

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. Therefore, speedy justice is said to be one of the cores of organized society. There is always recommended that a case must be resolved 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

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. This leads to confusion. To avoid this confusion and for the sake of clarity, these terms may be understood as follows. According to 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. Speedy Fair trials are the best way to prevent miscarriage of justice and are a key component of a fair society. However, it is not just a matter of defending offenders and accused. 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 philosophy that deals with the expeditious resolution of cases in order to make the courts more successful and to provide justice as quickly as possible. Article 21 states that no one's life or personal liberty can be taken away from them unless they

¹ Astha Sharma, “Speedy Trial: Facilitation of Legal System”, available at [Library \(latestlaws.com\)](https://www.latestlaws.com)

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-
- The time of remand and pre-conviction and imprisonment should be as brief as possible.
- Worry, distress, costs, and threats to this vocation and peace as a result of an overly long investigation, inquiry, or trial should be held to a minimum.
- 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.

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. As rightly pointed out by **Justice Chandramouli Kumar Prasad 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.”*

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.³

² Article 21 of the India Constitution of India

³ Astha Sharma, “Speedy Trial: Facilitation of Legal System”, available at “[Library \(latestlaws.com\)](https://www.latestlaws.com/)”

1.2 RIGHT TO SPEEDY TRIAL AS A FUNDAMENTAL RIGHT

Speedy trial was acknowledged as a constitutional right in **Hussainara Khatoon v. Home Secretary, State of Bihar, Patna**, and in this case, Justice P.N. Bhagwati observed:

“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 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

⁴ *Supra Note 3*

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 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

The causes of delay in criminal trials have been examined by various committees and academicians. Some of the major causes for bad implementation of Right to Speedy Justice are as follows:

- 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

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

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**⁶said 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.”

⁶ (1995) SCC (CRI) 634

2. LAWYER'S ATTITUDE: - For the Indian judiciary, 'time' has no real value. One of the facets of the truism that 'judges go by face law and not case law' is on the time graciously granted to senior counsel to argue their matters endlessly. In the High Court every one of us has become witness to the innumerable number of hours given to senior counsels to argue even simple anticipatory bail applications. In the Indian criminal law context, prosecutors regularly are thought to manipulate the procedure code's different interlocutory appeals provisions to keep cases at bay for long periods of time. Where prosecutors are unable to produce necessary evidence or witnesses, or where they discover other holes in their case, it is not uncommon for them to file adjournment motions so that they can pursue an interlocutory appeal, often on a minor issue, to buy more time. Reforming the appeals process on the civil justice side has proven to be difficult and has drawn strong opposition from the bar mainly because many lawyers' fees are determined by the frequency in which they appear in court. Cutting appeals thus means reducing their revenue.

For prosecutors, who are not paid in such a manner but instead are salaried, this same type of issue should not arise. Although, because promotions in prosecutors' offices can be based on convictions, and since promotions result in higher salaries, if delays can serve to benefit a prosecutor's case, then conceivably remuneration would be tied to this tactic.

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."

3. CORRUPTION⁷- That corruption is an endemic problem within Indian society,

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

especially because disparities in wealth are so stark (particularly among the police) has long been documented by scholars, civil society organizations, and the government itself. It affects the right in three ways:

- First, police at the local levels in India often engage in the practice of street-sweeps, arrests of individuals for petty misdemeanor violations. Subsequently, it is not uncommon for those being detained to be asked to pay a bribe, “karcha-pani,” to have their arrests waived. Given that many of these arrestees are unable to pay the bribe, they sit in jail.
- Second, corruption manifests itself in how the undertrial-prisoner is treated while incarcerated. As two separate officials remarked, regardless of whether the inmate is a petty offender or a more serious one, there is a simple rule of thumb. Those who can provide prison officials with benefits, such as bribes paid for by supporters on the outside, have an easier time in jail.
- Third, corruption is related to the extent to which the police scrutinize the merits of an undertrial-prisoner’s case. During the detention period, the police investigation often is thought to be dependent upon how much money is transferred by the defendant, or his supporters, to the inquiring law enforcement officials.

4. OTHER REASONS

- 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

Few of them as stated by Supreme Court in the case of **P. Ramachandra Rao v. State of Karnataka** are⁸: -

- (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;

⁸ 2002 SOL Case No. 236

- (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

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 they enjoy the full attention of the judiciary, which was historically lacking in high courts and district courts due to a backlog of pending cases.

❖ 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 assisted in the employment of thousands of individuals from various fields, as well as retired judges from high courts and district courts. The development of fast-track courts has helped the specialization of a legal group.
- *Improves judicial efficiency and effectiveness:* Quick track courts improve judicial efficiency and effectiveness by making proper use of the judiciary and expediting trials and judgments.
- *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 fast track court is to speed up the conviction process, reduce the workload on normal courts, and reduce the case backlog. 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 a perfect world, FTCs will challenge all of the witnesses in a single trial.
- The courts are expected to deal with a specific category of cases.
- FTCs are most strict in their business and don't adjourn hearing due to

delay in preparation of certain documents such as summons, warrants, etc.

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. Aside from that, the process is the same, the rules are the same, and the amount of time spent on cross-examination is the same. The courts, despite their name, follow the same protocol and face the same issues as a criminal court, such as delays in witness questioning due to non-arrival on time, the absence of a lawyer on hearing days, and the judges' lack of power to punish them.

Despite the fact that the government has gradually increased the number of courts and the funds allocated to their operation. However, there are shortcomings in the country's justice system that the government has failed to fix. No system determines which cases should be assigned to the FTCs; for example, some states assigned sexual assaults and rape cases, while others assigned other cases. As a result, the pressure on FTCs will be increased.

FTC's main concept included the hiring of judges, as well as improved amenities such

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/>

as courtrooms, libraries, and technical facilities, none of which seem to have been realised. They have no choice but to make do with what they have. Again, due to a lack of clearly specified technical assistance that should be given to an FTC, the goal of a speedy trial appears to be a pipe dream.

The absence of regular staff 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 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. According to data from the National Crime Records Bureau, approximately 81 percent of the 26,965 cases completed by fast-track courts in 2019 took between one and ten years to conclude.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. The fast-track court system must receive training regarding caste issues. Some commentators argue that an affirmative action program known as the government reservation system should be extended to the judiciary to ensure that there are low- caste judges in the system. 169 The hope is that including low-caste judges will minimize and eventually eliminate the implicit

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

and explicit caste-centric biases that are present in judicial decision making. Judges must be carefully vetted to ensure an unbiased and openminded approach to adjudication. Undergo mandatory training that consists of gender sensitization.

Community Engagement- Communities are a source of valuable information. By fostering trust in the system, community engagement made members of the public more likely to support and participate in court proceedings. Community engagement for the fast-track courts is critical, particularly in rural parts of the country.

- Collaborative Partnerships- A thoughtful collaborative approach would minimize the distance between law enforcement investigators, prosecutors, victims' advocates, and even defense attorneys in order to reinforce the speed and underlying efficiency of fast-track trials. Collaborative partnerships can target specific individuals or agencies rather than a community as a whole. Fast-track courts should conscientiously create avenues for law enforcement investigators, health care providers, social workers, prosecutors, and defense attorneys to work together in the day-to-day administration of the fast-track courts.
- Individualized Justice for Victims- the individual needs of each victim into the daily operation of the fast-track courts prevents or minimizes "re-victimization" or "the sense that victims are abused twice: once by the batterer and again by the system." Moreover, it increases the likelihood of the victim's involvement in the case and shields them from external pressure to remain silent. This means that fast-track courts should be removed from other court facilities and thoughtfully designed with amenities such as separate waiting areas for victims and even separate "camera rooms" to shield victims from testifying in front of the perpetrator.
- Fast-track courts and special courts are administered under different judicial bodies, with little coordination or uniformity among them. Therefore, **a lead agency** to be established by Central and State Governments to review the functioning of courts in a systematic and streamlined manner

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