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Assessing the Practicalities of the Right to Speedy Trial

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India and worldwide, it starts by explaining what the right is and how it connects with Article 21 of the Indian Constitution. Historical developments in India are discussed through key legal decisions like the Maneka Gandhi case and Abdul Rehman Antuley v RS Nayak, showcasing the courts' commitment to this crucial right. Comparing practices globally, the study extends beyond India, examining how countries like England, Canada, the United States, and Japan handle the Right to Speedy Trial. The paper emphasizes the vital role of quick trials in the criminal justice system, underlining their impact on individual freedom. The study also looks at international human rights treaties and various countries' legal frameworks, shedding light on different approaches and best practices. To address challenges in India, such as judicial burdens and resource constraints, the paper suggests practical solutions like better resource allocation, infrastructure improvement, and the promotion of Alternative Dispute Resolution. In conclusion, the Right to Speedy Trial is portrayed as more than just a legal idea, but a fundamental principle supporting justice and human rights. The paper underscores the need for collaborative efforts to turn this right into a reality that ensures justice for everyone.

Keywords: *right, speedy trial, judicial decisions, comparative analysis.*

INTRODUCTION

Considering that we live in a civilized society with much developed legal system, it is important for every citizen to have the access to justice. In fact, access to justice is a fundamental right provided to all Indian citizens under the Article 14¹ and Article 21² of the Constitution. The Supreme Court in the case of Anita Kushwaha v Pushap Sudan further established this fact³ too, in which the court held that access to justice was crucial to live a dignified life and equality before law and equal protection of law has no meaning without proper access to justice.

However, delays in justice is one of the main hindrances that people face while exercising this right. This is also rightfully pointed out by the legal maxim '*Justice Delayed is Justice Denied*'. This maxim means that if justice is not timely served, it is as if no justice is served at all. In India, this delay is due to several factors. One of the main factor is the immensely high inflow of cases in the courts. In fact, pending cases in India are around 5 crore, of which around 4.3 crore are pending in the district courts of the country, around 60 lakhs in the High Courts and around 70 thousands in the Supreme Court.⁴ Other factors include low number of judges, poor infrastructure, etc. This is where the Right to Speedy Trial comes in. It is a concept that deals with disposal of cases as soon as possible to make the judiciary more efficient and trustworthy and to make access to justice feasible for common people. The right to trial was first mentioned in the landmark document of English law, the Magna Carta. The constitutional philosophy propounded as the right to speedy trial has though grown in age over decades of judicial scrutiny and parliamentary statutes, the goal it aimed to achieve is still a far-off peak.

Right's evolution in India and Supreme Court's view on it: Right to Speedy Trial is enshrined in Article 21. However, this was only after Article 21 was observed by the Supreme Court to

¹ Constitution of India 1950, art 14

² Constitution of India 1950, art 21

³ *Anita Kushwaha v Pushap Sudan* (2016) 8 SCC 509

⁴ 'More than 5 crore cases pending in courts in India' *Times of India* (22 July 2023)

<<https://timesofindia.indiatimes.com/india/more-than-5-crore-cases-pending-in-courts-in-india/articleshow/102042623.cms?from=mdr>> accessed 28 November 2023

have a broad scope. In *Maneka Gandhi case*⁵, the Supreme Court observed the term ‘personal liberty’ in Article 21 to have the broadest scope possible. In the case, Justice Bhagwati observed:

The term ‘personal liberty’ in Article 21 has the broadest scope and embraces several rights that together make up a person’s liberty; certain of these rights have been elevated to the level of independent basic rights. Hence, *Maneka Gandhi case* gave way for several other rights that are not directly mentioned under the Constitution, including the Right to Speedy Trial, to come under the purview of Article 21. But this case did not directly establish the right to speedy trial as a fundamental right.

The right being part of Article 21 was put down in *Hussainara Khatoon case*⁶. This case is related to prisoner’s rights. Based on a news report that several under trials, including women and children, were in prisons of Bihar awaiting their trial for years, a PIL for habeas corpus was filed the Supreme Court. Many were in prisons for time way longer than the maximum punishment they could get. Behind the long incarcerations, the convicts were unable to arrange for a defense and afford a bail. Expressing shock, the court passed interim orders to discharge these people. The court also noted that long-term incarcerations are illegal and violated prisoners’ rights under Article 21.⁷ Another order by the court was to grant free legal-advice by the state for prisoners charged with non-bailable offences. This was intended to grant the poor undertrials with bail they could not afford and ensure that they exercise the right to speedy trial. The Supreme Court also ordered to provide for the locations of the trial courts, magistrates, and the total number of cases pending in each court in Bihar. Government and High Court were also ordered to explain the reasons for delay in disposal of cases. Again, this was all to ensure that a speedy trial takes place for all.

*Sheela Barsa case*⁸ involved a writ petition filed after instances of custodial violence against women in Mumbai Police lockups. In this case, the court again emphasised the importance of

⁵ *Maneka Gandhi v Union of India* (1978) 1 SCC 248

⁶ *Hussainara Khatoon & Ors v Home Secretary, State of Bihar* (1979) SCR (3) 532

⁷ *Ibid*

⁸ *Sheela Barsa v State of Maharashtra* (1983) SCR (2) 337

the right to speedy trial as a fundamental right and connected it with Articles 14⁹ and 21 of the Constitution.

In *Abdul Rehman Antuley v RS Nayak*¹⁰, the Supreme Court held that right to speedy trial under Article 21¹¹ is applicable through all stages, namely investigation, inquiry, trial, appeal, revision and retrial. The court also laid down a detailed guideline for speedy trial of an accused in a criminal case. This case is landmark in the sense that it expands the exercise of this crucial right to a very large scale and ensures that no one goes through the injustice of delayed justice.

The Supreme Court, in *P Ramachandra Rao* case¹², laid down certain factors to identify whether an accused is being deprived of his right to speedy trial. These factors include, among other things, length of delay, justification of delay, assertion by the accused of his right to speedy trial and prejudice caused to the accused by such delay. It is clear that the Supreme Court has repeatedly emphasised the importance of the right to speedy trial and has restated it as a very important part of the Constitution.

IMPORTANCE: WHY DO WE NEED THE RIGHT TO SPEEDY TRIAL

Providing a speedy trial to cases is one of the main objectives of the criminal justice system¹³ and to do so, there are number of judicial decisions and provisions in the Criminal Procedure Code and the Police Act.¹⁴ This is because of how important this right is for justice system and society to function properly. Other than the statutes and judgements, there also has been establishment of a number of committees and commissions to look into the matters of undue delays in delivery of justice.¹⁵ Undue delay in administration of justice poses a very serious threat to the freedom

⁹ *Ibid*

¹⁰ *Abdul Rehman Antuley v R.S. Nayak* (1988) SCR Supl 1 1

¹¹ *Ibid*

¹² *P. Ramachandra Rao v State of Karnataka* (2002) 4 SCC 578

¹³ S.N Sharma, 'Fundamental right to Speedy Trial: Judicial Experimentation' (1996) 38(2) Journal of the Indian Law Institute

<http://14.139.60.116:8080/jspui/bitstream/123456789/17646/1/027_Fundamental%20Right%20to%20Speedy%20Trail_Judicial%20Experimentation%20%28236-242%29.pdf> accessed 28 November 2023

¹⁴ Code of Criminal Procedure 1973, s 157

¹⁵ Law Commission, *Report on the Delay and Arrears in High Courts and Other Appellate Courts* (Law Com No 79, 1979)

and well-being of an individual. If charges are pending against an accused for a long time, he may suffer from anxiety and harassment and may be forced to undergo unnaturally long incarceration before the trials.

This is where the right to speedy trial becomes extremely crucial. As a safeguard against these backdrops that come with delay in administration of justice, the constitutional guarantee of a speedy trial helps in prevention of undue and oppressive incarcerations. Hence, its primary goal is to promote justice in the society. Idea behind the right to speedy trial is also to dispose of cases as quickly as possible to improve the effectiveness and reliability of the judicial system.

Speedy trial of offenses is a desirable goal also because long delays can defeat justice. As mentioned in the introduction of the project, it is important to focus on the common proverb and legal maxim that ‘justice delayed is justice denied’. Other than this, delay in occurrence of trial also poses a danger to the ability of the accused to refute the charges brought against him – potential witnesses may not be available, memory of available witnesses may fade with the passing of time etc.¹⁶ Hence, we can say that speedy trial is of the essence of an organized society and the cases should be decided as soon as possible.

A WORLDVIEW: RIGHT TO SPEEDY TRIAL IN OTHER COUNTRIES

The right to speedy trial is one of the most recognizable rights in many jurisdictions outside of India. In countries with strong legal system, prosecutors are forced to deal with cases within a reasonable timeframe. The right is based on the notion that long incarcerations should normally be restricted to the situations where the judge is sure about the guilt of the accused. This means that there is high focus on giving the right to speedy trial to the people who are more likely to go through unjust incarcerations.

In the international sphere, numerous international human rights treaties serve as the foundation for this right. In Article 11(1)¹⁷ of the UDHR states that ‘everyone charged with a

¹⁶ Alan L. Schneider, ‘The Right to a Speedy Trial’ (1968) 20(3) Stanford Law Review
<<https://www.jstor.org/stable/1227512>> accessed 28 November 2023

¹⁷ Universal Declaration on Human Rights 1948, art 11(1)

criminal offence has the right to be presumed innocent until proven guilty in a court of law after having been afforded all the protections necessary for his defense.’ Similar to this, Article 14(3)(c) of the ICCPR¹⁸, which many nations have ratified –including India –recognizes the right to a speedy trial. This provision reads, ‘In the determination of any criminal charge against him, everyone shall be entitled to... be tried without undue delay.’

Here are some of the prominent jurisdictions that follow the right to speedy trial:

England and Europe: England is a pioneer in ensuring that its citizens sufficiently their exercise their fundamental right to speedy trial. In English law, the Assize of Clarendon in 1168 and Magna Carta developed this right in 1215. The 1168 act ensured that a judge would be summoned if one was not available immediately. Magna Carta of 1215 stated that ‘to no one will we sell, to no one we will delay or refuse, right and justice.’ Even after century later, England tries its best to provide to its citizens this right. Within Europe as a whole, Article 6 of the ECHR recognizes speedy trial rights.¹⁹

Canada: The Section 11 of the Canadian Charter recognizes speedy trials rights in Canada on Rights and Freedom.²⁰ The Supreme Court of Canada, in the case of *R v Jordan*²¹, held that the rights under this Charter would be assumed to be violated if the trials don’t begin within 18 months of the charges being filed, or 30 months when there is a preliminary inquiry. When the speedy trial rights are violated, charges must be dropped by entering a stay of proceedings. Once the presumptive ceiling is exceeded, the burden is on the Crown to rebut the presumption of unreasonableness based on exceptional circumstances outside the Crown’s control.

United States of America: In the US, the Speedy Trial Clause of the Sixth Amendment to the American Constitution protects basic speedy trial rights. For federal charges, Speedy Trial Act²² applies. The trial must commence within 70 days from the date when the information were filed,

¹⁸ International Covenant on Civil and Political Rights 1976, art 14 (3)(c)

¹⁹ European Human Rights Convention 1953, art 16

²⁰ Canadian Charter on Rights and Freedom 1983, s 11

²¹ *R v Jordan* [2016] 1 SCR 631

²² Speedy Trial Act 1974 (US)

or from the date, the defendant appears before the court in which the charges is pending. State may also offer additional speedy trial protections. The consequences of a speedy trial violation may require that the case be dismissed, although depending upon the circumstances it may be possible for the state to again initiate the criminal charge against a defendant despite a speedy trial right violation.

Japan: The Article 37 of the Constitution states, 'In all criminal cases the accused shall enjoy the right to a speedy and public trial through a tribunal.' Takada case, in which the decision by the court was pending for more than 15 years. The Supreme Court of Japan according to Article 37 dismissed it. After Takada case, it is considered that dismissing judge should only apply if the accused asks for an acceleration of the trial.

PRACTICALITIES: ISSUES, THEIR SOLUTIONS AND FEASIBILITY OF THE RIGHT TO SPEEDY TRIAL

In theory, the right to speedy trial sounds like a very essential fundamental right and an important one to implement properly. It is a fundamental aspect of any legal system that is fair and just. It is a concept which is deeply rooted in the principles of justice, human right and the rule of law both national and around the world. However, its implementation is not that simple. To properly implement this right, it is important to access the practicalities of this right and its implementation. Practicalities of implementing and further upholding this right can be challenging and complex at times. Assessing the practicalities of this right goes beyond the theoretical or legal framework and delves into the practical challenges, solutions and experiences associated with ensuring that the accused get a timely and speedy trial.

Implementation: As stated before, implementation of the right to speedy trial is not as straightforward as it looks in the theory. To understand how well proper implementation of this right would work and what steps to take to improve its implementation, we have to look at how is this right put into action within the legal system, and what mechanism and procedures are in place in the legal system to ensure that cases are moved through it with ease and quickness.

In India, as we have talked before, there are several ways that the right to speedy trial is put into action within the legal system. In the domestic spheres, it has been an utmost priority of the Supreme Court of India to put an immense focus on implementing the right to speedy trial as a fundamental right. Other than judicial decision, there are also statutes that try their best to ensure that a speedy trial takes place. As mentioned before in the project, these statutes include provisions of the Police Act, 1861 and CrPC, 1973. There also have been several Law Commission Reports that put an emphasis on the proper implementation of the right to speedy trial.

In the international sphere, Universal Declaration on Human Rights ensures speedy trial rights among its signatories. India signed this declaration, even before achieving independence, in 1942. International Covenant on Civil and Political Rights (ICCPR), another international agreement that ensures speedy trial rights, was signed by India in 1979. It is also important to mention that Article 51²³ of the Constitution encourages the Government to respect the treaties it is a signatory to. Article 253²⁴ empowers the legislature to ratify and enforce any international treaty. Overall, we can say that there are mechanism in India to ensure international treaties regarding speedy trial rights are followed too²⁵, alongside domestic mechanism.

Challenges and Issues: As we have discussed before, India has ample number of ways to implement the speedy trial rights. However, the problem arises during the actual implementation because there are a lot of hurdles, challenges and issues in the way of doing that. One of the most prevalent challenges while implementing speedy right trials in India is the heavy burden on the judiciary. Backlog of cases in the different courts of India is very huge. In fact, the total number of cases pending in India is over 5 crores, with 4.3 crore pending in different district court in the countries, around 60 lakhs pending in High Courts of the country and around 70 thousand pending in the Supreme Court²⁶. Enforcing speedy trial rights is a problem considering how overburdened Indian justice system is. Moreover, enforcing these

²³ Constitution of India 1950, art 51

²⁴ Constitution of India 1950, art 253

²⁵ Vivek Sehrawat 'Implementation of International Law in Indian Legal System' (2021) 31(1) Florida Journal of International Law <<https://scholarship.law.ufl.edu/fjil/vol31/iss1/4/>> accessed 28 November 2023

²⁶ More than 5 crore cases pending in courts in India (n 4)

rights would burden the system even more, considering how many new cases would arise as a result of enforcement.

Another challenge is the problem of resources. India has chronically low resources as compared to its size. This resource problem is responsible for backlog of cases, and is a challenge in enforcing speedy trial rights. Resources constraints encompasses limitations in terms of physical resources, personal and financial support within the legal system. India, unfortunately, is unfirm in all these categories of resources, which makes it difficult for it to enforce the right to speedy trial for its citizens.

Inadequate legal representation is also a constraint on enforcing speedy trial rights. This problem is especially faced by the members of the marginalized community. Their insufficient financial capacity makes it difficult for them to get an adequate legal representation. This results in delay of cases, and hence can create a problem while enforcing the right to speedy trial. There are several other constraints too which makes it difficult to enforce the right to speedy trial, but word limit prevents the mention of all.

Solutions: Despite several constraints mentioned before, it's important to keep out hopes high because not all these constraints are unpreventable in nature. Many can be removed if proper policy is implemented.

First and most important solution is resource allocation and infrastructure improvement. The government can allocate more resources towards the judicial system. This would include hiring more judges, support staff and building new courtrooms. Adequate funding is important to get rid of backlog of cases. Investing in modern technology is also crucial to improve the efficiency of the system. This would include digital record keeping, electronic filing system, and video conferencing for remote hearings.

Another solution would be to promote Alternate Dispute Resolution and make it accessible for all sections of the society. It is a very efficient and quick system to get desirable decisions in non-criminal cases. It can also be considered as the best alternate to traditional court system for getting justice in non-criminal system. Currently, it is mostly restricted to the privileged section

of the society. Hence, it is important to promote it as much as possible for quick disposal of justice and prevent backlog.

In order to guarantee that people, especially those from underprivileged backgrounds, have access to knowledgeable legal representation, legal assistance programs should be strengthened. Ample legal aid helps avoid delays brought on by parties who are not represented. This includes encouraging solicitors and law businesses to offer free legal services to those who cannot pay them.

Another thing to do would be to ensure that those being held under detention for pending trial receive regular bail hearings to assess if additional custody is required. Adopting policies that give non-violent convicts priority when issuing bail is important to do so.

Another solution would be education and proper training for professionals. This would include providing training to people working in the judicial system to enhance their knowledge regarding the importance of speedy trials. Educating common population is also important. This would include conducting public awareness programs to make citizens informed about their rights, including speedy trial rights. Informed citizens ask for accountability from the judicial system, which is very crucial. Legislative reforms are also extremely crucial. This include making policies and laws that simplify and streamline legal procedures to reduce complexity and save time. These reforms can also eliminate unnecessary steps and make legal process more efficient.

CONCLUSION

The Right to Speedy trial is more than just a legal doctrine protected by laws, constitutions, and agreements on human rights internationally. It is an underlying principle that supports the fundamental principles of justice and fairness in any legal system. However, the realities of putting this right into practice show a complicated and multidimensional environment. In this research, we've examined the problems and potential solutions for assuring a quick trial while taking into account the actual difficulties that legal systems all over the world encounter.

The difficulties are great and varied, ranging from a backlog of cases to limited resources. These challenges may lead to unjust detention, restricted access to justice, and diminished public confidence in the legal system. Additionally, they may violate the fundamental rights and dignity of the accused.

Nevertheless, despite these difficulties, there are a variety of doable reforms that provide encouragement and a way forward. These options include resource distribution, judicial changes, platforms for alternative dispute settlement, and technological developments. They place a strong emphasis on the necessity of legal education, public knowledge, and accountability in ensuring that justice is delivered quickly and effectively. Governments, legal experts, civil society organizations, and the general public must work together to implement these solutions. It necessitates a dedication to the ideals of justice, equality, and human rights, where the right to a speedy trial is viewed not as a legal doctrine but as a concrete reality.

In conclusion, the realities of the right to a prompt trial go beyond legal theory and into the domain of practical application. They affect the lives of those who are accused of crimes and have an impact on how the public views justice. Legal systems can defend this fundamental right, maintain the values of justice, and reaffirm their commitment to the rule of law by addressing the real issues and embracing practical solutions. By doing this, they make sure that everyone can actually experience justice and that it is not just a lofty ideal.