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## ***ABOUT US***

LEX BONA FIDE - LAW JOURNAL is an open access, peer- reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

**LEX BONA FIDE: LAW JOURNAL**

## **FASTRACK COURTS**

(by -Animesh Jha, DSNLU)

### **ABSTRACT**

Fast track courts are extra sessions of the courts, established by executive order, to speed up prosecutions in long-pending lawsuits, in particular those requiring trials. The 11th Finance Commission proposed a scheme for the creation of 1734 FTCs for the expeditious handling of cases pending before the lower courts. In this respect, Rs 500 crore had been allocated to the Board. The FTC's were to be formed by the Governments of the States in consultation with the respective High Courts. In each district of the nation, an average of FTCs had to be created. Judges for these FTCs have been named on an ad hoc basis. Judges have been appointed by the High Courts of the respective States. There are three primary sources of recruiting. Firstly, by recruiting members from among the competent judicial officers; secondly, by nominating retired High Court judges; and, thirdly, by naming members of the Bar of the State concerned. FTCs were initially developed over a span of five years (2000-2005). This Research Paper points out the history, success and current scenario of the Fast Track Courts. The key objective of the analysis is to assess the success of the Fast Track Court in terms of the swift dispensation of justice. When investigating every topic, we need to be aware of and be transparent about, the problems and what's going on, so specifically, when we talk about this particular subject, that is. Fast Track Courts, the definition of FTCs is rather broad but unclear. When we talk of FTCs, we don't only mean speedy justice, we also think about the open and fair trial with the highest justification for an explanation, but none of this is happening in the actual situations, there are only three main causes in the FTCs themselves. People who have speedy justice have a high belief that there is a lack of careful review of evidence and guidance. Many and many are not going to get justice because of the lack of expertise of judges in the FTCs.

### **SCOPE OF THE STUDY**

The study is limited towards Fast Track Courts, how far it is successful as the current scenario. The present study has adopted an exploratory research method to understand and analyse the Fast Track Court concerning speedy justice. Documents that explain the mentioned topics have been used i.e., articles, cases, books, essays.

### **INTRODUCTION**

The 11th Finance Commission recommended that 1734 Fast Track Tribunals (FTCs) be created in the country to make long-standing meetings and other cases available. As a "special trouble and upgrade grant" for the judicial administration, the Ministry of Finance has authorised Rs 502.90 crores. The framework has been in service for 5 years. In the light of the Fast Track Courts system, funds were

reported directly to the national governments through the Finance Commission Division of the Ministry of Finance. The governments of the Member States are primarily responsible for the creation of these courts in conjunction with the high courts concerned.

The FTC's was set up to deal with long-term litigation pending in the Session Courts and long-standing cases of acquitted inmates. Terms of the arrangement for the Fast Track Courts proposed to be concluded by the Eleventh Finance Commission on 31 March 2005. The Supreme Court, which monitors the operation of the Fast Track Courts in the case of Brij Mohan Lal Vs UOI & Ors. It was observed that the Fast Track Courts scheme could not be unexpectedly dissolved and, in its order of 31 March 2005, the Union of India was ordered to continue the Fast Track Courts.

The Government issued permission for the continuity of 1562 Fast Track Trials, which were operational for further litigation as of 31.3.2005. Period of 5 years, i.e. until 31 March 2010, with the provision of Rs. Fifty-nine crores. The Department of Justice is in charge of the procedure. Central Assistance under the scheme referred to above is limited to the assisted level, i.e. Rs. 4.80 lakh per court per year (recurrent) and Rs. Lakh at 860 (non-recurring). Both expenses incurred by the State as ongoing and/or non-recurring expenditure to be paid by the Government of the Province.<sup>[1]</sup>

### **HUMAN RIGHTS ISSUE**

While the Constitution does not describe the right to a speedy trial as a constitutional right, it is implicit in Article 21, which deals with the fundamental right to life and personal liberty. Justice Bhagwati read down this Article in his landmark Judgement of Hussainara Khatoun V/s State of Bihar. Justice Bhagwati said, a procedure that does not ensure a reasonably speedy trial, is not just and fair and would fall foul of Article 21 of the Constitution. In her opinion, speedy trial means reasonably expeditious trial which is an integral part of the fundamental right to life and liberty.<sup>[2]</sup> In that case, the court ordered the Chief of Police to expedite the investigation within a reasonable period. It also stressed that the right to a speedy trial should not be refused based on the institutional or financial failure of the State. In the same case, it was also found that multiple under-trial inmates were languishing in jail who had completed the full penalty for the suspected crime! The court condemned the delay and ordered it to be released. In the case of Abdul Rehman Antulay vs. vs. R.S.Nayak<sup>[3]</sup> the court referred to the observations made in Meneka Gandhi Vs Union of India<sup>[4]</sup> in which an integral connection between Article 14 and 21 of the constitution was explained. In its observation the court said, "The procedure contemplated by Article 21 must answer the test of reasonableness to conform with Article 14. It must be „right, just and fair“ not arbitrary, fanciful or oppressive, otherwise it would be no procedure at all and the requirement of Article 21 would not be satisfied". The Hon'ble Supreme Court in the case of Sheela Barse v Union of India<sup>[5]</sup> reaffirmed that speedy trial is a fundamental right of a person. In which the petition was filed to release all children below the age of 16 years detained in various jails in the

country. The court sought detailed information regarding them. The court also observed that the problems of detained children's would have easily addressed if the investigation and trial could have been expedited.

#### HISTORY OF FAST TRACK COURTS

The Fast Track Courts were first illustrated and tested in the United States of America. According to Roger W. Kaufman, the Arizona Phoenix Court had 41 judges and wanted 12 more. The right to get a speedy trial lead to priority criminal trials and civil cases have been put aside. Similar to India, the Nation Board of Supervisors has failed to create new court divisions to accommodate the exponential population growth. As a result of which Phoenix endured judicial delays. John P. Frank, a renounced constitutional scholar and solicitor, stated the situation as "the pig in the parlour." The civil litigation was said to be a resemblance of „Jarndyce vs Jarndyce, the case reported in „Bleak House“ which took very long for a court to decide: At the end of 1970, the Maricopa County Supreme Court engaged in a national campaign to reduce the delay in civil litigation in court proceedings. The software was structured to deal with cases within twelve months. The programme was dubbed the Civil Delay Reduction Project, which had few objectives: ie.

- To reduce the processing time needed for civil litigation.
- To encourage the court to investigate civil litigation from the start of the case to the disposition of the case. Sets up benchmarks at separate levels of civil litigation.
- To provide firm trial dates[6].

As we know, the right to a speedy trial is first stated in the landmark text of the English Constitution, the Magna Carta. It was later adopted in the Declaration of Rights of Virginia in 1776 and later affirmed in the General Declaration of Human Rights in 1948. Yet this ideology of the right to a speedy trial has evolved in the last twenty-five years, and still, it has to go a long way. This principle deals with the speedy resolution of cases to make the courts more efficient and have quick justice. Article 21 of the Constitution provides that "No citizen shall be deprived of his life or personal liberty except in compliance with the process laid down in law. In the case of Babu Singh v State of U.P. [7] Justice Krishna Iyer remarked, "Our Justice system even in grave cases, suffers from slow motion syndrome which is lethal to a fair trial" whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally be punished within a reasonable time and the innocence being absolved from the inordinate ordeal of being condignly and finally punished within and the innocent being absolved from the inordinate ordeal of criminal proceedings."

#### **THREE-TIER JUDICIAL SYSTEM IN INDIA**

The Constitution of India has set up an efficient and autonomous judicial system. The Supreme Court of Appeal is based in New Delhi. The Supreme Court shall supervise the High Court, which shall be formed in each State or for a community

of States with its benches. Subordinate Courts and other Courts formed at District and Taluka level shall be controlled and supervised by the High Courts. These courts uphold the rule of law and maintain the basic rights granted by the Constitution of India to every person. In the three-tier legal structure, the conflict opens with the High Court (Appeal/Original Jurisdiction) and eventually enters the Supreme Court. The High Court, along with its numerous courts and tribunals based in the state capitals, is the cornerstone of the three-tier structure. The Inferior Court is the first case where the issue is taken before the courts. Except in the cases referred to above, questions relating to infringements of constitutional rights have been brought before the High Court or the Supreme Court.

The Government of the State has the sole constitutional authority to assess and make up all the inferior courts of the High Court. These Subordinate Courts are categorised into two categories of courts of law, i.e. The Civil and Criminal Courts.

1. **CIVIL COURT:** District Judge is the highest civil court in the state. It has legal and administrative powers. It is empowered to administer and oversee any of the courts below. The District Judges Court is housed at the headquarters of the district. He is authorised to hold a civil and criminal trial on the grounds of which he is appointed District and Session Judge. Below the District judges are the additional District Judges, the Civil Judge Senior Division, the Chief Judicial Magistrate or the Judicial Magistrate First Class and Second Class, who are based in the District Subdivision and Tehsils as notified and defined by the State Government.

2. **CRIMINAL COURT:** In each jurisdiction, The District Judge, who is also a Session Judge, is empowered to hold a criminal trial and to pass any penalty prescribed by statute, including life and death sentences. Additional District and Session Judges are similarly allowed to hold a hearing and to hear civil appeals from the lower courts. The Assistant Sessions Judge was empowered to hear civil appeals and to complete a term of up to ten years in jail in any felony proceeding. The Chief Judicial or Additional Chief Judicial Magistrate can try cases that are punishable for up to seven years. The First Class Judiciary can impose any sentence other than life, death or incarceration of more than three years, and the Second Class Judiciary can only pass a sentence of up to one year. The Metropolitan Magistrates shall be appointed in Metropolitan Cities and shall be equal to the Judicial Magistrates.

3. **FAST TRACK COURTS:** Fast Track Courts are special courts created by the Government of the State for the pursuit of individual cases referred to them by the District Judge. The control of these courts depends on the position of a presiding officer, i.e. the judge. While the Additional Sessions Judge presides over the court, the court shall be allowed to punish any term, including life and death. If the Assistant Sessions Judge presides over the case, the term is limited to a period of ten years. Judges of the Fast Track Court are usually provisional or named for a short period for which they are considered Ad-hoc Judges. Page 13 The Fast Track Courts (FTCs) were founded in India in 2000 to clear the longstanding sessions and other lower court cases. According to reports, more than 3 lawsuits

are pending in all courts in the region. A total of 1734 FTCs were authorised in 2000 following the recommendation by the 11th Finance Committee. Out of this, only 1562 had been operating by 2005, the year when this experimental system was due to finish. In 2005, the central government agreed to continue funding the 1562 working FTCs for the next 6 years (till 2011). At the end of 2011, there were just 1192 FTCs in service. On December 16, 2012, the gang rape and resulting death of a young physiotherapy student changed everything. It has given the fast-track courts a new lease on life. The central government extended the deadline to March 2015 and also proposed Rs 80 crore to pay the salary of the judges. An order was passed to set up six fast-track courts in Delhi to deal solely with cases of sexual harassment. On May 6, 2002, The Supreme Court, which monitors the workings of the Fast Track Courts in the case of Brij Mohan Lal Vs UOI & Ors<sup>[8]</sup> observed that the system of the Fast Track Courts should not be dissolved all of a sudden and, in its order of 31 March 2005, ordered the Union of India to continue the Fast Track Courts.

### **FORMATION OF FAST TRACK COURTS IN INDIA**

The 11th Finance Commission in its report published in the year 2000, observed that there is a pendency of about two Crore cases in District Courts as well as Subordinate courts in states. There was great concern over the increasing pendency of cases and an urgent need was felt to take up remedial measures against it. According to the statement, these cases had been disposed of by approximately 12,378 courts in 1998. There were about 1,88,241 prisoners under trial languishing in the country's prisons. The average cost per prisoner is Rs. 55/- per day for diet, accommodation and transportation from prison to court and back. The state governments had proposed the setting up of new courts that might have cost around Rs 4,870 crore. A scheme that would require lower investment was proposed by the Finance Commission. The plan proposed that retired judges should be appointed on an ad-hoc basis for disposing of pending hearings cases instead of appointing new judges. The term was limited to two years for such ad hoc judges. Guidelines on the number of disposals per month have been recommended. Two million cases were expected to be resolved by 2005. If this work were successful, it would be extended to civil cases. The Ministry of Home Affairs also supported the new court's proposal. To establish additional courts to dispose of lengthy outstanding cases, the central government granted Rs. 502.90 crore. Concerning the average rates of disposal, new courts have been established on the state level. For 5yrs, the budget is about 29 lakh per court. The salary of the Judge, Superintendent, Stenographer, Peon, construction costs and other facilities necessary for these courts were included. Initially, 1734 new courts were planned across the country. The Finance Committee reported that ad-hoc courts would reduce to 1,20,000 the number of prisoners subjected to trials. This saves Rs. 240 crore annually.<sup>[9]</sup>

## **PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012**

To better counter the horrific crimes of sexual assault and sexual harassment of children by less vague and stricter legislative requirements, the Ministry of Women and Child Welfare has championed the adoption of the Act on the Protection of Children from Sexual Offences (POCSO) in 2012.<sup>[10]</sup> The Act has been passed to shield minors from sexual abuse, sexual exploitation and pornography and to allow for the creation of special courts for the investigation of those crimes and similar matters and accidents. In 2019, the Act was amended to increase penalties for different offences such that the offenders are prevented and a child is protected, safe and dignified. Only children surviving and adults criminals are protected by the POCSO Act. If two children are engaged in sexual intercourse, or if a children commit a sexual assault on an adult, the Act 2000 (Juvenile Justice) applies.

## **PROVISIONS RELATED TO FAST TRACK COURTS**

The Act creates special courts for investigating crimes in compliance with the Law, which protects the child's best interest at any point of court proceedings. The legislation requires child-friendly reporting methods, evidence recording, prosecution and disciplinary prosecutions. The Act makes it mandatory for an offender who is responsible for six months or with a fine to report a crime and to register a complaint, whether he or she fails to do so. It is a punishable crime where a commission of an offence under this Act is not reported by police and the special Juvenile Police Unit. The Act allows for the accelerated testing of the child's proof to be reported within 30 days. The Special Court shall also end the proceedings as far as possible within one year (Section 35).

## **DELHI GANG RAPE AND MURDER (2012)**

The 2012 rape and murder case involving Delhi gang rape and fatal attack in Munirka, a suburb in South Delhi, on 16 December 2012. The incident occurred when Jyoti Singh, a 23-year-old female physiotherapy intern, was beaten, gang-raped and tortured in a private bus in which she was travelling with her male companion. There were six others in the taxi, including the driver, who raped the woman and beat her companion. Eleven days after the attack, she was admitted to an emergency medical facility in Singapore but died two days later.<sup>[11]</sup> The event created widespread domestic and worldwide attention and was widely criticised both in India and internationally. Then there were state and central demonstrations in New Delhi, where thousands of demonstrators clashed with the security forces for failure to provide women with proper security. In major cities around the world, similar demonstrations took place. Given the fact that Indian law would not allow a newspaper to publish the name of a rape survivor, Nirbhaya, which means 'fearless,' became a sign of the resistance of women to the abuse of the entire world, is known to the victims.<sup>[12]</sup>

## **POST NIRBHAYA**

2012 was a landmark year for the history of our criminal justice system when a new statute is being developed for the first time to combat the rising cases of child abuse offences. In 2012, the Sexual Offences Act (POCSO) Protection of Children was introduced. POCSO expands the spectrum to ensure that children are protected from sexual crimes, including pornography. Different strict POCSO rules include instant imprisonment without the accused's bail. More amendments were made to the law after the Nirbhaya case. The Verma Committee of Justice was formed to make prompt suggestions to reform the country's rape laws. The Criminal Law Amendment Act (2013) or the Nirbhaya Act came into effect based on these recommendations.<sup>[13]</sup> In India, the trials of the victim and her kin are often lengthy and sometimes degrading. While the statute notes that the trial must be concluded within the last two months, the Supreme Court observed that, between January and June 2019, the trial was completed in only 4% of the 24,000 cases of a sexual offence. In the light of the rapid disposal of rape cases under the Indian Criminal Penal Code, and offences under the POCSO Act, the Union Government has developed an overall proposal for 1,023 separate Track-track courts (FTC). But nothing is promising to document the current short courts. As of 30 September 2019, 701,478 lawsuits remain pending before the 704 fast-track courts operating throughout India."<sup>[14]</sup>

## **CONCLUSION**

The impression of Fast Track Court in the mindset of the general public is that this justice delivery mechanism should be fast or immediate. However, one has to be taken into account that adjudication of justice shall be performed carefully with accountability and if we neglect to do so, as King Martin Luther notes that it will have a disastrous effect on our nation. The rule of law is that justice is served promptly and in a fair time. The parties would be cruel to demand justice and wait years for it to pass. In the Indian background, legal bodies have defined the problem of Indian court conjunction that leads to delays in law enforcement. Judicial and system-wide burdens often come from population development, trade and trade, recognition of rights, economic inequalities and other crime causes. Attempts have been made to solve the problems by satisfying demand such as the increase in manpower, facilities, technology, alternate dispute settlement mechanism, locomotive Adalat-Nyayalay, the court of law, mobile court, etc. Even the Fast Track Court has also tried to deal with this issue. The insufficient capacity of the judge and the delay in serving its vacancies leads to the discharge of rapids by the High Court and the Subordinate Court. There are about 13.5 judges per million in India; this number is very unsatisfactory relative to countries all over the world. In the United States, the ratio of judges is 110 per million; There are about 50, Canada 72 and Australia 41 in the United Kingdom. The shortage of funding from the Government of the Central and State leads to delayed recruitment of judges and administrative staff. Judiciary only assigned 0.4 per cent of the overall discretionary spending in 2012–13, which is quite inadequate, according to Justice B Lokur. As chairman of the Supreme Court's

electronic committee, Justice Lokur said there will be several far-reaching measures to accelerate the introduction of justice by technology in the next one or two years. The video conferencing between judges is most significant, particularly between judges in various courts. "In some courts, applications for appeals have been pending for several years since the same bench does not sit again for different reasons.<sup>[15]</sup> Senior Advocate Fali Nariman also stressed the use of new technologies in our justice system, adding that "there is a need for judges, lawyers and lawyers who can inspire a common man and support him in his search for happiness. This is achievable by engaging in innovations and innovations through our young lawyers." As we know, the idea of Lok Adalat and Alternative Dispute Settlement Process has, in a way, enabled the current system of justice to reduce the pendency and suitability of civil courts. However, the same cannot be extended to court prosecutions for non-compounding crimes. The only realistic alternative for e-government was to set up provisional judges with minimum remedies.



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