

02 November 2018

Social Context Judging

Dr. Justice B S Chauhan

Former Judge
Supreme Court of India

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; and *Smt. Selvi & Ors. v. State of Karnataka*, AIR 2010 SC 1974].

Fair trial means a trial before an impartial judge, a fair prosecutor; 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 to prove his innocence.

[*Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat & Ors.*, AIR 2004 SC 3467]

Defective or Biased Investigation

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 Sections 311 or 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.

(See: *Karnel Singh v. State of M.P* (1995) 5 SCC 518; *Ram Bihari Yadav v. State of Bihar*, AIR 1998 SC 1850; *Amar Singh v. Balwinder Singh*, AIR 2003 SC 1164; *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)