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Fast Track Courts in India: Past, Present and Future

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ABSTRACT

'Justice delayed is Justice denied'.²

-William E. Gladstone

India faces the crisis of slow judicial process and a large number pending cases. On the other hand, Article 21 of the Constitution, implicitly provides a constitutional guarantee to speedy trial. In order to realize this Constitutional Mandate, 'Fast Track Courts' (FTC's) have been set up as a solution to the extensive delays which affect the functioning of 'normal' courts in India. These courts through their expedited procedure, can bring about a significant change in the Legal System. However, these courts have been largely established to appeal to popular sentiments, and their jurisdiction is mostly limited to ad hoc cases involving gender-based crimes, and as such they have their limitations and are by no means the only solution to impart 'quick justice'. Thus, the need is to supplement these courts with systematic changes in substantive/procedural law and socio-economic scenario in the country.

Keywords: *Fast Track Courts, Constitution, Legal System, Procedure, Jurisdiction.*

I. INTRODUCTION

It is an accepted fact that India, faces the challenge of slow judicial process and a large number pending cases. At the same time, Article 21 of the Constitution of India, implicitly provides a constitutional guarantee for speedy trial.³ In order to realize this Constitutional Mandate, there have been calls for establishment of a new class of Judicial Fora in the form of 'Fast Track Courts' (hereinafter referred to as FTC's). The term Fast Track generally means a route or method which provides for more rapid results than usual.⁴ Thus, the FTC's have often been mooted as a solution to the extensive delays that plague the functioning of 'normal' courts in India. However, there is clear evidence that these Courts are plagued with a number of issues.

¹ Author is a student at Army Institute of Law, Mohali, India.

² E Chemerinsky, Justice delayed is justice denied, Berkley Law, (Mar. 18, 2021, 3:43 PM), <http://lawcat.berkeley.edu/record/1116139/files/fulltext.pdf>.

³ Prateek Handa, Constitutional Right to Speedy Trial, Legal Service India, (Mar. 18, 2021, 3:45 PM), <http://www.legalservicesindia.com/article/571/Constitutional-Right-to-Speedy-Trial.html>.

⁴ Fast Track, Oxford UK Dictionary, (Mar. 18, 2021, 3:45 PM), https://www.lexico.com/definition/fast_track

Accordingly, this Article, attempts to look at the History of FTC's in India, their jurisdiction, merits and demerits in addition to working of such courts in other countries and some recommendations for improving their functioning in India.

II. A BRIEF HISTORY OF FAST TRACK COURTS IN INDIA

(A) Early Period

Fast Track Courts were initially established by the Union Government to dispose of cases pending for a long time, especially the cases in Sessions Courts, across a variety of subject matters under a grant from the 11th Finance Commission (2000-2005). During this period, a total of 1,734 FTC's was established across the country. The Law Commission of India in its 188th report in 2003⁵, recommended setting up a of a permanent fast-track commercial division at every High Court to deal with high-value commercial disputes. In 2008, the Law Commission again recommended the setting up of FTC's to deal with pending cheque bounce cases as an *ad hoc* measure⁶. In April 2011, the Union Government stopped funding FTC's, after which most of them were shut down. The FTC's established during the period were set up without any legislative backing. The Union Government allowed the States to continue with the FTC's scheme, subject to their exclusive funding by State Governments. Thus, a few FTC's continued to function across several States.⁷

(B) New-Era of Fast-Track Courts

In December 2012, the 'Nirbhaya' case led to a nationwide demand to reform the Criminal Justice system especially in context of violence against women.⁸ Subsequently, the Verma Committee Report emphasized that speedy justice was essential for securing the legitimacy and efficacy of the legal framework. It also noted that integral to dispensation of justice, was the procedural law relating to complaints, evidence, medical findings, and sensitizing judges and prosecutors to the issues involved in such cases. Following the recommendations of the Verma Committee, the States were requested to set up new FTC's for trying cases of sexual assault.⁹ Thus, while the previous iteration of the FTC's was non-specialized, the newer FTC's were Specialized Courts to try sexual crimes. Further, The Criminal Law (Amendment) Act,

⁵ 188th Report, Law Commission of India, (Mar. 18, 2021, 4:00 PM), <http://lawcommissionofindia.nic.in/reports/188threport.pdf>.

⁶ 213th Report of Law Commission, Indian Kanoon, (Mar. 18, 2021, 4:00 PM), <https://indiankanoon.org/doc/72803968/>.

⁷ J. Kothari, The Myth of Speedy and Substantive Justice, Centre for Law and Policy Research, (Mar. 18, 2021, 3:00 PM), https://clpr.org.in/wp-content/uploads/2015/06/Fast-Track-Court_final.pdf.

⁸ 2012 Delhi Gang Rape and Murder, News 18, (Mar. 18, 2021, 3:43 PM), <https://www.news18.com/news/india/delhi-gangrape-what-happened-on-december-16-2012-and-status-of-the-case-730141.html>.

⁹ Chandrasekharan, *supra* note 5.

2018 amended the IPC 1860, the CrPC 1973, the Indian Evidence Act 1872 and the POCSO Act 2012 in order to provide for expeditious trial and disposal of cases exclusively pertaining to sexual offences involving women.¹⁰ The Nirbhaya Fund was established by the Union Government which aimed to set up of 1,023 FTC's at the cost of Rs. 767.25 crores.¹¹ As per the report of the Ministry of Law and Justice released on 26th June 2019, there were 581 FTC's functional in India.¹²

III. NEED FOR SETTING UP FAST TRACK COURTS

- 1. Speedy Trials:** FTC's have been established to ensure that the Constitutional Guarantee of Speedy trial is fulfilled, which has been absent in regular courts.
- 2. Clearing pending cases:** The primary objective behind the establishment of FTC's is to clear the enormous number of pending cases (4 Crore as of September 2021)¹³, reduce burden off District/Sessions and High Courts and to give proper attention and time to cases involving sexual assault etc.
- 3. Reduce the number of undertrials in jails:** India has one of the largest numbers of undertrials in the world (approximately 3.30 lakhs as of 2019¹⁴). To reduce this number, it has been proposed that FTC's should be set up and clear the pending backlog of cases.
- 4. Reflective of the State's commitment:** FTC's work to provide speedy justice to gender and sexual violence victims, and this signifies the State's commitment towards ending sexual and gender-based violence.

IV. JURISDICTION OF FAST TRACK COURTS IN INDIA

The FTC's established by State Governments have jurisdiction primarily in relation to sexual offences against women and children. The following matters have been dealt with by these Courts:

- Indian Penal Code [(Sections 375, 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB, Section 377) pertaining to sexual

¹⁰ The Criminal Law (Amendment) Act 2018, Ministry of Home Affairs, (Mar. 18, 2021, 3:30 PM), https://www.mha.gov.in/sites/default/files/CSdivTheCriminalLawAct_14082018_0.pdf

¹¹ A. Dutta, Government approves to set up 1,023 fast track courts under Nirbhaya Fund, Hindustan Times, (Mar. 18, 2021, 3:30 PM), <https://www.hindustantimes.com/india-news/government-approves-to-set-up-1-023-fast-track-courts-under-nirbhaya-fund/story-IsGm18uiPRaOkyBOV6Rt4I.html>.

¹² Status of Fast Track Courts in India, Legal Desire, (Mar. 18, 2021, 3:30 PM), <https://legaldesire.com/status-of-fast-track-courts-in-india/>.

¹³ India's Pending Court Cases on the Rise, Bloomberg Quint, (Mar. 18, 2021, 2:00 PM), <https://www.bloombergquint.com/law-and-policy/indias-pending-court-cases-on-the-rise-in-charts>.

¹⁴ Prison Statistics India-2019, National Crime Records Bureau Report.

offences against women].¹⁵

- Punishment for offences against Children under Section 3-18 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.¹⁶

In a few states, the FTC's have dealt with cases under the Narcotic Drugs and Psychotropic Substances (NDPS) Act [(Sections 15-32 (Offences and Penalties)] and Motor Accident Claims Trials under Sections 165-176 of Motor Vehicles Act, 1988.¹⁷

V. MERITS OF FAST TRACK COURTS¹⁸

- 1. Reduction in pending Cases:** FTC's have adjudicated over a million cases and have helped in reducing the case load burden on other courts.
- 2. Can Promote specialization and professionalization:** The establishment of FTC's has the potential to encourage specialization, especially in criminal law matters. Further these Courts may help to establish a new class of Professionals dealing exclusively with such offences.
- 3. Improvement in judicial efficiency and effectiveness:** FTC's by using faster procedures, speedy trial and judgment, have to some extent helped in boosting the judicial efficiency.
- 4. High case clearance rate and speedy trial rate:** FTC's in India have a high case disposal rate due to their speedy procedure and hence are efficient in solving cases in a shorter duration. In 2017, the FTCs in Jharkhand, Karnataka, Madhya Pradesh, Rajasthan and Tamil Nadu disposed of at least half their cases within one year.

VI. DEMERITS OF THE FAST TRACK COURTS¹⁹

- 1. Case Disposal Rate is low:** When compared to the other courts, the FTC's appear to be relatively quicker in functioning, but they have failed to facilitate the disposal of a large number of cases and, consequently the case pendency remains high. According to the National Crime Records Bureau 2021 Report the FTCs completed trials of 28,000

¹⁵ Bindu Gopal Rao, why 'Fast Track Courts' have been slow to ensure justice for women and children, Citizen Matters, (Mar. 18, 2021, 3:00 PM), <https://citizenmatters.in/fast-track-courts-justice-for-women-and-pocso-crimes-15297>

¹⁶ FTC Scheme, Department of Justice, (Mar. 18, 2021, 3:00 PM), https://doj.gov.in/sites/default/files/FastTrackSpecialCourtsSchemeGuidelines2019_0.pdf.

¹⁷ *Supra* note 11.

¹⁸ Vandana Peterson, speeding up Sexual Assault Trials: A Constructive Critique of India's Fast-Track Courts, Yale Human Rights and Development Law Journal, (Mar. 18, 2021, 3:00 PM), <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1137&context=yhrdlj>.

¹⁹ A. Kaul, The hard realities of India's fast-track courts, The Hindu, (Mar. 18, 2021, 3:00 PM), <https://www.thehindu.com/opinion/op-ed/the-hard-realities-of-indias-fast-track-courts/article28838795.ece>.

cases out of which only 22% of the cases took less than a year to complete.²⁰

2. **Low Conviction Rate:** The conviction rate in FTC's is quite low. The primary reason for the same is the incidence of witnesses turning hostile and failure of the prosecution to make credible effort to present alternative evidence.
3. **Improper Application of Substantive and Procedural Law:** FTC judgments indicate that, these Courts have not admitted relevant evidence placed before them and have not followed proper Cross-Examination procedures. The FTC's have often placed a reliance upon outdated tests such as the two-finger test and prior sexual history of the victim. Further, these FTC's don't follow any specialized fast track Procedure and the majority of such Courts even lack dedicated/specialized court-rooms, judges and prosecutors.

VII. FAST TRACK COURTS IN FOREIGN JURISDICTIONS²¹

A few examples include:

1. **Australia:** An FTC system is in place since 2006 for deciding Commercial and IPR disputes, and judgment is delivered within 6 weeks of commencement of proceedings.
2. **United Kingdom:** Part 28 of the Civil Procedure Rules, outlines a fast track process that can be followed by the regular Courts, with pre-trial arrangements to be made for listing evidence to be submitted etc.
3. **Spain:** Special fast track procedures are in place for speedy trial of cases relating to gender-based violence with measures for special protection of the victim in such cases.
4. **Ghana:** The FTC System decides cases directly involving investments, banks, commercial disputes and election petitions etc.

VIII. REFORM PROPOSALS²²

1. **Need for Dedicated Legislation:** The absence of legislative backing has resulted in several issues pertaining to the functioning of FTC's. Firstly, these Courts are set up and closed down on an *ad hoc* basis often in response to political compulsions. Secondly, there is no proper legal framework specifying the objectives, functioning and procedures to be followed, which has resulted in FTC's working like ordinary courts.

²⁰ V. Mohammad, Trials in fast-track courts last longer than regular ones: Data, Hindustan Times, (Mar. 18, 2021, 3:10 PM), <https://www.hindustantimes.com/india-news/trials-in-fast-track-courts-last-longer-than-regular-ones-data/story-dB87FaFdowfcv1rD4HN10I.html>.

²¹ Kothari *supra* note 6.

²² *Supra* note 11.

Thus, suitable Legislation on the matter is the need of the hour.

2. **Procedural Reform:** For proper working of FTC's, the procedural laws pertaining to the examination, investigation, filing of charge-sheet, the medical reports and appeals should be reformed.
3. **Training:** The Professionals working in FTCs such as judicial officers, prosecutors, lawyers should be properly trained in dealing with issue of violence against women etc.
4. **Proper Infrastructure:** FTC's in India need better infrastructure such as proper computer systems, sound video recording arrangements and access to relevant legal resources etc.
5. **Periodic Monitoring and Evaluation:** Once established, the FTC's should be subject to periodic evaluation to assess their effectiveness, through Data Collection and Surveys.

IX. CASE LAWS

A few relevant case laws include:

1. **Babu Singh v. State of UP²³:** The Supreme Court observed that *“Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to ‘fair trial’ whatever the ultimate decision.”*
2. **Hussainara Khatoon v. Home Secretary State of Bihar²⁴:** The Supreme Court held that speedy trial is a guarantee for right to life/liberty, and is a part of Article 21 of Constitution.
3. **Sheela Barse v. Union of India²⁵:** The Supreme Court reaffirmed that right to speedy trial is a fundamental right under Article 21 of the Constitution.
4. **Swaran Singh v. State of Punjab²⁶:** The Supreme Court observed that in adjourning and delaying the matter without any valid cause, the court unwittingly becomes party to miscarriage of justice.
5. **Brij Mohan Lal v. Union of India & Ors (2002)²⁷:** The Supreme Court upheld the constitutional validity of the FTC Scheme proposed by the Union Government. Further, the Court observed that the State High Courts have to play a pivotal role in the

²³ Babu Singh v. State of UP, 1978 SCR (2) 777.

²⁴ Hussainara Khatoon v. Home Secretary State of Bihar, 1979 AIR 1369.

²⁵ Sheela Barse v. Union of India, 1986 SCALE (2)230.

²⁶ Swaran Singh v. State of Punjab, (2000) 5 SCC 668.

²⁷ Brij Mohan Lal v. Union of India & Ors, (2002) 5 SCC 1.

implementation of the scheme and gave certain directions with a view to see that FTC's function properly. Further, the Supreme Court observed that these FTC's were to be established on an *ad hoc* and not on permanent basis.

6. ***Brij Mohan Lal v. Union of India & Ors***²⁸ (2012): The Supreme Court declined to strike down the policy decision of the Union of India not to finance the FTC scheme beyond 31 March 2011 and ruled that the States were at liberty to either discontinue the FTC scheme or to continue the same as a permanent feature.
7. ***Zahira Habibullah Sheikh v. State of Gujarat***²⁹ (*Best Bakery Case*): The Supreme Court acknowledged that there were substantive concerns in the manner in which the FTC's had considered evidence, especially as no proper Cross-Examination Procedure was followed by the FTC in this case involving the 2002 Gujarat Riots.
8. ***Mahesh Chandra Verma & Ors v. State of Jharkhand & Ors***³⁰: The Supreme Court reiterated its earlier observation that if the *ad hoc* direct recruits under the FTC's, who have over the years gained a lot of judicial experience are regularized the problem of arrears of cases can be handled to some extent.
9. ***Vinod Kumar v. State of Punjab***³¹: The Supreme Court observed that slow conduct of trial and the numerous adjournments granted by a court under Section 309 of CrPC was one of the causes of witnesses turning hostile during a trial.
10. ***In Re: Alarming Rise in the Number of Reported Child Rape Incidents***³²: The Supreme Court on 25th July 2019 issued directions which provide that in every district of the country, if there are more than 100 cases under the POCSO Act 2012, an exclusive/designated special court shall be set up which shall try no other offences except those under that Act.

X. CONCLUSION

FTC's through their expedited procedure, can bring about a significant change in the Legal system. However, in the Indian context the establishment of FTC's has been largely been done to appeal to popular sentiments, and these courts have been limited to *ad hoc* cases involving gender-based crimes, while other foreign jurisdictions have used them to resolve

²⁸ Brij Mohan Lal v. Union of India & Ors, (2012) 6 SCC 502.

²⁹ Zahira Habibullah Sheikh v. State of Gujarat, 2004 (4) SCC 158.

³⁰ Mahesh Chandra Verma & Ors v. State of Jharkhand & Ors (CIVIL APPEAL NO. 6647 OF 2012).

³¹ Vinod Kumar v. State of Punjab, (2015) 3 SCC 220.

³² In Re: Alarming Rise in the Number of Reported Child Rape Incidents, Suo Moto Writ Petition (Criminal) No. 1/2019

civil/commercial disputes as well. However, it has been time and again recognized that such Courts have their limitations and are by no means the only solution to impart 'quick justice', especially in absence of systematic changes in substantive/procedural law and Indian socio-economic scenario.
