

Right to Speedy Justice in India: A Myth

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Abstract

One of the fundamental objectives of the criminal justice system is the speedy trial, since a lengthy pause can defeat justice. It is, therefore, considered one of the core values of organized society to be swift justice. It is always recommended that the case be dealt with as soon as possible, but also the fundamental norms that make justice possible can be ignored as "justice rushed, justice buried" is a common popular proverb. The right balance should therefore be established between simple standards and speedy trial, because the main aim of all legal systems is to provide all with proper justice.

This paper seeks to discuss the right to speedy trial in two parts, first part will discuss the concept of speedy trial and how it has evolved over the period of time as a fundamental right. Thereafter, in the second part the concept of fast-track courts in India and the causes that have led to the institution of the same. This paper will also investigate whether the fast-track courts implemented for the speedy disposal of cases have been effective and successful in achieving its objective.

Keywords: Speedy Trial, Fast Track Courts, Fundamental Right, Justice & Constitution

Speedy Trial in India

1.1 Concept of Speedy Trial

The fundamental issue when it comes to enforcing quick justice is what's called for its postponement. There is a lack of consistency and clear understanding in the circumstances which ought to be counted as delay. Phrases like “delay,” “pendency,” “arrears,” and “backlog” comes into play simultaneously. As a result of which doubts are created. These terms may be interpreted as follows, with a view to preventing such uncertainty and in the interests of transparency. The **“Law Commission of India's 245 Report on Arrears and Backlogs”** provided that: “pendency” means ‘all cases instituted but not disposed of, regardless of when the case was instituted’, the term ‘delay’ means ‘a case that has been in the Court/judicial system for longer than the normal time that it should take for a case of that type to be disposed of’ while the term ‘arrears’ is understood in relation to ‘delayed cases that might be in the system for longer than the normal time, for valid reasons; those cases that show unwarranted delay are referred to as arrears.’¹ The fast trial is an important characteristic of a fair trial. Not only the victim, but even the accused are concerned for a speedy trial. A fair society must have rapid fair trials because they are the strongest defense against injustice being carried out unfairly. However, it goes beyond only protecting accused parties and perpetrators. The constitutional provisions guaranteeing speedy trials provide a vital protection for avoiding unfair and oppressive pre-trial incarceration; for minimizing concern about public prosecution and limiting the possibility that prolonged delays will impede an accused's right to defend himself. The right to a speedy trial is first stated in the Magna Carta, England's most significant legal text. Though the constitutional philosophy of the right to a speedy trial has been around for almost two and a half decades, the aim it seeks to accomplish is still a long way off. It is a way of thinking that emphasizes swift case settlement in an effort to improve the effectiveness of the legal system and deliver justice as soon as feasible. As per clause 21 of the Living document of the Country “no one's life or personal liberty can be taken away from them unless they follow the legal procedure”.²

- The right to a speedy trial is enshrined in Article 21 of the Constitution. The concern for the right to a speedy trial from the perspective of the accused is that- Remand,

¹ Astha Sharma, “Speedy Trial: Facilitation of Legal System”, available at “Library (latestlaws.com)”

² Article 21 of the India Constitution of India

pretrial detention, and incarceration should last as little time as feasible.

- There should be a minimum amount of anxiety, concern, expenses, and risks to this profession and tranquilly as a result of an excessively drawn-out investigation, inquiry, or trial
- The Accused's ability to protect himself is harmed by undue delay.

In general, a "Speedy Trial" refers to the disposition of a case in a "Reasonable Time," although it cannot be interpreted to mean the "Khomeini Trial," in which trials are conducted in camera and the trial is completed in a short period of time, followed by an immediate execution with no right of appeal.

In a democratic country like Bharat, not a single law is there in Justice System which gives a privilege of quick remedy to an individual like the “**Speedy Trial Act 1974**” of the U.S. As rightly pointed out by “**Justice Chandramouli Kumar Prasad**” clearly stated that:

“The concern for a speedy trial is not merely an inherited mandate from the American jurisprudence but equally is the inarticulate premise underlying our **Code of Criminal Procedure, 1973**. It was pointed out that both as regards the investigation and also with regard to trial, the need for speed is underwritten in express terms or by unequivocal necessary implication and indeed, permeated the whole gamut of the code in the said context.”

Criminal Procedural Law in clause 309 gives that “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”.³

1.2 Right to Speedy Trial as a Fundamental Right

Speedy trial was acknowledged as a constitutional privilege in “**Hussainara Khatoon v. Home Secretary, State of Bihar**”, Patna, and Justice P.N. Bhagwati observed that:

“Even though speedy trial is not expressly enumerated as a fundamental right in our Constitution, we believe it is implied in the broad sweep and substance of Article 21 as interpreted by this Court in Maneka Gandhi v. Union of India. 6 In that case, we

³ Astha Sharma, “Speedy Trial: Facilitation of Legal System”, available at “Library (latestlaws.com)”

held that Article 21 confers a constitutional right on any person not to be deprived of his or her life or liberty except in accordance with the procedure prescribed by law, and that compliance with that Article's requirement does not require only that some semblance of a procedure be prescribed by law, but that the procedure be reasonable, fair, and just.”⁴

If a person's liberty is taken away in a way that isn't reasonable, equitable, or just, that deprivation would be a violation of his constitutional right under Article 21, and he would be able to enforce that right and obtain his release. Obviously, the method prescribed by statute for depriving a person of his liberty cannot be "rational, fair, or just" unless it guarantees a speedy trial to determine the person's guilt. Article 21 states that no procedure can be considered "reasonable, fair, or just" if it does not guarantee a relatively fast trial. Therefore, there can be no question that a speedy trial, by which we mean a trial that is conducted in a reasonable amount of time, is an important and essential part of the constitutional right to life and liberty enshrined in Article 21. The Apex Court in Maneka Gandhi case also stated that “from that point forward, substantive due process would be formally recognized as a fundamental aspect of the liberty provision of Article 21”.

1.3 Right to Speedy Trial: in Reality

Despite Right to speedy Trial is a fundamental right it is one of the most overlooked facets of the criminal justice system is the right to speedy justice. The need for speedy justice has been recognized in all societies and at all stages of their development; delayed justice has been regarded as the most "biting bad" in human society in all civilized systems; the issue of legal delays is not a new one – it is as old as the law itself. Amid the Supreme Court's recognition of speedy trial as a constitutional right in 1986, India continues to have a large number of pending cases. In 2012, the total number of cases pending in High Courts and subordinate courts fell by over 6 lakh. However, there is a significant backlog of cases in different courts throughout the world. According to the Ministry of Law and Justice's most recent data, there are 43.2 lakh cases pending in the High Courts and 2.69 crore cases pending in district courts.⁵ This has always seemed to be an intractable issue due to large-scale

⁴ *Id.*

⁵ Rajya Sabha Starred Question no 231 dated December 10, 2012. Rajya Sabha Starred Question no 231

vacancies in nearly all courts around the country and an ever-increasing pool of litigants, corruption in the country, Attitude of Lawyers, procedural delays, political influence on judiciary etc. The establishment of dedicated Fast Track Courts had been proposed as one solution to the problem of pendency and to speed up the dispensation of justice in India.

Reasons for Delay in Justice

Different committees & educationist have been examining the reasons behind the postponement of criminal proceedings. Some of the major causes for bad implementation of Right to Speedy Justice areas follows:

2.1 Political influence on Judiciary- There are innumerable pending cases in which rich and famous or some big politicians are involved. Judges are forced to admit cases because of political pressure and also conveniently forget cases against them because of the same pressure. Supreme Court has also admitted the same and thus in case of **Ganesh Narain Hegdge v. S. Bangarappa and others**⁶ said that:

“The slow motion becomes much slower motion when politically powerful or rich and influential persons figure as accused.... And if ever the case reaches the stage of trial after all the interruptions, the time would have taken its own toll; the witnesses are won over; evidence disappears; the prosecution loses interest the result is an all too familiar one.”

2.2 Lawyer's attitude: - For the Indian judiciary, 'time' has no real value. The axiom that "judges go by face law and not case law" has many aspects, one of which is the indulgent amount of time given to senior counsel to exhaustingly argue their cases. In the Apex Court of the State each of us has seen firsthand the countless hours senior solicitors spend arguing even straightforward advance bail applications. Within the framework of Indian criminal law, attorneys are alleged to frequently abuse the various interlocutory appeals procedures of the procedural law to prolong the length of cases. It is usual for lawyers to seek pleas for adjournment in order to pursue an interlocutory appeal, frequently on a minor matter, in order to gain more time when they are unable to present the requisite evidence or witnesses or when they find other flaws in their case. Because many solicitors' fees are based on how frequently they appear in court, changing the civil appeals process has proven challenging and has faced fierce hostility from the bar. Therefore, eliminating appeals also implies lowering their revenue.

⁶ (1995) SCC (CRI) 634

This kind of problem shouldn't exist for attorneys as they are salaried employees and are not compensated in this way. However, since promotions in prosecutor services might be dependent on convictions and since promotions result in better salary, it is conceivable that compensation would be linked to this strategy if postponement could help a prosecutor's claim.

The Apex Court of the Country 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.”

2.3 Corruption⁷- That corruption is an endemic problem within Indian society, especially because disparities in wealth are so stark (especially among the cops) is well known and has been studied by scholars, groups from civil society, and government officials. It affects the right of individuals in the following manner:

2.3.1 First, neighborhood sweeps, or the capture of people for minor infractions, are a common practice among police at the local level. People who are being held are frequently urged to pay a favor, also known as "karcha-pani," in order to get their detention lifted. Many of these detained individuals sit in jail because they are unable to pay the payment.

2.3.2 Bribery is also shown in the way inmates who are awaiting trial are handled while they are detained. There is a straightforward rule of thumb that applies whether the convict is a minor offence or a more serious one, as two different officials noted. Those who can provide prison official's advantages, such bribery funded by admirers outside, have an easier life behind bars.

2.3.3 Lastly, the level of law enforcement inquiry into the merits of an undertrial prisoner's case is correlated with misconduct. The legitimacy of the police inquiry is frequently regarded to depend on how much money the defendant

⁷ Jayanth K. Krishnan & C. Raj Kumar, "Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy T Empirics of Speedy Trials in in Comparative Perspective", Maurer School of Law: Indiana University Digital Repository @ Maurer Law, 2011

or his supporters transfer to the questioning law enforcement officers throughout their jail term

2.4 Other Reasons

- (a) Trial judges list several cases each day that they are unable to attend to personally, causing them to waste time by calling work or roll calls and then adjourning the cases to later dates.
- (b) matters that must be postponed because convicts fail to appear before the judge
- (c) Not presenting witnesses adequately in advance or serving them even when they are not present

Some of them are as stated by Apex Court of the Country in the case of “**P. Ramachandra Rao v. State of Karnataka** are”⁸: -

- (i) “Absence of, or delay in appointment of, public prosecutors proportionate with the number of courts/cases;
- (ii) Absence of or belated service of summons and warrants on the accused/witnesses;
- (iii) Non-production of under trial prisoners in the Court;
- (iv) Presiding Judges proceeding on leave, though the cases are fixed for trial;
- (v) Strikes by members of Bar; and
- (v) Counsel engaged by the accused suddenly declining to appear or seeking an adjournment for personal reasons or personal inconvenience”.

⁸ 2002 SOL Case No. 236

“Fast Track Courts”

3.1 Fast Track Courts

Fast Track Courts (FTCs) were recommended by the Eleventh Finance Commission (2000- 2005) to deal with long-pending cases in Sessions courts and other courts. The FTCs were created to expedite the resolution of long-pending cases in the Sessions Courts and cases involving under-trial detainees. The key aim of India's fast track courts is to provide timely justice to a large number of pending cases within a fixed time frame. Judges are selected on an ad hoc basis, and retired judges are eligible. In India, fast track courts have proved to be a successful way of dealing with sexual harassment and child abuse cases because owing to a backlog of unresolved cases, the judiciary's entire attention, which has previously been absent in regional courts and Apex Court of the States are on them.

Advantages

- Lessening the overall caseload burden: The goal for which the fast-track courts were developed has proven to be extremely beneficial to the judiciary, as it has resolved over a million cases and decreased the caseload of other courts.
- Encourages specialization and professionalism: It has helped thousands of people in a variety of industries, including retired judges from Apex court of States and Regional courts, find jobs. The creation of rapid-track courts has aided in the legal community's specialization.
- Improves judicial efficiency and effectiveness: By properly using the legal system and hastening trials and decisions, rapid track courts increase judicial efficiency and efficacy.
- High case disposal rate and speedy trial rate: India's Fast Track courts have the highest case disposition rate due to their quick trials and decisions. As a result, it is successful at solving cases in a limited amount of time.
- Consistency and predictability are ensured: Fast track courts are known for their high success rates as well as their stability and continuity. It is extremely accurate when it comes to delivering justice.

Disadvantages

- In some circumstances, fast track courts do not have maximum justice: Since they analyse each and every factor carefully, courts require time to render justice. However, in fast track trials, some cases are dismissed without a thorough review of the facts, and several people are wrongfully convicted.
- Judges' professionalism is lowered due to tampered subject matter: Since fast track courts deal with only one form of rule, judges' ability to deal with other cases involving various laws is harmed.

Fast Track Courts: Reaffirms Speedy Trial?

The key goal of Rapid court are to shorten the length of time it takes to convict an individual, lessen the pressure on normal courts, and clear the pile of cases. When opposed to a traditional trial court, a fast track court has several distinct characteristics that are as follows:

- A fast track court is given a certain number of cases to decide in a specific period of time.
- In an ideal scenario, FTCs would cross-examine each testimony in just one trial.
- A certain class of matters are anticipated to be handled by the courts.

FTCs are quite rigid in their work and won't postpone hearings because some paperwork, including summons and permits, take longer to prepare.

When opposed to a normal court, these features are intended to make trials in these courts go speedier. The FTCs' defining characteristics have failed to achieve their specified target. However, according to a study published by the National Crime Records Bureau in January 2020, Indian FTCs conducted trials in 28,000 cases, with just 22% of those cases taking less than a year to complete, the lowest rate among the types of courts surveyed (SC/ST Court, District/Session Judge, POCSO Court, etc.). Furthermore, 42 percent of FTC trials took more than three years to complete, while 17

percent took more than five years. As compared to the data from the previous year's study, trials conducted in 2018 were slower.⁹

These figures indicate that FTCs are in the same, if not worse, shape as other courts. The report also shows that the speed at which trials were conducted varied by state, with Jharkhand being the fastest and Uttar Pradesh having the most trials completed. "The sense of Fast Track Courts is vague," said Justice H Suresh, a former Bombay High Court Judge, implying that the case could only be heard early. Other than that, the procedure, the regulations, and the length of the interrogation are all the same. Despite their name, the courts follow the same procedures and deal with the same problems as a criminal court, including delays in witness depositions caused by lateness, the absence of a counsel on hearing days, and the judges' lack of authority to impose penalties.

Even though the government has steadily expanded both the number of judges and the funding designated for their functioning. The administration hasn't managed to address several issues with the nation's judicial system, though. There is no formula that decides which cases should go to the FTCs; for instance, some states allocated rape and sexual assault charges, while others assigned other crimes. As a result, FTCs will be under more pressure.

FTC's main concept included the hiring of judges, as well as improved amenities such as courtrooms, libraries, and technical facilities, none of which seem to have been realised. Making do with what they have is their only option. Once more, the objective of a rapid trial looks to be a pipe dream because to a lack of clearly defined technical support that should be provided to an FTC. The lack of regular employees in some FTCs exacerbates the problem. There is an urgent need for a concise description of FTC that gives the word a correct sense, as well as for the state to avoid overburdening FTCs with cases. To be granted the status of FTC, a court must have reached a certain degree of technical and infrastructure development. These courts need professionally qualified personnel, not temporary workers. The findings of the NCRB study, as well as legal experts' observations, represent the reality of the Fast Track Courts' decelerated proceedings. The pace at which cases are resolved is determined less by the case's

⁹ Diganth Raj Sehgal, Fast Track Courts: Are They Expediting the Conviction Process(2020) available at: <https://blog.iplayers.in/fast-track-courts-expediting-conviction-process/>

title and more by how the proceedings are performed. As a result, we can infer that when a system decides to operate correctly, it can deliver prompt decisions regardless of whether it is referred to as a Fast Track Court or not.

Conclusion & Suggestions

The right to a speedy trial is seen as critical to the future of the right to a fair trial, has always remained a distant fact. A process that does not provide for trial and disposition within a reasonable time frame cannot be deemed just, fair, or reasonable. The number of pending cases in the courts has always been alarming due to which the Fast-Track Courts were established to expedite the disposal process of the cases. On a several occasions, fast-track courts may be advantageous. They aid in the administration of justice, the reduction of the prison population, and the potential for victims and their families to receive closure. In certain cases, they are, however, slower than other courts. Approximately 81 percent of the 26,965 cases resolved by rapid-track courts in 2019 took between one and 10 years to complete, according to statistics from the National Crime Records Bureau.¹⁰ Furthermore, the statistics indicate that 69 percent of the 17,155 cases resolved by the Protection of Children from Sexual Offenses courts in 2019 took between one and ten years. Despite the fact that the POCSO Act of 2012 specifies that all its cases must be disposed of within one year. Further, there is no clear description of Fast Track Court as of yet, which is a serious concern. In addition, there must be a clear technological norm. It is past time for the legislature to resolve the issues that arise from the pillars of the legal system.

Suggestions for the better functioning of the Fast-Track Courts are:

- **Training-** that fast-track court judges should be carefully chosen and properly trained. Caste-related training is required for the accelerate judicial system. Some critics contend that the federal government's quota system, a type of affirmative initiative, should be expanded to the judiciary in order to ensure that there are low-caste justices in the system. It is believed that by introducing judges from lower castes, caste-centric prejudices within judicial decision-making would be reduced and finally eliminated. Judges must be carefully vetted to ensure an unbiased and open minded approach to adjudication. Undergo mandatory training that consists of gender sensitization.
- **Local Interaction** - Informational resources may be found in localities. The

¹⁰ Duration of Completion of Trials by Various Courts for IPC & SLL Crimes (2019), at, https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2018A.5_1.pdf

involvement of communities helped the general population feel more confident in the regulatory framework by building that trust more likely to support and participate in court proceedings. The rapid-track courts need participation from the community, especially in the countryside of the nation.

- Collaborative Partnerships- To increase the pace and fundamental effectiveness of rapid trials, a sensible collaborative strategy would reduce the roadblock between law enforcement investigators, lawyers, survivors' representatives, and even opposing lawyers. Working together might focus on certain people or organizations rather than the community as a whole. Speed up courts should deliberately set up opportunities for counsellors, attorneys, and defence litigators to work together with law enforcement examinations in daily operations of the rapid courts.
- Individualized Justice for Victims- Incorporating each individual's unique demands in the swiftly justices' regular activities avoids or reduces "re-victimization" or "the sense that victims are abused twice: once by the batterer and again by the system." Additionally, it makes the innocent party more likely to be involved in the case and protects them from outside pressure to be quiet. This implies that rapid-track courts should be situated apart from regular court buildings and intelligently planned with features like distinct waiting spaces for victims and even separate "camera rooms" to prevent victims from testifying in front of the accused.

There is no coordination or uniformity between the regulatory organizations that oversee rapid-track courts and special courts. As a result, both the federal and state governments will establish an oversight body to assess the operation of the courts in a methodical and efficient way.

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