

## RIGHT TO SPEEDY TRIAL AND MERCY PETITIONS IN INDIA

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### Introduction

Article 21 of the Constitution of India provides that no person shall be deprived of his life or liberty except in accordance with the procedure established by law. It is now well settled, after the decision of the Apex Court, in *Maneka Gandhi v. Union of India*<sup>1</sup>, that it is not enough that there should be some resemblance of procedure provided by law, but the procedure under which a person may be deprived of his life or liberty should be 'reasonable', 'fair' and 'Just'. In *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna*<sup>2</sup> the Apex Court observe that 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 to devise such a procedure as would ensure speedy trial to the accused. So Right to Speedy Trial is one of the essential for protecting life and liberty of a person, where state initiated a proceeding for depriving a person from life and liberty.

The speedy trial of criminal act is one of the basic objectives of the criminal delivery justice system, because long delay can defeat justice. Hence, it is said that speedy justice is one of the essence of organised society. It is always advocated that a case should be decided as early as possible but it is also said that basic norms which ensure justice cannot be overlooked because it is a common popular proverb that 'justice hurried, justice burried'. So there should be proper balance between basic norms and speedy trial because the main object of every legal system is providing complete justice to all.

This paper discusses the right of speedy trial in two parts first part is investigating about jurisprudence of speedy trial in India. It describes the concept of speedy trial by discussing, how speedy trial was evolved? What are legislative provisions in India for securing speedy trial? What are reasons for causing delay in trial? Is there any International instrument which has provisions for

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<sup>1</sup> AIR 1978 SC 579.

<sup>2</sup> AIR 1979 SC 1369.

speedy trial? Is Speedy Trial a Fundamental right in India? If yes then what is remedy or impact of it on violation of Right to Speedy Trial? And lastly in this part paper discuss judicial response to Right to Speedy Trial. Second part of the paper discusses implication of Right to Speedy Trial in the cases where mercy petitions for death row convicts are pending from long time. It discuss judicial view on the point whether such person should be entitled to this right or if this right is applicable to these petitions then what should be remedy for violation of the right? Lastly this paper gives concluding observation on the Right to Speedy Trial for death row convicts.

### **Jurisprudence of Speedy Trial**

Jurisprudence of speedy trial is based on a simple principle that innocent (suspect) person should not be harassed by legal system to an unreasonable period and victim should get justice as early as legal system can provide it. Jurisprudence of Speedy Trial can be understood by understanding firstly the evolution of it. Secondly, its legislative framework or how it can be traced in drafted law. Thirdly, what are the reasons for delay in trial? Fourthly, how international instruments are treating this demand? Fifthly, concept of speedy trial as fundamental right. Sixthly, what is impact of it after considering it as fundamental right? And lastly, how judiciary respond to it for development of its various aspects? All these ways can be understood in short by discussing following heads.

#### **A. Evolution of the concept of Speedy Trial**

In India, during the medieval period, when there was Muslim rule, Muslim law and Muslim Judicial institution were established. The power to administer law and justice was in hand of Sultan. Hierarchies of the courts were established in the districts and provinces. Aurangzeb was the first ruler who evolved the concept of Speedy trial. The 'Fatwa Namgiri' was drafted during his time, which shows that no person shall be arrested without permission of kazi and justice shall be done quickly after arrest of the accused and no person could be anguished in jail for indefinite period unless the guilt is proved. It is also provided that the Kazi could grant 'bail'.<sup>3</sup> So it can be said the concept of speedy trial is not new in India, even it was evolved in medieval period. But

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<sup>3</sup> S.P. Singh and Krishan Kant Dwivedi, *Speedy Trial in constitution of India*, Journal of Constitutional and Parliamentary Studies 256, 256-270 (2012).

modern concept of speedy trial developed in USA, where the main focus was on balancing between right of accused and demand of justice for victims of crime.

In USA the sixth amendment of the constitution provides Right to Speedy Trial to accused and this has been further ensured by The Federal Speedy Trial Act 1974. In *Baker v. Wingo*<sup>4</sup>, the U.S. Apex Court discussed the various aspect of Speedy trial. Justice Powell's observation can be summarised as:

- I. The right to a speedy trial is a more vague and generically different concept than other constitutional right guaranteed to accused persons and cannot be quantified into a specific number of days or months, and it is impossible to pinpoint a precise time in the judicial process when the right must be asserted or considered waived;
- II. While a defendant's assertion or non assertion of his right to a speedy trial is one of the factors to be considered in an inquiry in to the deprivation of such right, the primary burden remains on the courts and prosecutors to assure that cases are speedily brought to trial;
- III. A claim that a defendant has been denied to his right to a speedy trial is subject to balancing test, in which the conduct of the both the prosecution and the defendant are weighed, and courts should consider such factors as length of the delay, reason for the delay, the defendant's assertion or non assertion of his right, and prejudice to the defendant resulting from the delay, in determining whether a defendant's right to a speedy trial has been denied;
- IV. While the petitioner's case, involving as it did such extra ordinary delay, was a close one, the facts that prejudice to him was minimal and that the petitioner himself did not want a speedy trial outweighed the deficiencies attributable to the state's failure to try the petitioner sooner; and
- V. The petitioner was not denied his right to a speedy trial.

### **B. Legislative framework in India for Speedy Trial**

There are various provisions in Criminal Procedure Code, 1973 (herein after Cr.P.C.) which insures speedy trial and an early investigation:

- I. Under Section 157(1) of Cr.P.C. every officer in charge of a

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<sup>4</sup> 407 US 514 (1972).

- police station is bound to proceed, to the spot, to investigate the facts and circumstances of the case, and if necessary, to take measures for the discovery and arrest of the offender.
- II. Section 167(2) (a) of Cr.P.C. provides that no magistrate shall authorise the detention of the accused person in custody for total period exceeding;(i) 90 days, where the investigation relates to an offence punishable with death, life imprisonment for life or imprisonment for a term of not less than 10 years;(ii) 60 days, where the investigation relates to any other offence, and on the expiration of such period as case may be the accused shall be released on the bail.
  - III. Section 173(1) of Cr.P.C. Provides that every investigation under chapter XII shall be completed without unnecessary delay.
  - IV. Section 173(1A) of Cr.P.C. Provides that the investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.
  - V. Section 207 of Cr.P.C. Casts a duty on the magistrate that a copy of (i) the police report;(ii) FIR recorded under section 154 (iii) statement recorded under section 161(3) of all persons(iv)confession and statement recorded under section 164(v) any other document forwarded to the magistrate with the police report under section 173(5), shall be given to the accused free of cost.
  - VI. Chapter XXI of Cr.P.C. Provides provisions(from section 260 to 265) for summary trial in certain petty offences.
  - VII. Chapter XXIA of Cr.P.C. Provides provisions( from section 265-A to 265-L) for Plea Bargaining. This chapter is applicable to other than an offence which punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law time being in force but does not apply where such offences affects the socio economic condition of the country or has been committed against a woman, or a child below age of fourteen years.
  - VIII. Section 309 (1) of Cr.P.C. Provides that in every inquiry or trial the proceeding shall be continued from day to day until all the witnesses in attendance have been examined. It also provides that when the inquiry or trial relates to an offence under section 376, or 376-A or 376-B or 376-C or 376-D of the Indian Penal Code, 1860, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the chargesheet.
  - IX. Section 468 of Cr.P.C. Provides bar in taking cognizance after

lapse of the period of limitation. Sub section (2) provides limitation period as (a) 6 months, if the offence is punishable with fine only (b) 1 year, if the offence is punishable with imprisonment for a term not exceeding one year (c) 3 year, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

### **C. Reasons for delay in Trial**

Important question is that why demand of speedy trial arose, answer in simple word is that there was delay in disposal of cases. In *State of Maharashtra v. Champalal Punjaji*<sup>5</sup>, the Apex Court observed that delay is a known defense tactic. With the passage of time, witnesses cease to be available and memories cease to be fresh. Vanishing witnesses and fading memories render the onus on the prosecution even more burdensome and make a welter weight task a heavy weight one. Sure, court does not mean to suggest that the responsibility for delaying criminal trials is always to be laid at the door of the rich and the reluctant accused. Court held that we are not unmindful of the delays caused by the tardiness and tactics of the prosecuting agencies. Court knows of trials which are over delayed because of the indifference and somnolence or the deliberate inactivity of the prosecuting agencies. Sometimes when the evidence is of a weak character and a conviction is not a probable result, the prosecuting agencies adopt delaying tactics to keep the accused persons in incarceration as long as possible and to harass them. This is a well known tactic in most conspiracy cases. Again, an accused person may be seriously jeopardized in the conduct of his defence with the passage of time. Witnesses for the defence may become unavailable and their memories too may fade like those of the witnesses for the prosecution. There are many reasons which can be responsible for delay in trial; some of the popular reasons can be identified as followings heads:

- I. Non availability of counsel.
- II. Non availability of accused.
- III. Belated service of summons and warrants on the accused/witnesses.
- IV. Non production of under trial prisoners in the court.
- V. Presiding judges proceeding on leave, though cases are fixed for trial
- VI. Counsel engaged by the accused declining to appear or

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<sup>5</sup> AIR 1981 SC 1675.

seeking an adjournment.

#### **D. International instruments and Speedy Trial**

It is due to social importance of speedy justice that it has also been recognised by the various international instruments. It has been accepted that speedy trial is one of the basic human right because without speedy trial it will be injustice with another human rights. So for protecting human right violations speedy trial should be provided.

The European commission on Human Rights, 1950 recognise the concept of Speedy Trial. For example Article 5(3) says that every person arrested or detained...shall be entitled to trial within a reasonable time or to release pending trial. Article 5(4) provides that everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of detention shall be decided speedily by a court. Article 6(1) provides that “ ...in the determination of ...any criminal charge against him...is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

The principle of Speedy Trial has accepted also in various articles of the American convention on Human Rights 1969. Some of the important articles in which concept of Speedy Trial accepted can be illustrated as Article 7(4) provides that anyone who detained shall be informed of the reasons for his detention and shall be promptly notified of the charge of charges against him. Article 7(5) provides that any person detained shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceeding. Article 7(6) provides that anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that court may decide without delay on the lawfulness of his arrest or detention and order of his release if the arrest or detention is unlawful. Article 8(2) provides that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law.

#### **E. Speedy Trial as a Fundamental Right in India**

In *Hussainara Khatoun v. Home Secretary, State of Bihar, Patna*, speedy trial was accepted as a fundamental right and in this case

Justice P.N. Bhagwati (for himself and on behalf of Justice Koshal) observed that:

We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by this Court in *Maneka Gandhi v. Union of India*<sup>6</sup> We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be 'reasonable, fair and just'. If a person is deprived of his liberty under a procedure which is not 'reasonable, fair or just', such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously procedure prescribed by law for depriving 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. No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

#### **F. Remedy vis a vis impact of Right to Speedy Trial**

In *Sheela Barse v. Union of India*<sup>7</sup>, the Apex Court held that if an accused is not tried speedily and his case remains pending before the Magistrate or the Sessions Court for an unreasonable length of time, it is clear that his fundamental Right to Speedy Trial would be violated unless, of course, the trial is held up on account of some interim order passed by a superior court or the accused is responsible for the delay in the trial of the case. The consequence of violation of the fundamental Right to Speedy Trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right.

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<sup>6</sup> *Supra* note 1.

<sup>7</sup> AIR 1986 SC 1773.

### G. Judicial Response to Right to Speedy Trial

In *P. Ramachandra Rao v. State of Karnataka*<sup>8</sup>, the Apex Court held that it is the constitutional obligation of the State to dispense speedy justice, more so in the field of criminal law, and paucity of funds or resources is no defense to denial of right to justice emanating from Articles 21, 19 and 14 and the Preamble of the Constitution as also from the Directive Principles of State Policy

After declaring Speedy trial as a right real question was that at which stage this right can be exercised and the Apex Court in *Abdul Rehman Antulay v. R.S. Nayak*<sup>9</sup> observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. And court also observed that the Right to Speedy Trial from the point of view of the accused are:

- I. The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;
- II. The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and
- III. Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

By another step Court developed jurisprudence of unreasonable delay because unreasonable delay in trial can violate the Right of Speedy trial but the real question was how it can be identified whether such delay is proper or not. The solution of this problem was given in *P. Ramachandra Rao v. State of Karnataka*<sup>10</sup>, where it was observed that whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors (1) length of delay, (2) the justification for the delay, (3) the accused assertion of his Right to Speedy Trial, and (4) prejudice caused to the accused by such delay.

After declaring Speedy trial as fundamental Right, another difficulty faced by courts that criminal were using it as a weapon

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<sup>8</sup> AIR 2002 SC 1856.

<sup>9</sup> AIR 1992 SC 1701.

<sup>10</sup> *Supra* note 8.



and criminal justice system were not serving its purpose, so the Apex Court for solving this problem, in *State of Maharashtra v. Champalal Punjaji*<sup>11</sup> held that In deciding the question whether there has been a denial of the right to a speedy trial, the court is entitled to take into consideration whether the defendant himself was responsible for a part of the delay and whether he was prejudiced in the preparation of his defence by reason of the delay. The court is also entitled to take into consideration whether the delay was unintentional, caused by over-crowding of the court's docket under-staffing of the prosecutors. If the accused is found to have been prejudiced in the conduct of his defense and it could be said that the accused had thus been denied an adequate opportunity to defend himself, the conviction would certainly have to go. But if nothing is shown and there are no circumstances entitling the Court to raise a presumption that the accused had been prejudiced there will be no justification to quash the conviction on the ground of delayed trial only.

In an another case *Lallan Chaudhary v. State of Bihar*<sup>12</sup> the appellant contended that the appellants are facing criminal trial for the last 14 years and if the committal proceedings are initiated by the trying Magistrate pursuant to the directions of the High Court, it would impede speedy trial and the same would be violative of Article 21 of the Constitution. And court held that no doubt, quick justice is sine-qua-non of Article 21 of the Constitution but, when grave miscarriage of justice is committed by the Police Officer, the ground of delay of disposal of cases or otherwise would not scuttle the miscarriage of justice. Similarly, court were of the view that in the given facts and circumstances of this case, the accused themselves would be liable to be blamed for the delay, if any.

*Raj Deo Sharma v. The State of Bihar*<sup>13</sup> that in offences punishable with imprisonment for a period not exceeding seven years, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not. It was also observed that If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge

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<sup>11</sup> *Supra* note 5.

<sup>12</sup> AIR 2006 SC 3376.

<sup>13</sup> AIR 1998 SC 3281.

framed, whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next step provided by law for the trial of the case, unless for very exceptional reasons to be recorded and in the interest of justice the court considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time limit.

But in *P. Ramachandra Rao v. State of Karnataka*<sup>14</sup>, court overruled *Common Cause" A Registered Society" v. Union of India*<sup>15</sup> and *Raj Deo Sharma v. The State of Bihar*<sup>16</sup> and held that it is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in earlier cases are not good law. And court further observed that the criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in *common Cause Case*<sup>17</sup>, *Raj Deo Sharma case*<sup>18</sup>. At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay's case and decided whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any Court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.

In *P. Ramachandra Rao v. State of Karnataka*<sup>19</sup>, the Apex Court gave directions and held that the criminal courts should exercise their available powers such as those under Sections 309, 311 and 258 of Code of Criminal Procedure to effectuate the Right to Speedy Trial. A watchful and diligent trial Judge can prove to be better protector of such right than any guidelines. In appropriate cases, jurisdiction of High Court under Section 482 of Cr. P.C. and Articles 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions.

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<sup>14</sup> *Supra* note 8.

<sup>15</sup> (1996) 4 SCC 32.

<sup>16</sup> *Supra* note 13.

<sup>17</sup> *Supra* note 15.

<sup>18</sup> *Supra* note 13.

<sup>19</sup> *Supra* note 8.

## **Mercy Petitions for death row convicts and Right to Speedy Trial**

It has recognised principle that speedy trial is an essential ingredient for protecting liberty. But the issue is whether liberty of a person, who received punishment of death sentence from Apex Court, should be protected? Before going into this question it is important to consider that whether he/she has liberty or not? It can be answered that liberty of such person is curtailed by a procedure established by law which was reasonable, fair and just. Such person got the sentence by reasonable, fair and just procedure and another issue is that whether such sentence should be executed in reasonable, fair and just manner or not. Whether Right to Speedy Trial has relevance in deciding mercy petitions and if yes, then what should be remedy in case violation of Right to speedy trial took place. The Apex Court described these aspects in different cases in different manner.

In *T.V. Vatheeswaran v. State of Tamil Nadu*<sup>20</sup>, appellant was sentenced to death but punishment was not executed for eight years and appellant was in solitary confinement in all this period. The main issue before the Apex Court was whether delay in execution of death sentence mitigates punishment. Article 21 provides right to life and liberty and this right only curtailed by just fair and reasonable procedure established by law and it also include Right to Speedy Trial. It was accepted by the court that prolonged detention to await execution of death sentence is unfair, unjust and unreasonable procedure to deprive a person from his right to life and liberty. Court held that delay of two years or more in execution of death sentence liable to quashing of death sentence and in this case death sentence was substituted by life imprisonment.

In *Sher Singh v. State of Punjab*<sup>21</sup>, the petitioners relies upon a decision of the Apex Court in *T.V. Vatheeswaran v. State of Tamil Nadu*<sup>22</sup>, contended that since more than two years have passed since the petitioners were sentenced to death by the Trial Court, so sentence should be quashed and substituted by the sentence of life imprisonment. Question before the court was that whether delay exceeding two years in execution of sentence of death must be considered sufficient for setting aside that sentence. the Apex

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<sup>20</sup> AIR 1983 SC 361.

<sup>21</sup> AIR 1983 SC 465.

<sup>22</sup> *Supra* note 20.

Court overruled *T.V. Vatheeswaran Case*<sup>23</sup> and observed that there can not be an absolute or unqualified rule that in every case in which there is long delay in execution of death sentence the, sentence must be substituted by sentence of life imprisonment. Convict has right to pursue all remedies lawfully open to him to get rid of sentence of death imposed upon him. Convicted person can ask for commutation of his sentence even after death sentence finally confirmed by Court by using remedy which is available to him under law. And court held that sentence of death cannot be vacated merely for reason that there has been long delay in execution of death sentence.

In *Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra*<sup>24</sup> the petitioner contended exemption from death sentence on grounds of his tender age, reformation in jail and long lapse of time since passing of death sentence. It was contended by petitioner that delay in executing death sentence should be sufficient enough to invoke Article 21 for quashing of death sentence. Court observed, without accepting *Sher Singh v. State of Punjab*<sup>25</sup> that besides delay, other circumstances also to be taken into consideration for commuting death penalty and held that this case is fit for commuting death penalty and death sentence was altered to imprisonment for life.

In *Triveniben v. State of Gujarat*<sup>26</sup> High Court held that there was no procedure provided for expeditious disposal of cases and dismissed Petitions which was filed to set aside death penalty and substitute a sentence of life imprisonment in view of prolonged delay in execution. Before the Apex Court issue was whether sentence of life imprisonment should be substituted on account of time factor, and Court by accepting *Sher Singh v. State of Punjab*,<sup>27</sup> and overruling *Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra*<sup>28</sup>, held that time was spent in public interest for proper administration of justice, If there was inordinate delay in disposal, Trial Court or Appellate Court might consider delay and cause, when sentence awarded was valid and binding, it was to be executed in accordance with law. Therefore, if delay in disposal of case was not a mitigating circumstance for lesser sentence, it would be wholly inappropriate to fall back upon same

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<sup>23</sup> *T.V. Vatheeswaran v. State of Tamil Nadu, Ibid.*

<sup>24</sup> AIR 1985 SC 231.

<sup>25</sup> *Supra* note 21.

<sup>26</sup> AIR 1989 SC 1335.

<sup>27</sup> *Supra* note 21.

<sup>28</sup> *Supra* note 24.

delay to impeach execution; thus, delay in passing sentence could not render execution unconstitutional. Court further observe that it would be arbitrary to fix any period of limitation for execution on ground that it would be a denial of fairness in procedure under Article 21 of Indian Constitution.

In *Devender Pal Singh Bhullar v. State of N.C.T. of Delhi*<sup>29</sup>, Petitioner filed mercy petition to President under Article 72 of Constitution and prayed for commutation of death sentence wherein President rejected his petition. And main issue in this case was that whether, Court could exercise power of judicial review on ground of undue delay in judicial process. For answering this issue Court observe that while imposing punishment for murder and similar type of offences, Court was duty bound to take into consideration nature of crime, motive for commission of crime, magnitude of crime and its impact on society, nature of weapon used for commission of crime, etc. Court further observe that if murder was committed in an extremely brutal or dastardly manner, which gave rise to intense and extreme indignation in community, Court would be fully justified in awarding death penalty, if enormity of crime was such that a large number of innocent people were killed without rhyme or reason, award of extreme penalty of death would be justified. However, all these factors had to be taken into consideration by President or Governor, while deciding mercy petition Thus, exercise of power by President or Governor, not to entertain prayer for mercy in such cases could not be characterized as arbitrary or unreasonable. Finally court held that Court could not exercise power of judicial review only on ground of undue delay.

But In *Shatrughan Chauhan v. Union of India*<sup>30</sup>, the Apex Court converted death sentence into imprisonment for life, erstwhile accused who has been accused for heinous crime and punished to death sentence by court itself where converted as victim in view of inordinate delay by the executive which they term as infringement of fundamental right as the court felt every day delay by the executive tent amounts to denial of justice and death sentence is not executable. It is interesting to note under this judgment 14 convicts who got death sentence converted into life and period of delay was between 2 years to 16 years this approach of the court has been challenged by the centre. This judgment is also gives an impression that court is looking for opportunity to abolish death

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<sup>29</sup> AIR 2013 SC 1975.

<sup>30</sup> MANU/SC/0043/2014.

sentence regardless of nature and gravity of case. Other important feature of the case is that persons who are accused in anti terror laws like TADA will also get the benefit of this ratio as the punishment in the IPC or any of the special law do not distinguish between convicts under IPC or Under anti terror laws. To that extent this judgment has overruled earlier Judgment in *Devender Pal Singh Bhullar v. State of N.C.T. of Delhi*<sup>31</sup> by two judge bench. In this case there was no direct reference to Right to Speedy Trial but whole judgment was based on the argument that inordinate delay in execution of the punishment is amount to infringement of fundamental right under Article 21. So from this judgment it can be said that this case again restore the position of Right to Speedy Trial for mercy petitions and also for execution of death sentence.

### **Concluding observations**

It has recognised principle that speedy trial is an essential ingredient for protecting liberty. Concept of speedy trial is not new in India but modern concept's evolution took place in USA. In USA Right to Speedy Trial was given by sixth amendment in constitution, for further enlargement of right Speedy Trial Act 1974 was enacted. But in India there is no such Special Act, however in Cr.P.C. there are various provisions for speedy trial like Plea bargaining. Concept of speedy trial is also accepted by various international instruments like European Commission on human Right. Right to Speedy Trial in India is accepted as fundamental rights by various cases. The Apex Court has developed various aspect of Speedy Trail. Recently in *Shatrughan Chauhan v. Union of India*<sup>32</sup> the Apex Court without referring Right to Speedy Trial has accepted the concept by mentioning that undue delay in execution of death sentence is amount to infringement of fundamental right under article 21 of the constitution of India.

After the decision of the Apex Court in *Shatrughan Chauhan v. Union of India*<sup>33</sup>, issue of delay in execution of death sentence has become an issue of debate. This type of problem is arising due to the absence of any special mechanism for dealing with Mercy Petitions and for execution of death sentence. So for dealing with this type of petitions, Researcher would like to suggest that there should be a special procedural law for deciding mercy petitions and for establishing special mechanism for executing death

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<sup>31</sup> *Supra* note 29.

<sup>32</sup> *Supra* note 30.

<sup>33</sup> *Ibid.*

sentence because after *Shatrughan Chauhan case*<sup>34</sup> it has become trend to use ground of delay for commutation of death sentence. Petitions are filing for commutation sentence and there is no certainty in Apex Court's decision about time limit of delay in execution of death sentence. It is not a job of Apex court to commute sentence after delivering final verdict, it is power given to executive by the constitution of India and should be exercised by executive only. For exercising this power by the executive, it is need of time that Parliament should legislates a proper procedural law for providing proper mechanism, so mercy petition can be decided on time and convicted person should get his due on time or otherwise he/she should not be mentally harassed by waiting for death.



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<sup>34</sup> *Shatrughan Chauhan v. Union of India, Ibid.*