

FAST TRACK COURTS- NEED OF THE HOUR TO COMBAT SEXUAL OFFENCES

Simran Singh
Ph.D. Scholar
School of law

Jagran Lakecity University, Bhopal, Madhya Pradesh, India.

Abstract- After the Nirbhaya incident it was very much clear and needed that Fast Track Courts came into action. The incident was so heinous that it created that pressure for speedy disposal of cases of sexual assault. It was discussed to be the most feasible option as the normal courts are plagued with the delay. After which the state government took the initiative so as to establish Fast Track Courts, funds were allocated by the central government for establishment of 1800 Fast Track Courts all over the country. Those Courts were specifically dedicated to deal with cases of sexual assault.

Index terms- Fast Track Court, Sexual Offences, Rape, Delay in disposal of Cases, Right to Speedy Justice.

Speedy trial with fairness is a right of any individual who is under the custody of law. While Constitution of United States expressly quotes that an accused shall enjoy the right to speedy and public trial, no such expressed declaration is been made in the Indian Constitution. Hussainara Khatoon caseⁱ was one of the first, where eager need of speedy trial was observed. It was observed by the Supreme Court in this particular case that providing speedy trial is a constitutional obligation which cannot be escaped by pleading financial and administrative inability. Supreme Court commanded for setting up of new courts with more staff and infrastructure, appointment of more judges, to ensure the speedy trial. Numerous cases discuss the need and importance of speedy trial and one of them being Abdul Rehman Antulay vs R. S. Nayakⁱⁱ where the Apex Court formulated few guidelines inspired by the principles of law, crux of those guidelines are as follows:-ⁱⁱⁱ

- Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right that the accused to be tried speedily;
- Right to speedy trial following from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and re-trial
- Reasons and factors responsible for the delay. Attendant circumstances, including nature of the offence, number of accused and witnesses, and the work-load of the court concerned, prevailing local conditions and so on, the so called systemic delays must be kept in view.
- Each and every delay does not necessarily prejudice the accused, but some delays indeed work to his advantage.
- Ultimately, the court has to balance and weight the several relevant factors- 'balancing test' or 'balancing process'-and determine in each case whether the right to speedy trial has been denied in a given case.
- Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order- including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence, where the trial has concluded as may be deemed just and equitable in the circumstances of the case.
- It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weight all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit in the guarantee of right to speedy trial.
- An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay

the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.

The need of the hour made Supreme Court come up with these norms, which per se were not hard and fast rules to be followed to the T. In the progressive times where the globalization was in trend and so were technological developments, leading to better economies and better opportunities, it was needed for the judiciary also to buck-up, to face the upcoming challenges with the changing times. The technology rather helped in a substantial growth of Judiciary as well, the management became smoother with the help of the technology. Hence, it was also the need to better the justice system with faster pace. Article 21 of the Indian Constitution of India ensures speedy trial of the proceeding, delay in disposal especially of a criminal proceeding is against right to life and liberty which again is covered by Article 21 of the Constitution.

Even though the importance of speedy trial was recognised long back but the constitution or any other statute does not mention it specifically, it happens to be an implied concept under Article 21. It was observed by the Law Commission that in an organised society there is a need that law suits be decided in specific time frame bringing a factor of definitiveness, for the interest of the citizens also the state disputes. Inordinately long trials leads to miscarriage of justice and with the litigation growing up to an expensive affair and the situation is serious for criminal trials more than civil trials. A procedure to be addressed as just, fair and reasonable, it is very much required for the procedure to be timely, having the capability of disposing a case within a reasonable time, elimination of elements which are bias unfair or prejudiced either towards the accused, victim or witness is necessary. Acquittal of the accused after so much of delay after the unnecessary sufferings in itself is an unjust side of law. All these unnecessary delays and procedural lethargy results to faded memory of the witnesses, testifying with unclear memory is again an unjust facet of the whole proceedings.

Delay is a defeat to justice, even if the aggrieved party gets justice after a long duration its value is negated due to so much of time lapse. *Ansuyaben Kantilal Bhatt vs. Rashiklal Manilal*^{iv} is one such example to such situation, where the applicant who was the landlord wanted evict the tenants for his personal business endeavours, the matter fell into the legal cycle. Till the matter reached the final stage at Supreme Court 33 years had already passed by. The purpose of approaching the legal system was defeated due to the huge time duration, strongly putting across the point “justice delayed is justice denied.”

Law Commission came up with the thought of system of conciliation especially for civil cases unburdening the load of cases from the normal courts. In 1978, 77th Law Commission Report suggested the setup of conciliation boards to deal with the petty suits which valued up to 5000/- rupees where the parties were suppose to consult the conciliation board first and then approach the court. This seemed to be a better alternative way of settling the dispute rather than approaching the court directly.

114th report of Law Commission states boldly that after deep observation “Unmanageable backlog of cases, mounting arrears and inordinate delay in disposal of cases in courts at all levels- lowest to highest- coupled with exorbitant expenses- have attracted the attention of not only the members of the Bar, consumers of justice (litigants), social activists, legal academics and Parliament but also the managers of the courts. The Chief Justice of India has gone on record saying that the ‘justice system as in vogue in this country is about to collapse’^v

The more this problem is tried to be avoided the more it comes into notice concerning the law reforms. Lot many suggestion were given by the law commission suggesting to introduce essential reforms in order to administer justice timely. The major discussed agenda was reduction in the delay in disposing of cases, cutting down on unnecessary procedures which brings delay as well as the unimportant expenses, making the system less formal. 14th 77th and 79th reports of the Law commission made many such recommendations ensuring that system works with the basic framework only with marginal changes. But such changes led the situation to even worse situation. Code of Criminal Procedure 1908 has been observed deeply by the 54th Law Commission Report, with a view to make the procedure a less formal and more simple and conclusive resulting in speedy disposal of the cases. 77th reports made the same efforts suggesting reduction in the delay in disposal by marginalizing the arrears.

The lack in infrastructure is so high that it is incapable of settling the increasing cases in a definite time frame. As discussed earlier, many efforts have been made to make this whole situation better but almost at every time a common person finds himself to be caught up in the in a trial, the litigation seems to be the lengthiest and never ending. Leading to end of all the resources which the particular person owns added with suffering of harassment especially by the procedure.

The Arrears Committee^{vi} headed by Justice V. S. Mallimath identified various causes of accumulation of arrears of cases in the High Courts. Some of the principal causes are:^{vii}

- Litigation explosion,
- Accumulation of first appeal
- Inadequacy of staff attached to the High Court
- Inordinate concentration of work in the hands of some members of the Bar
- Lack of punctuality among judges
- Granting of unnecessary adjournments
- Indiscriminate closure of Courts
- Indiscriminate resort to writ jurisdiction
- Inadequacy of classification and granting of cases
- Inordinate delay in the supply of certified copies of judgments and orders etc.

This delay is a major setback to situations where the victim is survivor of sexual assault. The trauma of the incident is huge in itself and on it the delayed justice results in breaking down spirit of the victim to fight for justice. It often result to non- reporting of the cases, which is a bad mark on justice system of our country, demonstrating the disbelief in the justice system.

After the Nirbhaya incident it was very much clear and needed that Fast Track Courts came into action. The incident was so heinous that it created that pressure for speedy disposal of cases of sexual assault. It was discussed to be the most feasible option as the normal courts are plagued with the delay. After which the state government took the initiative so as to establish Fast Track Courts, funds were allocated by the central government for establishment of 1800 Fast Track Courts all over the country. Those Courts were specifically dedicated to deal with cases of sexual assault.

As it is known by all, under article 32 the Apex Court has the power to direct any case or criminal or civil nature to the High Court of any state also from a subordinate court to any High Court as well. The Apex Court happens to be the final institution to appeal and hence it usually refers to the standing of the High Court which has previously decided the case. High Courts are established under Article 214 of the Indian Constitution at every state and union territory. District Courts are subordinate to the High Courts, which are established based on factors like the population distribution or amount of cases. Fast Track Courts are a recent addition to the District level of Courts, their existence can be seen from the year 2000. Under the reign on 11th Finance Minister i.e. Arun Jaitley, funds were allocated for the Fast Track Courts aiming to reduce the backlog of cases which occurs due to a lesser amount of judges than required. The funds further went to each state establishing these Courts, these courts, at the very start, tried every matter, which lead to same status as it was before the establishment of the Fast Track Court. But they were on track, dealing with defendant which were under trial, which were huge in count and were in custody of state. By disposing these kind of cases these courts helped in saving the state's funds. Not only the, these courts also ensure the constitutional rights of speedy trial. Many such courts were established, retired judges or ad-hoc judges presided in these courts, and their tenure usually lasted for 2 years. The scheme had a overhauling in the year 2005 but due to shortage of funds, the functioning of these courts came to a halt by the year 2011-12. There happened to be a lot many constitutional challenges which were faced by these courts. The power appoint the judge and the staff by themselves or usage of the budget, all such powers lied with the court. It was getting difficult to set the accountability of the whole staff with the judge in such scenario. As the tenure was only 2 years it was difficult to decide a case in that span of time and the idea of fast track was seen failing. The authenticity of such decisions, their consistency and precedential value was under scrutiny due to such short period of the tenure. A substantial amount of funding was allocated for these courts rather than concentrating on backlogged cases and less number of judges as compared to the cases, which could have been a more permanent solution to the issue. With all these issues, Supreme Court made it a mandate to attain speedy justice because of overcrowding of the prisons, due to lengthy delays of the trials. No doubt, functioning of the Fast Track Courts helped in bringing down the burden on the prison maintain the accused which were under trials. However, the specification to Fast Track Courts towards sexual offences has taken place after the Nirbhaya Case which happened on 12 December 2012, which came as a national crisis, the functioning of these courts were revived after the death of the victim.

The function and the procedures of Fast Track Courts are no different from the normal courts, they too function under Criminal Procedure Code. The difference here in the Fast Track Courts is that they do not allow any party to take long adjourned dates, which keeps the timeline of the case shorter as compared to others. One of the

major drawbacks which is continuously pointed out, is that due to the hurries, procedure the court usually fails to provide a just or fair judgement. In depth inquiry of questioning does not take place, the technicality of the issue too is avoided in a detailed manner. The judgement is usually on a superficial basis, accused fitting the criterion of the crime is usually declared guilty and it goes vice versa too where the if not liable is declared to be innocent. Cutting down on procedures like proper cross-examination or proceeding in absence of the lawyer has proved to be a drawback. Ex- Parte are usually seen to be biased in a Fast Track Court set up.

With the setup of Fast Track Court it has been observed that the justice is not achieved in through and complete sense as some or the other evidence or witness or cross-examination is missed due a hassled timeline. Some witness are missed or let go on the notion of not being essential to the case proceedings affecting the decisions of the court. Even if the judge meets the timeline for the Fast Track Court the victim has no option but to wait for long seeing justice from the High Court or Supreme Court anyways. The basic investigation take place in the district court and that is the only level where the thorough investigation takes place or say should take place. In our country major of the cases are acquitted due to procedural irregularities in the lower courts, which depicts how crucial it is to discuss or at least acknowledge the intricacies by hearing every party involved securing the proper procedure of the law.

Various international agencies including United Nations states that the reason for increasing rape cases in our country is incompetency of the judicial system, the ill functioning, over burdening due to the procedures leads to low conviction rates which is a common scenario in Indian judiciary. With all the above, corruption and redtapism has their part to play in affecting the judiciary for worse. The power play which is played by the accused to manipulate the witnesses added with tiresome and unapologetic system is enough to push the witnesses away from testifying. Manipulation of the witnesses by any means, scaring them, threatening them etc. put the witness protection system under questionability.

It has become a standard that in order to determine good performance of the judiciary, convictions are pedestal. Whereas, properly following the procedure with efficiently examining the evidences and witnesses, indicates of healthy and efficient judiciary. It can be easily identified that investigation which is performed by the police with protection to the witness which has been failed judiciary miserably. The miscarriage is not only at the part of judiciary but executive part of the functioning is also in a bad state, which has very often failed to investigate and pull out every aspect of any case. At times the judges presiding in the Fast Track Court are appointed there besides their regular courts, which not only overburdens them but also overburden other judges who cover up the work of the judges sitting in the Fast Track Courts.

It has been often seen that large number of cases which were tried under the Fast Track Court, reaching the High Court are usually reversed by the High Court. This obvious behaviour of High Court is majorly due to poor examination and improper inquiry performed under the jurisdiction of the lower court. The trials which reach the conclusion in a very short duration are something to be celebrated, but deliverance of justice in such cases is always doubtful or is always under question. The law of our country has always preached that a hundred guilty might be acquitted but single innocent shall not be punished, in order to keep up with the above notion there is no need for sever degree of scrutiny to keep a check on any kind of irregularity be it procedural or otherwise leading to Fast Track Injustice.

There has been many famous cases which portrayed the failure by the Fast Track Court but the Best Bakery Case^{viii} has to be the more highlighted one. During a communal frenzy a mob swooped in the bakery killing almost all the family members. On the start of the proceedings, despite of the fact that the whole family was victim of it, the surviving member, also the potential witnesses were not given any kind of protection by the police. Zeheera Sheikh the prime witness to the accident, due to lack of protection withdrew her statement. The accused were set free which were 21 in number due to lack of evidence, it being the Fast Track Court the proceedings were complete in 41 days. The verdict was upheld by the High Court as well, till National Human Rights Commission filed petition in the Apex Court asking for a retrial, there being huge miscarriage of justice. After the Supreme Court proceeded the case it was again quoted by Apex Court that miscarriage of justice was at its epitome during the case proceedings at the lower court. Later it was confessed by the prime witness that she was threatened because of which she retracted her statement and her mother who again was a witness turned hostile.

Accidents which are recurrent like rape in India are images of the cultural and the social norms which support the gender inequality and the fact that it has been running for long, shows that such behaviour is encouraged. Seen historically, India has always been as male dominated society limiting the power of women over anything,

even on her own life. With this kind of societal attitude there existed a dire need for courts to do speedy justice and the Fast Track Courts had the capability to deter the crime by bringing in the changes in the legal enforcement.

There have been many legislation in our country which ensured protection of women in in some or the other way. Dowry Prohibition Act of 1961 or Protection of Women from Domestic Violence Act are few of them which are quite known. Despite of these collection of laws which supposedly protect the women against gender violence, it is no surprise that rather the violence has grown rampantly in the country. The socio- cultural attitude has somehow always attacked the legal reform. Addition to this, the failure on the part of the police complying with the judicial mandate has worsened the situation more. The complexity of the law leading to inaccuracy of the law has resulted in the inefficiency of the failure of the legislation, as quoted by Justice Verma Committee.

Especially when it comes to the rape laws, they have seen the most resistance from the society in the way to exhibit such resistance have taken the shape of victim blaming. Dressing of the women, company in which the women moves etc. has all been the points which supported the victim blaming. Not just a few, but many scholars and reformists have stated that rape is badly dealt with, by the law and it has been happening for many years now and result of which is the rising number of rape cases. It is shameful to accept an acquittal where there had been enough evidence to prove the accused guilty but the caste of the women, especially the lower one, rather seems a better ground to prove her promiscuous helping the accused be free. It has been observed in the past that sexual assault cases where the victim survives, are treated less seriously as compared to the situations where the victim's injury leads to her death. For example comparing Nirbhaya's^{ix} case to Tukaram vs State of Maharashtra,^x events which happened in the former case after the incident took place were no surprise where as in the later one the girl lived to narrate her own tale. To which she was she was questioned on her promiscuous nature as she was not virgin also these were no signs of resistance, concluding that the accident was rather consented. To surprise Supreme Court rather held the original appeal stating there were no marks of injury. The idea of passive submission was rather dismissed till the public outcry, which forced custodial rape to be part of Indian Penal Code amending the Code. It gave a different perspective to notion of consent in situations of sexual assault. Though Indian society is adaptable to the concept of normative changes but the hate crime in our society have reached a different tangent which tends to take away the effect as well as the limelight of these changes.

The effort of specializing the Fast Track Courts is a huge step which portrays that sexual crime will surely be punished. But somehow it is felt that the judges presiding in these courts are needed to be trained with that compassion so as to understand the need of the whole situation. Judges filling in the make shift position in the court cannot be expected with that level of compassion and thoughtfulness. Also it has been discussed very often that that the whole system of Fast Track Courts needs a holistic approach which is missing there is a need of relevant acting parties to ensure reduction of space which is between parties like law enforcement, investigating party, prosecutors etc. which automatically will lead to rapidity increasing the efficiency of the Fast Track Courts. It is also needed that there should be a collaboration between the formal courts and informal justice systems like panchayats, in order to be on the same page with respect to the issue of sexual assault, putting in the bilateral efforts, which will bring a normative change too.

Presence of the Fast Track Court has definitely brought in the normative changes as they are acting symbol of action against rising sexual violence, same affect can be seen when a strong legislation comes in to force. To have a stronger impact on the socio- cultural norms it is required to combine sturdy legislations with effective enforcement and as seen the normative changes are extremely slow. The combination of both the law and the enforcement in our country has been observed to be not in sync so as to bring the desired effectivity and moreover bringing a normative change is never seen even to be a priority. With the kind of environment in our culture it is highly required to have normative commitment especially to combat the gender injustice due to gender violence. Normative change with effective working of the Fast Track Courts will surely bring the desired result and that too which will arise from the root level keeping all the agencies in the loop.

"Justice delayed is justice denied and justice hurried is justice buried," keeping in mind the same idea, the functioning of the Fast Track court is expected. But the thought of no innocent being punished has resulted in low conviction rate. This ongoing has made the Fast Track Courts cautious about their functioning, keeping a check on their overstepping with context to the judicial practices. Functioning of the Fast Track Courts is expected to be swift but with the narrow mandates the whole system puts the victims as well as the communities in more vulnerable situation. The best part about the Fast Track Courts are that they are approachable as District Courts and they do try to find the balance between speedy justice and the due process without any prejudice. But ultimately the appeal approaches the higher institutes of justice and sadly none of them adhere to the norms

of Fast Track Courts or even have corresponding fast track procedure, hence the delay happens anyways. So now when swift prosecution is an essential element to bring deterrence against the sexual crime, the process which a trial goes through is matter of concern by the judiciary. In a country like ours justice is and expensive affair, the Fast Track Courts, though try to bring wrap the whole trial with minimal fund but it is a short term situation. Approaching the higher courts is anyways becomes the same story as they do not commensurate with the functioning of the Fast Track Courts, which ultimately defies all the efforts made by the Fast Track Courts. Fast Track Courts are the need of the hours, these functioning is needed to be smooth and without any burden. For the same to happen it is required that the required positions are filled with a sensitized staff, not just this a holistic functioning of all the agencies has become a must in order to reach the ultimate goal of the Fast Track Court. Bringing in ideas to affect the existing socio- cultural norms is also to be put in the priority to make the whole procedure holistic.

ⁱAIR 1979 SC 1369.

ⁱⁱ 1988 AIR 1531, 1988 SCR Supl.

ⁱⁱⁱ Abdul Rehman Antulay vs R. S. Nayak, Law (SC)-1991-12-10 at <http://www.the-laws.com/Encyclopedia/Browse/Case?CaseId=001991086000>

^{iv} (1997) 5 SCC 457

^v Law Commission of India, 114th report at <https://lawcommissionofindia.nic.in/101-169/Report114.pdf>

^{vi} 77th Report Law Commission of India, 1978 at <https://lawcommissionofindia.nic.in/51-100/Report77.pdf>

^{vii} Chapter III, Right to Speedy Justice at https://sg.inflibnet.ac.in/bitstream/10603/10373/9/09_chapter%203.pdf

^{viii} Zahira Habibullah Sheikh v. State of Gujarat and Ors. AIR 2006 SC 1367.

^{ix} Mukesh and Anr. vs. State for NCT of Delhi & Ors., Criminal Appeal Nos. 609-610 of 2017, (Arising out of S.L.P. (Criminal) nos. 5027-5028 of 2014)

^x AIR 1979 SC 185

