

CHAPTER IV

THE SUPREME COURT AND THE RIGHT TO SPEEDY TRIAL

4.1 Chapter outline

In this chapter we look at several of the main decisions rendered by the Indian Supreme Court on the right to speedy trial. A number of themes emerge, including the following:²⁹⁰

- a. Is not the setting of time-limits for conclusion of criminal proceedings essential to ensure the “fair, just and reasonable procedure” envisaged under Article 21 post *Maneka Gandhi*? Has the Supreme Court handled the question of time-limits adequately?
- b. As per Supreme Court decisions indicating a “facts and circumstances” approach, has a *practical* test for determining violation of the right to speedy trial been set in order to make the right not just rhetorical, but *real and meaningful*?
- c. What are the “facts and circumstances” that are relevant to decide whether the right has been violated?
- d. Are “blanket orders” granting bail *en masse* to certain categories of accused the way forward?
- e. When one studies the different cases decided by the Supreme Court on the right to speedy trial, is there any discernible rationale or pattern underlying the decisions that explains *when* the court will quash proceedings?
- f. To whom does the right to speedy trial belong- the accused, the State or the victim?

²⁹⁰These themes are not mutually exclusive but might overlap.

- g. What are the different stages of the criminal process at which the right attaches?
- h. How has the right been dealt with in the United States and other jurisdictions?

4.2 The chequered course of the right to speedy trial: time-limits versus “facts and circumstances” approach

Article 21: Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law. (underlining supplied)

Unlike the constitution of the United States which provides expressly in the 6th Amendment that “in all criminal prosecutions, *the accused shall enjoy the right to a speedy and public trial,...*”, the right has become a part of Article 21 by an ingenious process of interpretation. In the initial years after independence, the decision in *A.K. Gopalan vs. State of Madras*²⁹¹ had resulted in a theory that the freedoms under the different Articles of Part III were *mutually exclusive*, each Article enacting a complete code relating to the protection of distinct rights. Some twenty years later, *R.C. Cooper vs. Union of India*²⁹² overruled *A.K. Gopalan* to hold that “Part III of the Constitution weaves a pattern of guarantees on the texture of basic human rights. The guarantees delimit the protection of those rights in their allotted fields: *they do not attempt to enunciate distinct rights*²⁹³.” Thus, the fundamental rights were held to be *not* distinct and mutually exclusive. This was reiterated in cases such as *Shambhu Nath Sarkar vs. State of West*

²⁹¹AIR 1950 SC 27

²⁹²1970(2)SCC 298

²⁹³Per Justice Shah

*Bengal*²⁹⁴ and *Haradhan Saha vs. State of West Bengal*²⁹⁵. Consequently, it became permissible to combine and read the different articles together, giving scope for judicial creativity.

Taking advantage of the cleared ground, it was Justice Bhagwati in *Maneka Gandhi vs. Union of India*²⁹⁶ who gave a new reading of the phrase "procedure established by law" in Article 21. Did the phrase imply simply that any procedure established by law could be used to deprive a person of life and liberty without requiring anything further? The petitioner was the holder of a passport under the Passports Act, 1967. She received a letter from the Regional Passport Office informing her that the government had decided to impound her passport under the Act, and requiring her to surrender her passport within 7 days. She immediately wrote back requesting a copy of the statement of reasons for the order passed against her. This was replied to by the Government with another letter stating that the government had decided - in the interest of the general public- not to furnish her a copy of the statement of reasons. The petitioner filed a writ petition under article 32 in the Supreme Court, challenging the order of impounding and the action of the government in declining to give her a copy of the statement of reasons for doing so. The Act indeed *provided* that the passport authority could impound a passport on the grounds set out. The Act further envisaged that the passport authority could even decline to give a copy of the reasons if it was of opinion that it would not be in the interest of the general public to furnish such a copy. In her writ petition, the petitioner raised the grounds *inter alia*, that the relevant provisions in section 10 (3) and section 10 (5) of the Act were themselves violative of Articles 14, 19 and 21, even if it was assumed that the authorities were acting *within the letter* of the Act. When the matter was listed in court,

²⁹⁴1973 (1) SCC 856

²⁹⁵1975 (3) SCC 198

²⁹⁶1978(1) SCC 248

the Attorney General conceded the matter by agreeing to consider any representation that might be made by the Petitioner and giving her an opportunity to be heard, whereupon fresh orders would be passed, thus, there was no occasion for the court to interfere. Nonetheless, Justice Bhagwati, sitting in a bench of 7 judges including the stellar Justice V.R. Krishna Iyer and Justice Y.V. Chandrachud, laid down several principles. It was pointed out that now the fundamental rights were no longer to be treated as being mutually exclusive and distinct; consequently, a law depriving a person of personal liberty and prescribing a procedure for that purpose within the meaning of Article 21 *had to also satisfy Articles 14 and 19*, where applicable. Having regard to the impact of Article 14 on Article 21, the concept of reasonableness would be projected onto the procedure contemplated under Article 21. Consequently, *any* procedure would not suffice to satisfy Article 21: the procedure must be *right and just and fair*, not arbitrary, fanciful or oppressive. Upon a study of the Act in question, the court found that it did not, in fact, violate Article 21 thus understood.

Taking cue from his own earlier dicta in *Maneka Gandhi*, in *Hussainara Khatoon(I) vs. Home Secretary, Bihar*²⁹⁷ Justice Bhagwati in 1979, sitting in a 3-judge bench went on to articulate the existence of the right to speedy trial as being implicit in the *reasonable, fair and just procedure* envisaged under Article 21. A writ petition seeking habeas corpus was filed in the Supreme Court incorporating several facts mentioned in an Indian Express newspaper; it was pointed out that there were a large number of undertrials including women and children, awaiting trial for several years in Bihar State; many had been charged with trivial offences involving punishments of 1 or 2 years, but had been incarcerated for periods ranging from 3 to 10 years; some undertrials had even spent more than 10 years in jail without commencement

²⁹⁷1980(1) SCC 81

of trial; many of the under-trials were too poor to afford bail. Incited, the Supreme Court in as many as six detailed *interim* orders²⁹⁸ obtained statistics and information relating to the plight of Bihar's under-trials and issued several directions directing the release of different classes of under-trials²⁹⁹. It was held that a procedure prescribed by law for depriving a person of his liberty cannot be reasonable, fair and just *unless that procedure ensures a speedy trial* for determination of the guilt of such person- else, it would fall foul of Article 21. Thus, even though the Indian constitution did not expressly mention speedy trial as in the US, it was nonetheless held to be *implicit*. *Pathak J.* concurred, pointing out that the primary principle of criminal law is that imprisonment should follow a judgment of guilt, not *precede* it.

²⁹⁸ *Hussainara Khatoon vs. Home Secretary, State of Bihar*, 1980 (1) SCC 81, 91, 93, 98, 108 and 115.

²⁹⁹ In *Hussainara Khatoon (I)* directions were issued to release the undertrials whose names appeared in the Indian Express on their personal bond without monetary obligation, as an exceptional measure. In *Hussainara Khatoon (II)* it was recorded that the Bihar State Government had taken a policy decision to withdraw, with the permission of the courts concerned, several classes of cases including cases under the Forest Act, Excise Act, Police Act, Motor Vehicles Act where the accused had been incarcerated for more than 6 months; cases under section 109 CrPC (security for good behavior) where the accused had been incarcerated for more than 6 months; lepers and other prisoners with dangerous infectious diseases incarcerated for more than 6 months; prisoners who had spent more than the maximum period of punishment for the offences alleged, etc. The court approved the said measures as a step in the right direction(para 1). In *Hussainara Khatoon (III)* women who were in alleged "protective custody" were directed to be released forthwith; the Sessions Judge was directed to forward an explanation as to why the trial of one Bhola Mahto had not commenced for seven years; details regarding compliance with section 167(2) CrPC were ordered to be produced to examine whether the Magistrates were mechanically remanding the accused to custody; information was further sought with regard to persons against whom charge-sheets were not filed within the periods of limitation prescribed, and with regard to cases where investigations were not completed in compliance with section 167(5) CrPC. In *Hussainara Khatoon (IV)* further directions were issued with regard to obtaining relevant data; undertrials who had completed more than the maximum periods of punishment for the offences alleged were directed to be released; directions were also issued with regard to undertrials who had completed more than ½ the maximum period of imprisonment prescribed for the offence. In *Hussainara Khatoon (V)* affidavits were ordered to be filed relating to persons of unsound mind kept illegally in jails. In *Hussainara Khatoon (VI)* further directions were issued with regard to undertrials facing trial for multiple offences.

The six orders passed in the *Hussainara Khatoon* cases show that the judges appeared to be very much *in favour* of fixing time-limits for conclusion of criminal proceedings. In the third order, a note was filed on behalf of the Bihar government pointing out a policy decision that where police investigation in a case had been delayed for over 2 years, the Superintendent of Police would ensure expeditious completion. This was deprecated as being too small a measure. It was pointed out that reasonable time-limits should be set by the government for investigations. Any investigation that took more than 2 years would imply something radically wrong and such cases should be withdrawn by the government³⁰⁰.

However, by the time *Hussainara Khatoon (VII) vs. State of Bihar*³⁰¹ came up for final disposal in the year 1995, Justice Bhagwati and the other judges in the earlier Bench had retired. The new Bench led by Justice Ahmadi took a surprisingly stern view against laying down general guidelines for release of under-trials. It was held that the responsibility now lay with the High Courts for enforcement; general orders for release of under-trials without reference to specific fact situations in different cases was held to be a hazardous practice; it was held that sympathy for under-trials had to be balanced with the impact of crime, especially serious crime; withdrawal of prosecutions from time-to-time was also not always the appropriate remedy. The cases were finally disposed of on this rather tame note.

In *State of Maharashtra vs. Champalal Punjaji Shah*³⁰² which was decided quickly after *Hussainara Khatoon*, another 3-judge bench headed by Justice Chinnappa Reddy took the view that the question whether a conviction should be quashed on the ground of delay should be decided *on the facts*

³⁰⁰Para 1 of *Hussainara Khatoon (III)*.

³⁰¹ 1995(5) SCC 326

³⁰² 1981(3) SCC 610

and circumstances of each case. The facts were that the police along with excise officials had raided a building in Bombay in the year 1965; the Respondent accused was one of the persons found in the flat; 100 slabs of gold were found in an almirah in the flat; keys to the almirah had been seized from the person of the Respondent accused, as well as keys to the flat itself. Upon being charged under *inter alia*, section 135 of the Customs Act, the Respondent accused was convicted by the trial court and sentenced to imprisonment for 2 to 4 years on various counts. The accused's appeal to the High Court was allowed and he was acquitted. The State of Maharashtra preferred an appeal to the Supreme Court. On facts, the Supreme Court found that the evidence against the accused was impeccable and that consequently the High Court judgment was perverse. However, it was argued for the accused that there was considerable delay in the proceedings (16 years: from 1965 when the raid took place to 1981 when the Supreme Court had to decide the case); that an order of acquittal should not be interfered with after such a long lapse of time, especially when the accused had undergone incarceration for more than 3 years during trial. Rejecting the contentions of the accused, the Supreme Court allowed the State's appeal holding that *a delayed trial is not necessarily an unfair trial* if no prejudice is caused to the accused; the question whether conviction should be quashed on the ground of delay *depends upon the facts and circumstances of each case*; in this particular case, *the accused himself had been responsible for a fair part of the delay* and was further unable to show any prejudice as such; if it was an offence of a trivial nature, such as simple assault or theft of a small sum, the decision might have been otherwise however, *the offence was a serious one* which jeopardised the economy of the country. Thus, the Supreme Court advocated a "facts and circumstances" approach, and these facts and circumstances would apparently include (a) the seriousness of the offence, (b) the integrity of the evidence against the accused, on merits, (c)

the prejudice caused to the accused by the delay, and (d) whether the accused was himself responsible for the delay.

But in *Sheela Barse (II) vs. Union of India*³⁰³ decided thereafter in 1986, Justice Bhagwati again made his approach clear, sitting in a Division Bench. An article 32 petition had been filed seeking information about the incarceration of children under 18 years of age in various jails in the country and their release. Once again, using the technique of interim orders, the Supreme Court directed all the District Judges in the country to obtain information from their respective districts as to the number of children below 16 years who were in jails and related details. Justice Bhagwati ordered that no children should be kept in jails; if the State governments did not have sufficient accommodation in remand and observation homes, the children were to be released on bail. It was also directed that where a complaint or FIR relates to a child below 16 years for an offence for which less than 7 years' imprisonment was prescribed, the investigation shall be completed within a period of 3 months from the date of the complaint/FIR; further, that case must be tried and disposed of within a further period of 6 months thereafter. Failure to abide by these time-limits would result in the prosecution being closed. Referring also to the larger question of what would be a reasonable period of time for *any* trial, not just one relating to children, beyond which period the court would regard the right to speedy trial as having been violated, the court deferred this question for consideration in some other case.

The next significant case where various aspects relating to the right to speedy trial were squarely considered, was the Constitution Bench decision

³⁰³1986 (3) SCC 632.

in *Abdul Rehman Antulay vs. R.S. Nayak*³⁰⁴, decided some 12 years after *Hussainara Khatoon* first articulated the existence of the right. A criminal case had been instituted against A.R. Antulay, former Chief Minister of Maharashtra in the year 1982 by the complainant R.S. Nayak, alleging various offences under the Prevention of Corruption Act, 1947. Following various proceedings before several courts, the matter was still pending in the year 1990. In the connected case, one Ranjan Dwivedi had been arrested and charged in the year 1975 but his proceedings were also pending in the year 1990. Both A.R. Antulay and Ranjan Dwivedi, along with several others, filed writ petitions and criminal appeals before the Supreme Court praying for quashing of proceedings on the ground of violation of the right to speedy trial or for setting of time-limits for conclusion of criminal proceedings. A Division Bench of the Supreme Court referred the matter to a Constitution Bench. The arguments advanced by the parties before the Constitution Bench are worthy of note. For the accused, it was argued that in order to make the right to speedy trial *meaningful, enforceable and effective*, there ought to be an outer-limit beyond which continuance of proceedings would violate Article 21; that in the absence of an outer-limit of say 7 years, the right is *illusory*. Counsel for the complainant R.S. Nayak argued that the delay was due to the fault of the accused, which would disentitle him to any relief. Mr. Jethmalani, arguing for the State of Bihar, contended *inter alia*, that:

- (a) the Constitution-makers were *aware* of the express provisions in the US 6th Amendment, but *chose* not to make the right express in India;
- (b) the right in the US is express and unqualified whereas in India it is *only a component of justice and fairness*- Indian courts have to reconcile justice and fairness to the accused with *many other* interests which are compelling and paramount;

³⁰⁴1992(1) SCC 225

- (c) instead of time-limits, Indian courts could always ensure speedy trial by issuing suitable directions to the trial courts in specific cases;
- (d) courts must respect legislative policy and the fact that time-limits have not been set by Parliament;
- (e) it is neither permissible, possible nor desirable in the circumstances to lay down outer time-limits- in each case the court has to perform a balancing act and weigh a variety of factors – thus every decision has to be *ad hoc*;
- (f) the US Supreme Court also had declined to lay down such time-limits; laying down time-limits would amount to judicial legislation- which was impermissible;
- (g) the core of the “right to speedy trial” being protection against incarceration, an accused who has never been incarcerated cannot complain; and
- (h) the plea of violation would have to be first evaluated by the trial court since a finding on prejudice would be impossible without knowledge of the facts and merits of the matter.

The Attorney-General argued that the CrPC itself contains several provisions which ensure speedy trial; that section 482 CrPC can be invoked by an accused whose right has been denied and he can seek quashing of proceedings; that consequently there is no need for time-limits.

The Supreme Court after considering several Indian³⁰⁵ and US decisions³⁰⁶, held as under:

³⁰⁵Including *State of Bihar vs. Uma Shankar Ketriwal* (1981) 1 SCC 75, *State of Maharashtra vs. Champalal Punjaji Shah* (1981) 3 SCC 610, *S. Guin vs. Grindlays Bank Ltd*, *Raghubir Singh vs. Bihar* (1986) 4 SCC 481, *TJ Stephen vs. Parle Bottling Co (P) Ltd* 1988 Supp SCC 458 and *State of AP vs. PV Pavithran* (1990) 2 SCC 340.

³⁰⁶These are considered later in the Chapter.

- a. Unlike the US constitution, which expressly recognizes the right, the Indian constitution does not expressly state the existence of the right. Indeed, until *A.K. Gopalan* was overruled in *R.C. Cooper*, it was difficult to recognize the existence of the right to speedy trial as flowing from Article 21. Only thereafter, the creative decision in *Maneka Gandhi* and the subsequent decisions in the *Hussainara Khatoon* cases became possible, holding the right to be *implicit* in Article 21.
- b. Per Bhagwati in *Maneka Gandhi*, the procedure under Article 21 must be “right and just and fair” and not arbitrary, fanciful or oppressive- otherwise it would be no procedure at all. Obviously therefore, a procedure prescribed by law that deprives 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.
- c. Fair, just and reasonable procedure implicit in Article 21 creates a right in the accused to be tried speedily. The fact that speedy trial is also in public interest or that it serves social interest also, does not make it any less the right of the accused.
- d. The right to speedy trial encompasses all stages i.e., investigation, inquiry, trial, appeal, revision and re-trial.
- e. Right to speedy trial is already embedded in the statutory law of the country – in the CrPC- in sections 309 and 482. Thus, even *de hors* Article 21, the question of delay has been addressed by the law. The provisions of the CrPC provide for early investigation and speedy trial- if only these provisions are followed in their letter and spirit, there would be little room for grievance- but these provisions are more honoured in their breach.

- f. The decisions of the US courts, which have also been approved by the Privy Council are to be approved³⁰⁷: the right to a speedy trial is *generically different* from any of the other rights enshrined in the Constitution for the protection of the accused- there is a *societal* interest in ensuring a speedy trial which exists separate from and sometimes in opposition to, the interests of the accused; secondly, deprivation of the right may work to the accused's *advantage*. The right to a speedy trial is a more vague concept than other procedural rights- we cannot say how long is too long in a system where justice is supposed to be swift but deliberate; the amorphous quality of the right leads to the unsatisfactory remedy of dismissal of the indictment when the right has been deprived – letting the guilty go free. The acceptable approach is to adopt a balancing test, considering cases on an *ad hoc* basis. The factors to be considered would include: the length of the delay, the reasons for the delay, the defendant's assertion of his right and prejudice to the defendant.
- g. It is not possible to lay down any time-limits for conclusion of criminal proceedings, *in the very nature of things and present-day circumstances*. The nature of the offence, the number of accused, the number of witnesses, the workload of the particular court, all need to be kept in mind. Some cases take longer than others. In many places, the requisite numbers of courts are not available. Each case has thus to be decided on its own facts. If minor offences are involved (not being economic offences) and the delay is too long, and not caused by the accused- *different considerations may arise*. The contention that without such an outer limit the right becomes illusory is not acceptable.

³⁰⁷ *Barker vs. Wingo* (33 L Ed 2d 101); *Strunk vs. US* (37 L Ed 2d 56); *Bell vs. Director of Prosecution, Jamaica* (1985) 2 ALL ER 585 (PC); *US vs. Hawk* (88 L Ed 2d 640).

- h. Ultimately the court has to balance and weigh the several relevant factors by adopting a *balancing test* and determine in each case whether the right has been violated: nature of the offence, numbers of accused and witnesses, workloads of the courts concerned, prevailing local conditions and such other systemic delays need to be taken into account. A realistic and practical approach has to be adopted instead of a pedantic one.
- i. Any rule fixing an outer time-limit is bound to be a qualified one. Such a rule cannot be evolved merely to shift the burden onto the prosecution to prove justification. In every case of complaint of denial of the right, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint.
- j. Each and every delay does not necessarily prejudice the accused- some delays may work to his advantage. However, *inordinately* long delays may be taken as *presumptive proof of prejudice*. The fact of incarceration of the accused will be a relevant factor.
- k. The consequence of infringement would not be only quashing. In many cases, quashing may not be in the interest of justice. In such cases, techniques such as expedition of trial, reduction of sentence and so on, can be adopted.
- l. The grievance regarding denial of the right should first be addressed to the High Court- to be disposed of on priority basis.

The prayers made by A.R. Antulay and Ranjan Dwivedi for quashing were rejected, upon analyzing the facts and circumstances of their cases, especially since they had themselves contributed to the delays. However, directions were issued to ensure expeditious disposal of their criminal cases.

A.R. Antulay was followed by yet another Constitution Bench decision in *Kartar Singh vs. State of Punjab*³⁰⁸, which affirmed the “facts and circumstances” approach. The controversial Terrorist and Disruptive Activities (Prevention) Act, 1987, (TADA), and related enactments were challenged in a writ petition filed in the Supreme Court. It was contended that the special provisions contained in the Act, especially the restrictive provisions with regard to the grant of bail to persons accused of offences under the Act, were violative of Article 21. Even though the Act professed to have been enacted to ensure speedy trial of cases under the Act, by creating designated special courts, dispensing with committal proceedings, etc., the procedure in reality resulted in delayed trial and was therefore not *reasonable, fair and just procedure* as contemplated in Article 21. It was also argued that the Act by making serious departure from regular criminal procedure, seriously affected the accused’s right to fair trial under Article 21. Unfortunately³⁰⁹, the Supreme Court largely upheld the validity of the Act holding that the Act *did* adequately incorporate the right to speedy trial. In the course of the judgment it was pointed out that the right to a speedy trial is a derivation from the Magna Carta; it travelled from there to the Virginia Declaration of Rights of 1776 in the US and further to the 6th Amendment of the US Constitution. The US Federal Speedy Trial Act of 1974 gave effect to the right by setting time-limits for all major stages of criminal proceedings. It was also noted that the right is reflected in section 309 CrPC. Several Indian and US decisions were noted. It was held that the court has to adopt a balancing approach by taking into account (a) length of delay, (b) justification for the

³⁰⁸1994(3) SCC 569

³⁰⁹More discussion on laws relating to terrorism and national security and the Supreme Court’s approach to bail under these enactments is found in Chapter 3.

delay, (c) accused's assertion of his right and (d) prejudice caused to the accused by the delay.

After *Kartar Singh*, what followed were a surprising spate of decisions laying down specific time-limits for conclusion of criminal proceedings, apparently in response to the deteriorating conditions in the criminal justice system and the plight of the incarcerated, who were forever growing in numbers. These decisions were rendered in the face of the Constitution Bench dicta in *A.R. Antulay* and *Kartar Singh*, but under the umbrella of the 7-judge Bench in *Maneka Gandhi*.

In *R.D. Upadhyay vs. State of AP*³¹⁰ a Public Interest Litigation under article 32 was filed by an advocate with regard to the large numbers of under-trials languishing in Tihar Jail without trial. The Supreme Court division bench directed the Superintendent of the Jail to file an affidavit giving details of the under-trials confined for more than a year. Thereafter specific directions were given with regard to 880 pending murder cases: ten additional District Judges were directed to take up these matters exclusively and the High Court was to consider directing these judges to *dispose of these cases within 6 months*. Specific directions were also given with regard to release of under-trials on bail upon the lapse of certain time-limits.

It may be recalled that even in *AR Antulay*, a Constitution Bench in spite of frowning upon time-limits, had nonetheless kept open the question whether it would be appropriate to frame time-limits for *relatively minor offences*. In *Common Cause(I), A Registered Society vs. Union of India*³¹¹ a division bench of the Supreme Court adopted a bold approach by

³¹⁰1996(3) SCC 422

³¹¹1996 (4) SCC 33

setting time-limits for conclusion of proceedings in relatively minor offences. The petitioner society espousing public causes, had asked for certain directions in a writ filed under article 32, applicable to minor offences in all criminal courts across the country. The court noted that in many cases where the offences are minor, the proceedings are kept pending for years together; if the accused are poor they languish in jail due to inability to provide bail; and that "it appears essential to issue appropriate directions to protect and effectuate the right to life and liberty under Article 21..."³¹² The following directions *inter alia*, were issued:

- (a) For offences under the IPC or other laws punishable with imprisonment for a *maximum period of 3 years* with or without fine and if trial is pending for more than 1 year and if accused has been in jail for more than 6 months – the criminal court *shall release* the accused on bail or personal bond subject to such conditions as may be found necessary;
- (b) For offences under the IPC or other laws punishable with imprisonment for a *maximum period of 5 years* with or without fine and if trial is pending for more than 2 year and if accused has been in jail for more than 6 months – the criminal court *shall release* the accused on bail or personal bond subject to such conditions as may be found necessary;
- (c) For offences under the IPC or other laws punishable with imprisonment for a *maximum period of 7 years* with or without fine and if trial is pending for more than 2 years and if accused has been in jail for more than 1 year – the criminal court *shall release* the accused on bail or personal bond subject to such conditions as may be found necessary;

³¹²Para 4

- (d) In criminal proceedings for *traffic offences* pending for more than 2 years the court may discharge the accused;
- (e) In criminal proceedings which are *compoundable* pending for more than 2 years and where trial has not yet commenced, after hearing the Public Prosecutor and other parties the courts may discharge or acquit the accused;
- (f) In criminal proceedings with regard to *non-cognizable and bailable offences* pending for more than 2 years where trial has not commenced, the courts shall discharge or acquit the accused;
- (g) In criminal proceedings *involving only fine*, which are not of recurring nature pending for more than 1 year where trial has not commenced, the courts shall discharge or acquit the accused;
- (h) In criminal proceedings where the maximum punishment is imprisonment *for less than a year* with or without fine, and where the case is pending for more than a year and trial has not commenced, the courts shall discharge or acquit the accused;
- (i) In criminal proceedings where the maximum punishment is imprisonment *for less than 3 years* with or without fine, and where the case is pending for more than 2 years and trial has not commenced the courts shall discharge or acquit the accused;
- (j) The above directions would not apply to offences under special acts which involved national security or the economy such as: Prevention of Corruption Act, Explosive Substances Act, TADA, Arms Act, to public servants, to offences involving public funds, coins and government stamps, smuggling, elections, false evidence, offences against the State, tax enactments and defamation under section 499 IPC. All these offences would be tried on priority basis by the criminal courts.
- (k) These directions would apply not only to existing cases, but also to all cases that might be filed henceforth.

It is crucial to note that all the directions setting time-limits were issued with regard to smaller offences. Therefore, the division bench was not disrespecting judicial discipline by ignoring the dicta of the larger bench in *A.R. Antulay*-which had kept the question of time-limits *open* for smaller offences. Unfortunately, as we shall see, this bold decision which might have decongested much of our criminal courts' dockets and our jails, was overruled subsequently, holding it to be contrary to the dicta in *A.R. Antulay*.

In *Common Cause (II) vs. Union of India*³¹³ the court made some modifications to its directions in *Common Cause (I)*. The time-limits were held to be inapplicable to cases where the delay was attributable wholly or partly to the dilatory tactics of the accused. Secondly, the list of offences to which the directions would not apply, was *expanded* to include matrimonial offences, offences under the Negotiable Instruments Act, criminal misappropriation and breach of trust, rash and negligent acts, offences affecting public health, safety, convenience, decency and morals. Since some 6 months had passed since the passing of *Common Cause (I)*, the court was conscious of the fact that criminal courts might have *already* released persons accused of crimes under the expanded list of excluded offences. Consequently, it was ordered that the cases where the accused had been discharged for offences under the expanded list, pursuant to *Common Cause (I)*, be restored and fresh summons and warrants be issued in these cases! Surely, this is a good instance of the pitfalls of judicial law-making –if there ever was one.

³¹³1996(6) SCC 775

Next, in *Raj Deo Sharma (I) vs. State of Bihar*³¹⁴ a three-judge bench of the Supreme Court once again adopted a bold approach to the question of time-limits. A case had been registered against the appellant in the year 1982 with regard to an alleged offence under the Prevention of Corruption Act, 1947: it was alleged by the CBI that he had amassed disproportionate assets to the tune of around Rs. 9 lakhs. In the year 1987 after cognizance was taken, the Petitioner applied for and obtained bail. Charges were framed in 1993 and by the year 1995 the prosecution had completed examination of only 3 witnesses out of 40 mentioned in its list of witnesses. The petitioner filed a writ in 1995 before the High Court challenging the entire proceedings as being in violation of his right to speedy trial, given the lapse of more than 13 years from the date of registration of the offence. The High Court dismissed the writ on the ground that there was only 1 special CBI court which had a large number of pending cases. The said order was challenged in a Special Leave Petition before the Supreme Court, which was admitted in the year 1998. The Supreme Court initially called for a report from the special judge as to the stage of the present case and other cases pending before it. The report disclosed a shocking state of affairs- out of 40 prosecution witnesses only 3 had been examined till date and 36 adjournments had been taken after the examination of the last witness. It was noted that there were several other such cases pending before the Special Judge in Bihar. The Supreme Court went through the previous decisions of the court on the question of the right to speedy trial, including *A.R. Antulay and Kartar Singh*. It was held that the CrPC was itself comprehensive enough to enable the Magistrate to close the prosecution if the prosecution is unable to produce its witnesses despite repeated adjournments- section 309, which directs trial from day-to-day and also requires reasons for adjournment, was noted. In spite of noticing the Constitution Bench decision in *A.R. Antulay* and referring to it, the bench of

³¹⁴1998(7)SCC 507

three judges went on to lay down guidelines purportedly *in addition to* the directions issued in *Common Cause (I) and (II)* in view of the large pendency of cases:

- a. Where the offence is punishable with imprisonment *up to 7 years*, then the court shall close the prosecution evidence on the completion of 2 years from the date on which the plea is recorded and the court can then proceed to the next step in the trial process, irrespective of whether the accused is incarcerated or not;
- b. In the above-mentioned cases, if the accused has been jailed for a period more than $\frac{1}{2}$ the maximum period of punishment for the offence, he shall be released on bail forthwith;
- c. Where the offence is punishable with imprisonment *for more than 7 years*, then the court shall close the prosecution evidence on the completion of 3 years from the date on which the plea is recorded and the court can then proceed to the next step in the trial process, irrespective of whether the accused is incarcerated or not; unless for exceptional reasons to be recorded the court grants further time to the prosecution;
- d. But if the delay is due to the fault of the accused himself, then these limits will not apply;
- e. The period during which proceedings have been stayed by any court shall be excluded in computing whether time-limits have been exceeded.

The impugned High Court order was set aside and the Special Judge was directed to pass orders as per the directions in the judgment. It is interesting to note that this case laid down time-limits not only for minor cases, but for major ones as well (offences involving punishment of more than 7 years also), that too, after due reference to *A.R. Antulay!* What is also interesting is that whilst *A.R. Antulay* seems to have refused to

endorse time-limits on the assumption that *quashing* of the proceedings would be the only remedy thereupon, in this case *quashing* was not provided for: exceeding the time-limits set would not lead to automatic closure of the criminal prosecution, only the prosecution evidence would be treated as closed and the prosecution would move on to the next stage of the trial. Therefore, were the judges in *Raj Deo Sharma (I)* acting contrary to the dicta in *A.R. Antulay* or not?

Embarrassingly, a Criminal Miscellaneous Petition came to be filed in the disposed of *Raj Deo Sharma (I)*, by the CBI, seeking clarifications and modifications, and this petition came up for disposal after about a year. In *Raj Deo Sharma (II) vs. State of Bihar*³¹⁵ the 3-judge bench headed by Justice Thomas³¹⁶ clarified that it had *not* gone counter to the decisions in *A.R. Antulay* or *Kartar Singh* since *outer* limits for conclusion of criminal proceedings had not been laid down. It was stated that the time-frame had been laid down only to prevent the prosecution from becoming a persecution, by speeding up the trial. It was clarified that the power of the trial court under section 311 CrPC to call and examine any person as a witness would not be curtailed in any event, even if the prosecution evidence was closed; however if the presiding officer of the criminal court in question was absent- such time was to be excluded; further that an additional period of 1 year could be claimed by the prosecution with regard to *pending* cases. Justice M. Srinivasan, agreeing with Justice Thomas, asserted in his separate judgment that *Raj Deo Sharma (I)* was not contrary to *A.R. Antulay*; and that there was a difference between fixing time-limits for disposal of the proceedings and fixing time-limits for completion of prosecution evidence. It was further stated by Justice M.

³¹⁵1999(7) SCC 604

³¹⁶By this time Justice M.M. Punchhi had retired and Justice Shah had taken his place, along with Justice M. Srinivasan.

Srinivasan, that there were hundreds of such delayed cases and if the Supreme Court were to look on helplessly merely reiterating that right to speedy trial is a fundamental right under Article 21, but no time-limit could be fixed, the problem would remain unsolved forever. Justice Shah however, dissented, holding that *Raj Deo Sharma (I)* had been rendered contrary to the Constitution Bench decisions in *A.R. Antulay* and *Kartar Singh* and consequently the directions therein needed to be kept in abeyance.

Ultimately, a seven-judge bench in *P. Ramachandra Rao vs. State of Karnataka*³¹⁷ has tried to put the matter at rest. The appellant public servant was working as an Electrical Superintendent in Mangalore City Corporation. He was charged under the Prevention of Corruption Act in the year 1994 for amassing wealth disproportionate to his known sources of income; in the year 1999 the Special Judge directed the acquittal of the accused since the trial had not commenced till then and more than 2 years had elapsed, as per the directions in *Raj Deo Sharma(I)*; the State of Karnataka preferred an appeal to the Karnataka High Court which allowed and remanded the matter on the ground that offences relating to corruption fell within the exempted categories in *Raj Deo Sharma(I)* and therefore, would not attract the time-limits; the accused preferred a Special Leave Petition to the Supreme Court; other cases involving similar facts were also clubbed together. A three-judge bench of the Supreme Court initially referred the matter to a Constitution Bench on the question whether time-limits could be laid down. The Constitution Bench, upon noticing the dicta in earlier benches of similar strength, referred the matter to a still larger bench of seven judges, which would have the power to overrule a Constitution Bench. The seven-judge bench asked

³¹⁷2002(4) SCC 578

the question: is it necessary to have time-limits? Is there no other effective mechanism available to achieve the same end? It was pointed out that several provisions of the CrPC indeed provided for speedy trial, including sections 309, 258 and 482. Disappointingly, the seven-judge bench headed by Justice Lahoti held that :

- a. Bars of limitation were uncalled for and impermissible since first, it would tantamount to impermissible legislation and second, it would be contrary to the law laid down in *A.R. Antulay*.
- b. Laying down time-limits would amount to legislation – something not within the power of the Supreme Court.
- c. *Common Cause (I and II)* and *Raj Deo Sharma (I and II)* ran counter to the Constitution Bench pronouncements in *A.R. Antulay* and were accordingly overruled.
- d. The dicta in *A.R. Antulay* was correct and still good law; propositions were re-affirmed and upheld.
- e. It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe outer-limits for conclusion of all criminal proceedings.
- f. Criminal courts should exercise their available powers under provisions such as sections 309, 311 and 258 CrPC to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be a better protector of the right than any guidelines. In appropriate cases, the jurisdictions of the High Courts under section 482 CrPC and articles 226 and 227 of the Constitution could be invoked seeking suitable directions.
- g. The directions made in *Common Cause (I and II)* and *Raj Deo Sharma (I and II)* with regard to *bail*, are not the subject-matter of the reference and are not to be affected by the overruling of these cases on other counts.

h. However, the criminal cases concluded as per the overruled judgments shall not be re-opened.

Justice Raju whilst concurring with most aspects, dissented on the point that the Supreme Court did not have the *power* to lay down time-limits.

What can be said about the judgment in *P. Ramachandra Rao*? Is it a step backwards? In the humble opinion of the researcher, the 7-judge bench could have done a lot more to protect the right to speedy trial by upholding the decisions in *Common Cause (I and II)* and *Raj Deo Sharma (I and II)*. Merely making rhetorical statements about the existence of such a right, without giving effect to it in concrete cases to the affected undertrials, is not a commendable approach:

(a) The judges in *P. Ramachandra Rao* could have saved the decisions in *Common Cause (I and II)* and *Raj Deo Sharma (I and II)* to a large extent. *A.R. Antulay* had specifically stated that with regard to the setting of time-limits, the considerations would be different for minor/smaller offences. *Common-Cause (I and II)* and *Raj Deo Sharma (I and II)* in fact, dealt mostly with minor offences. At least the directions relating to such minor cases could have been held valid. Secondly, as rightly pointed by Justice M. Srinivasan, *A.R. Antulay* had frowned upon time-limits in the context of an assumption that the only remedy for exceeding the time-limits would be quashing of the proceedings, letting the guilty go free. But *Raj Deo Sharma(I)* did not lay down any outer time-limits providing for putting an end to the prosecution itself, should the limits be breached. Only the prosecution *evidence* would be treated as closed and the prosecution would go on to the next stage i.e., questioning of the accused or accused's evidence. Therefore, *P.*

Ramachandra Rao could have upheld the earlier cases if these subtleties had been gone into.

- (b) The seven-judge bench did not examine in detail the question whether setting of time-limits would be valid, simply on the ground that it would be contrary to the Constitution Bench decision in *A.R. Antulay*. However, the instant bench was a 7-judge bench, having the power to differ from and *overrule* *A.R. Antulay* if so required! The 7-judge bench did not even examine the different pros and cons of setting time-limits but simply followed the decision of the smaller bench. This does not speak much for the jurisprudence of the court.
- (c) Even if we evaluate the court's approach in the light of social and statistical realities, it is clear that it is in fact, *feasible and advisable* to lay down time-limits for proceedings. Without these time-limits, the right to speedy trial becomes mere rhetoric for the large numbers of poor incarcerated under-trials. In the last chapter, the researcher has argued that a gradually progressive, step-by-step approach to laying down time-limits would be feasible and advisable. Initially, given the current state of resources and infrastructure, time-limits could be set for the most disadvantaged categories within under-trials: women, children, the mentally ill and the sick. Since these categories of inmates do not constitute a huge percentage of the undertrial population, fixing of time-limits for such persons would not unduly strain the existing system. So also, the fixing of time-limits for persons accused of minor crimes would not greatly strain the system since the majority of undertrials are incarcerated for serious and heinous crimes. Again, other categories of inmates for whom time-limits could be laid down are persons accused of terrorist activities or offences against

national security, persons holding high offices in the government, etc. Society requires that the trial of such persons be concluded quickly. As India's judicial infrastructure and judge-to-population ratio gets better, the courts could consider time-limits for the remaining categories of inmates. These arguments are considered in detail in the last chapter.

- (d) The 7-judge bench's timid stand that it did not have the *power* to lay down time-limits (dissented to by Justice Raju) is rather curious given the extraordinarily activist history of the Supreme Court of India and the powers under articles 141 and 142 of the Constitution of India!
- (e) The court failed to appreciate the most compelling argument for time-limits: another 7-judge bench in *Maneka Gandhi* had categorically held that *any* procedure will not suffice to satisfy article 21; the procedure must be *reasonable, just and fair*, which would obviously mean that the procedure must be reasonably expeditious. Can a procedure that takes 5 years be held to be reasonable? Or a procedure that takes 10, 15 or even 25 years?! It would be contrary to logic and common-sense to suggest that a procedure which takes so long is in conformity with article 21. Judges and scholars may quibble about the *precise* length of time that would be deemed reasonable, but no one could deny that a procedure which takes say, more than 7 years, is an unreasonable procedure. Thus understood, it is clear that some concept of time-limit is *inbuilt* into the right to speedy trial. To put it philosophically, everything in life has an expiry date; life itself has an expiry date! Therefore, time-limits are *inevitably* a part of reasonable, just and fair procedure under Article 21. Thus understood, *A.R. Antulay*, which failed to recognize this reality is in fact, contrary

to the larger 7-judge decision in *Maneka Gandhi*, since by failing to incorporate time-limits into criminal procedure, the procedure remains unfair, unjust and unreasonable and violates Article 21. *P. Ramachandra Rao* should have followed *Maneka Gandhi* and overruled *A.R. Antulay*.

- (f) Merely because India may not have the judicial resources to complete trials within a reasonable time, we cannot simply repeat the rhetoric of speedy trial without further enumeration and assume that the right has been protected. The more honest approach would be to accept that the right is infringed in a large number of cases and then address the question of resources. In other words, the question of *feasibility* is different from the question of *constitutionality*. Merely because we are not able to assure trial to the accused within a reasonable time we cannot say that no constitutional right has been violated—the more honest approach would be to acknowledge that a constitutional right has been infringed but that we do not have the capabilities to address these infringements.

In the last chapter, the researcher has tried to put together different strands from statistical and social realities as well as legal discourse, to make an argument for progressively recognizing time-limits for different categories of under-trials.

4.3 The practical application of the “facts and circumstances” approach: do serious crimes ever die?

When we look at the *practical manner* in which the “facts and circumstances” approach is applied in the individual cases that come up seeking quashing

before the Supreme Court, it becomes apparent that in a large number of cases, the Supreme Court has quashed proceedings on the ground that they violate the accused's right to speedy trial: but all these cases relate to *minor/smaller offences*. Wherever serious or heinous crimes are involved, the Supreme Court almost never lets go of the accused that easily³¹⁸. The nature of the offence charged thus appears to be the single most determinative factor in holding that the accused's right to speedy trial has been violated. Some examples could be considered under each type of case.

(a) Serious offences

In *Mohd. Hussain vs. State (Delhi)*³¹⁹ the accused, a Pakistani national, was alleged to have planted a bomb in a passenger bus, resulting in the death of 4 persons and injury to 24 others. The alleged act took place in the year 1997. The accused was charged under sections 302 and 307 IPC read with section 120B IPC, as well as under sections 3 and 4 of the Explosive Substances Act, 1908. After a detailed trial involving 65 witnesses, the trial court convicted the accused in the year 2004 and awarded *inter alia*, punishment of death sentence. The High Court of Delhi on appeal, confirmed the conviction in the year 2006. The accused then appealed to the Supreme Court. The division bench found that the trial of the accused had been vitiated since the accused had not been given adequate assistance of counsel, in breach of the mandatory provisions of section 304 CrPC. The trial was therefore unfair and the conviction was thus bound to be set aside as per the accepted principles of criminal justice. However, the difficult question before the division bench was whether to merely set aside the conviction and

³¹⁸The researcher has not found a single case where the Supreme Court has quashed criminal proceedings in a matter relating to heinous or serious crimes.

³¹⁹2012 (9) SCC 408

release the accused or to set aside the conviction with a direction for *de novo* trial? *Justice Dattu* directed remand with a specific direction to conclude the trial within 3 months. However, *Justice C.K. Prasad*, held that "he had no courage to direct *de novo* trial at such a point in time." Crucially, the accused had been arrested in the year 1998 and had been in jail for some 14 years; death sentence had been awarded more than 7 years earlier. He held that ordering *de novo* trial at this point of time would be a travesty of justice – by the passage of time, witnesses would not be available leading naturally to acquittal of the accused, in any event. He ordered that the person be deported back to Pakistan. In view of the conflicting opinions, the matter was referred to a 3-judge bench on the question whether the matter required to be remanded for a *de novo* trial? The bench held, after reviewing several previous decisions, that there is a *qualitative* difference between the right to speedy trial and the right to fair trial; deprivation of the right to speedy trial does not *per se* prejudice the accused in defending himself; the right to speedy trial in its very nature is *relative* and needs to be weighed with other factors such as the nature and gravity of the crime. These principles are equally applicable when the question of re-trial arises. It was held that in the facts and circumstances of the case, given the very grave nature of the offence, even though the accused had been in jail for more than 14 years and had passed through the mental agony of a death sentence pending against him, these aspects were not sufficient for acquittal of the accused. The case was remanded for *de novo* trial with the direction that it be completed within 3 months. Given the seriousness of the offence, the court's concern is appreciable- but would the *de novo* trial after 15 years result in conviction and justice? Or, given that witnesses would have disappeared, would it result in acquittal?

In *Shyam Babu vs. State of UP*³²⁰ a dispute between relatives led to firing with guns and country-made pistols resulting in the death of 5 persons and grievous injury to one person. The FIR had been lodged in the year 1978 under *inter alia*, sections 302 and 307 IPC. In the year 1980, after 10 years, the Sessions Judge acquitted all seven accused. The State preferred an appeal to the High Court. In the year 2006, after a lapse of 25 years from the date of the incident, the High Court allowed the appeal and convicted the accused- of whom only 3 were left alive by that time, and sentenced them to life imprisonment. The 3 convicted persons preferred appeals to the Supreme Court. During the pendency of their appeals, 2 of them died, leaving just Shyam Babu facing conviction and life sentence. Before the Supreme Court it was argued that the sole appellant should be discharged on the ground of delay- that the High Court could not have reversed an order of acquittal after 25 years. But the Supreme Court declined to interfere, pointing out the serious nature of the offence.

In *Gopi Chand vs. Delhi Administration*³²¹ the appellant Gopi Chand had been the chief cashier in United Commercial Bank, New Delhi; he was charged with commission of offences under section 409 IPC relating to criminal breach of trust involving funds of the Bank, in three separate criminal cases involving sums to the tune of Rs. 1,65,000/-, Rs. 23,772.86/- and Rs. 10,000/- respectively. The FIR had been lodged in the year 1948 and trial commenced in 1949. The trial court and High Court concurrently found him guilty and imposed sentence upon him. However, the appellant preferred appeals to the Supreme Court upon certificates granted by the High Court under Article 134(1)(c) of the Constitution, contending that instead of trying his case as a warrant case, the trial court had adopted the procedure applicable to summons cases. The Constitution Bench of the Supreme Court

³²⁰2012(8) SCC 651

³²¹AIR 1959 SC 609

deciding the matter in the year 1959 found that indeed, the procedure adopted was irregular and that the appellant had been prejudiced by the denial of opportunity to cross-examine prosecution witnesses twice and the failure to frame charges. The convictions were set aside. However, it was held that the offences were of a serious nature; even though he would have to undergo the ordeal of trial and incarceration pending trial for a further period, that would not justify not ordering a *de novo* trial. Having regard to the gravity of the offence, a *de novo* trial was ordered to be conducted expeditiously, even though 11 years had elapsed from the date of filing of the FIR.

In *Phoolan Devi vs. State of Madhya Pradesh*³²² the story of the notorious *Bandit Queen*³²³ Phoolan Devi was involved. Phoolan Devi was allegedly a victim of gang rape; atrocities were allegedly committed against her and her family in caste wars; this is supposed to have driven her to become a dacoit and adopt a life of crime. Some 55 criminal prosecutions had been lodged against her in the State of Uttar Pradesh involving heinous crimes like dacoity and murder. After surrendering in 1983, and after several years in custody, Phoolan Devi filed an Article 32 petition in the Supreme Court praying for her release from custody and for a writ quashing all the prosecutions lodged against her in the State of Uttar Pradesh. She contended that she had voluntarily surrendered in 1983 on certain terms and conditions offered to her by the Government, *inter alia* that she would be released after 8 years of custody; that she had completed 8 years in custody as per the terms of her surrender and therefore was bound to be released. She contended that detention in spite of the lapse of 8 years, contrary to the terms of surrender, would violate her right to speedy trial. The Supreme Court took a stern view, holding that the question of the effect and terms of

³²²1996(11) SCC 19

³²³That is the title given to her in the movie by that name.

the surrender had to be raised and decided in each of the 55 prosecutions pending in the respective criminal courts and not in an omnibus Article 32 petition. It was held that the mere lapse of several years would not *per se* violate the right to speedy trial; the petition for quashing was accordingly rejected³²⁴. Assuming that the terms of the surrender were valid,³²⁵ the Supreme Court not having held otherwise, the Supreme Court's severe approach can be seen in the fact that it refused to go into the terms and conditions of Phoolan Devi's surrender, which would imply that she would have to await decisions in 55 criminal cases³²⁶.

In *Ranjan Dwivedi vs. CBI*³²⁷ the petitioners were before the Supreme Court in an Article 32 petition seeking quashing of the criminal prosecutions pending against them. They had been accused of the assassination of a former Union Railway Minister, who died in a bomb blast at a railway station on 02-01-1975. Even though the charge-sheet had been filed in 1975, the trials were still pending after 37 years. The petitioners had earlier obtained a direction from the Supreme Court in the year 1991 for expeditious conclusion of trials and for conduct of trials on a day-to-day basis, in a writ petition that had been filed by them. In spite of these directions, the trials were still pending in the year 2012 when the Supreme Court considered the matters once again in fresh petitions. On behalf of the petitioners it was argued that the lapse of 37 years from the date of the alleged crime violated the right to speedy trial; that the better part of the petitioners' lives had already been spent in jail; no judicial system would tolerate such a long period of delay; the delay was inexcusable and the family of the petitioners had also suffered.

³²⁴However, considering that there were no pending orders of the UP courts requiring her to be in custody, she was released subject to any further order to be made by any of the courts where she had been charged. But the prosecutions continued.

³²⁵Since plea-bargaining applies only to smaller offences, it is a mystery how the Government was able to enter into such an agreement.

³²⁶The court further held that the imprisonment of 8 years did not conclude the prosecutions.

³²⁷2012(8) SCC 495

However, the Supreme Court was not impressed. It held that from 1991 until 2012 the prosecution only sought 4 or 5 adjournments and the delay was attributable to the accused alone; the mere passage of time would not suffice to warrant quashing; the question of delay has to be considered with the complexity of the case, the manner of proof and the gravity of the alleged crime. Accordingly, the petitions were rejected with directions for expeditious disposal.

In *State (through CBI) vs. Narayan Waman Nerukar*³²⁸ the allegation against the accused was that when he was working as an Advisor to the Department of Electronics, Government of India, he parted with the contents of a sensitive secret document being evaluated by the army authorities and thereby committed offences under sections 3 and 5 of the Official Secrets Act, 1923, read with section 120B of the IPC. In view of the fact that the accused had been awaiting trial for 12 years, the High Court quashed the proceedings under section 482 CrPC. However, the Supreme Court on appeal by the State, set aside the order of the High Court and remitted the matter back to the High Court for fresh consideration, apparently in view of the serious nature of the allegations against the accused.

The case of *P. Vijayan vs. State of Kerala*³²⁹ shows the extent of delay that will be tolerated by the Supreme Court to ensure that a single guilty man does not go free. The appellant was a retired IPS officer aged 85 years, who had enjoyed a considerable reputation during his service and had retired as the Director-General of Police, Kerala. A prominent Naxalite called Varghese, who was wanted for many serious crimes, was supposedly killed in a police encounter in the year 1970, whilst P. Vijayan was in service. From 1970 to 1998, for a period of 28 years, there was no whisper of an allegation

³²⁸2002 (7) SCC 6

³²⁹2010(2) SCC 398

that the encounter was a fake one. However only in 1998, newspaper reports appeared that he had been killed in a fake encounter in which senior police officials were involved. Several writs came to be filed in the Kerala High Court seeking CBI investigation; in the said writs a Constable by name Ramachandran Nair filed an affidavit confessing that he had indeed shot the Naxalite Varghese upon the instructions of the then Deputy Superintendent of Police called Lakshmana, and that the appellant was also present when the incident occurred. In the year 1999, the High Court directed the CBI to register an FIR on the facts disclosed in the counter-affidavit of Constable Ramachandran Nair; the CBI subsequently registered an FIR against Constable Ramachandran Nair (who was accused No. 1), Lakshmana- the then Deputy Superintendent of Police (accused no. 2) and the appellant (accused no. 3) for offences under section 302 read with section 34 IPC. In the year 2002 the CBI filed a charge-sheet before the Special Judge after investigation against the three accused. During the pendency of the trial, the appellant filed a petition under section 227 CrPC before the trial judge for discharge on the ground that there was no material against him to make out a *prima facie* case. This application was dismissed and the criminal revision to the High Court was also dismissed. The appellant approached the Supreme Court in a Special Leave Petition. Before the Supreme Court, the question was whether there was sufficient material to allow the trial to proceed further. The CBI relied upon the confessional note of Constable Ramachandran Nair and his counter-affidavit in the High Court, as also some section 161 statements of witnesses stating that Constable Ramachandran Nair had admitted the killing to them. By this time however, Constable Ramachandran Nair was dead, and therefore his confession was inadmissible under section 30 of the Indian Evidence Act, 1872, since the section mandates that only where several accused are being *jointly tried*, the confession of one accused can be used against the other accused. This the Supreme Court squarely accepted. However, the Supreme Court

nonetheless proceeded to reject the petition. The only other evidences were the section 161 statements of witnesses regarding Constable Ramachandran Nair's confession, which were inadmissible – therefore it is difficult to appreciate what material the court saw in the prosecution case. Truly, allowing a trial to go on against a retired 85-year old IPS officer, when FIR has been lodged after 28 years from the date of the alleged offence, and when the prosecution evidence is scanty at best, shows the extent to which the Supreme Court will ensure that “a single guilty man should not go free.” Whether such an approach is fitting is a matter for further discussion³³⁰.

In *Sudarshanacharya vs. Purushottamacharya*³³¹ the Supreme Court did not interfere with a prosecution against a 72-year-old, some 39 years from the date of the alleged offence, since the allegation that he had misappropriated several articles of gold jewellery belonging to Lord Venkateshwara temple in Ayodhya, belonging to a trust, was deemed serious enough to permit the prosecution to continue even at that stage³³².

In *Niranjan Hemachandra Sashittal vs. State of Maharashtra*³³³ the petitioner was the Deputy Commissioner in the Department of Prohibition and Excise, Maharashtra Government. The anti-corruption bureau filed an FIR against him in the year 1986 for offences under the Prevention of Corruption Act, 1947. Thereupon, raids were conducted at various places and eventually it was found that the petitioner, a public servant, had acquired assets to the tune of Rs. 33 odd lakhs, which was disproportionate to his known sources of income. Sanction was accorded by the Government for the prosecution in 1993. However, the charges were framed against the petitioner only by the

³³⁰These aspects are discussed further in the last Chapter.

³³¹2012(9) SCC 241

³³²See more detailed facts at para 4.4. The fact that the accused was also responsible for the delay also made a big difference.

³³³2013(4) SCC 642

year 2007. Some four years from the date of the charges being framed, the trial was still in its infancy with the Investigating Officer having been partly examined and the matter being adjourned continuously thereafter. The petitioner finally moved the Supreme Court under Article 32. Deciding the petition in the year 2012, some 26 years from the date of the FIR, the Supreme Court refused to quash the FIR against the petitioner, observing that the value of Rs. 33 odd lakhs has to be borne in mind³³⁴. Directions were issued to expedite the trial.

In *Santhosh De vs. Archana Guha*³³⁵ the Respondent Archana Guha had filed a private complaint in the year 1977 against 5 police officers alleging that they had tortured her during the years 1974 to 1977 in the police headquarters in Calcutta, when she had been detained under the Maintenance of Internal Security Act, 1971. In the year 1980 the High Court directed that the matter be tried as a warrant case. From 1980 to 1994 no progress was made in the trial other than the examination-in-chief of the complainant; this was largely due to various proceedings taken by the accused in the superior courts. Two of the accused then filed writ petitions in the High Court and the Single Judge quashed the proceedings on the ground of violation of right to speedy trial. The Division Bench of the High Court however, set aside the judgment of the Single Judge on the ground that the allegations of inhuman torture were serious in nature. Upon appeal to the Supreme Court, the apex court also rejected the appeals of the accused, noting the serious nature of the offences alleged³³⁶ and observing that it was possible for a man of sufficient means in India, to keep the law at bay.

³³⁴It was also noted that the petitioner was also to blame for the delay.

³³⁵1994 (2) SCC 420

³³⁶In the connected matter in the Supreme Court one of the accused had filed an application before the trial court seeking discharge under section 245(3) of the Code of Criminal Procedure, 1973, as amended by the West Bengal (Amendment) Act No. 24 of 1988. The said section, as applicable to the state of West Bengal, provides that if the evidence in support of the prosecution is not produced within 4 years from the date when the accused

These cases where the Supreme Court has declined to quash proceedings primarily in view of the seriousness of the offences alleged, affirm the principle that *a serious crime never dies*³³⁷. The integrity of the evidence against the accused i.e., how strong a case the prosecution has, also seems to be a crucial factor in deciding whether the Supreme Court will grant relief to the accused. The court is extremely hesitant to let off people who appear guilty merely on the technical plea of violation of right to speedy trial.

(b) Minor/smaller offences

However, when it comes to relatively minor offences, the Supreme Court has put its rhetoric into action and ordered quashing of proceedings in a number of cases. In *Biswanath Prasad Singh vs. State of Bihar*³³⁸ the appellant had been working as depot manager in a state-owned enterprise; fertilizer worth Rs. 1,15,000/- was found short; in 1977 he was suspended pending enquiry by his employer; in 1978 he was dismissed from service and his PF/gratuity benefits were forfeited; in the year 1977 an FIR was lodged against him under section 408 and other sections of the IPC but he was released on bail. The charge-sheet was filed against him by the police after a delay of 5 years in 1983; after another 6 years' delay, the court finally framed charges in the year 1989. Being aggrieved, he approached the High Court in a writ

appears, the Magistrate shall discharge the accused unless the prosecution satisfies the court that it is in the interest of justice to proceed with the trial. The Magistrate rejected the application on the ground that it would not be in the interest of justice to discharge the accused. The High Court in revision agreed. The Supreme Court also refused to interfere.

³³⁷ In *Japani Sahoo vs. Chandra Shekar Mohanty* [2007(7) SCC 394] the phrase "a crime never dies" was used.

³³⁸ 1994 Supp (3) SCC 97

proceeding, which came to be dismissed. The accused then preferred an SLP to the Supreme Court which granted leave in 1989 but did not stay the criminal proceedings. When his case came up for final hearing in the year 1993, the trial was still pending- the prosecution had closed its case and defence evidence was yet to be led. The Supreme Court, noting that more than 16 years had lapsed from the date of the alleged offence, and the fact that he had been dismissed and had lost pensionary benefits as well, quashed the proceedings against him on the ground of violation of right to speedy trial.

The curious case of *Motilal Saraf vs. State of J&K*³³⁹ is another case in point. The appellant had been working as Manager in State Bank of India, Kashmir. In the year 1980 an FIR was lodged against him under the Jammu & Kashmir Prevention of Corruption Act on the allegation that he had received a bribe of Rs. 700/-. He challenged the criminal proceedings before the High Court on the ground that he being a public servant, no sanction had been obtained for prosecuting him- this was allowed by the High Court in 1982. In the meanwhile, in the disciplinary proceedings held against him by his employer, he was punished with removal from service. In the year 1986 the police filed a fresh *challan* on the ground that since he was no longer in service, sanction was not required and he deserved to be prosecuted for the same offence. On an application made by the appellant before the trial court, the trial court discharged him in the year 1999 on the ground that the alleged offence having taken place when he was *in service*, it required the sanction of the government, which was admittedly not taken. The police undeterred, filed yet another *challan* in the year 2000 against the appellant after a lapse of 20 years, for the same offence. The appellant approached the High Court in a section 482 CrPC petition – which was rejected. Thereupon the

³³⁹2006 (10) SCC 560

appellant appealed to the Supreme Court. Noting that in the last 26 years, not a single witness had been examined for the prosecution, the Supreme Court quashed the criminal proceedings.

The right to speedy trial would be especially applicable to cases instituted upon a private complaint, where the complainant has a major role to play in bringing the accused to justice. In *S. Rama Krishna vs. S. Rami Reddy*³⁴⁰ the appellant had issued cheques to the complainant, which came to be dishonoured in 2001. A complaint under section 138 of the Negotiable Instruments Act was filed in 2001. In the year 2003 the complainant died and a substitution application was filed by the respondents. Even though no order was passed on the application, the respondents did not press their application seriously. During the years 2005-2006 nobody represented the complainant on 14 dates. In 2006 the appellant was acquitted by the Magistrate under section 256 CrPC. Thereafter an appeal filed by the respondents was allowed by the High Court. In the appeal by the accused to the Supreme Court challenging the High Court order, the Supreme Court held that the respondents representing the complainant had themselves not been prosecuting the matter diligently; the discretion under section 256 CrPC was rightly exercised to acquit the accused; speedy trial was a fundamental right of the accused.

In *Vakil Prasad Singh vs. State of Bihar*³⁴¹ the appellant had been an Assistant Engineer in the Bihar State Electricity Board. A complaint had been lodged in 1981 by a civil contractor alleging that he had demanded a bribe of Rs. 1000/-. The High Court in the year 1990 had quashed the order of the Magistrate taking cognizance, since the concerned Inspector who had conducted the investigation did not have jurisdiction to do so, with a direction

³⁴⁰2008(5) SCC 535

³⁴¹2009(3) SCC 355

to complete investigation within 3 months. When no investigation was started until 1998, the appellant approached the High Court under section 482 CrPC again, on the ground that re-investigation had not yet been initiated. The High Court admitted the petition in the year 1998 but dismissed it in 2007 directing trial from day-to-day. On appeal to the Supreme Court, the court quashed the proceedings noting that the right to speedy trial includes the preceding police investigation as well; even till date the prosecution was not aware whether sanction was required for prosecution and whether it had been granted or not.

In *Pankaj Kumar vs. State of Maharashtra*³⁴², an FIR had been lodged against the appellant (then 18 years old), his parents and several employees of a government Dairy Plant. The allegation was that the appellant's parents were doing business in dairy equipment; the accused employees of the Dairy Plant allegedly conspired with the appellant's parents to get bills from them for the purchase of spare parts for the milk plant, in small amounts of Rs. 10,000/- each, without calling for quotations, and made payments vide cash and demand drafts to the appellant; thereby misappropriating these sums; the total misappropriations were allegedly to the tune of Rs. 2,03,705/-, Rs. 91,469/- and Rs. 64,100/- respectively. The alleged acts having taken place during the years 1980 to 1982, charges were framed *inter alia*, under sections 420 read with section 120B of the IPC. In the year 1999, the appellant and his mother filed writ petitions challenging the proceedings on the ground of violation of the right to speedy trial. The father of the appellant had already expired by then. During the pendency of the writs, the mother of the appellant also expired. The High Court finally rejected the writ of the appellant. He appealed to the Supreme Court. Before the apex court it was contended that the appellant was neither a partner nor a proprietor of the

³⁴²2008(16) SCC 117

businesses being run by his parents; other than receiving payment, there was no other evidence to show he was running the concerns; the FIR having been lodged in 1987 and the charge-sheet having been filed in 1991, there had been no examination of prosecution witnesses in spite of the lapse of 26 years from the date of the alleged offence. The Supreme Court accepted the contentions of the appellant, noting that the delay in this case was not attributable to him; further noting that he was a boy of 18 years when the alleged acts were committed by his parents- who were both now dead. The appeal was allowed and the proceedings quashed.

In *S. Guin vs. Grindlays Bank*³⁴³ the appellants, pursuant to a call of strike given by the employees of a bank, allegedly obstructed the officers of the bank, particularly one G. Vaidya, from lawfully entering the bank premises and obstructed the transaction of normal business at the bank, on 31-10-1977. A complaint was filed by the Operations Manager of the Bank for offences under sections 147, 341 and 34 IPC, and section 36AD of the Banking Regulation Act, 1949. In the year 1978 the Magistrate acquitted all the accused. The bank appealed. The appeal was disposed of 6 years later in the year 1984 by the High Court, whereupon the High Court remanded the matter for fresh trial, holding that the trial court had missed the essence of the charge. The accused challenged the High Court order of remand before the Supreme Court. The Supreme Court allowed the appeals holding that the High Court ought not to have ordered a *de novo* trial after 6 years; even if for some reason it came to the conclusion that the acquittal was wrong, it ought not to have ordered a fresh trial after 6 years since this would cause harassment and would amount to an abuse of the judicial process.

³⁴³1986 (1) SCC 654

*Ramanand Chaudhary vs. State of Bihar*³⁴⁴ exemplifies the typical small case that has been unduly delayed. The appellant had been employed as Circle Inspector in the Revenue Department of Bihar. One Manik Shah filed a complaint before the police in the year 1979 that the appellant had demanded Rs. 200/- as bribe for getting work done within the revenue department. Consequently a raid was conducted and two currency notes of Rs. 100/- each were allegedly recovered from the appellant. Thereafter, there was no further action by the police for 6 years. Only in the year 1985 the opinion of the Public Prosecutor was sought by the government to determine whether consent for prosecution should be given. The Public Prosecutor opined that the case was full of improbabilities and infirmities and not fit for prosecution. The government in the year 1988 refused sanction. However, in the year 1990 the government made a U-turn and granted sanction for prosecution. The Special Judge took cognizance in the year 1990, 11 years after the date of the alleged offence. The appellant filed a section 482 CrPC petition before the High Court seeking quashing on the ground of delay- this was dismissed. He approached the Supreme Court. The Supreme Court, noticing that there had not been any action for several years, and the nature of the offence alleged, quashed the proceedings.

In *Mahendra Lal Das vs. State of Bihar*³⁴⁵ the appellant had been the executive Engineer in the Public Engineering Department of Ranchi. An FIR was lodged against him in the year 1988 under sections 5(1)(e) and 5(2) of the of the Prevention of Corruption Act, 1947, alleging that during the years 1961 to 1983 the appellant had acquired disproportionate assets through corrupt means. During investigation, the Investigating Officer concluded that the appellant was in possession of Rs. 50,600/- as unaccounted money. However, the government did not sanction the prosecution for several years.

³⁴⁴AIR 1994 SC 948

³⁴⁵2002(1) SCC 149

In the year 2000 the appellant moved the High Court for quashing on the ground of violation of right to speedy trial. This was rejected. He then approached the Supreme Court. During the pendency of his appeal before the Supreme Court, the government finally gave sanction for prosecution in the year 2001. However, the Supreme Court quashed the proceedings, noting that more than 13 years had been taken only to obtain sanction for the prosecution; the investigating agency cannot continue without any limits of time; the appellant had also lost his chances of promotion as Chief Engineer due to the pendency of the criminal case against him and had also been deprived of the society of his children since they lived abroad and he could not leave the country due to the criminal case against him.

In *Srinivas Gopal vs. UT of AP*³⁴⁶ the accused in the year 1976 allegedly drove a jeep in a rash and negligent manner resulting in an accident wherein one of the occupants died and another sustained grievous injuries. The accused was charged under sections 304A and 338 IPC. However, no investigation took place until 1987. The Supreme Court quashed the proceedings noting that the offence was neither grave nor heinous, nor an offence against the community.

In *TJ Stephen vs. Parle Bottling Co.*³⁴⁷ the appellant-complainant was the Deputy Chief Controller of Imports and Exports. He had filed a complaint before the Magistrate in the year 1983 against the Respondents 1 and 2 alleging offences under section 5 of the Import and Export (Control) Act, 1947. The respondent no. 1 was a company and the Respondent No. 2 was its Managing Director. In the year 1986 the High Court of Bombay upon petitions being filed by the accused, quashed the proceedings against the

³⁴⁶1988(4) SCC 36

³⁴⁷1988 Supp SCC 458

Managing Director on the ground that no allegation had been made against him. On appeal by the complainant, the Supreme Court held that the High Court had erred in quashing the complaint against the Managing Director—there were clear averments in the complaint that the Managing Director had committed the offence on behalf of the company; further, a company could not by itself act. The judgment of the High Court was set aside. However, in spite of setting aside the judgment, the Supreme Court noted that the alleged offences had occurred some 20 years ago; prosecution could not be started after 20 years; accordingly the case against the Managing Director was quashed, but he was directed to pay exemplary costs of Rs. 10,000/-.

*State of Bihar vs. Uma Shankar Ketriwal*³⁴⁸ was a case where an FIR had been filed under section 7 of the Essential Commodities Act, 1955, in the year 1960 against the Respondent firm, which had a license for dealing in iron and steel. The allegation was that the firm had misappropriated a large quantity of metal sheets meant for distribution to quota holders. Cognizance having been taken in the year 1963, the charges were framed in 1967. However, subsequent progress was very tardy, partly because the accused had approached superior courts in various proceedings. In the year 1979 the Respondent accused made applications to the High Court for quashing on the ground of delay. These applications were accepted by the High Court, and the proceedings were quashed, the High Court noting that even though the accused were partly to blame, the delay was unjustified since the last revision was disposed of in 1973; and even after the lapse of 5 years thereafter, only 4 witnesses had been examined and the prosecution was not even in a position to know the addresses of all the witnesses. The Supreme Court on appeal by the state, refused to interfere³⁴⁹.

³⁴⁸1981(1) SCC 75

³⁴⁹Even though it was noted that the Respondents were themselves partly to blame and the offences were serious.

*S. Veerabadrán Chettiar vs. EV Ramaswami Naicker*³⁵⁰ involved a curious incident. The appellant-complainant had filed an FIR alleging that offences had been committed under section 295 and 295A of the IPC by the accused. The allegation was that the accused no. 1 broke an idol of Lord Ganesha in public, instigated and aided by the accused nos. 2 and 3, to insult the religious feelings of Hindus. The Magistrate dismissed the complaint, upon an erroneous interpretation of what section 295 IPC required. The Sessions Judge and the High Court concurred. On appeal by the complainant, the accused-respondents remained *ex parte* before the Supreme Court. The Supreme Court found that the courts below had erred in their interpretation of section 295 IPC, and that the acts complained of, if proved, would indeed constitute offences under the said section. However, since 5 years had already elapsed, and it was held that "the action complained of against the accused persons, if true, was foolish, to put it mildly", no further enquiry was directed.

In *State of Andhra Pradesh vs. P.V. Pavithran*³⁵¹ the Respondent-accused was an IPS officer against whom an FIR was lodged in the year 1984, under section 5(1)(e) read with section 5(2) of the Prevention of Corruption Act, 1947, alleging that during the years 1978-1982 he had acquired immovable assets in his name and in his wife's name, by indulging in corrupt practices. In the year 1987 the Respondent filed a petition for quashing before the High Court, on the ground of delay in conducting the investigation. The High Court quashed the FIR on the ground of delay. After the passing of the High Court order, the investigating agency filed its report and the government then accorded sanction for the prosecution. The State preferred an appeal to the

³⁵⁰ AIR 1958 SC 1032

³⁵¹ 1990(2) SCC 340

Supreme Court against the order of quashing by the High Court. The Supreme Court rejected the appeal of the State noting that sanction for prosecution had been given after quashing by the High Court; the respondent had also retired upon attaining superannuation.

In *Chajoo Ram vs. Radhey Shyam*³⁵² the Supreme Court refused to order a prosecution for perjury under section 476 CrPC, after the lapse of more than 10 years from the date of the offence.

The cases discussed above show the trend of the Supreme Court: the court is ready to enforce the right to speedy trial and quash criminal proceedings when it considers the offence to be relatively minor or small and the offence is non-heinous.

(c) Questions regarding the two-faced approach of the Supreme Court

What can be said about the dual-strategy of the Supreme Court: strict enforcement of the right when minor offences are involved but the attitude of “a crime never dies” when major ones are involved?

When the trend of the Supreme Court clearly shows that the right will be strictly enforced for minor offences, what harm can be caused by laying down time-limits for the trial of cases involving minor offences, as was sought to be done in *Common Cause (I and II)*?

³⁵²1971(1) SCC 774

Whilst appreciating the enforcement of the right with regard to minor offences, what about the *innocent* person involved in a major offence? If the courts ultimately find the accused guilty of a major offence, then the undue delay can perhaps be justified on the ground that he will get set-off under section 428 CrPC i.e., the period of sentence will be reduced by the period of detention undergone as an under-trial. But if the accused is ultimately acquitted, how can the long period of incarceration be justified? For example, if an under-trial is incarcerated for 20 years and then *acquitted* by the court, how can the State justify itself before such a person? Was not the detention for 20 years excessive? How does the State compensate such a person for the loss of 20 years of his life? Does it make any sense to say that there has been no violation of the right to speedy trial even if several decades have elapsed, merely because the accused was charged with a serious crime? This troubling issue is unfortunately not addressed by the Janus-faced approach of the Supreme Court.

4.4 “Facts and circumstances” approach: the fault of the accused is an important consideration

The dicta in several Supreme Court decisions³⁵³ indicate unequivocally that where the accused *himself* is at fault in causing the delay, the court will not quash proceedings on the ground of delay and will show little sympathy to the accused- irrespective of the length of delay. For instance, in *Sudarshanacharya vs. Purushottamacharya*³⁵⁴ the appellant was the accused whilst the complainant was the respondent no. 1 before the

³⁵³See *Ranjan Dwivedi vs. CBI* [2012(8) SCC 495], *Diwan Naikat Rai vs. State* [1989(1) SCC 297], *State of Maharashtra vs. Champalal Punjaji Shah* [1981(3) SCC 610], *Kartar Singh vs. State of Punjab* [1994(3) SCC 569] and *Santosh De vs. Archana Guha* [1994 Supp (3) SCC 735]. These cases have already been discussed earlier.

³⁵⁴2012 (9) SCC 241

Supreme Court. In a complaint filed in the year 1985 against the accused, it was alleged that in the year 1973 the appellant had been entrusted with several articles of gold jewellery belonging to Lord Venkateshwara temple in Ayodhya, which was managed by a trust; he never returned the articles and thus misappropriated them, committing criminal breach of trust. The Magistrate took cognizance in 1986. In 1988 the Magistrate discharged the appellant on the ground that the complainant had not appeared for production of evidence. The complainant filed revision before the Sessions Judge pointing out that the accused had, in fact, delayed the trial. The Sessions Judge remanded the matter to the trial court whereupon the appellant preferred a revision to the High Court. Finally, the High Court dismissed the appellant's revision in 2000. In the year 2009, the appellant again preferred a discharge application on the ground that the power-of-attorney holder of the complainant had died, consequently that all actions of the complainant had become void. The Magistrate dismissed the application holding the application an attempt to delay the case and further holding that due to the conduct of the appellant the case had not proceeded for 22 years. Thereupon the appellant preferred a petition under section 482 CrPC before the High Court for quashing the proceedings on the ground of delay. This was rejected by the High Court- but proceedings were ordered to be expedited. The appellant impugned the High Court order in an appeal to the Supreme Court. By this time, the appellant was 72 years old and facing prosecution after some 39 years from the date of the alleged offence! The Supreme Court noted that every time the case was to be heard, the appellant had put a spoke in the wheel by filing an application for discharge. Further, the case involved trust property. The appeal was rejected affirming the order of the High Court directing hearing from day-to-day.

4.5 To whom does the right to speedy trial belong?

Supreme Court dicta indicate that the right to speedy trial is not just the right of the accused- even though it is usually only the accused who approaches the court. The right is equally the right of the victim or her relatives, as well as the right of the State. There is thus, a *triangular* set of interests. The accused has a stake in ensuring speedy trial since he wants to minimize the incarceration and anxiety that accompanies criminal prosecution. The victim or her relatives have a stake in ensuring that they get retribution for the wrong committed to them – within a reasonable period of time. Thirdly, society or the State has a stake in ensuring that the objects of the criminal justice system are enforced and that the guilty are brought to book expeditiously. However, the researcher is yet to encounter a case where the State or victims have sought to enforce the right.

In *Abdul Rehman Antulay vs. RS Nayak*³⁵⁵ the Constitution Bench of the Supreme Court held that the requirement of fair, just and reasonable procedure under Article 21 creates a right in the accused to be tried speedily. The fact that speedy trial is also in public interest or that it serves societal interests also, does not take away from the fact that the accused is entitled to assert this right.

In the recent decision of *Rattiram vs. State of MP*³⁵⁶ the Supreme Court held that speedy trial is not an exclusive right of the accused. The right of the victim and society has to also be recognized. The three-judge bench of the Supreme Court was referred a matter involving conflict between two decisions of the Supreme Court on the question whether a conviction by a

³⁵⁵1992(1) SCC 225, discussed in detail at para 4.2.

³⁵⁶(2012) 4 SCC 516

Special Court could be sustained if the court had *suo motu* entertained the complaint and taken cognizance, without any committal proceedings committing the matter to the Special Court. The appellants had been initially charged under section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, but later the charges were framed under sections 147,148, 302 read with section 149 IPC. In 1996 all the appellants suffered convictions before the trial court under section 302 read with section 149 IPC, and sentenced to life imprisonment and fine. They filed criminal appeals to the High Court contending that the entire trial was vitiated since there was no committal of the case to the Court of Session under section 193 CrPC. The High Court rejected the appeals. Upon appeals being filed to the Supreme Court by the appellant-accused, the Supreme Court rejected the appeals. The Supreme Court held that the mere fact that no committal proceedings had taken place did not violate the trial since the appellants were not prejudiced, and had been given a fair trial. The plea of the appellants for *de novo* trial was further rejected on the ground that speedy trial is equally the right of the victim and the State. It was held that “delay in conclusion of trial has a direct nexus with the collective cry of the society and the anguish and agony of the accused and the victims”. In the case on hand, no objections had been raised by the accused at the time of framing charges or at any other relevant time, but only voiced after conviction. In these circumstances, the right of the collective and the victim would spring to the forefront. Unless the accused were able to establish prejudice, setting aside the convictions and ordering re-trial at this stage would be anathema to justice³⁵⁷.

However, an interesting constitutional issue arises at this stage: Article 21 states that no person shall be deprived of his life or personal liberty except

³⁵⁷The court followed its earlier decision in *Mangal Singh vs. Kishan Singh* [2009(17) SCC 303]. See also *Iqbal Singh Marwah vs. Meenakshi Marwah* 2005(4) SCC 370.

according to procedure established by law: this obviously relates only to the rights of the *accused*. How can *victims* and the *State* trace their right to speedy trial to this Article unless the language of Article 21 is wholly ignored? Historically too, it is clear that the constitutional guarantees under Articles 20 to 22 are concerned with the accused's rights and the protection of accused persons from persecution by the State.

Can a *victim* prefer say, a petition under articles 226, 227 or 32, seeking speedy trial against the perpetrator of a crime? To which fundamental right could such relief be traced? Even though this has not been squarely addressed by the Supreme Court, it is submitted that the rights of the victims to speedy trial could be traced to Article 14, since the victims could argue that the State, being constitutionally and statutorily bound to prosecute offenders and bring them to justice, has failed to act non-arbitrarily, speedily and as per the mandate of law, thereby affecting the life of the victim concerned³⁵⁸.

4.6 The right attaches at all stages of the criminal process

As held by *A.R. Antulay* and affirmed by *P. Ramachandra Rao*, the right to speedy trial encompasses all stages i.e., investigation, inquiry, trial, appeal, revision, re-trial and execution of the sentence³⁵⁹.

In India, the death penalty is one of the punishments in the IPC, retained after Independence. The Law Commission in its 35th Report recommended the retention of the death penalty holding that India cannot risk abolition of

³⁵⁸This has been further examined in the last chapter.

³⁵⁹These cases have been examined earlier.

the death penalty. In *Jagmohan Singh vs. State of UP*³⁶⁰ the constitutionality of death sentence has been upheld. In *Bachan Singh vs. State of Punjab*³⁶¹ the Supreme Court also upheld the constitutionality of section 302 IPC, which prescribes death sentence. However, in *Machi Singh vs. State of Punjab*³⁶² it has been held that death sentence can be awarded only in the "rarest of rare cases".

At the stage of execution of a death sentence, it is seen that the jurisprudence of the Supreme Court is particularly problematic. In *Ediga Anamma v. State of A.P.*³⁶³, *Chawla v. State of Haryana*³⁶⁴, *Raghubir Singh v. State of Haryana*³⁶⁵, *Bhoor Singh v. State of Punjab*³⁶⁶, *State of Punjab v. Hari Singh*³⁶⁷ and *Gurudas Singh v. State of Rajasthan*³⁶⁸ delay between the award of death sentence and the execution of the death sentence was taken into account for the purpose of awarding the lesser punishment of life imprisonment. But equally, there are a large number of cases where death sentences have been confirmed, even when several years have been taken in executing the death sentence.³⁶⁹ Commentators have criticised the seemingly arbitrary approach of the Supreme Court, contending that the question whether death sentence will be confirmed or not on the ground of delay in execution, is a cruel judicial lottery³⁷⁰.

³⁶⁰ 1973(1) SCC 20

³⁶¹ 1980 (2) SCC 684

³⁶² 1983(3) SCC 470

³⁶³ 1974 (4) SCC 443

³⁶⁴ (1974) 4 SCC 579

³⁶⁵ (1975) 3 SCC 37

³⁶⁶ 1974) 4 SCC 754

³⁶⁷ 1974(4) SCC 552

³⁶⁸ 1975(4) SCC 490

³⁶⁹ See for examples *Rishideo Pande v. State of U.P.* (AIR 1955 SC 331), *Bharwad Mepa Dana v. State of Bombay* ((1960) 2 SCR 172).

³⁷⁰ It is pointed out that decided cases show that there is no way of predicting the exact period of prolonged proceeding which may favour an accused. Whether any importance should be given to the factor of delay and if so to what extent, are matters entirely within the discretion of the Court and it is not possible to assert with any definitiveness that a particular period of delay after sentencing will earn for the accused immunity from death penalty. It

In *TV Vatheeswaran vs. State of Tamil Nadu*³⁷¹ some guidelines were sought to be laid down to determine exactly when the condemned person would be entitled to a lesser sentence. The petitioner before the Supreme Court had been convicted and sentenced to death in January 1975. Since then, he had been kept in illegal³⁷² solitary confinement for 8 years. Justice O. Chinnappa Reddy quashed the sentence of death and substituted the sentence of life imprisonment instead. He further held that making all reasonable allowances for the time necessary for appeal and consideration of reprieve, *delay exceeding 2 years should be considered sufficient* to demand quashing of the death sentence. However, in *Sher Singh vs. State of Punjab*³⁷³ the judges held that no hard-and-fast rule could be laid down regarding the period of delay that would be determinative of when the right to speedy trial would be infringed. Several factors needed to be taken into account such as the nature of the offence, whether the condemned man was at fault, etc. In view of the conflicting views expressed in *Vatheeswaran* and *Sher Singh*, the question of time-limits for execution of death sentences was referred to a Constitution Bench in *Triveniben vs. State of Gujarat*³⁷⁴. The Constitution Bench overruled *Vatheeswaran* and upheld *Sher Singh*, reiterating that no fixed time-limits could be laid down to determine when delay in execution of death sentence would violate the right to speedy trial. *Triveniben* thus prophesied the attitude to time-limits that would be adopted in the subsequent decision

follows as a necessary corollary from these vagaries in sentencing, arising from the factor of delay, that the imposition of capital punishments becomes more or less a kind of cruel judicial lottery. If the case of the accused is handled expeditiously by the prosecution, defense lawyer, Sessions Court, High Court and the Supreme Court then this mitigating factor of delay is not available to him for reduction to life sentence. If, on the other hand, there has been lack of dispatch, engineered or natural, then the accused may escape the gallows, subject of course to the judicial vagaries arising from other causes. In other words, the more efficient the proceeding, the more certain the death sentence and *vice versa*.

³⁷¹1983 (2) SCC 68

³⁷²In *Sunil Batra vs. Delhi Administration* [1978 (4) SCC 494] it had been held that solitary confinement could not be inflicted on a person awaiting death sentence.

³⁷³1983(2) SCC 344

³⁷⁴1988(4) SCC 574

of *AR Antulay*³⁷⁵. Recent decisions such as that of *Devender Pal Singh vs. State (NCT of New Delhi)*³⁷⁶ have reiterated the “facts and circumstances” approach to decide whether delay in execution should mitigate the punishment³⁷⁷.

4.7 Blanket bail and the right to speedy trial

In order to ameliorate the plight of incarcerated under-trials the Supreme Court has often had to resort to the *exceptional* technique of granting bail *en masse* to whole classes of accused who have remained incarcerated in jails. This is done usually without reference to whether these persons have fulfilled statutory requirements for grant of bail under the CrPC and other statutes, and further without reference to whether these persons had already made bail applications and suffered rejections.

In *Hussainara Khatoon (I) vs. Home Secretary, State of Bihar*³⁷⁸ Justice Bhagwati had ordered that the under-trials whose names had appeared in the newspapers -upon which writs had been filed – be released on their personal bonds without any monetary obligation, as an *exceptional* measure.

In *Supreme Court Legal Aid Committee vs. Union of India*³⁷⁹ the Narcotic Drugs and Psychotropic Substances Act, 1985, had enacted stringent provisions with regard to grant of bail to persons charged under the Act.

³⁷⁵ *Triveniben* preceded *AR Antulay*.

³⁷⁶ 2013 (6) SCC 195

³⁷⁷ Incidentally it may be noted that in that case, it was held that the power vested in the President under Article 72 and the Governor under Article 161 is a manifestation of the prerogative of the State- not a matter of grace or privilege; but an important constitutional responsibility to be discharged by the highest executive while keeping in view considerations of larger public interest and welfare of the people.

³⁷⁸ 1980(1) SCC 81

³⁷⁹ 1994(6) SCC 731

Under section 37, it was provided that if a person had been accused of an offence under the Act involving punishment of more than 5 years' imprisonment, then he shall *not* be released on bail unless:

- (i) The Public Prosecutor has had an opportunity to oppose the bail; &
- (ii) If bail is opposed, the court is satisfied that there are reasonable grounds for believing that he is *not* guilty and is not likely to indulge in the commission of similar offences.

Further, under section 36 of the Act the Government was required to constitute Special Courts for the speedy trial of offences under the Act, which courts alone would have the jurisdiction to try cases under the Act³⁸⁰. The petitioner society filed a writ under Article 32 seeking directions with regard to the plight of detainees under the Act. The Supreme Court held that:

- (a) The government had not constituted sufficient numbers of special courts- consequently there had been a pile up of cases; to deny bail on the one hand through stringent provisions and yet to delay the trial of cases on the other hand would clearly be contrary to Articles 14, 19 and 21;
- (b) The right to bail was *embedded* in the right to speedy trial; even though the Supreme Court was not inclined to quash the proceedings altogether, *one-time* directions would be issued providing for release on bail of persons incarcerated under the Act, on certain terms and conditions.

Accordingly, bail was ordered to the detainees subject to certain terms and conditions, including completion of a certain term of incarceration, ignoring the statutory requirements of section 37.

³⁸⁰Section 36A

In *R.D. Upadhyay vs. State of A.P.*³⁸¹ a writ petition was filed by an advocate in the form of a public interest litigation relating to the large numbers of under-trials languishing in Tihar Jail without trial for long periods; the Superintendent of the Jail was directed to file an affidavit detailing the numbers of under-trials confined for more than a year; thereupon based on this affidavit directions were issued by the Supreme Court *inter alia* providing for grant of bail to persons incarcerated in excess of certain periods of time³⁸².

In *Common Cause(I), A Registered Society vs. Union of India*³⁸³ as considered earlier, a division bench of the Supreme Court adopted a bold approach by setting time-limits for conclusion of proceedings in relatively minor offences. Extensive directions were issued providing for release on bail upon completion of certain periods of incarceration.

The Supreme Court appears to have adopted a sympathetic approach to bail especially where persons are incarcerated under enactments that make grant of bail difficult. In *Shaheen Welfare Association vs. Union of India*³⁸⁴ a PIL had been filed praying for reliefs with regard to under-trials charged under the Terrorist and Disruptive Activities (Prevention) Act, 1987. The Supreme Court noted that whilst the constitutional validity of TADA had been upheld in *Kartar Singh's case*, in the absence of adequate numbers of designated courts, there was very little prospect of speedy trial under the Act. It was noted that where speedy trial is not ensured, release on bail, which is embedded in the right to speedy trial would have to be resorted to. Accordingly, detainees under TADA were divided into 3 different classes and

³⁸¹1996(3) SCC 422

³⁸²The directions included expedited trials for murder cases.

³⁸³1996 (4) SCC 33

³⁸⁴1996(2) SCC 616

directions for grant of bail were laid down for each class separately, in spite of section 20 of the Act.

The 7-judge bench in *P. Ramachandra Rao vs. State of Karnataka*³⁸⁵ noting the directions for blanket bail given in *Common Cause (I)* refused to overrule the same, on the ground that the directions relating to bail were not the subject-matter of the reference. Thus, the directions given on an *ad hoc*, *exceptional* basis to various classes of under-trials have remained valid.

However, the Supreme Court directions granting bail to various classes of accused have been rendered largely redundant since Parliament has stepped in and provided for release on bail as a matter of right in section 436A CrPC, once a person has undergone incarceration for a period up to ½ the maximum period of punishment prescribed for the offence³⁸⁶. Granting bail *en masse* to whole classes of accused, contrary to the existing statutory provisions and irrespective of whether the trial judge has refused bail, is a judicial practice that does not commend itself to the rule of law. It is submitted that in view of Parliamentary intervention, this practice need not be resorted to, except with regard to enactments such as TADA where judicial intervention is still required to water-down the drastic effects of the legislation.

³⁸⁵2002(4) SCC 578

³⁸⁶This does not apply where death sentence is one of the punishments.

4.8 The right to speedy trial in the United States

U.S. Scholars³⁸⁷ assert that references to the right to speedy trial can be found as early as in the 12th century, in the *Assize of Clarendon*; this was followed by its presence in the *Magna Carta* of 1215, as well as in the famous tomes of Sir Edward Coke. Revolutionaries in colonial America are supposed to have valued this right. The 6th Amendment to the US constitution provides as follows:

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.

The case-law on speedy trial did not develop until the US Supreme Court's ruling in *Beavers vs. Haubert*³⁸⁸ (1905). In the year 1903 two indictments³⁸⁹ were filed in the district of New York, charging the accused for violations of sections 1781 and 1782 of the Revised Statutes of the United States. Another indictment was filed in the district of Columbia, a few days later, for another offence. The accused approached the circuit court for a writ of habeas corpus on the ground of speedy trial violation, since the numerous indictments in different courts against him resulted in delays. This was rejected by the circuit court and affirmed in appeal by the district court as well. His appeal to the US supreme court was also dismissed, the supreme

³⁸⁷ See for example : *A New Speedy Trial Standard for Barker vs. Wingo: Reviving a Constitutional Remedy in an Age of Statutes*, Brian P. Brooks, Vol. 61, No. (Spring 1994), University of Chicago Law Review, pp 587-611.

³⁸⁸ 198 US 77 (1905)

³⁸⁹ Charges.

court holding that where several indictments were being tried in different courts, the accused cannot use the resultant delay as a ground to seek quashing of proceedings for violation of speedy trial rights. The reasoning of the court is worth quoting: "Undoubtedly, a defendant is entitled to a speedy trial and by a jury of the district where it is alleged the offence was committed. This is the injunction of the Constitution, but suppose he is charged with more than one crime, to which does the right attach? ...He cannot be tried for all at the same time and his rights must be considered with regard to the practical administration of justice. ... Appellant seems to contend that the right attaches and becomes fixed to the first accusation and, whatever be the demands of public justice, they must wait. *We do not think the right is so unqualified and absolute...The right to speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances.It secures rights to a defendant. It does not preclude the rights of public justice*"(italics supplied).

For the next several decades, the US courts incrementally enhanced the speedy trial rights of defendants in a number of cases.³⁹⁰ In *Thomas E. Pollard vs. USA*³⁹¹ the petitioner pleaded guilty in the US district court to a charge of unlawful taking and embezzlement of a US treasury cheque, in violation the relevant statute,³⁹² in the year 1952. A few days after pleading guilty, he appeared before the judge again for sentencing when, due to some judicial oversight, an invalid sentence came to be imposed upon him, ordering probation for 3 years³⁹³. Thereafter, the petitioner who was already serving a sentence for another offence, was paroled the next month. Nearly

³⁹⁰*Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective*, Jayanth K. Krishnan and C. Raj Kumar, Georgetown Journal of International Law, Vol. 42, 2011, Jindal Global Legal Research Paper No. 5/2011.

³⁹¹352 US 354 (1957)

³⁹²18 US section 1702

³⁹³The judge ordered probation for three years, but this was done without the presence of the defendant, and hence was invalid.

two years later, in 1954, the trial judge issued a warrant for the petitioner's arrest on the basis of the probation officer's report that the petitioner had violated the terms of probation. He was then arrested and brought before the court and sentenced to two years' imprisonment, setting aside the earlier invalid order of the court. The petitioner contended *inter alia*, that his right to speedy trial had been violated since the sentence was being imposed only in 1954, although the trial was of the year 1952, when he had pleaded guilty. It was pointed out that Rule 32(a) of the Federal Rules of Criminal Procedure required imposition of sentence "without unreasonable delay". Rejecting his case, the court held that the delay in awarding sentence in this case was *neither purposeful nor oppressive*, it was accidental and promptly remedied when discovered; undoubtedly, where a void sentence had been passed, a court had the power to enter sentence at a succeeding point in time- to hold otherwise would be to allow the guilty to escape through a legal accident.

In *United States vs. Clarence Ewell and Ronald K. Dennis*³⁹⁴ the appellants were indicted in 1962 for selling narcotics without the order form required by the relevant statute³⁹⁵. The indictments however, did not name the alleged purchasers. After pleas of guilty they were sentenced in December 1962 for terms of 5 and 10 years. In 1963, the Court of Appeal, in an unrelated case, held that an indictment under the relevant statute that does not allege the name of the purchaser is defective and may be set aside. Consequently, the appellants' motions to vacate their convictions were granted in 1964. However the appellants were immediately re-arrested and re-indicted in 1964 itself, but this time the purchasers were duly named. Upon motion by the appellants to dismiss their indictments, the US district court granted the same in 1964. The government appealed to the Supreme Court. The question was whether the passage of 19 months between the initial arrests

³⁹⁴383 US 116 (1966)

³⁹⁵26 USC section 4705(a)

and later indictments violated the 6th Amendment. The court held that there was no violation- the new indictments had been brought within the statute of limitations and appellants had been unable to show any *real prejudice – no loss of witnesses or other evidence*. The judgment was reversed and matters were remanded.

In *Klopper vs. North Carolina*³⁹⁶, the petitioner's trial in a North Carolina criminal trespass indictment ended with a declaration of mistrial when the jury failed to reach a verdict; after the case had been postponed for 2 terms, the petitioner filed a motion with the trial court in which he petitioned the court to ascertain when the State intended to bring him to trial; in the meanwhile the State prosecutor moved for permission to take a *nolle prosequi with leave*, a procedural device whereby the accused is discharged from custody, but remains subject to prosecution at any time in the future at the discretion of the prosecutor; this was granted without stated justification, in spite of objection by the petitioner. On appeal, the Supreme Court reversed and remanded the matter holding that by indefinitely postponing the prosecution in spite of petitioner's objections and without stated justification, the state had denied the petitioner the right to a speedy trial guaranteed by the 6th and 14th amendments; it was stressed that the right to speedy trial was one of the most basic rights preserved by the Constitution of the United States.

In *Smith vs. Hoey*³⁹⁷ the petitioner was indicted in 1960 upon a charge of theft, in Texas; at that time he was a prisoner at the federal penitentiary at Kansas; shortly after his indictment he mailed a letter to the Texas trial court requesting a speedy trial; thereafter for the next 6 years, by various letters, motions and the like he continued to seek trial; but the State did not take any

³⁹⁶ 386 US 213(1967)

³⁹⁷ 393 US 374 (1969)

steps; he finally sought *certiorari* before the US Supreme Court on the ground of violation of the right to speedy trial. The Supreme Court affirmed that his right to speedy trial had been violated; merely because he was already incarcerated in another matter, it did not mean he was not equally entitled to the right to a speedy trial³⁹⁸.

The case of *Dickey vs. Florida*³⁹⁹ exemplifies the strict approach of the US supreme court to speedy trial violation-irrespective of the gravity of the offence. The petitioner was arrested for armed robbery in 1960. However, even though he was available for trial for the 7-year period thereafter, the State did not try him, without any tenable reasons; the lapse was in the face of the petitioner's diligent and repeated efforts to secure a prompt trial. In the interval period, two witnesses died and another allegedly became unavailable; police records of possible relevance became lost or were destroyed. In view of the *actual prejudice* shown by the petitioner due to loss of evidence, it was held that the right to speedy trial had been violated. In spite of the fact that two courts below had concurrently convicted the petitioner, the US Supreme Court reversed the conviction and set the petitioner free. Would the Indian Supreme Court ever reverse a conviction founded on merits, on the ground of speedy trial violation? Here the different attitude of the US courts is apparent. The *gravity* of the offence does not seem to matter; if speedy trial violation is found, the proceedings (and convictions) are quashed without hesitation.

The case of *United States vs. Marion*⁴⁰⁰ raised interesting issues relating to the interpretation of the US constitution. The accused during the period 1965 to 1967 allegedly operated fraudulent businesses relating to home

³⁹⁸The order of the Supreme Court of Texas was set aside and the matter was remanded to that court for further proceedings not inconsistent with the judgment of the Supreme Court.

³⁹⁹398 US 30 (1970)

⁴⁰⁰404 US 307 (1971)

improvement devices, by making misrepresentations, alteration of documents and deliberate non-performance of contracts. Even though the government was aware of the relevant facts since 1967, the indictment was filed only by the year 1970, after a delay of 3 years. The district court, on motion by the accused, dismissed the indictment for lack of speedy prosecution and remarked that since the government had been aware of the facts since 1967, the defence was bound to have been prejudiced by the delay. The state appealed directly to the US Supreme Court. The Supreme Court held:

- (a) That as per the wording of the 6th Amendment, the speedy trial clause has no application until the person is an "accused", i.e., he has been indicted; *pre-trial delay* cannot be considered for the purposes of the 6th Amendment;
- (b) That however, the relevant statutes of limitation would apply; the applicable statute of limitations is the primary guarantee against bringing overly stale criminal charges;
- (c) That if actual restraints are imposed by arrest and holding to answer a criminal charge, the accused might *then* invoke the 6th Amendment; and
- (d) That however, the accused would be able to invoke the 5th Amendment if it were shown at trial that the pre-indictment delay caused substantial prejudice to the accused's rights to a fair trial and that the delay was an intentional tactic to gain tactical advantage against the accused- *Brady vs. Maryland*⁴⁰¹ was followed.

In the facts of the instant case the court held that the indictment had been filed within the period of limitation and further, the accused had failed to demonstrate that the pre-trial delay had violated the 5th Amendment by showing that an unfair trial and intentional delay had taken place. The

⁴⁰¹373 US 83 (1963)

judgment of the lower court was reversed, holding that there was no violation of the constitution.

In *USA vs. Martin L. Roemer*⁴⁰² the government had postponed prosecution of the accused whilst it was trying unsuccessfully, to secure the extradition of a co-accused; the court held that the delay was justified and further noted that the Defendant himself had not tried to hasten his trial by asking for it; instead he had hoped to catch the government in violation of statutory and constitutional norms. The accused's plea of speedy trial violation was rejected.

In *US vs. Jeffrey R. MacDonald*⁴⁰³ the accused was a physician in military service; in the year 1970 his wife and 2 daughters were murdered at his quarters; the Army charged him with the murders but subsequently dismissed the charges and granted him honourable discharge for reasons of hardship; only by August 1974 the government began presentation of the case to a grand jury of the US district court; in the year 1975, after a lapse of 5 years from the date of the alleged offence, the grand jury indicted the accused on three counts of first degree murder; the accused was arrested and released on bail a week later. The district court denied a number of motions submitted by the accused including a motion to dismiss the indictment on the ground of violation of the 6th Amendment. The district court held that the 6th Amendment right does not arise until the person is an "accused" i.e., until the indictment. The US Court of Appeal however, stayed the trial and allowed an interlocutory appeal, reversing and remanding with instructions to dismiss the indictment on the ground of speedy trial violation. The US Supreme Court on appeal, held that the Court of Appeal did not have *jurisdiction* to entertain interlocutory appellate review against an order

⁴⁰²514 F 2d 1377 (1975)

⁴⁰³435 US 850 (1978)

denying a speedy trial motion. The undesirability of entertaining speedy trial issues on interlocutory appeals was noted, holding that the resolution of a speedy trial claim necessitates a careful assessment of the particular facts of the case; most speedy trial claims are best considered only *after* the relevant facts have been developed at trial; before trial, an estimate of the degree to which delay has impaired an adequate defence tends to be *speculative*. It was further held: "There is perhaps some superficial attraction in the argument that the right to a speedy trial must be vindicated before trial in order to insure that no non-speedy trial is ever held- but this argument fails- the right does not encompass 'a right not to be tried' to be upheld before trial; it is the delay before trial, not the trial itself that offends..." This is indeed an interesting issue. It is submitted that if the prejudice caused to the accused in his defense is the *sole* criterion to determine speedy trial violation, then it makes sense to say that until the trial is concluded and the evidence is on record, actual prejudice cannot be determined and thus the trial must always go on, irrespective of the length of delay. However, if there are other considerations that go into the question of speedy trial, other than prejudice to the defendant in his defence, then some cases may justify quashing of proceedings irrespective of whether trial has commenced or not.

In *US vs. Hawk*⁴⁰⁴ it was held that delays due to interlocutory appeals, during which period the accused is not under indictment nor subject to official restraint, cannot be counted against the state for the purposes of speedy trial violation⁴⁰⁵.

⁴⁰⁴88 L Ed 2d 640

⁴⁰⁵The case was referred to by the Indian Supreme Court in *AR Antulay vs. RS Nayak* [1992(1) SCC 225].

The decision in *Barker vs. Wingo*⁴⁰⁶ (1972) was a landmark case that tried to lay down the law relating to speedy trial comprehensively. The petitioner Barker and another person by name Silas Manning had been arrested in connection with a murder in the year 1958. The prosecution (State) had a stronger case against Manning- and also believed that unless Manning testified against Barker, Barker could not be convicted; but this would be possible only if Manning had been convicted first- only then he could testify as a witness against Barker- as per the rule against self-incrimination. Therefore, the State proceeded with the trial against Manning but deliberately delayed the trial of Barker, by seeking repeated adjournments. In the year 1962, Manning was finally convicted – whereupon the State sought to proceed in the trial against Barker in the year 1963 (Barker had been out on bail after 10 months of incarceration). In 1963 the trial court convicted Barker also, overruling his plea that his right to speedy trial had been violated. The appellate court affirmed the conviction. The matter was taken to the US Supreme Court seeking certiorari wherein Barker contended that the delay of 5 years had violated his right to speedy trial. Rejecting his plea, the US Supreme Court, whilst acknowledging that the delay was excessive, held that this factor must be weighed against counter-balancing factors i.e., the prejudice to Barker was minimal since he was in jail for 10 months only; Barker himself had not really wanted a speedy trial since he was gambling on the acquittal of Manning. The judges laid down a 4-part balancing test to determine whether the right had been infringed in a given case, which had to take into account:

- (a) The length of the delay;
 - (b) The reason for the delay;
 - (c) The time and manner in which the Defendant has asserted his right;
- and .

⁴⁰⁶33 L Ed 2d 101

(d) The degree of prejudice to the defendant which the delay has caused.

The Supreme Court also noted that the right to a speedy trial is *generically different* from any of the other rights enshrined in the Constitution for the protection of the accused for three reasons:

- (a) First, there is a *societal* interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the accused. The Court commented on the backlog of cases, mainly in urban courts, that often enable defendants to negotiate a plea for a lesser offense. The Court also noted that persons released on bond had the opportunity to commit further crimes, "the longer an accused is free awaiting trial, the more tempting becomes his opportunity to jump bail and escape", and that "delay between arrest and punishment may have a detrimental effect on rehabilitation." The Court also noted that if the accused cannot make bail, that too can make rehabilitation difficult, that a lengthy pre-trial detention can be costly, and that "society loses wages which might have been earned, and it must often support families of incarcerated breadwinners."
- (b) Second, the Court noted that deprivation of the right may work to the accused's advantage. As the time between arrest and trial lengthens, witnesses may become unavailable and their memories may fade; if the witnesses are for the prosecution the case may be seriously weakened, as the prosecution has the burden to prove the defendant guilty beyond a reasonable doubt.
- (c) Finally, the Court noted that the concept is more vague than with other rights, in that the Court "cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate."

This decision of the US Supreme Court in *Barker* has been affirmed by the Privy Council in *Bell vs. Director of Prosecution, Jamaica*⁴⁰⁷. The Court of Appeal had held that a delay of 32 months would not violate the right, having regard to the circumstances obtaining in Jamaica. This was accepted by the Privy Council; however it was held that the right was violated since it was a case of *re-trial, not trial*: a re-trial must be held with greater speed and delay which may be ignored at the stage of trial may not be ignored in the case of re-trial. The Indian Supreme Court has also noted with approval, the decision in *Barker vs. Wingo*, in its Constitution Bench judgment in *A.R. Antulay*.

The next important case to be considered is the case of *Strunk vs. US*⁴⁰⁸. The petitioner was found guilty in the US district court of transporting a stolen automobile, and was sentenced to a term of 5 years⁴⁰⁹; there had however been a delay of 10 months by the prosecution; the district court had denied a motion to dismiss the federal charge on the ground of 6th Amendment violation; the court of appeal held that the accused had in fact, been denied a speedy trial- however it held that the extreme remedy of dismissal of charges was unwarranted, instead, it ordered reduction of sentence to the extent of 259 days in order to compensate for the delay. The Supreme Court differed. The Supreme Court noted that there was no cross-petition by the government challenging the finding of the Court of Appeal that speedy trial violation had taken place; the only question that remained was what the remedy would be. It was held that the speedy trial guarantee recognizes that a prolonged delay may subject the accused to an emotional stress that can be presumed to result in the ordinary person from uncertainties in the prospect of facing public trial and of receiving a sentence; the remedy of reduction of sentence does not deal with these difficulties; *even though the*

⁴⁰⁷1985(2) All ER 585 (PC)

⁴⁰⁸37 L Ed 2d 56(1973)

⁴⁰⁹This was to run concurrently with a sentence of 1 to 3 years that the petitioner was then serving in jail pursuant to a conviction in another offence.

remedy of dismissal of charges might be "unsatisfactorily severe" since a person guilty of a serious crime will go free, without having been tried, such severe remedies were not unique in the application of constitutional standards; in the light of the policies which underlie the right to speedy trial, dismissal must remain the only possible remedy. The court of appeal order was reversed. However, this decision has come under severe criticism from US scholars who argue that by making the only remedy for speedy trial violation a complete dismissal of the case, letting the accused go free, courts would be loath to find in favour of the accused and give effect to the right⁴¹⁰.

In *Doggett vs. US*⁴¹¹ the accused Doggett was indicted on federal drugs charges in 1980, for conspiring with others to import and distribute cocaine; but before the Drugs Enforcement Agency could secure his arrest he left the country; the Drugs Enforcement Agency in spite of knowing that he had later been imprisoned in Panama, never followed up on his case, even though it had requested that he be expelled back to the USA; further, when Doggett left Panama for Colombia, the Drugs Enforcement Agency never followed up on his status; thus it was unaware that he had re-entered the USA in 1982, married subsequently, earned a college degree, found steady employment, lived openly under his own name and stayed within the law. The Marshalls' service eventually located him during a simple credit check on individuals with outstanding warrants. He was finally arrested in the year 1988, 8 ½ years after his indictment; he moved for dismissal on the ground that the government's failure to prosecute him earlier violated his 6th Amendment rights. The US Supreme Court held that the delay between Doggett's indictment and arrest violated the 6th Amendment; the delay of 8 ½ years was extraordinary, and the government was solely to blame for it; further, it

⁴¹⁰See for examples: *H. Richard Uviller, Barker vs. Wingo : Speedy Trial gets a Fast Shuffle*, 72, *Colombia Law Review*, 1376 (1972); *Amsterdam, Speedy Criminal Trial: Rights and Remedies*, 27 *Stanford Law Review* 525 (1975).

⁴¹¹505 US 647 (1992)

was conceded that Doggett did not even *know* of his indictment until he was arrested in 1988. It was further held that the delay *presumptively* prejudiced his ability to prepare an adequate defense; Doggett's failure to cite any demonstrable specific prejudice did not affect his right; *presumptive prejudice* is a part of the mix of relevant factors that need to be gone into as per *Barker vs. Wingo* criteria.

The constitutional right to a speedy trial under the 6th Amendment has been largely superseded due to the enactment of the *US Speedy Trial Act of 1974*⁴¹², which laid down precise time-limits for each stage of federal criminal prosecutions. The Act is reproduced as **Appendix "E"**. Under the Act, any indictment charging an individual with the commission of an offense should be filed within 30 days from the date on which such individual was arrested or served with a summons in relation to such charges⁴¹³. If a plea of not guilty is entered, the trial shall commence within 70 days from the date of filing the indictment.⁴¹⁴ The following periods of delay shall be excluded in computing the time within which an indictment must be filed or in computing the time within which the trial should commence⁴¹⁵: any period of delay resulting from other proceedings concerning the defendant, *including but not limited to*:

⁴¹²18 USC Chapter 208- Speedy Trial, sections 3161-3174 (1974)

⁴¹³Section 3161(b). If an individual has been charged with a felony in a district in which no grand jury has been in session during such thirty-day period, the period of time for filing of the indictment shall be extended by an additional 30 days. Section 3161(b).

⁴¹⁴ More precisely, the trial shall commence within 70 days from the filing date and making public of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If the defendant consents in writing to be tried before magistrate judge on a complaint, the trial shall commence within 70 days from the date of such consent: Section 3161(c)(1). Unless the defendant consents in writing to the contrary, the trial shall not commence less than 30 days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed per se: Section 3161(c)(2). Sections 3161(d)(1) to 3161(g) provide further details of time-limits keeping in mind the exigencies of re-charging, reinstatement of indictment following an appeal, fresh trial following a declaration of mistrial, etc.

⁴¹⁵Section 3161(h) onwards.

- (a) delay due to examinations to determine the mental or physical competency of the defendant;
- (b) delay due to trial of other charges against the defendant;
- (c) delay due to interlocutory appeals;
- (d) delay due to pre-trial motions;
- (e) delay due to transfer of the case or removal of the defendant to another district;
- (f) delay resulting from transportation of any defendant from another district, or for examination or hospitalisation;
- (g) delay due to consideration plea bargaining agreements;
- (h) delay due to absence or unavailability of the defendant or an essential witness;
- (i) delay due to a period when the defendant was mentally or physically incapable of standing trial;
- (j) delay due to joining of trial with a co-defendant;
- (k) delay caused due to the grant of an adjournment (continuance) to serve the ends of justice⁴¹⁶; &
- (l) delay due to procurement of evidence in a foreign country.

Under section 3162, if the indictment is not filed within the time-limits prescribed, the charges will be dismissed. However, in order to determine whether the dismissal should be with or without prejudice to the right of the state to bring a fresh charge, the court will take into account factors such as the seriousness of the offence, the facts and circumstances of the case which led to the dismissal, the impact of the re-prosecution on the administration of the Act and on the administration of justice⁴¹⁷. If the trial is

⁴¹⁶ Delay due to general congestion of the court's calendar, lack of preparation by counsel or failure to obtain witnesses cannot be excluded.

⁴¹⁷ In *United States v. Taylor* 487 U.S. 326 (1988) the Supreme Court held that a trial court must examine each statutory factor in deciding to dismiss charges with prejudice. The Court in *Taylor* found that a minor violation of the time limitations of the act that did not prejudice

not commenced within the prescribed time-limits, the indictment shall be dismissed on motion by the defendant, again by the court considering various factors to determine whether the dismissal should be with or without prejudice. However, failure of the defendant to move for dismissal prior to trial will constitute a waiver of his right.

It is notable that the Act does not stop at setting time-limits. Further provisions have been made to ensure speedy and effective disposal of criminal matters. If any government advocate or defense attorney files a motion solely for the purposes of delaying the matter, makes a false statement to get an adjournment, or otherwise fails to proceed with the trial without justification, the court may punish such advocate by imposing compensatory fines, denying the right to practice for a period not exceeding 90 days, or by reporting to the appropriate disciplinary committee, etc.

Section 3164 provides that the trial of persons who are under detention pending trial, or who have been released pending trial, but designated as *high-risk*, shall be accorded priority. Further, no person shall be held in custody pending trial after the expiry of the 90- day period required for the commencement of his trial.

Under section 3165 each district court is required to conduct a continuing study of the administration of criminal justice in the district and to prepare plans for the disposition of criminal cases in accordance with the Act. The planning and implementation process shall seek to accelerate the disposition of criminal cases in the district, consistent with the time standards of the Act and the objectives of efficient law enforcement, fairness to accused persons,

the defendant's trial preparation did not justify the dismissal with prejudice of an indictment charging serious drug offenses.

efficient judicial administration and increased knowledge concerning the functioning of the criminal law. The process shall seek to avoid under-enforcement, over-enforcement and discriminatory enforcement of the law, etc. After approval by a reviewing panel, the plans are to be submitted to the Administrative Office of the United State Courts, which office shall further report annually on the operation of such plans to the Judicial Conference of the United States.

Under section 3166 the contents of the district plans are enumerated. Each plan shall include a description of time-limits, procedural techniques, innovations, etc., by which the district court, the US attorney, the Federal public defender and private attorneys have expedited or intend to expedite the trial of criminal cases. Each plan is required to include information *inter alia*, as to the incidence of, and reasons for delay, statistics relating to the time-span between arrest and indictment, indictment and trial, conviction and sentencing and statistics on several other matters. Under section 3167 the Administrative Office of the United States Courts, with the approval of the Judicial Conference, shall submit periodic reports to Congress detailing the plans submitted under section 3165. Such reports shall include recommendations for legislative changes or additional appropriations to achieve the time-limits and objectives of the Act. Further, detailed statistical information on various aspects is required to be furnished. Under section 3170 provides for mechanisms for collection of speedy trial data.

It is indeed commendable that the Act, in order to give effect to the right to speedy trial, does not merely concern itself with *legal doctrine*, i.e., the setting of time-limits and the consequences thereof, but also contains meticulous provision for planning, collection of statistical data, appropriation of finances and enforcement of the right to speedy trial, at the *administrative*

and infrastructural level, which, as we shall see, is crucial to achieve speedy justice in the criminal justice system.

The US constitutional and statutory approach has come under scrutiny by US constitutional-law scholars. It would be worthwhile to note some of the key issues and opinions proffered. *Amar*⁴¹⁸ argues that the 6th Amendment right to speedy trial essentially protects three clusters of rights: (a) a *physical liberty* interest in avoiding prolonged pre-trial detention, (b) a *mental liberty* and *reputational* interest in minimizing unjust accusation and (c) a *reliability* interest in assuring that the accuracy of the trial itself is not undermined by an extended accusation period. The 6th Amendment is further stated to have the effect of pursuing truth and protecting innocence. He severely criticizes the US approach of treating dismissal of charges with prejudice as being the *only* remedy for violation of the right. He points out that as matter of logic, there are many other possible remedies for violation of the right; as a matter of history, alternative remedies have deep roots in the common-law, and even as a matter of constitutional text and structure, the remedy of dismissal of indictment with prejudice does not make sense. Dismissal of charges with prejudice (i.e., without the state having the right to file fresh charges) provides a windfall for the guilty whilst leaving the innocent accused uncompensated⁴¹⁹. He further points out that since the only remedy for speedy trial violation is held to be dismissal of the charges and discharge of the accused without trial, judges are loath to admit that there are speedy trial violations- thereby several accused are made worse off because their constitutional rights are not adequately enforced. Amar concludes that dismissal with prejudice is appropriate only where due to the lapse of time, the holding of a trial would be unreliable to ascertain the truth due to loss of

⁴¹⁸*The Constitution and Criminal Procedure: First Principles*, Akhil Reed Amar, Yale University Press, New Haven and London, 1997.

⁴¹⁹The question of appropriate remedies for violation of the right to speedy trial is examined in more detail in the last chapter.

evidence; in all other cases, compensatory and punitive damages, injunctive and habeas corpus reliefs, and sentencing off-sets would be more appropriate. *Steinberg*⁴²⁰ observes that the speedy trial guarantee has several advantages:

- (a) it enhances the integrity of the fact-finding process by making it more likely that evidence and memories of witnesses remain available;
- (b) it minimizes the anxiety of the defendant and prevents prolonged incarceration pre-trial;
- (c) it guards against oppressive conduct of public officials who may intentionally delay or withhold a public trial.
- (d) The public is also benefitted since the deterrent goals of the criminal justice system are served.

Steinberg is of the view that the Speedy Trial Act, 1974, not only meets the minimum standards of the 6th Amendment, but *exceeds* these standards. *Amsterdam*⁴²¹ points out the crucial aspect that speedy disposal of criminal cases in the country cannot be achieved merely by manipulation of legal doctrine- basic *institutional* changes are required – improved deployment of resources, additions to judicial strength, etc⁴²².

What can we take away from the US experience with the right to speedy trial? It is submitted that:

- (a) The severe criticism that is made of the US approach of dismissal of charges with prejudice as the *only* remedy for speedy trial violation, is fortunately not to be made with regard to the Indian approach to

⁴²⁰*Right to Speedy Trial: Maintaining a Proper Balance between the Interests of Society and the Rights of the Accused*, Marc I. Steinberg, 4 UCLA-ALASKA L. REV. 242 (1974).

⁴²¹*Speedy Criminal Trial: Rights and Remedies*, Anthony G. Amsterdam, Stanford Law Review, Volume 27, No. 3 (Feb 1975) pp 525-543.

⁴²²See also *Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective*, Jayanth K. Krishnan and C. Raj Kumar, Georgetown Journal of International Law, Vol. 42, 2011, Jindal Global Legal Research Paper No. 5/2011.

speedy trial violation. Indeed, in *A.R. Antulay* the court specifically held that in addition to quashing, other remedies such as compensation and reduction of sentence could be explored⁴²³;

- (b) Whilst the 6th Amendment and the Speedy Trial Act, 1974, require that the defendant must *assert* his right in order to avail of it, failing which the right is deemed to have been *waived*, this doctrine has fortunately not become a part of the Indian law on the subject; it would indeed be reckless to import this requirement into the Indian law since the majority of incarcerated accused in India are poor, ignorant and uneducated;
- (c) Whilst the 6th Amendment right suffers from the fact that it only applies when a person is an “accused” that is, *after* trial has commenced⁴²⁴, the Indian right to speedy trial encompasses *all* stages of the criminal proceedings⁴²⁵;
- (d) Whilst the judges of the United States were equally reluctant as the Indian judges in advocating any fixed time-limits for determination of the right, and preferred a case-by-case approach (which approach has also been followed by the Indian courts),⁴²⁶ intervention by the legislature in the US vide the Speedy Trial Act, 1974, has resulted in specified time-limits, and the Act is seen to *exceed* constitutional guarantees;
- (e) The US Speedy Trial Act, 1974, gives us a template and an example, upon which we could also model time-limits in Indian cases, should we wish to do so, including the exceptions that need to be provided for and the manner and circumstances under which the trial judge may authorize a delayed trial to continue;

⁴²³See *AR Antulay vs. RS Nayak* (1992) 1 SCC 225.

⁴²⁴The accused has to rely upon the applicable statute of limitations and the 5th Amendment to complain about pre-trial delay.

⁴²⁵See *AR Antulay vs. RS Nayak* (1992) 1 SCC 225.

⁴²⁶*Ibid.*

- (f) It is indeed noteworthy that the Speedy Trial Act, 1974, not only addresses *legal doctrine*, but also issues relating to planning, finance and administration of the criminal justice system to enforce this right i.e., the *institutional* aspect of the right; this is something India should borrow, as argued in the next chapter;
- (g) Comparing the Indian and US approaches, it would be necessary to bear in mind the vast difference in functioning of the two judiciaries insofar as *efficiencies* are concerned: the US system is efficient when compared to the Indian one therefore, time-limits can probably only be implemented progressively and gradually in India;
- (h) Criticism by scholars in the US show that whilst time-limits may help, they cannot be expected to magically solve the problem of delays and arrears: other factors such as judge strength and infrastructure have great bearing on the question of delays and arrears. These aspects are explored in the next chapter.