

A WARM WELCOME TO THE PG DIPLOMA STUDENTS OF NALSAR TO THE VIRTUAL LECTURE ON THE TOPIC OF CRIMINAL TRIAL: GAP BETWEEN LAW AND PRACTICE – CURRENT TRENDS IN THE CONVICTION.

As you are the students of Law , I presume that you all are aware of the basic concepts of Law. Criminal Major Acts is like Bhagwadgita to the Legal fraternity. Indian Penal code is a substantial law which envisages the offences and punishment. Whereas Criminal Procedure Code is an exhaustive Procedural Law which deals with the procedure to be followed by all the criminal courts. (summary trials, summons cases, warrant cases, private complaints, sessions cases, appeals and revisions.) Indian Evidence Act envisages the types of evidences and their admissibility, types of witnesses, presumptions, etc.

The two cardinal principles of Criminal Law are that:

- 1) The burden is always on the prosecution to prove the guilt of the accused.
- 2) Accused shall be presumed as innocent till the guilt is proved.

One thing we have to keep in mind always is that the acquittal of accused by a court does not only mean that he did not commit the offence, but it is on account of the failure of the prosecution to prove the guilt or the failure of the Investigating Agency to collect the evidence and examine the proper witnesses.

Generally, Criminal Law is set into motion by registering the First Information Report. We all know that basing on the information given by the informant FIR is being registered in the police station by the Station House Officer in cognizable offences, as required under section 154 of Criminal Procedure Code.

After registering the FIR, the Investigation will be commenced by the Investigating Agency which collects the physical, oral, expert/technical evidence, medical evidence, etc., and files a Charge Sheet before the Court of Law under section 173 Cr.P.C. This is the theoretical part what we all study in the Criminal Procedure code.

The Moment the charge sheet is filed and if it is in order, it will be numbered by the concerned jurisdictional Magistrate, and if there are any objections, it will be returned for compliance. After examining the allegations leveled in the Charge Sheet and the nature of punishment, a Calendar Case/PRC number will be allotted. If the offence is triable by the Magistrate, the Charge Sheet will be taken on file as Calendar Case and if the offence is triable by Court of Sessions, Charge Sheet will be numbered as PRC and later will be committed to Court of Sessions for Trial under Section 209 Cr.P.C. After receipt of the case file, the Prl. Sessions Court may try the case or may transfer it to other Sessions Court for trial.

Once the case is numbered, summons will be issued to the accused. On appearance of the accused before the trial court, time will be granted to him for engaging counsel and if the accused express inability to engage an counsel, a Legal Aid Counsel will be appointed to defend the accused. After hearing on charges, if the allegations made against the accused are not sufficient to frame charges, the accused will be discharged. If there is substantial material to frame the charges, charges will be framed, read over and explained to the accused in the local language and the trial takes place thereafter. Generally, in Sessions Cases, Schedule for trial will be fixed, evidence of prosecution witnesses will be recorded. After completion of evidence, the accused shall be examined under section 313 of Cr.P.C., explaining the incriminating evidence found against the accused.

If the accused intends to lead defence evidence, the case will be adjourned to defence evidence otherwise the next step is for arguments of the prosecution as well as for the defence. After hearing the arguments the Sessions Judge will pronounce the Judgment either acquitting or convicting the accused for the charges leveled against him. In case of conviction, the Presiding Officer shall question the accused as to the quantum of sentence. Taking into consideration the relevant facts as to the socio-economic conditions of the accused and the nature and gravity of the offence the Sessions Judge imposes the sentence either by applying Sec 360 of Cr.P.C/ Probation of Offenders Act.

Indian Constitution is the mother of all the Laws.

Constitutional perspectives:

Articles 20 and **22** of the constitution of India provide for certain safeguards to the persons accused of offences. **Article 20** secures the protection of the accused persons, in respect of conviction for offences, from **EXPOST FACTO** laws, double jeopardy and prohibition against self-incrimination. Similarly, **Article 21** of the constitution of India ensures the protection of life and liberty which reads as "no person shall be deprived of his life or personal liberty except according to the procedure established by law. This right may be affected in cases of preventive detention under preventive detention laws. As such, Constitutional protection against arrest and detention is ensured under **Article 22(1) to (7)** of the constitution of India.

Importance of a fair trial:

One of the primary goals of criminal law is to protect society by punishing offenders. However, justice and fair play require that no one is punished without a fair trial. A person might be under a thick cloud of suspicion of guilt, he might have been caught red-handed, and yet he is not to be punished unless and until he is tried and adjudged to be guilty by a competent court. In the administration of justice, it is of prime importance that justice should not only be done but must also appear to have been done. Further, it is one of the most important principles of criminal law that everyone is presumed to be innocent unless his guilt is proved beyond reasonable doubt in a trial before an impartial and competent court. Therefore it becomes absolutely necessary that

every person accused of a crime is brought before the court for trial and that all the evidence appearing against him is made available to the court for deciding as to his guilt or innocence.

Speedy trial is an essential feature of a fair trial. A speedy trial is important not only to the victim but also to the accused. The constitutional provisions that guarantee speedy trial is an important safeguard to prevent undue and oppressive incarceration prior to trial; to minimize concern accompanying public accusation and to limit the possibilities that long delays will impair the ability of an accused to defend himself. It also makes societies safer and stronger. Without fair trials, it is believed that the rule of law collapses.

The right to a speedy trial was initially mentioned in that landmark document of English law, the Magna Carta. The constitutional philosophy propounded that right to speedy trial has though grown in age by almost two and a half decades; the goal to be achieved is yet far-off. It is a concept that deals with speedy disposal of cases to make the judiciary more effective and to impart justice as fast as possible.

It was held that under trial prisoners have been in jail for duration longer than prescribed, if convicted, their detention in jail is totally unjustified and is violation of fundamental rights under Article 21. Delay in trial unnecessarily confers a right upon the accused to apply for bail. Under sec. 482 read with 483, Cr. P.C lays that every possible measure to be taken to dispose off the case within 6 months from today.

The Judiciary being the ultimate protector of human rights and the final resort for dispensation of justice, the citizens of India look up to this institution with great respect and eternal hope. This casts a very heavy responsibility on the entire judicial system to live up to the expectations reposed in it and to maintain the sacred aura attached to it unsullied. Qualities of honesty and integrity are inherent to these expectations. The role of the judiciary places enormous responsibility on the shoulders of the Courts. The development of the nation is equally dependent on the dynamism and the innovativeness of the judicial system. Hence, there is an urgent need to ensure that no justice is delayed and the situation existing today is remedied soon. Despite the increasing incidence of reliance on the Courts, there are large sections of the population which are unable to approach the judicial system on account of factors such as poverty, lack of awareness and entrenched social discrimination. Thus we have an apparent paradox i.e., even though the judicial system has been tackling a continuously rising case-load, the overall social indicators of access to justice are quite disappointing.

Increase in population, lack of adequate number of Courts, disproportionate judge strength as against the population, lack of ministerial manpower, lack of infrastructure, snail's pace in computerization and use of information technology, inadequate budgetary allocations for judiciary, awareness, globalization, raise in economy, changed economic considerations, literacy, faith in the system, accessibility, resources, impact of legislations,

standards of living and new dimensions to relationships are the reasons for huge pendency and delay in disposal.

When we talk about the enforcement of speedy justice, the basic question is - what is called as delay? There is no single or clear understanding of when a case should be counted as delayed. Often, terms like "delay," "pendency," "arrears," and "backlog" are used interchangeably.

It is also a constitutional obligation of the Indian State in the light of the Directive Principles of State Policy articulated in Articles 38(1), 39 and 39-A of the Constitution of India and also on account of India's international legal obligations to guarantee delivery of justice on time.

The Preamble of the Indian Constitution enjoins the State to secure social, economic and political justice to all its citizens. Article 38(1) provides that the State should strive for a social order in which such justice shall inform all the institutions of national life. While interpreting this provision in **L. Babu Ram v. Raghunathji Maharaj**, the Supreme Court held that "social justice" would include "legal justice" which means that the system of administration of justice must provide a cheap, expeditious and effective instrument for realisation of justice by all sections of people irrespective of their social or economic position or their financial resources." Article 39-A mandates the State to provide legal aid.

There is no specific legislation in Indian legal system which ensures the right to speedy trial like the Speedy Trial Act 1974 of the United States.

Under Section 309 Cr.P.C, every inquiry or trial should be held "expeditiously" and when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses have been examined. Interpreting the provisions of the Constitution, the court stressed that expeditious trial is a rule and adjournment is an exception.

If the schedule for trial has to be postponed, the Sessions Judge has to record special reasons for the cancelling the schedule. In order to drag the case often petitions are filed under section 309 of Cr.P.C or under section 311 of Cr.P.C for recall of evidence of Prosecution witnesses.

While taking notice of certain distressing and unethical tendencies, the Supreme Court in *Swaran Singh* observed that "it is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only that a witness is threatened; he is abducted; he is maimed; he is done away with; or even bribed. There is no protection for him. In adjourning the matter without any valid cause a Court unwittingly becomes party to miscarriage of justice."

In 1979 P.N. Bhawati, J. in *Hussainara Khatoon (1)* said that although the right to speedy trial is not "specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21" as interpreted in *Maneka*. It was reiterated that

'reasonable expeditious trial' is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The causes of delay in criminal trials have been examined by various committees and academicians while also finding mention various judgments. A few which affect the system are :

-(a) trial magistrates list a large number of cases every day when they cannot physically pay attention to all those cases personally, leading to a waste of time on calling work or roll calls only to adjourn the cases to next dates

(b) cases being required to be adjourned because prisoners are not produced before the judge

(c) Witnesses not being present, though served, or not being served well in advance

(d) dilatory tactics of prosecution or defence

(e) inept handling of Court administration by inefficient or inexperienced judicial officers." In addition to the above mentioned causes identified by Law Commission of India, there are many other causes which have been highlighted by the judiciary in a plethora of cases.

A. Delay in Police Investigation-

The criminal law is set in motion after filing an FIR and is followed by an investigation. As a part of investigation process, if the police officer seeks the custody of any person for pre-indictment or pre-trial interrogation, he must file an affidavit sworn by him explaining the reasons for not only for such custody but also for the delay, if

any, in seeking the police custody. In the absence of a clear-cut policy on scientific investigation and proof, criminal proceedings continue in old fashioned ways, causing enormous delays and costs and occasional miscarriage of justice.

B. Delay in Services of Summons/Warrants-

Absence of some or all the accused or non-production of undertrial prisoners at the stage of framing of charges and during the trial contributes for the delay. Earnest efforts are not being made by the Police in apprehending and producing the absconding accused. Execution of warrants has become the least priority for the police who have their own reasons, may be genuine or artificial.

The Code of Criminal Procedure provides for various modes of service. Section 62 of the Code provides that summons shall be served by a Police Officer, or subject to such rules being framed by the State Government, by any officer of the Court or other public servant. Unfortunately rules have not been framed by many State Governments.

C. Delay in Examination of Witnesses-

Delay in examination of witnesses leads to many unreasonable consequences and several reasons are attributed to this malady such as inordinate delay in the trial of cases.

D. Delay in Submission of Expert Reports-

Police is quite often handicapped in undertaking effective investigation for want of modern gadgets such as cameras, video equipment etc. Forensic science laboratories are scarce and even at the district level, there is no lab which can render timely

assistance to the investigating Police. Further, it is common knowledge that there is dearth of forensic and cyber experts in police departments of various State. The result is that police heavily lean towards oral evidence, instead of concentrating on scientific and circumstantial evidence.

E. Non Implementation of Pre-Trial Hearing under the Code of Criminal Procedure-

In India, the concept of pretrial hearing has not taken deep roots. Sections 291 to 298 of Cr.P.C. provide for sorting out certain matters at the pre-trial hearing. Section 294 envisages that the particulars of every document filed by the prosecution or the accused shall be included in a list, and the other party or its pleader "shall" be called upon to admit or deny the genuineness of each such document. Where the genuineness of such document is not disputed, the document may be treated as 'proved'. This provision, unfortunately, is rarely utilized

9. Judicial Mechanism Identified For the Enforcement of the Right

The Hon'ble Supreme Court has held that the Criminal Procedure Code, under Sections 167, 258, 309, 311 and 468 provides to expedite the disposal of cases and to enable timely delivery of justice. Section 167 Cr.P.C provides a statutory time limit to complete an investigation and further provides that a failure to complete investigation within the statutory time frame shall lead to release of the accused in custody on bail. The Criminal Procedure (Amendment) Act, 2005, introduced Section 436A, which stipulates that the maximum period for which under trial prisoners can be detained is half of the maximum

period of imprisonment specified for that offence under that law excluding offences for which the punishment of death has been specified as one of the punishments under that law. Hence, by invoking these provisions, right to speedy justice can be protected

The seven Judges constitutional bench has answered maximum questions arising out of enforcement of concept of speedy justice in *Abdul Rehman Antulay* and has held that *'it is neither advisable nor feasible to draw or prescribe an outer time-limit for conclusion of the criminal proceedings.*

1. The Hon'ble Supreme Court quashed a number of criminal proceedings due to inordinate delay in investigation, inquiry and trial of the cases. Various factors like complicated procedure, access to police station and problems for registration of FIR, investigation by police officer not well-versed with law that caused delay, are no longer relevant in the modern era of science and technology.
2. The provisions of the Cr.P.C. only impose duties upon the state machinery to conduct investigation, inquiry and trial etc. But no accountability has been fixed in case of non-performance of the assigned duties by the State machinery.
3. The right to speedy trial is a fundamental right of the people but neither the relevant provisions of any enactment nor the Apex Court have fixed any time-limit for expeditious disposal of cases. This gives an opportunity to the parties and State machinery for delaying the criminal proceedings.

4. Section 309 CrPC requires the “examination of witnesses” from day to day but no provision has been made in order to ensure the protection of life and honour of the witnesses, or even reimbursement of travel expenditure incurred by the witnesses who come to the court from distant areas. The witnesses are harassed, threatened and abducted. Maltreatment in court is common.

5. The provisions of plea bargaining have been incorporated into the CrPC as Chapter XX-A. But no provision has been made which imposes mandatory obligations upon the presiding officer and the advocate in order to acquaint and explain to the parties concerned as to the process of plea bargaining before commencement of the trial.

6. Many special Acts for speedy trial of cases were passed by the States which were challenged on different grounds including arbitrary exercise of discretionary powers of the Government in selection or classification of classes of cases or offences and unreasonable procedures to be adopted by the special court. The Supreme Court has given certain guidelines from time to time for speedy disposal of the cases by special courts. These guidelines have been incorporated into various subsequent Acts. But the enactments, which have been made, could not achieve the very objective of the speedy trial due to the absence of a sense of responsibility among the machinery concerned.

Current trends in Conviction :

In practical the conviction rate is very low because of various factors including the lapses in investigation, lack of expertize in investigation, non proper collection of evidence, delay in getting the expert reports, non protection of witness as well as non production of witnesses by the police before the trial courts, turning of witnesses hostile, delay in conducting the trials, increase in pendency of crime i.e. huge of number of criminal cases and less number of courts, less number of prosecutors, judges and staff, lack of infrastructure, non training of investigating officers, judicial officers, staff, prosecutors and non utilization of information and technology, etc.
