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FAST AND SPEEDY TRIALS OF THE COURT- Vincy Chanchal¹**ABSTRACT**

India is a country with the largest Democracy and also carrying the title of the world's longest Constitution, going through various amendments. A nation's legal system can be best found looking upon its citizens. The way citizen looks upon the issue concerning the country in general, speaks a lot more about the Judiciary. Therefore in the country where the Judiciary has been kept free from two other branches so that justice can be delivered unbiased and within the time limit. The role of the Courts is not merely to mediate disputes between the parties, but also to protect liberty and rights of the citizens. This becomes more important when dealing with criminal matters, where an individual is contend against the might of the State. Hon'ble Justice Madan Lokur, Judge, Supreme Court of India comment "that evaluating pendency of cases would be an impolite stun." He further expressed that "with crores of cases effectively pending transfer, it would take over 300 years to clear the excess and that as well if no new cases are enrolled amid that time." The regular increase in pendency of cases, prosecutions in Councils and Courts, is a worry for nation, over the couple of decades. Not providing justice in time limit is violating the Rights of both victims and accused. Therefore measures should be taken to focus on matters of protected significance.

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SYNOPSIS

The research paper starts with the introduction of the topic, wherein it has been mentioned that fast and speedy is a Fundamental Right of the citizens and various case laws have been mentioned to prove the same. There is mention of both advantage and disadvantage of Fast Track Courts.

Next come the historical background, wherein various data have been mentioned to provide that there is large no. of large no. of pendency of cases and why it is important to set up Fast Track Courts, especially for the sexual assaults and child related cases. There is also the mention of importance of Fast Track Courts and Speedy Trials.

The establishment of Fast Track Courts was due to various reasons. The delay in the justice not only infringes the Right of both victims and accused. It causes economic, emotional, mental and physical loss. This is followed by a historical case of **Hussainara Khatoun & Others v. Home Secretary State of Bihar.**²

The criticism is the real mirror of the topic. The solution has been provided for the reasons of pendency. The opinion of an author of the research paper is also very important.

INTRODUCTION

India in spite of being one of the biggest Democracies in the world should be concerned about the delay in justice with much more time. This is also known as “Docket Explosion”, consumed with millions of Court cases pending before the different Courts in India. According to the National Judicial Data Grid Statistics, about **3 crores** cases are still pending in SC, HC and the Subordinates Courts across the nation. Most of them are related to the sexual assault and cases related to crimes against children. The SC said that the States that deal with more than **100**

² Hussainara Khatoun v. State of Bihar, 1979 AIR 1369, 1979 SCR (3) 532

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pending cases of Protection of Children from Sexual Offences (POCSO) Act set up the special courts, which are Fast Track Courts, to deal with these types of cases. Now at very first, what actually are Fast Track Courts? Fast Track Courts are special Courts having exclusive jurisdiction in cases of sexual assault and crimes against children.

Advantages of Fast Track Courts:-

- It assures flexibility and uniformity.
- High case disposal rates, appeals and expeditious trials.
- Promotes expertise and specialization
- Enhances Judicial performance and potency

Disadvantages of Fast Track Courts:-

- Enormous high rates.
- Offers non-comprehensive solutions
- It does not lead to justice in each and every case.
- Subject matter is narrow and the professional behavior of some Judge is lower.

It was in **Sheela Barse v. UOI**³, “speedy trial to be Fundamental Right. Right to speedy trial is a concept gaining acceptance and importance nowadays.” In case of **Katar Singh v. State of Punjab**⁴ “it was declared that the right to speedy trial is an inherent part of Fundamental Right to life and liberty.” The most important purpose of the fast and speedy trials of the Court is to safeguard the innocents and victims of the rape and child cases from undue punishment but the enormous no. of cases had made an unbreakable boundary. The colossal pendency of cases for a long time together makes mental and monetary weight on the defendants.

HISTORICAL IMPORTANCE

It was in 1986, that the Supreme Court did recognized speedy trial as a Fundamental Right. The concept of right to a speedy trial was first referenced in milestone archive of English Law, the

³ Sheela Barse v. UOI, JT 1986 136, 1986 SCALE (2)230

⁴ Katar Singh v. State of Punjab, 1961 AIR 1787, 1962 SCR (2) 395

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“Magna Carta”. This idea has developed in age by very nearly two and half decades. India being a democratic country believes on the concept “Let 100 culprits go free but no single innocent should be punished.” The Fast Track Courts were established first in India in the year 2000. **1,734 Fast Track Courts were established in the year 2000 as per the report of the 11th Finance Commission.** But till the year 2005 only 1,562 were functional. The Central Government decided to continue 1,562 Courts till 2011. By the end of 2011 it was found that only 1,192 Fat Track Courts were only functional. But the “**Nirbhaya**” case on December 16th, 2012 gave Fast Track Courts charter to the life of Fast Track Courts, thus allowing the Central Government to think upon the effectiveness of Judiciary in the nation. After “**Nirbhaya**” a report was made by Justice Verma on the sexual assault. Following the recommendations made in the Verma Committee Report and public sentiment favoring speedy justice, the States were requested to set up fast track for trying cases of sexual assault, by utilizing the additional Judges applied pursuant to the SC decision on Fast Track Courts. It was through the case of **Brij Mohan Lal v. India**⁵, Supreme Court recognized that the scheme of Fast Track Courts should not be disbanded and directed to continue the scheme till 2011.

IMPORTANCE OF FAST AND SPEEDY TRIALS OF COURT

Under Article 21 of the Indian Constitution as stated, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” This Article provides every person the Fundamental Right to Life and Personal Liberty. Out of the three wings i.e., Executive, Legislature and Judiciary; Indian Judiciary is the one who looks after the rights of citizens and also protect them. Right to fast Courts and Right to the speedy trial are some of the rights given by the Indian Judiciary.

Objective/ Importance of Fast Tracks Court

- To provide speedy justice to increasing no. of pending cases within appropriate time.
- This Court may deal in a good way in cases related to sexual assault, rape and also crimes related to children. These cases are being given full attention by the Judiciary which

⁵ Brij Mohan Lal v. India, (2012) 5 SCR 305

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otherwise do not get in High Courts and Districts Courts due to abundance of pending cases.

- This Court turns out to be more comfortable as compared to the other Courts as the victims do not have to face their abusers in the Court directly.

Importance of speedy trials

- An important Constitutional guarantee to forestall undue and severe confinement before preliminary.
- If trial does not take place in time, criminal defendants could be held indefinitely under a cloud of unproven criminal accusations.
- Speedy trials are crucial in assuring that a criminal defendant receives a fair trial.
- If too much time gap is there between the alleged crime and the trial, it affects the witnesses also. They may die, shift to another place, their memories can fade, and the physical evidences may get lost.

PENDENCY OF CASES IN INDIA

According to the National Data Judicial Grid accessed on August 7th, 2019, “87% of all pending cases are in subordinate Courts”⁶. From 2006 there has been increase of 22% (64 lacs) pendency in cases across all the Courts in the nation. When seen on August 2019, there is pendency of 3.5 crores cases including in SC, HC, and also the Subordinate Courts.

Chief reasons for the pendency of cases in the Courts

1. **Shortage of Judges-** The number of Judges is insufficient (just around 21,000). The current number could be seen in the form of proportion 10:1 million, where 10 refer to no. of Judges and 1 million refers to the population. The Centre Government speaks of the responsibility that should be taken by the States to increase the no. of Judges, and vice-versa. This tug of war between the State and the Centre is not a help and there is no increase in the strength of Judges and the prosecutors remains in the custody.

⁶ Sources: Court News, 2006, SC of India

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2. **Vacancy of the post of the Judges-** More than half of the post of Judges is being vacant and this is mostly because of the drift between the Executive and the Judiciary, as regard to the appointment of the Judges. This is also a reason for the pendency of Courts.
3. **Inadequate Resources-** The lack of infrastructure is also a reason for pendency of cases. It seems that both Central and the States are not interested in increasing the no. of infrastructure which could help Courts to become more adequate in dealing with the cases.
4. **Low judicial quality-** The corruption and acceptance of bribes can be seen in the Lower Courts more often. When the cases from HC are send to subordinate Courts for revisiting there is lack of trust in people. The quality of Judges in lower Courts is average.

The **Bhopal Gas Leak Tragedy**⁷ influencing lives of in excess of 15000 people and from that point forward 20 years have passed that incident and still individuals endured a great deal to get the remuneration. The condition of those young ladies who were ruthlessly assaulted during the **Godhra riots** in front of their vulnerable relatives. The instance of **Jessica Lal**⁸, where Delhi police still can't seem to snatch Manu Sharma, the fundamental charged, who is yet ready to defend himself from the grip of the legal organization. The victims of **Best Bakery**⁹ case who were trusting that the equity will be apportioned in support of them however the peak begins with the key observer for the situation turned antagonistic and the whole destiny of the **Best Bakery** case is in unrest. Today the victims of the all the above cases know well that the cost of truth is amazingly high.

OBSERVATIONS

Justice Delayed is Justice Denied. The situation that is seen in the case of Judiciary across the country thus justifies the above line. **Fiscal deficiency, inadequate resources, overcrowded Courts** cannot be a valid reason for deprivation of a person. It is well understood that taking a

⁷ Union Carbide Corp. v. UOI, 1990 AIR 273, 1989 SCC (2) 540

⁸Sidhartha Vashisht Alias Manu Sharma v. State (NCT of Delhi)

⁹ Zahira Habibulla H Sheikh and Anr v. State of Gujarat and Ors, April 12th, 2004, Appeal No. 446-449 of 2004

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case to trial in India can be very lengthy process. Delayed justice means there is uncertainty of remedy even in those cases where chances of definite remedies are available under enacted laws.¹⁰ If this is the situation, it will cause disregard to the legal system and no faith will remain in the administration of justice as provided by the Government. It has been observed that the delay in the criminal trial will encourage the wrongdoer to take a chance to escape the results of their wrong-doing. It has been observed in some cases that the victim being a weaker opponent is traded by the opposition party very easily. This will put an end to the concept of **Welfare State**, and thus bring the State of lawlessness and chaos. To the extent, people might look for some alternative ways to claim their rights against infringement. In India 60% of the police arrests, are reported to be “unnecessary or unjustified.” Delay in trial turns out to be a boon for the accused, as it superfluously presents a privilege upon them to apply for bail. Under Section 482 read with Section 483, CrPC “that every possible measure should be taken to dispose off the case within six months”.

The delay in the justice not only violates the right of victims, but also that of the accused. The delay in justice is like a hanging sword on the head of accused, fearing anything bad can happen to them, which directly affect their Freedom of movement, liberty and interaction, even if the accused is not in the prison. The pre-trial detention causes mental trauma of imprisonment and also has a social-economic impact on the accused family members. In many cases it has been found that the accused is the only earning member in the family and by the time he or she is in the custody the means of the family is affected, even though the accused is acquitted later on. The delay infringes the right of victims also. The delay in trial or long trials can lead to loss in evidences, witness testimony is either forgotten or lost, which reduces the chances of conviction of the accused. *Hussainara Khatoon v. State of Bihar*¹¹ framed the premise of the idea of the Speedy Trial. For this situation it was held that “where under trial prisoners have been in police or judicial custody for duration longer than prescribed, if afterwards convicted, their detention in jail is totally unjustified and there is a breach of Fundamental Rights under Article 21”.

CASE LAW RELATED TO FAST AND SPEEDY TRIALS

¹⁰ <http://www.lawyersclubindia.com>

¹¹ *Hussainara Khatoon v. State of Bihar*, 1979 AIR 1369, 1979 SCR (3) 532

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Hussainara Khatoon & Ors v. Home Secretary, State of Bihar, on 9 March, 1979**Equivalent citations: 1979 AIR 1369, 1979 SCR (3) 532****Bench: Bhagwati, P.N.****PETITIONER:**

HUSSAINARA KHATOON & ORS.

Vs.

RESPONDENT:

HOME SECRETARY, STATE OF BIHAR, PATNA

DATE OF JUDGMENT-09/03/19

Facts of the case

“The writ petition that came before the Court for the hearing of the release of under trial prisoners in the State of Bihar. The State of Bihar was guided to file a revised chart showing a year-wise break-up of the under-trial prisoners after dividing into two broad categories which is minor offenses and major offenses that were not carried out.”

Judgment

The Court directed that these under-trial prisoners whose names and particulars are given in the list filed by Mrs. Hingorani should be released abruptly as continuing their detention is illegal and is in violation of their Fundamental Right under Article 21 of the Indian Constitution because they have been in jail for a duration exceeding the maximum term that they should have been convicted for.¹²

The Court also directed that on the next trial dates, when the under-trial prisoners, charged with bailable offenses, are produced before the Magistrates, the State Government should appoint an *amicus curiae* for making an application for bail and opposing remand provided that no objection is raised to assigned lawyer on their behalf and with an aim that speedy trial is executed. The

¹² <http://www.lawjournals.com>

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State Government and High Courts were required to furnish particulars as to the location of the Courts of Magistrates and Courts of Sessions in the State of Bihar along with the total pending cases in each Court as of December 31st, 1978. They are also required to explain as to why the disposal of those cases has been pending for more than six months.

Conclusion

The Court prescribes the State and the Central Government, a comprehensive legal service program which is mandatory not only under Article 14 which guarantees equal justice and Article 21 which confers the right to life and liberty, but also embodied in the constitutional directive embodied in Article 39A. The State cannot deny the Constitutional right to a speedy trial to the accused by pleading monetary or administrative inability. The Court is hence required to adopt a reforming approach, issue directions to State to take positive actions to secure enforcement of the Fundamental Right for a speedy trial.

CRITICISM

A three Bench led by Justice U.U.Lalit said that the fast and speedy trials should not bury the cause of the justice.¹³ “Expeditious disposal is undoubtedly required. However, the attempts to expedite the process should not be at the expense of the basic elements of fairness and the opportunity to the accused, on which postulates the entire criminal administration of justice is founded,” remarked by the Bench. The Bench, also comprising of Justice Indu Malhotra and Justice Krishna Murari, said “what is paramount is the cause of justice and keeping the basic ingredients which secure that as a core idea and ideal, the process may be expedited, but fast tracking of process must never ever result in burying the cause of justice.” This judgment was made when the Bench set aside the decisions made by the subordinate Court, which provided death penalty to the Accused of a rape case within 12-days of the conviction. The judgment was brought out in the case of **Anokhilal v. State of Madhya Pradesh**. The accused, Anokhilal, was charged with rape and murder of a minor, nine-year old girl. After examining thirteen witnesses

¹³ <http://www.thehindu.com>

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and holding five more hearings, the Subordinate Court in March, 2013 passed the judgment which was later upheld by the HC.

MY OPINION ON THE TOPIC

After the research, I found the fact that fast and speedy trials are really the need of hour, especially in dealing with crimes related to sexual assault and children. An unforgettable “**Nirbhaya**”¹⁴ case on the night of December 16th, 2012 shook the Government and put a big question on the Judiciary. This case was referred to “Fast Track Court” but the justice was served this year, taking more than seven years. The long-trial infringed the Rights of both the victim and the accused. Speedy justice should have been provided, but not at the cost of taking away someone’s Right to freedom and liberty and also Right to Life, which are the basic Fundamental Rights. In the sexual assault cases victims are most affected and sometimes it took away life as seen in **Dr. Priyanka Reddy and Unao rape case**. I have observed that in the crimes related to child, the accused end up taking the life of children. At most, the Judiciary by providing the justice in the appropriate time limit can provide the relief to both victims and accused without burying the real concept of serving justice.

SOLUTIONS

Many different kinds of solutions have been found to reduce the pendency of cases which include, diverting cases from the Courts to alternate dispute resolution forums (such as arbitration, mediation and Lok Adalats) and specialized tribunals in premise of criminal justice, increasing the strength of judges, reducing judicial vacancies. The introduction of “fast-track” courts, Jail-Adalats (“prison courts”), and plea-bargaining were introduced with much fanfare, but their success is yet to be seen. There is rise of some serious questions about the **class-bias** running in these systems. For instance, according to the recent Daksh Report¹⁵, an accused who has been in prison for many years as an under trial, may think it is more beneficial for him to

¹⁴ Mukesh & Anr v. State for NCT of Delhi & Others

¹⁵ <http://dakshindia.org>

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plead guilty and leave prison, rather than face the ambiguity of trial. Delays in the legal system are not only because of a shortage of judges, but also because of the shortage of police officers (who have to investigate cases and then come to court on a regular basis), prosecutors (who are often underpaid and over-worked), and inadequate judicial infrastructure. Thus, any comprehensive solution will have to be cognizant of the variety of factors that cause delays, with a strong focus on hypocrite to understand the cause for delays. A start in this direction is already done, but has a long way to go.

CONCLUSION

The Right to Speedy Trial isn't a reality however a Fundamental reality and it must be given a due regard. The Courts and the governing body have just acknowledged it as one of the mode for lessening the expanding outstanding tasks at the hands of the Courts. The privilege to a Speedy Trial and its subsequent effect on both the respondent and society in all. This Sixth Amendment ensures a Fundamental segment of the Bill of Rights and furthermore another significant piece of our lawful legacy. In **Abdul Rehman v. R.S.Nayak**¹⁶ the SC saw that its Court watchfulness whether right to Speedy Trial has been denied or not. For the situation **Madheshwardhari Singh v. State of Bihar**¹⁷, it was held that every single criminal indictment is presently non-negotiable Fundamental Rights to the citizens.

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¹⁶ Abdul Rehman v. R.S.Nayak, writ petition 833 out of 1990

¹⁷ Madheshwardhari Singh v. State of Bihar, 1986 CriLJ 1771

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