

THE IMPACT OF JUDICIAL HIERARCHY ON THE SPEEDY TRIALS WITH RESPECT TO COMMON AND ENGLISH LAW

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ABSTRACT

This paper majorly talks about the Indian Judiciary correlating it to the English law and how the hierarchical nature of our judiciary has impacted the undue delay in the decision making of certain cases. According to Article 21 of the Indian constitution, it is the right of every citizen to demand a speedy trial irrespective of, from where do they belong. Also, Section 483 of the Code of Criminal Procedure states that high court has to continuously maintain its superintendence over Judicial Magistrates to review whether they are delivery each judgement without any unnecessary delay. Similarly, in the light of these topics, the paper discusses the dire need of speedy trials and how it is treated in the courts of India.

KEYWORDS: *Speedy Trials, Delay, Hierarchy.*

1. INTRODUCTION

Judicial hierarchy refers to the system of courts and judges arranged in a hierarchical order, where each court is subjected to the authority of the court above it. The impact of judicial hierarchy on the speedy trials with respect to common and English law can be significant.

In common law systems, the judicial hierarchy typically consists of a trial court, an intermediate appellate court, and a supreme court. Each court has specific powers and responsibilities, and decisions made by higher courts are binding on lower courts.

Just like in the case of *Abdul Rehman Antuley v. R S Nayak, 1992*¹ where the court held that Article 21's right to a prompt trial applies throughout the whole legal process, including the stages of the investigation, inquiry, trial etc. The Court refused to establish a deadline for the trial's finish but provided specific rules for an accused's quick trial in a criminal trial. According to the Court, it could not be in the best interests of justice to quash the proceedings because of the characteristics of the violation and the surrounding circumstances. In this situation, it may issue a ruling allowing for a shortened trial and less punishment. One way in which judicial hierarchy can impact the speedy trial is through the appeals process. When a case is appealed to a higher court, it can result in significant delays in the resolution of the case. In some cases, the appeals process

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¹ *Abdul Rehman Antuley v. R S Nayak, 1992, 1992 AIR 1701.*

can take years to complete, resulting in a lengthy delay in the final resolution of the case.

In contrast, the English legal system follows a more streamlined approach to judicial hierarchy. It is also portrayed in the case law of *Doggett v. United States*², where the apex court mentioned that Doggett's right to a quick trial was violated by the time it took for him to be arrested after being charged. His claim fits with the *Barker v. Wingo*³ case and the criteria for judging claims for a quick trial. defence. The Government is wrong when it says that the Speedy Trial Provision doesn't protect a defendant's right to a fair trial very well. The system consists of a single court, the Supreme Court of Judicature, which has both trial and appellate jurisdiction. This means that cases can be resolved more quickly and efficiently, as there are no delays associated with the appeals process.

However, despite these differences in judicial hierarchy, both common and English law systems place a strong emphasis on the right to a speedy trial. This means that courts are generally required to resolve cases as quickly as possible, while also ensuring that defendants receive a fair trial and due process.

Overall, the impact of judicial hierarchy on the speedy trials with respect to common and English law depends on a variety of factors, including the complexity of the case, the availability of resources, and the efficiency of the court system.

2. STATEMENT OF PROBLEM

Due to the amount of over-exceeding cases in India, the tendency for a case to be receive a final verdict is very in very low in India. As a matter of right under the relevant article, every citizen demands speedy trials. The criminal offence rate has burdened the Indian Judiciary that speedy trials also take a reasonably long period of time. The hierarchical order leads to distribution in jurisdictional powers, maintaining the balance of powers and splitting the cases as per urgency and seriousness of the crime. This paper also throws light on such issues where speedy trials are required and how courts are over-burdened with the pendency in cases from over a decade. There's a comparison of how English law deals it differently than common law or are there any similarities. It deals with issues pertaining to right under Code of Criminal Procedure and Article 21 for that matter.

² *Doggett v. United States*, 505 U.S. 647 (1992).

³ *Barker v. Wingo*, 407 U.S. 514 (1972).

3. LITERATURE REVIEW

➤ ARTICLES

1. “Speedy Trial Schemes and Criminal Justice Delay”⁴ – By Allen P. Rubine

- The English common law and the United States Constitution have long recognised the right of criminal defendants to a speedy trial.
- However, it is difficult for an accused to prove that he was denied a fast trial since American courts have always been unwilling to impose any affirmative obligation on the government to bring a convicted criminal to trial quickly.
- Today's massive issues with delayed justice have spurred politicians and court officials to try to redefine what the fast trial promise actually entails. Although the justice to the accused, particularly those who are imprisoned before trial, is the main focus of these measures. Additionally, they want to lower the significant costs of delays to the neighbourhood.

2. “Speedy Trial”⁵

- It majorly talks about speedy trials as a right more than a relief or requirement. According to the United States Supreme Court States, "one of the most fundamental liberties safeguarded by our Constitution is the right to a timely trial." The Magna Carta, which declares, "We will trade to no person, we will not reject or postpone to any person either justice or right," is the source of the right as it is defined by the 6th amendment to the American Constitution.
- Also, the right was seen as essential by the English legal system and the Magna Carta, which led to its inclusion in the Constitution. But the Apex Court hasn't previously offered any direction on when an accused person may use this power.

3. “FUNDAMENTAL RIGHT TO SPEEDY TRIAL: JUDICIAL EXPERIMENTATION.”⁶ -- By S.N Sharma

⁴ Rubine, P. Allen, “Speedy Trial Schemes and Criminal Justice Delay”, Cornell Law Review, Article 5, Vol 57, Issue 5 May 1972, ISSN: 0010-8847.

⁵ “Speedy Trial.” The Journal of Criminal Law and Criminology (1973-), vol. 68, no. 4, 1977, pp. 543–54. JSTOR, ISSN: 914169.

- The paper began with discussing about that how one of the fundamental goals of the criminal justice system is the Fast trial of crimes. The Code of Criminal Procedure and Police Act provide several procedures for the swift resolution of cases. Despite the issue of delays in handling cases at different levels. Despite the fact that the issue with case disposal is not new, it has recently grown immensely. Although several commissions and committees have been established to look at the issue, little progress has been made. The courts' handling of matters goes through numerous levels of delay.
 - The major causes of delays are:
 1. the lack of witnesses;
 2. the lack of counsel.
 3. adjournments;
 4. lengthy lists; and
 5. neglect to question a witness notwithstanding their presence.
 6. the lack of a daily hearing system;
 7. the manner in which judgements are delivered.
 - This perspective is necessary in order to understand the basic right to a prompt trial that results from judicial activism in support of article 21.
- 4. “Speedy Criminal Trial: Rights and Remedies.”** ⁷ -- By Anthony G. Amsterdam
- In a very literal way, the right to a quick trial under the Sixth Amendment is now, to use the words of a famous procrastinator, "more honoured in the violation than the observance. Different institutional adjustments and the forces at work in the criminal proceeding have for a long time tended to change the entitlement of every suspected criminal to a speedy trial into a completely different privilege: the right of just few defendants, who were most grievously denied a speedy justice, to have the charges

⁶ Sharma, S. N. “FUNDAMENTAL RIGHT TO SPEEDY TRIAL: JUDICIAL EXPERIMENTATION.” *Journal of the Indian Law Institute*, vol. 38, no. 2, 1996, pp. 236–42. JSTOR, ISSN: 0019-5731.

⁷ Amsterdam, Anthony G. “Speedy Criminal Trial: Rights and Remedies.” *Stanford Law Review*, vol. 27, no. 3, 1975, pp. 525–43. JSTOR, ISSN 0038-9765.

filed against them dropped because of that. The changes are helped by recent Supreme Court decisions.

➤ **BOOKS**

1. “The Constitutional Right to a Speedy and Fair Criminal Trial”⁸ – By Warren Freedman

- Although the right to a fast and fair trial is guaranteed under the U.S. Constitution, unjust trial conditions and excessive trial delays are becoming more common in the legal system. Here, Warren Freedman, a fellow of the bars of New York, Connecticut, and the United States Supreme Court, provides an in-depth analysis of the legal and constitutional principles supporting the right to a fast and fair trial and looks at how they are used in actual court procedures.
- The notion of a swift and fair trial is introduced at the outset, along with its roots in history. The next chapters look at the standards for speed and justice, the jury's function, and relevant laws like The Speedy Trial Act of 1974. They also look at grand jury inquiries and prosecutorial violations of the rules of law that ensure speed and fairness. The subject is illuminated by analysis of relevant case law and precedent-setting court judgements. This volume clearly outlines not only the fundamentals of swift and fair trial guarantees but also the numerous elements that might work against them in today's sometimes overwhelmed court system, making it an essential resource for lawyers in criminal, corporate, and private practise.

2. “Right to Speedy Trial Indian Judiciary and Justice Delivery System”⁹ – By Majumdar Ahmed

- The validity of the entitlement to a fast trial is the topic of discussion and analysis in this book. The book addresses the measures taken to review and examine the national judicial system in India.

⁸ Freedman Warren, “The Constitutional Right to a Speedy and Fair Criminal Trial”, Praeger Publishers Inc, January 1989, ISBN-13: 978-0899303314.

⁹ Ahmed, Majumdar, “Right to Speedy Trial Indian Judiciary and Justice Delivery System”, Regal Publications, April 2015, ISBN-13: 978-8184844382.

1A: SPEEDY TRIALS AND JUDICIARY

The right to an instant trial was first mentioned in the Magna Carta, an essential component of English law. Even though the constitutional idea of "right to a speedy trial" has been around for almost 25 years, the goal it aims to reach is still a long way off. It's a way of thinking about how to handle cases quickly so that the court system works better and people get justice as quickly as possible. Article 21¹⁰ says that no one can be taken away from their life or freedom without following the rules set by the law.

In *Babu Singh v. State of UP*¹¹, when Justice Krishna Iyer looked at the bail petition, he said, "Even in serious cases, our justice system moves too slowly, which hurts the idea of a "fair trial" no matter what the final decision is. Speedy justice is a part of social justice because the community as a whole wants the criminal to be punished in a dignified and final way within a reasonable amount of time and wants the innocent to be spared the stress of criminal proceedings."

In *Sheela Barse v. Union of India*¹², the court said again that the right to a quick trial is a basic one. Right to a quick trial is an idea that is getting more and more attention and importance every day. In India, social order and peace depend on three things:

1. The legislature,
2. The executive, and;
3. The judiciary

There are two kinds of case delays:

- a. Delay in the court system, which is the time between when the case is filed and when it is brought up for trial.
- b. There was a delay because lawyers were being polite to each other and to the court.

But here are some of the most common reasons for delays:

1. The number of judges compared to the number of people in the country. When the number of people in the country and the number of pending cases is taken into account, there are very few judges available.
2. The way the judiciary works is independent, but that doesn't mean it doesn't have to answer to anyone. Taking this into account, we can say

¹⁰ Article 21, Constitution of India, 1950.

¹¹ *Babu Singh v. State of UP*, 1978 AIR 527, 1978 SCR (2) 777.

¹² *Sheela Barse v. Union of India*, JT 1986 136, 1986 SCALE (2)230.

that it makes the judges want to relax and be comfortable, which causes the cases to take longer.

3. The main reason why the cases are taking so long is because the court keeps putting them off for no good reason. Section 309 of the Code of Criminal Procedure ¹³(CrPC) talks about adjournments and the court's power to put off the hearing.
4. Time off for the court: There is a debate about giving courts time off when there are so many cases waiting to be heard in a country like India. Most countries, like the U.S. and France, don't have this kind of law.
5. Some cases are brought about by laws and laws on different topics that were passed quickly and poorly written.

Think about the Bhopal Gas Leak Tragedy, in which over 15,000 people lost their lives. Even after 20 years, the victims of that tragedy had to go through a lot of trouble to collect their due recompense. The plight of the Godhra riot victims who were gang raped in front of their horrified families. Take the Jessica Lal case; the police in Delhi have not yet captured the main suspect, Manu Sharma, who has thus far able to evade capture by the law enforcement establishment. The victims of the Best Bakery case, who had been expecting justice to be done on their behalf, are thrown into chaos when the case's climax begins with a crucial witness becoming hostile. The victims of the aforementioned situations now realise the hefty cost of the truth.

Comparing this belittling truth, the foreign laws where speedy trials as a matter of right is better than the Indian courts but still on the same path. Like in the case of *Dickey v. Florida*¹⁴, where the petition was filed multiple years ago and the case was postponed for immaterial reasons which delayed justice. Just like that famous quote goes that “justice delayed is justice denied”, even the US supreme court was inconsiderate of the trauma the victim suffers which makes the situations of the two countries a lot similar.

Very similarly in the case of *Beavers v. Haubert*¹⁵, When the court agrees, the government may decide not to prosecute the defendant on the charges currently pending in that court and may instead remove him to some other area for trial on the charges still pending there. It has not been determined if such an election is possible without the court's approval.

A defendant who has been indicted in much more than one district cannot use the right to a speedy trial and before a panel of judges of the district in which the

¹³ Section 309, Code of Criminal Procedure, 1973.

¹⁴ *Dickey v. Florida*, 398 U.S. 30 (1970).

¹⁵ *Beavers v. Haubert*, 198 U.S. 77 (1905).

offence was committed, which relates to the timing of the trial rather than the location of the trial, to prevent being transferred from the district where he is currently located to the other where the government has legitimately chosen to try him.

So, in a nutshell, rapid trials are under personal rights of every accused and it is also addressed under law, similarly in the US. The conditions of the pending cases are slightly better in the west than in India like in the case of *Barker v. Wingo*¹⁶, the court held that accused constitutionally protected right to a quick trial can't be set by a hard-and-fast rule. Instead, it can only be decided by balancing the behaviour of the defendant and the behaviour of the defendant. The court should look at things like how long and why the delay actually occurred, how the defendant used his right, and how the delay hurt him. In this case, complainant was not disadvantaged of his privilege to a criminal proceeding because there was no serious harm to him and the record showed that he really does not want a fast trial. This outweighs any other factors and forces the court to say that complainant was not dispossessed of his right to a jury trial. But due to very disproportionate number of judicial post-holders, it worsens the cases.

A speedy trial is ideal since a protracted process might thwart justice. There is a saying that goes, "Delay destroys justice." It is also said in *Rajiv Gupta v. State of Himachal Pradesh*¹⁷, that in this particular instance, the Apex Court ruled that if a trial for a crime that can get you up to three years in jail has been waiting for more than 3 years and the trial hasn't started, the criminal court must release and clear the person who was accused. As a result, it is stated that swift justice is essential to a well-functioning society and that issues should be resolved as soon as feasible. However, in order to achieve the aim of swift justice, the fundamental principles that guarantee "justice" must be disregarded since, as the saying goes, "justice delayed, justice buried." In other words, it's important to strike a balance between expediency and fairness.

1B: LEGISLATIVE FRAMEWORK

1. Article 21, Constitution of India¹⁸

Article 21 of the Indian Constitution protects two rights: the Right to Life and the Right to Personal Liberty. Over time, these rights have been interpreted to include more than just the right to live. For example, the right to life has been interpreted to include the right to a good quality of life and the right to a healthy way of life. The privilege to personal liberty

¹⁶ *Supra note 4.*

¹⁷ *Rajiv Gupta v. State of Himachal Pradesh*, 2000 SCC 10 68.

¹⁸ *Supra note 8.*

has been perceived to include the right to privacy, the right to travel abroad, and other rights.

2. Section 309, Code of Criminal Procedure, 1973¹⁹

Section 309 of the Code of Criminal Procedure says that every investigation or trial must go as quickly as possible. The section tells the courts to move criminal cases quickly from day to day until all witnesses have been questioned. Also, it helps give the magistrate the power to send the accused back to custody if that is what is needed after the crime has been recognised or the trial has begun.

This section also talks about the power of court system to delay or postpone proceedings. It stresses the necessity to avoid indefinite holds of action so that evidence doesn't get lost over time and the accused isn't bothered for no reason.

3. Section 483, Code of Criminal Procedure, 1973²⁰

This part talks about the High Court's responsibility to keep an eye on the Courts of Judicial Magistrates. Every High Court should have control over the Courts of Judicial Magistrates under the jurisdiction of it. This way, it can make sure that these Magistrates handle cases quickly and correctly.

4. CRITICAL ANALYSIS

The concept of a speedy trial is a fundamental right in many legal systems around the world, including the United States, where it is enshrined in the Sixth Amendment of the Constitution. The idea behind the speedy trial is to ensure that defendants are not subject to undue delays in the legal process and that justice is administered in a timely manner.

However, the definition of what constitutes a speedy trial can vary between jurisdictions and can be influenced by cultural, political, and legal factors. In some countries, for example, there may be different standards for criminal and civil cases, or different procedures for cases involving high-profile defendants.

Moreover, the practical implementation of the speedy trial can also be affected by factors such as court backlogs, resource constraints, and other systemic challenges that may impede the timely resolution of legal disputes.

When it comes to foreign law, the concept of a speedy trial may be viewed differently depending on the legal tradition and practices of the particular country. For example, in some civil law systems, the emphasis may be on

¹⁹ *Supra note 11.*

²⁰ Section 483, Code of Criminal Procedure, 1973.

ensuring a fair trial rather than a speedy one, while in common law jurisdictions, the right to a speedy trial may be given greater weight.

In addition, international human rights law recognizes the right to a fair trial, which includes the right to a timely and expeditious hearing of cases. The United Nations International Covenant on Civil and Political Rights, for instance, requires that any person charged with a criminal offense be brought to trial without undue delay.

Overall, the notion of a speedy trial is an important principle in the administration of justice, but its interpretation and implementation can be influenced by a range of factors, including cultural, political, and legal considerations.

5. CONCLUSION AND SUGGESTIONS

The impact of judicial hierarchy on the speedy trials with respect to common and English law is complex and varies based on the specific legal system and jurisdiction involved. However, in general, a hierarchical judiciary can have both positive and negative effects on the speed of trials. While higher courts can provide important oversight and ensure consistency in legal decisions, appeals and delays in the appeals process can prolong trials. Ultimately, the impact of judicial hierarchy on speedy trials will depend on a range of factors, including the legal framework, procedural rules, and court management practices.

For maintaining the status quo and to rather decrease the pendency of cases on the courts, each country has its own laws and procedures for ensuring speedy trials, so it's important to consult the laws and regulations of the specific country in question. However, here are some general suggestions for ensuring speedy trials in courts with respect to foreign law:

1. Set reasonable time limits for each stage of the trial process, such as pre-trial motions, discovery, and trial itself.
2. Prioritize cases involving defendants who are incarcerated or facing serious charges.
3. Use technology to streamline court processes, such as electronic filing and remote hearings.
4. Hire additional judges and court staff to reduce case backlogs and increase the speed of trials.
5. Consider alternative dispute resolution methods, such as mediation or arbitration, which can be faster and less costly than a traditional trial.
6. Ensure that defendants have access to effective legal representation, which can help expedite the trial process.
7. Foster international cooperation and communication to ensure that foreign legal proceedings are handled efficiently and effectively.