

South Asia Human Right Documentation Centre

22 Northend Complex, Ramakrishna Ashram Marg

New Delhi 110001, India

e-mail: ravinairsahrdc@gmail.com

www.hrhc.net/sahrdc

Landlines 91- 11-23361120 and 91-11-23342717

Mobile number: 91-9810344765

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Annexure 5

Right to a Speedy Trial - Judicial Delay

As of 26 April 2016, “the current judges-to-population ratio in India is estimated at 17 judges for every million citizens.”¹ This number is far lower than the United States, which has 151 judges per million and China, which has 170 judges per million people.² *The Business Standard* stated that, “some experts estimate that at current rates of disposal the backlog would take 466 years to clear.”³ Currently the backlog stands at 30 core cases, 60,000 of those cases are pending before the Supreme Court, 30 lakh before High Courts, and 2.7 core before subordinate judiciaries.⁴

To add to the disparate ratio, there are currently around 5,000 vacancies on the bench that need to be filled.⁵ As retired Chief Justice Shri Y.K. Sabharwal stressed in his 2006 Justice Sobhag Mal Jain Memorial Lecture, “Delay in the disposal of cases not only creates disillusionment amongst the litigants, but also undermines the very capability of the system to impart justice.”⁶

Indian Jurisprudence

In *Hussainara Khatoon v. Home Secretary, State of Bihar* (1979), the Supreme Court of India found that Article 21 of the Indian Constitution guarantees the right to a speedy trial.⁷ Article 21 establishes the protection of life and personal liberty stating, “no person shall be deprived of his life or personal liberty except according to procedure established by law.” The Court wrote, “a speedy trial is... an essential ingredient of 'reasonable, fair and just' procedure guaranteed by Article 21 and it is the constitutional obligation of the State.”

¹Ghosal, Sayan, “Justice Delayed is Justice Denied: India’s Tryst with Judicial Backlog”, 26 April 2016, http://www.business-standard.com/article/opinion/justice-delayed-is-justice-denied-india-s-tryst-with-judicial-backlogs-116042600278_1.html.

² Id.

³ Id.

⁴ Id.

⁵ Id.

⁶Justice Sobhag Mal Jain Memorial Lecture, July 2006, retired Chief Justice Shri Y.K. Sabharwal.

⁷*Hussainara Khatoon v. Home Secretary, State of Bihar*, 1979 SC 1369.

The Court went on to discuss how the State must do whatever is necessary to safeguard the right to a speedy trial. Specifically, the Court held that, “The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources.”⁸ The Court also discussed how judges have a role to play in protecting this right acting as a “guardian of fundamental rights”.⁹

In the *State of Maharashtra vs. ChampalalPunjaji Shah* (1981), the Court reaffirmed *HussainaraKhatoon* by ensuring that although the right to a speedy trial is not expressly mentioned in the Constitution, it is implicit in Article 21 and implied in the establishment of a fair trial.¹⁰ The Supreme Court held that courts should consider whether a defendant is responsible for part of the delay, whether he was prejudiced by the delay, whether the delay was unintentionally caused by an overcrowded docket, and the nature of the offence of which he is charged.¹¹ The Court wrote, “there is no justification to quash a conviction on the ground of delayed trial unless it is shown that... the accused had been prejudiced.”¹² The Court acknowledged that, “While a speedy trial is an implied ingredient of a fair trial, the converse is not necessarily true... If the accused were found to have been prejudiced... the conviction would certainly have to go. But if not... there will be no justification to quash the conviction.”¹³

In the *State v. Maksudan Singh and Ors* (1985), the Supreme Court held that the constitutional right to a speedy trial is identical to that of the Sixth Amendment of the U.S. Constitution, that once this right has been violated the accused is entitled to unconditional release, and that callous delays of ten years or more entirely because of the prosecution would be per se prejudicial.¹⁴ Justice P.S. Sahay, did not agree with Justice S. Sandhawalia’s majority opinion.¹⁵ Specifically, he called the fixed period of ten years “wholly arbitrary.” Justice S. Shamsul Hasan stated also did not agree with Sandhawalia in this regard stating that the period should be two years.¹⁶

In *P. RamachandraRao vs. State of Karnataka* (2002), the Supreme Court of India sought to curb past judicial activism. The Court wrote, “It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings.”¹⁷ The Court emphasized that the right to a speedy trial does not entail the mandatory termination of cases following a specific period of time – such as ten years.

In 2012, the 1975 murder trial of railway minister L.N. Mishra was still pending. This 37-year-old criminal case highlights flaws within Indian jurisprudence and systemic failures of the court system. In this case the Supreme Court stated, “an accused cannot claim a violation of the right to speedy trial if the delay is caused due to administrative factors such as overcrowded court

⁸ Id.

⁹ Id.

¹⁰ *State of Maharashtra vs. ChampalalPunjaji Shah*, 1982 SCR (1) 299.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ *State v. Maksudan Singh and Ors*, AIR 1986 Pat 38.

¹⁵ Id.

¹⁶ Id.

¹⁷ *P. RamachandraRao vs. State of Karnataka*, 2002.

dockets.”¹⁸*India Today* summarized this decision stating that, “The scope of the right has thus been limited to an accused pointing to faults on part of the prosecution... A delay caused due to factors such as infrastructure, pendency, administrative inefficiency, etc. cannot be considered to have caused unreasonable delay.”¹⁹ The result is vast injustice for litigants and a reversal of past Indian jurisprudence that supported the constitutional right to a speedy trial. In past cases, such as *Hussainara Khatoon*, the Court held that the State could not avoid its constitutional obligation to provide a speedy trial. The Mishra decision sets this jurisprudence back several decades and transforms the right to a speedy into something unrecognizable.

International Standards

India has been a party to the International Convention on Civil and Political Rights (ICCPR) since 1979 and Article 14(3)(c) guarantees the right to a speedy trial.²⁰ Specifically, Article 14 states, “(3) In determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees... (c) to be tried without undue delay.”²¹

Likewise, the Statute of the International Criminal Tribunal for the Former Yugoslavia and European Convention of Human Rights guarantee the right to a speedy trial. Article 20 of the ICTY Statute states, “the Trial Chambers shall ensure that a trial is fair and expeditious,” and Article 21(4)(c) echoes Article 14 of the ICCPR.²² Article 6 of the European Convention on Human Rights maintains that, “everyone is entitled to a fair and public hearing, within a reasonable time, by an independent and impartial tribunal established by law.”²³ Similar provisions guaranteeing the right to be tried without undue delay are found in Article 67 (1)(c) of the Statute of the International Criminal Court, Article 8 (1) of the American Convention on Human Rights, and Article 7 (1)(d) of the African Charter on Human and Peoples’ Rights.²⁴

In 2007, the UN Human Rights Committee issued General Comment No. 32, Article 14: Right to Equality Before the Courts and Tribunals and to a Fair Trial (CCPR/C/GC/32). The comment elaborated upon ICCPR Article 14 (3)(c) by stating that the right to undue delay is, “not only designed to avoid keeping persons too long in a state of uncertainty... (and) to ensure that such deprivation of liberty does not last longer than necessary... but also to serve the interests of justice.”²⁵ The Comment went on to state that the complexity of the case, conduct of the accused, and manner in which the delay was dealt with by judicial authorities all factor into what is

¹⁸Singh, Gyanant, “Supreme Court Jolt for Right to Speedy Trial”, 29 August 2012, <http://indiatoday.intoday.in/story/supreme-court-jolt-for-right-to-speedy-trial/1/215144.html>.

¹⁹ Id.

²⁰International Convention on Civil and Political Rights, List of Parties, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&lang=en.

²¹International Convention on Civil and Political Rights, Article 14 (3)(c).

²² Statute of the International Criminal Tribunal for the Former Yugoslavia, Article 20 and Article 21 (4)(c).

²³ European Convention on Human Rights, Article 6(1).

²⁴ United Nations Human Rights Office of the High Commissioner, Facilitator’s Guide, Chapter 7 The Right to a Fair Trial, Part II: From Trial to Final Judgment.

²⁵ UN Human Rights Committee issued General Comment No. 32, Article 14: Right to Equality Before the Courts and Tribunals and to a Fair Trial (CCPR/C/GC/32), 2007.

considered a reasonable delay.²⁶ Furthermore, the Committee ensured that at “all stages, whether in first instance or on appeal” the concept of undue delay is crucial.²⁷

The case-by-case analysis purported by the UN Human Rights Committee is similar to that employed by the U.S. Supreme Court in *Barker v. Wingo*. The Sixth Amendment to the U.S. Constitution guarantees the right to a speedy trial. In *Baker*, the Supreme Court laid out a four-factor test for Sixth Amendment violations, which considers length of delay, reason for the delay, time and manner in which the defendant has asserted his right, and the degree of prejudice which the delay has caused.²⁸ Moreover, in 1974 Congress enacted “The Speedy Trial Act”, which establishes specific time limits between various stages of federal criminal proceedings.²⁹ At the state level many states have passed similar legislation.

Similarly to the U.S. Supreme Court, the European Court of Human Rights has established a case-by-case assessment for which delays are reasonable based on the complexity of the matter, the conduct of the applicant, the conduct of the state, and the importance of the matter to the applicant.³⁰

Although there is no bright line rule to determine when a delay is unreasonable it is clear that India is not matching international standards. A backlog of over 30 core cases and many delays lasting well over five years is clearly unreasonable. The case-by-case assessments discussed above, when applied to the many cases pending before the Indian Courts, illustrate how the delays individuals suffer are unjust and undue.

The Court System Today

On 24 April 2016, Chief Justice T S Thakur made a plea to Prime Minister Narendra Modi to appoint more judges to rectify the current backlog. The Chief Justice noted how the issue has existed for decades and as a result, “justice continues to be an illusion” for large portions of the Indian population. As a June 2016 *Hindustan Times* article highlighted, the poor are hit the hardest by the current backlog.³¹

To compound the problem of judicial vacancies, and the low ratio of judges-population, only one percent of the Union Budget is spent on the judiciary, the existing infrastructure for court buildings is poor, and the number of courts with a computerized system stands around a mere

²⁶ Id.

²⁷ Id.

²⁸ *Barker v. Wingo*, 407 U.S. 514 (1972).

²⁹ “Speedy Trial”, <http://legal-dictionary.thefreedictionary.com/Speedy+Trial+Act>.

³⁰ *Frydlender v France* (application no. 30979/96), para 43; *Atanasovic v The Former Yugoslav Republic of Macedonia* (application no. 13886/02), judgment of 22 December 2005, para 33; *Parizov v The former Yugoslav Republic of Macedonia* (application no. 14258/03), judgment of 7 February 2008, para 55.

³¹ Singh, Soibam Rocky, “Quest for Justice: Poor Litigants the Worst Hit”, 27 June 2016, <http://www.hindustantimes.com/india-news/battling-backlog-poor-litigants-the-worst-hit-by-snail-paced-justice-delivery-system/story-MLRrNaIobz3A1UoxLDynZM.html>.

64%.³² Furthermore, the Law Commission stated that in 2012 about 9.2 million of the pending cases were traffic fines or other routine payments that could be handled without hearings.³³

Some former judges believe that the backlog is due to a combination of factors such as, “delay in police investigation, unwarranted adjournments, poor judge-population ratio, a shortage of judicial professionals, lack of infrastructure, ineffective alternative dispute resolution mechanisms, a gap between allocated and actual working strength of judges, and work culture of the bench.”³⁴ Several judges advocate for ‘Alternate Dispute Resolution Mechanisms’ or fast track courts, while certain attorneys say this misses the heart of the problem, which they believe is lethargic police investigations and the lackadaisical work ethic of attorneys and judges alike.³⁵ In 2000, the government approved over 1,700 fast-track courts, however the quality of the case verdicts was questionable and funding was cut in 2011.³⁶ Ajit Prakash Shah, a retired chief justice of the Delhi High Court, now head of the Law Commission of India has stated, “The criminal justice system... is on the verge of collapse.”³⁷

In a *Bloomberg Businessweek* article, Alok Prasanna Kumar, senior resident fellow at the Vidhi Center for Legal Policy, stated, “the bar in India is in very bad shape,” when referencing the many attorneys who clog the court system with pointless litigation just to fill their pockets.³⁸ The same article also featured attorney Puneet Mittal, who went to court in 2015 for a matter from 1999, only to find that the prosecutor from the Central Bureau of Investigation was unprepared.³⁹ The court later posted that the prosecutor had “yet to go through the entire evidence and the number of documents exhibited.”⁴⁰

An example of the need for computerization was illustrated in 2012, when *India Today* reported that the Jharkhand High Court discovered that 833 cases were not being heard due to miscommunication between subordinate and high courts.⁴¹ In particular, the subordinate courts did not hear 115 cases for over 30 years under the false belief that they had been stayed by the high court.⁴² New email communications have been set up to alleviate this problem in Jharkhand, but other states have a lesson to learn.

It is also notable that judicial delay has spilled outside of the courtroom and resulted in an increase of self-help. As Pravin Parkeh, six-time president of the Supreme Court Bar Association

³² Id.

³³ Lasseter, Tom, “India Stagnant Courts Resist Reform”, 1 January 2015, <http://www.bloomberg.com/news/articles/2015-01-08/indias-courts-resist-reform-backlog-at-314-million-cases>.

³⁴ Anwar, Tarique, “Justice Delayed Again”, 8 May 2015, <http://www.firstpost.com/india/justice-delayed-again-former-chief-justice-of-india-explains-why-cases-like-salman-khan-drag-on-2234398.html>.

³⁵ Id.

³⁶ Lasseter, Tom, “India Stagnant Courts Resist Reform”, 1 January 2015, <http://www.bloomberg.com/news/articles/2015-01-08/indias-courts-resist-reform-backlog-at-314-million-cases>.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

⁴¹ Singh, Gyanant, “Bizarre Cause of Judicial Delay”, 29 August 2012, <http://indiatoday.intoday.in/story/supreme-court-jolt-for-right-to-speedy-trial/1/215144.html>

⁴² Id.

stated, self-help tactics are common in landlord-tenant disputes; in an effort to avoid the courts landlords instead hire thugs to ensure evictions.⁴³

Official Recommendations

In retired Chief Justice Shri Y.K. Sabharwal's 2006 speech he recommended an increase in the strength of judges (decreasing vacancies), augmenting of infrastructure, a two shift system where retired judges work a second shift, increased financial autonomy, an increase in case management techniques at the micro level and court management at the macro level, alternative dispute resolution mechanisms, the computerization of courts, increased training of judges and staff, the earmarking of certain courts for cases that have a three year plus pendency, discretionary prosecution, increased government settlements, increased efficiency for the service of summons, reigning in the granting of frivolous adjournments and interlocutory applications, an elimination of lawyer strikes, an increase in plea bargaining, and various procedural improvements in both civil and criminal cases.⁴⁴ He concluded his speech by reminding the audience that, "stress on speed alone at the cost of substantial justice may impair the faith and confidence of the people in the system and cause greater harm than the one caused by delay."⁴⁵

The Law Commission's June 2014 Report (No. 245) recommended that, "the recruitment of new judges should focus, as a matter of priority on the number of judges required to breakeven and to dispose of the backlog in a three year time frame," and that the retirement age should be increased to 62.⁴⁶ Additionally, the Law Commission advocated for the creation of special courts for traffic cases, adequate staff and infrastructure, and Periodic Judicial Needs Assessments to be undertaken by the High Courts.⁴⁷ On top of these recommendations the Law Commission suggested the need for system-wide reform consisting of monitoring and increasing judicial strength, encouraging Alternative Dispute Resolution Methods where appropriate, and increasing the application of good judicial management practices, which could be monitored via timeliness and performance benchmarks.⁴⁸

In the Resolutions Adopted in the 2016 Chief Justices' Conference, the Delay and Arrears Committees reported, "various High Courts have indicated a need to prioritize... the disposal of pending cases."⁴⁹ The Conference noted that, "(i) the pendency of cases in the High Court has been stagnant for over three years and (ii) 43% of the pendency is of cases of over five years."⁵⁰ The Conference went on to resolve that, "(i) all High Courts shall assign top most priority for disposal of cases which are pending for more than five years... (iii) High Courts shall

⁴³Lasseter, Tom, "India Stagnant Courts Resist Reform", 1 January 2015,

<http://www.bloomberg.com/news/articles/2015-01-08/indias-courts-resist-reform-backlog-at-314-million-cases>.

⁴⁴Justice Sobhag Mal Jain Memorial Lecture, July 2006, retired Chief Justice Shri Y.K. Sabharawal.

⁴⁵ Id.

⁴⁶ Law Commission of India, Report No. 245, Arrears and Backlog: Creating Additional Judicial (wo)manpower, July 2014.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Resolutions Adopted in the Chief Justices Conference, 2016 (22 & 23 April 2016).

⁵⁰ Id.

progressively thereafter set a target of disposing of cases pending in the district courts for more than five years; and...(v) efforts must be made for strengthening case-flow management rules.”⁵¹

Conclusion – Looking Forward

An increase in funding and infrastructure, separate traffic courts, and the elimination of all judicial vacancies could go a long way in decreasing judicial backlog. Additionally, a Speedy Trial Act, similar to the U.S. act, Alternative Dispute Mechanisms, and other procedural reforms would benefit the current court system. Lastly and perhaps most importantly, a requirement of stricter preparedness and urgency from the investigating police, practicing attorneys, and sitting judges would greatly transform the existing climate of judicial delay.

Every week the government waits to take action is another week of injustice for the Indian people. The standards in India do not match that of the international community and the problem of judicial delay cannot continue to be overlooked.

⁵¹ Id.