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# NAVIGATING THE RIGHT TO SPEEDY TRIAL IN INDIA AND COMPARATIVE PERSPECTIVES FROM THE USA, CANADA, AND THE UK

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## ABSTRACT

*“Justice delayed is Justice denied” a legal maxim that highlights and underscores the importance of a speedy trial in the quest for justice. This research paper aims to hunt through the provisions of speedy civil and criminal trials in our country. It aims to provide a comprehensive understanding of the provisions, their constitutional roots, the precedents, and the aims of the judicial system for the furtherance and completion of this goal. This paper also traces the provisions relating to speedy trials in various common law countries and provides a comparative analysis of the problems they’ve faced along with the solutions devised. Through the exploration of various judicial precedents, there is an aim to highlight the important steps that have been taken to fulfil this goal and emphasize the critical role of speedy trials in the justice-delivering mechanism.*

## I. INTRODUCTION.

Pendency of cases is one of the most important issues in the country and needs urgent attention. As per the data extracted from the National Judicial Data Grid there exist pending cases which have been litigated for over 50 years as of now. The three oldest pending cases were registered in the years 1952 and 1953. The data further shows the grave situation of pending cases in the country according to the data there are approximately 67 lakh pending civil cases in the High courts of the country and around 17 Criminal Cases the situation of the civil courts is even worse as there exist almost 1 crore 6 lakh pending civil cases and around 3 Crore pending criminal cases in the lower courts of the country. In India trials can be divided into two main categories i.e. Civil trials and Criminal Trials. Both types of trials have their separate set of governing laws and bodies and differ from each other in procedural aspects. Civil proceedings

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usually involve wrongs against a private individual for remedy is usually the grant of damages and are dealt with by the Civil Procedure Code of 1908. Criminal proceedings are undertaken when there is a wrong against the state as a whole and are dealt with by the Code of Criminal Procedure. Both these sets of laws provide the people with the procedure the forums to approach for remedy have a different set of provisions in place for the speedy enforcement of their rights.

## II. PROVISIONS IN THE CIVIL PROCEDURE CODE

The civil proceedings officially begin with the plaint being admitted into the court. When a plaint is admitted into the court after this the defendant is called into the court to answer the allegations raised by the plaintiff and this is where the first and foremost provision comes into place section 27 of the CPC directs the courts to make sure that summons have been served to the defendants within 30 days and the Order V Rule 9(3) which allows service of summons via speed post or fax messages or electronic mail for the speedy service.

Order VIII Rule 1 of the CPC mandates the filing of the written statement within 30 days from the date of issuance of summons although a time extension of 90 days can be granted by the court but after the expiration of this period, the defendant forfeits his right to file a written<sup>2</sup> statement. This rule makes sure that the defendants file their submissions on time and not delay the proceedings.

Section 89 in the Civil Procedure Code encourages to promotion outside of court settlement of disputes. Section 89 says that whenever it appears to the court that there is an element of settlement that may be acceptable by both parties then the court shall formulate such terms and refer the parties to arbitration, conciliation, and judicial settlement including settlement through Lok Adalat or Mediation. The Order X Rule 1A,1B, and 1C talk about the procedure for the provisions under section 89. Order 1A mentions that after recording the admission and denials court can ask for the parties to opt for an out-of-court settlement Order X Rule 1B talks about the date of appearance of such parties in front of the forum and Order X Rule 1C talks about the appearance in court after failure to settle the dispute. On the same lines Order XXVII Rule 5B directs the court to reach a settlement between parties when there is a suit against the government or public officer.

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<sup>2</sup> Code of Criminal Procedure, 1973

Furthermore, after the amendment of 1999, Order XVII Rule 1 limited the number of adjournments a party could seek to three during the trial. All these provisions seek to speed up the civil trials in the country and show the conscious steps taken to achieve this goal.

### III. SUPREME COURT OBSERVATION

- Supreme Court in the case of [Yashpal Jain vs Sushila Devi and OR's](#). Acknowledged the situation of pendency of cases in the country and gave out a well-detailed plan of action for tackling this issue and speedy settlement of disputes. The key guidelines set forth by the court revolved around the following four major aspects:
  - Improvement of the Judicial System to suit the requirements of the modern society
  - Reduction of time for scrutiny of cases to less than 1 week
  - Summons and notices to be attached with the plaint on the date of filing, without stating the filing date.
  - Procedural reforms for civil as well criminal proceedings.

The directions issued by the Apex court were:

- i. "All courts at district and taluka levels shall ensure proper execution of the summons and in a time-bound manner as prescribed under Order V Rule (2) of CPC and the same shall be monitored by Principal District Judges and after collating the statistics they shall forward the same to be placed before the committee constituted by the High Court for its consideration and monitoring.
- ii. All courts at the District and Taluka level shall ensure that written statement is filed within the prescribed limit namely as prescribed under Order VIII Rule 1 and preferably within 30 days and to assign reasons in writing as to why the time limit is being extended beyond 30 days as indicated under proviso to sub-Rule (1) of Order VIII of CPC.
- iii. All courts at Districts and Talukas shall ensure after the pleadings are complete, the parties should be called upon to appear on the day fixed as indicated in Order X and record the admissions and denials and the court shall direct the parties to the suit to opt for either mode of the settlement outside the court as specified in sub-Section (1) of Section 89 and at the option of the parties shall fix the date of appearance before such forum or authority and in the event of the parties opting to any one of the modes of settlement directions be issued to appear on the date, time and venue fixed and the

parties shall so appear before such authority/forum without any further notice at such designated place and time and it shall also be made clear in the reference order that trial is fixed beyond the period of two months making it clear that in the event of ADR not being fruitful, the trial would commence on the next day so fixed and would proceed on day-to-day basis.

- iv. In the event of the party's failure to opt for ADR namely resolution of dispute as prescribed under Section 89(1) the court should frame the issues for its determination within one week preferably, in the open court.
- v. Fixing of the date of trial shall be in consultation with the learned advocates appearing for the parties to enable them to adjust their calendar. Once the date of the trial is fixed, the trial should proceed accordingly to the extent possible, on a day-to-day basis.
- vi. Learned trial judges of District and Taluka Courts shall as far as possible maintain the diary to ensure that only such number of cases can be handled on any given day for trial and complete the recording of evidence to avoid overcrowding of the cases and as a sequence of it would result in adjournment being sought and thereby preventing any inconvenience being caused to the stakeholders.
- vii. The counsels representing the parties may be enlightened of the provisions of Order XI and Order XII so as to narrow down the scope of dispute and it would be also the onerous responsibility of the Bar Associations and Bar Councils to have periodical refresher courses and preferably by virtual mode.
- viii. The trial courts shall scrupulously, meticulously, and without fail comply with the provisions of Rule 1 of Order XVII and once the trial has commenced it shall proceed from day to day as contemplated under the proviso to Rule (2).
- ix. The courts shall give meaningful effect to the provisions for payment of cost for ensuring that no adjournment is sought for procrastination of the litigation and the opposite party is suitably compensated in the event of such adjournment is being granted.
- x. At the conclusion of the trial the oral arguments shall be heard immediately and continuously and judgment be pronounced within the period stipulated under Order XX of CPC.
- xi. The statistics relating to the cases pending in each court beyond 5 years shall be forwarded by every presiding officer to the Principal District Judge once in a month who (Principal District Judge/District Judge) shall collate the same and forward it to

the review committee constituted by the respective High Courts for enabling it to take further steps.

- xii. The Committee so constituted by the Hon'ble Chief Justice of the respective States shall meet at least once in two months and direct such corrective measures to be taken by the concerned court as deemed fit and shall also monitor the old cases (preferably which are pending for more than 05 years) constantly.”

#### **IV. SPEEDY TRIAL PROVISIONS IN THE CRIMINAL PROCEDURE CODE**

The Criminal Procedure Code which deals with the criminal proceedings procedure in our country also has a well-elaborated and developed system of provisions for the speedy remedial.

Section 173. Report of the police officer on completion of the investigation.<sup>3</sup>

This section requires investigations to be finished on time, with a three-month window for cases involving child rape. A thorough report describing the people involved, the nature of the information, the arrests, and other relevant information must be given by the in-charge officer to the magistrate. Addressed are the magistrate's directives regarding the released accused, the communication of acts to informants, and the involvement of higher-ranking police. The section delineates the process of submitting pertinent documents and statements, permitting the omission of superfluous information, and exploring the potential for additional research subsequent to the first report submission.

Section 167. Procedure when investigation cannot be completed in twenty-four hours.

This section describes what to do when it is not possible to finish an inquiry in the allotted 24-hour time (Section 57). A copy of the case entries must be sent right away to the closest Judicial Magistrate by the officer in charge or the investigating police officer (rank not lower than sub-inspector) if an individual is arrested and there are reasons to believe the accusation is true but the investigation cannot be finished in a day. The accused must be sent to the magistrate at the same time.

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<sup>3</sup> Code of Criminal Procedure, 1973

The accused may be detained for up to fifteen days with permission from the magistrate, regardless of whether they have the authority to trial the case. The accused may be sent to a magistrate with the proper authority if the magistrate decides that additional detention is not necessary or does not have jurisdiction over them. Notably, under certain conditions, the magistrate may prolong the detention beyond fifteen days; nevertheless, in general, the maximum duration for major offenses should not surpass ninety days, and for lesser offenses, it should not surpass sixty days.

Section 309 of the CrPC:

Except in cases where the court determines an adjournment is required and documents the reasons for it, this provision requires that any investigation or trial go day-by-day until all witnesses in attendance have been questioned. Section 309(1) states that efforts must be made to complete the investigation or trial within two months of the charge sheet's filing date, particularly in situations involving specific offenses under the Indian Penal Code, such as sexual offenses (Sections 376, 376A, 376B, 376C, or 376D).

Section 468 of CrPC

The time frame in which a court may consider a particular offense is limited by this provision. If the specified term of limitation has passed, no court may, unless the Code specifies otherwise, begin proceedings for any of the offenses mentioned in sub-section(2).

- For offenses punishable simply by fine, the defined duration is Six months.
- One year for crimes carrying a maximum one-year sentence.
- 3 Years for offenses that carry a sentence of more than a year in jail but not more than three years.

The statute of limitations is also established based on the offense that carries the harshest punishment when numerous offenses are allowed to be tried concurrently.

Case Laws:

[P. Ramachandra Rao vs State of Karnataka on 16 April, 2002](#)

In this case, the following was held:

“(5) The Criminal Courts should exercise their available powers, such as those under Sections 309, 311, and 258 of the Code of Criminal Procedure to effectuate the right to a speedy trial. A watchful and diligent trial judge can prove to be a better protector of such rights than any guidelines. In appropriate cases, the jurisdiction of the High Court under Section 482 of Cr.P.C.

and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions.”

## **V. RIGHT TO SPEEDY TRIALS UNDER ARTICLE 21: RIGHT TO LIFE AND LIBERTY**

Article 21 of the Indian Constitution secures the right to a dignified life and personal liberty for the people of our country. Art. 21 is right which has given birth to a huge number of rights due to its vast scope and rich history. The judicial system has consistently held that the right to a speedy trial falls under the ambit of the right to life and liberty.

In the case of *Hussainara Khatoon vs. State of Bihar* 1979, the apex court highlighted that the right to a speedy trial is a fundamental right guaranteed under Art. 21 of the Indian Constitution and declared that inordinate delay in the disposal of cases is a violation of this right.

While Article 21 does not explicitly include the right to a speedy trial but the wide interpretation of the article has recognized this right as an integral aspect to enjoy the right to life and liberty and hence has been put under the ambit of Art 21.<sup>4</sup>

## **VI. SPEEDY TRIAL PROVISIONS IN OTHER COMMON LAW COUNTRIES: A COMPARATIVE ANALYSIS**

### **A. UNITED STATES OF AMERICA**

The right to a speedy trial has a very vast and rich history in the United States which dates back to almost 1791. The whole system is branched into two main provisions which ensure a speedy trial and fast adjudication of cases. The main components of this system are the 6<sup>th</sup> Constitutional Amendment and the Speedy Trial Act of 1974 wherein the latter is a manifestation of the idea and aims of the former.

The 6th constitutional amendment was brought in as a response to the rising concerns about the protection of the rights of the accused and the prevention of prolonged abuse of their rights. The article enshrined the right to speedy trial as a fundamental guarantee and since then has been a cornerstone in the American Judicial System.

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<sup>4</sup> U.S. Const. amend. VI

S.R. Lohman, Speedy Trial Act of 1974 - Defining the Sixth Amendment Right, 25 Cath. U. L. Rev. 130 (1975)

The official text quotes as:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his Favor, and to have the Assistance of Counsel for his defence.”<sup>5</sup>

The amendment does not limit itself to just expediting the judicial process but goes beyond it and makes sure that criminal defendants have the right to be tried by an impartial jury to prevent biases and prejudices furthering the aim of ensuring a fair as well as a speedy trial.

Fast forward to 1974, the United States enacted the Speedy Trial Act of 1974 which aimed at enforcement of the right to speedy trial. This was a legislative milestone that set various time limits for different stages in a federal criminal prosecution.

The act provides for filing of an information or indictment must be done within 30 days of arrest or the service of summons and trial shall commence within 70 days from the filing date or appearance of the defendant before an officer of the court. The potential pitfalls of rushing the defendants to trial were taken care of by the amendment of the act in 1979. This amendment introduced a minimum period, providing defendants with a reasonable window before trial commencement, unless they voluntarily agree to an earlier date. The act also recognized practical challenges and complexities that are inherent to a legal proceeding. Certain pre-trial delays which deemed reasonable were also excluded from the time limit set by the act which reflects the state's nuanced understanding of the intricate nature and process of a trial making it fair and speedy in nature.

## B. CANADA

In Canada, the right to a speedy trial is provided under the Canadian Charter of Rights and Freedom. The Charter of Rights stands as a cornerstone of the nation's commitment to safeguard individual liberties.

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<sup>5</sup> [U.S. Constitution - Sixth Amendment](#) | [Resources](#) | [Constitution Annotated](#) | [Congress.gov](#) | [Library of Congress](#)



The Nine Rights provided to the citizen under the charter are:

- to be informed without unreasonable delay of the specific offence;
- to be tried within a reasonable time
- not to be compelled to be a witness in proceedings against that person in respect of the offence;
- to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- not to be denied reasonable bail without just cause;
- except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
- not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
- if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
- if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Section 11(b) specifically addresses the right to be tried in a reasonable time frame which is very similar to the provision set forth by the United States of America. This provision is made to prevent the individuals from protracted uncertainty and delay in the justice delivery mechanism. Section 11(b) does not set a time limit but leaves it open for judicial interpretation to constitute what “unreasonable delay” might be.

In the leading case of [R. vs Finta \(1994\)](#) the Apex court clarified that the period of an unreasonable delay commences once the charges are laid and reasonableness is evaluated based on investigative work, and case complexities. Parties involved and other local resources.

Then came the Jordan Test which was coined in 2016. This test established a framework of time threshold for trials. It was held that any time exceeding 18 Months for a<sup>6</sup> provincial court case and 30 months for a superior court case shall be termed as an unreasonable delay.

### C. UNITED KINGDOM

The United Kingdom's justice-delivering system is built on a strong foundation of commitment to safeguarding the rights of the accused. The United Kingdom is a signatory to the European Convention on Human Rights and the right to complete a trial within reasonable time is protected under article 6 of the ECHR

Article 6 of the ECHR says that

*“Article 6 – Right to a fair trial*

*1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

*2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*

*3 Everyone charged with a criminal offence has the following minimum rights:*

*a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*

*b to have adequate time and facilities for the preparation of his defence;*

*c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*

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<sup>6</sup> Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11.; Harshita Kumari, The Rights of a Criminal in the United Kingdom: A Comprehensive Overview, Legal Xpress, (September 6, 2023)

*d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*  
*e to have the free assistance of an interpreter if he cannot understand or speak the language used in court”*

Article 6 of the European Convention on Human Rights guarantees the right to fair and a speedy trial. The provisions outline certain basic rights for the accused which involve the accused being promptly informed about the charges against him, adequate time for preparation of the defence, the right to legal assistance, and examination of witnesses. Concerning the speedy trials article 6 highlights the importance of timely justice along with the maintenance of sanctity of a fair trial.

The Criminal Procedure Rule 3.2 highlights the importance of an active case management system promoting expeditious legal proceedings. The rule lays a duty on the court to actively manage the case by early and prompt identification of key issues and needs of witnesses, setting up of a clear timetable for the progression of the case, monitoring compliance, and promoting efficient evidence presentation. There is an emphasis on discouraging delay in trial and use of technology wherever possible to fast track the case all this protrudes to show the commitment towards ensuring a speedy trial.

## **VII. CONCLUSION**

In the light of the provisions and judicial precedents stated above we can rightly conclude that the right to speedy trial has been recognized by the courts and has been progressively upheld by the judiciary as well as the legislature. Drawing comparisons with the legal frameworks of other common law countries such as the USA, Canada, and the UK we can rightfully say that our country has taken significant strides in ensuring this right and securing a fair and fast justice delivery system. The judiciary through various landmark cases has laid the foundation to enhance the efficiency of court procedures and alleviate the pending cases. Our journey towards a more responsive and committed justice system is in full force and our commitment towards this goal remains critical in fostering a fair and equitable justice system.