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Fair Trial Rights: Role of a Judge

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Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. *Fair investigation is also part of Fundamental rights guaranteed under Articles 20 and 21 of the Constitution of India. For which the investigation must be fair, transparent and judicious.*

(Vide Abdul Rehman Antulay v. R.S. Nayak (1992) 1 SCC 225; Hema v. State, thr. Inspector of Police, Madras, (2013) 10 SCC 192); Smt. Selvi & Ors. v. State of Karnataka, AIR 2010 SC 1974).

In Sushil Kumar Sharma v. UOI & Ors., (2005) 6 SCC 281, The Supreme Court observed that the role of the investigating agencies is that of watch dog and not of a bloodhound. It should be checked that innocent person is not made a victim of flawed investigation procedure.

It has been suggested by the Supreme Court in *Prakash Singh v. UOI* (2006) 8 SCC 1 and also by the Malimath Committee that there must be a separate wing for Investigation from the enforcement of law and order police. There is a need to provide more mobility to police forces, forensic evidence training, no pressure of over working and training for better development of professionalism. It has been suggested so as to

keep investigation agencies free from any political influence / interference and other cumbersome duties. Only about 37% of the total time is given to the investigation while rest of the time is given for other duties.

Such Investigation Agencies would have nothing to do with maintenance of law and order, bandobast duties, escort of prisoners, patrol duties, traffic arrangements, security of VIPs and what not. Investigation has to be made by trained and professional personnel.

The separation will increase the expertise of investigating police. The said investigating agency working in plain clothes would be in position to have a good rapport with the people and thus, get their cooperation and support.

Proactive role of the judge to ensure a fair trial. He is not a silent/mute observer when it presides over trial. The judge has to ensure truancy that neither party plays with trial or corrode sanctity of the proceedings. (Bablu Kumar v. State of Bihar (2015) 8SCC 787).

Judge represents the society collectively. Thus he has a duty to conclude the trial expeditiously so that the truth does not become the victim and the accused may not get time to win over witnesses. Section 309 CrPC to be compiled with (Vinod Kumar v. State of Punjab (2015) 3 SCC 220).

In *Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat & Ors.*, AIR 2004 SC 3467 the Court held that

“Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. Fair trial” includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial.”

Absence of congenial atmosphere itself would deny a fair and impartial trial.

The courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on presiding officers of court to elicit all necessary materials by playing an active role in the evidence-collecting process.

In the case of a defective investigation the court has to be circumspect in evaluating the evidence and may have to adopt an active and analytical role to ensure that truth is found by having recourse to Section 311 or at a later stage also resorting to Section 391 instead of throwing hands in the air in despair. It would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into

the hands of the investigating officer if the investigation is designedly defective. (See: *Karnel Singh v. State of M.P* (1995) 5 SCC 518)

In *Paras Yadav v. State of Bihar* AIR 1999 SC 644, it was held that if the lapse or omission is committed by the investigating agency designedly or because of negligence, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of courts getting at the truth by having recourse to Sections 311, 391 of the Code and Section 165 of the Evidence Act at the appropriate and relevant stages and evaluating the entire evidence; otherwise the designed mischief would be perpetuated with a premium to the offenders and justice would not only be denied to the complainant party but also made an ultimate casualty.

As was observed in *Ram Bihari Yadav v. State of Bihar*, AIR 1998 SC 1850, if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice in the hands of courts. The view was again reiterated in *Amar Singh v. Balwinder Singh* AIR 2003 SC 1164.

Thus unless lapses made on the part of the investigating authorities are such, so as to cast a reasonable doubt on the case of prosecution, or serious prejudice to the defence, the court would convict the accused. In such cases the courts have repeatedly asked the state authorities to initiate disciplinary proceedings against the erring IO even at a belated stage i.e after their retirement. (*Karan Singh v. State of Haryana*, AIR 2013 SC 2348).

The Supreme Court awarded the compensation to the victim's family and directed to recover the amount from the investigating officer who had not conducted the investigation fairly. [*Zorawar Singh v. Gurubax Singh Bains* (2015) 2 SCC 572]

In 1983, in order to prevent social victimisation, the IPC was amended inserting provision of section 228A, clause (3) thereof makes disclosure of the identity of victim of sexual offences without permission of that court, punishable. Similar provisions exist in the Protection of Children from Sexual Offences Act, 2012 (POCSO) (*Bhupinder Sharma v. State of Himachal Pradesh*, AIR 2003 SC 4684; and *State of Punjab v. Ram Dev Singh* AIR 2004 SC 1290).