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Analysing the Role of Fast Track Courts and E-Complaint System in Deterring the Crime against Women in India

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ABSTRACT

In India, a crime against women and children below the age of twelve faces no dearth of legislative aids in paper to prevent it. However, the efficacy of such aids reach is a lingering question this research paper intends to answer. Various state governments have positively introduced Fast Track courts and E-complaint system. This article discusses about the domestic violence cases during the Covid-19 pandemic and the impact of the e-complaint system on it. While India proudly proclaims its heritage and achievements, one big mark that blots a lot of its glory is the number of rape cases against all genders. As per the recent report of the National Crime Records Bureau (NCRB) in 2019, an average of 88 rape cases happens in India per day. There has been an increase in the rate of crimes against women by 7% from 2018 to 2019. Moreover, it has been recorded that the conviction rate is less than 30% in India. These figures show that this issue deserves to be dealt with by stringent punishments, appropriate legislative aids, and diligent implementation.

This article is a humble effort to understand the competence of fast track courts and e-complaint system in India to provide speedy justice. It discusses how fast Justice a boon and hurried justice a bane is. It also explores how can these existing legal aids be made more accessible and reap better results. It is concluded that, the distinction between desirable fast justice and undesirable hurried justice should be recognized. A holistic approach should be taken to improve India's Fast Track Courts and E-complaint system.

I. INTRODUCTION

It is observed that a significant reason for the low conviction rate in India is the long driven path towards Justice. For heinous crimes such as rapes where a strong mental element of the perpetrator is involved, it is pertinent that a sense of fear and moral obligation is instilled within the society. Fast delivery of Justice can help in achieving this. Fast Track Courts' concept rests its foundation on the common saying that "justice delayed is justice denied."

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Fast Track courts were introduced in India by the Eleventh Finance Commission in 2000. It suggested a scheme to have 1734 Fast Track Courts by 31st march 2005 in the country. However, the Supreme Court observed in the case **Brij Mohan v Union of India**², "The scheme of fast track courts should continue for the next five years and should not be stranded suddenly." The Fast Track Courts were continued to be funded by the central government until 2010 and then left at the state governments' discretion. Later, the Criminal Law (Amendment) Act 2018 and POCSO (Amendment) Act, 2019 were introduced. For effective implementation of the same, The Supreme Court recommended to set up more Fast Track Courts for speedy trial of rape and POCSO Act cases. Each of these Fast Track Courts is expected to complete a minimum of 165 cases in a year.³

E-Complaint system:

Domestic violence is the least reported and recognized of all the cases of violence against women in India. It has been surveyed that 86% of women who experienced violence did not seek help, 77% of the victims resorted to absolute silence regarding this issue.⁴

The major reasons for the same include the victim's financial instability and the fear of being out casted from their own family and society, prevalent in India's rural parts. In the current scenario of Covid-19 pandemic, where domestic violence cases peaked up, it is essential to have a better understanding of the scope of this legal aid. This study does not intend to undermine domestic violence faced by men. However, it is beyond the scope of this paper as it is not predominant in India.

Literature Review:

"Speeding up Sexual Assault Trials: A Constructive Critique of India's Fast-Track Courts"⁵ by Vandana Peterson, This journal article extensively covers multiple angles of Fast Track Courts. The first part discussed types of sexual violence against women in India. In the next part, Fast Track Courts' evolution in India is elaborated. Later a comparison is made with international models, and lessons imparted from them are discussed. This helped the researcher to develop a holistic understanding of Fast Track Courts.

² Brij Mohan Lal v. Union of India, (2002) 5 S.C.C. 615 (India).

³ Department of Law and Justice, *Scheme on fast track special courts (ftscs) for expeditious disposal of cases of rape and protection of children against sexual offences (pocso) act*, MINISTRY OF LAW AND JUSTICE, GOVERNMENT OF INDIA (Nov. 14, 2020, 8:17 AM), <https://doj.gov.in/node/113907> .

⁴Vignesh Radhakrishnan et al., *Domestic violence complaints at a 10-year high during COVID-19 lockdown*, THE HINDU, (Nov. 14, 2020, 10:53 AM), <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>.

⁵ Vandana Peterson, *Speeding up Sexual Assault Trials: A Constructive Critique of India's Fast-Track Courts*, 18 YALE HUM. RTS. & DEV. L.J.,1 (2016).

"A Scheme on setting up 1023 Fast Track Special Courts for Expeditious Disposal of Cases of Rape and POSCO Act"⁶, by Ministry of Law and Justice, Government of India: It widely covered the necessity of Fast Track courts in India. An elaborate discussion of the objectives and functioning of these courts is included along with a detailed view of the fund allotted for it. It was resourceful for the researcher to understand the intentions behind introducing special courts.

"Crime in India 2019 Volume I"⁷, by National Crime Records Bureau (NCRB), Ministry of Home Affairs, Government of India: It provided detailed statistics on the actual status of crimes in India. It recorded that the predominant cases of violence against women include cruelty by husband or his relatives, Assault on women to outrage her modesty, and abduction of women. Statistics used by the researcher in this study is derived predominantly from this record.

"Effective complaints procedures"⁸ from records of U.N. Women, This article deals with the fallouts of the existing complaint system and provides suggestions for its betterment. The first part deals with ways to improve the efficiency of the system as a whole. The second part dealt with better investigation procedures for cases of violence against women. It helped the researcher to gain new perspectives.

"Violence against women: Where are the solutions?"⁹ by Indira Sharma, This journal article dealt with the multiple facets of violence against women in India and their impact on society. It identified and categorized different types of atrocities against women. The socio-cultural factors effecting the same is also discussed. The researcher gained knowledge about the background of the issue and explored cultural practices behind the same.

"Domestic violence complaints at a 10-year high during COVID-19 lockdown"¹⁰, The Hindu: This article detailed the facts and figures of domestic violence during the lockdown based on data collected by a survey. It concludes that most victims do not resort to any legal aid when being subjected to domestic violence. This article inspired the researcher to understand the ground reality and the reasons behind this painful situation.

⁶ *Supra* note 3

⁷ National Crime Records Bureau (NCRB), *Crime in India 2019 Volume I*, MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA, (Nov. 13, 2020, 12:07 PM), <https://ncrb.gov.in/en/crime-india-2019-0>.

⁸ U.N. Women, *Effective complaints procedures*, VIRTUAL KNOWLEDGE CENTRE TO END VIOLENCE AGAINST WOMEN (Jan. 10, 2021, 10:51 AM), <https://www.endvawnow.org/en/articles/1980-effective-complaints-procedures-.html>.

⁹ Indira Sharma, *Violence against women: Where are the solutions?*, 57(2) INDIAN J. OF PSYCHIATRY 131, 131-139 (2015).

¹⁰ *Supra* note 4.

II. SPEEDY JUSTICE AS A FUNDAMENTAL RIGHT OF THE ACCUSED AND THE AGGRIEVED.

Speedy trial is a quintessential part of righteous Justice. The United States recognized speedy trial as a constitutional right, and the European Convention on Human Rights also assures everyone arrested trial within a reasonable time. In India, speedy trial is recognized as a fundamental right under Article 21 of the Indian Constitution. The interpretation of right to life and personal liberty was widened to include the right to speedy Justice. It is in favor of the accused if they are innocent and in favor of the aggrieved otherwise.

The speedy trial concept was first introduced in the case of **Hussainara Khatoon v. State of Bihar**¹¹. It was held that a person's personal liberty could have encroached only under just, fair and reasonable procedure established by law. In **Katar Singh v. State of Punjab**¹², the concept of speedy Justice was read under Article 21 and interpreted as a fundamental right. A delayed Justice deprives the aggrieved of deserved Justice and mentally tortures the accused even before proven guilty. It was reiterated in the case of **Sheela Barse v. Union of India**¹³. The mental stress and anxiety accompanied by the lengthy path for Justice can itself be a punishment, as held in **Arun Kumar Ghosh v. State of Bengal**¹⁴.

The principles of natural Justice that ensure fairness in action states that a judgment should be unbiased, heard from both sides, and reasoned adequately. It was held in the case of **Mohinder Singh Gill vs. Chief Election Commissioner**¹⁵, "the concept of fairness should be in every action whether it is judicial, quasi-judicial and administrative work." Therefore, while ensuring speedy Justice, one must not compromise on these basic principles of fairness. In some instances like corruption and malpractice in the judicial system, a fair trial is not held. Hence, specific guidelines were introduced in **Abdul Rehman Antulay v. R.S. Nayak's**¹⁶ case, and it held that quashing of a case should depend on its nature.

III. COMPETENCE OF FAST TRACK COURTS IN INDIA

Fast Track Courts were introduced in India to reduce the pendency of cases. However, according to NCRB data in 2019, 81% of the 26,965 cases held by fast-track courts and 69% of the 17,155 cases disposed of by the POCSO courts took between one to ten years for the

¹¹ Hussainara Khatoon v. State of Bihar, (1980) 1 S.C.C. 98.

¹² Katar Singh v. State of Punjab, (1994) 3 S.C.C. 569.

¹³ Sheela Barse v. Union of India, (1986) 3 S.C.C. 632.

¹⁴ Arun Kumar Ghosh v. State of Bengal, (1972) 3 S.C.C. 823.

¹⁵ Mohinder Singh Gill vs. Chief Election Commissioner, (1978) 1 S.C.C. 405.

¹⁶ Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 S.C.C. 225.

trial to be completed.

In the case of **Babu Singh v. State of U.P.**¹⁷, Justice Krishna Iyer emphasized, "Speedy Justice is a component of social Justice since the community, as a whole, is concerned in the criminal being punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings."

The effectiveness of Fast Track Courts can be evaluated by the fairness of the judgment pronounced also. It has been observed that most cases held by Fast Track Courts are later appealed to higher courts as the result was not satisfactory. Moreover, another scenario where innocent people are framed to dispose of a case quickly is also observed. It shall be noted that fast Justice becomes a great relief to the victims and the wrongly accused, but hurried Justice will jeopardize these benefits.

Major fallouts of Fast Track Courts:

- Even though Fast Track Courts are established as special courts, no special powers are given to it. A Fast Track Court is expected to follow every procedure as that of a regular court and still arrive at faster conclusions, which is not practical.
- Most of the Fast Track Courts are understaffed and have incompetent infrastructural amenities. I.T. infrastructure and mechanisms to procure evidence are notably weak in such courts.
- Delay in receiving reports and frivolous adjournments are also a reason for the incompetence of these courts.

It can be concluded that a holistic approach should be followed by the special courts to ensure fast and fair Justice. It shall be kept in mind that Justice delayed is Justice denied, but Justice hurried is Justice buried.

Suggestions for fast and fair justice from international models-

Few suggestions inspired by the model of special courts in the United Kingdom and the United States are discussed in this chapter. In India, more efforts should be taken to increase the efficacy of courts while the structure already exists.

1. It is essential to clearly define a shorter procedure for special courts as observed in the U.K. model. Moreover, there should be a clear demarcation of the type of cases transferred to these courts, which is vague in India.

¹⁷ Babu Singh v. State of U.P., (2005) 9 S.C.C. 741.

2. State governments fund the Fast Track Courts' at present. It is observed that every state government does not give the deserving importance for it. Either this should be appropriately monitored, or the central government should take it up again to ensure uniformity.
3. It can be noted from the U.S. model that there is more community engagement in the courts, which develops more public trust. The gap between the individuals and the judicial system is reduced by the same.
4. Further, it would be more productive to have specialized judges for special courts. For instance, POCSO courts can have trained judges who have better expertise in that field. It could be achieved by sensitizing the judges of the Fast Track courts before recruiting them.

IV. E-COMPLAINT SYSTEM AS A LEGAL AID FOR DOMESTIC VIOLENCE CASES

From a common man's perspective, a judicial system's success also lies in its ease of accessibility. An E-complaint system introduced for the same is a positive step towards this. Victims of domestic violence in India best harvest the fruit of this system. A legal aid like an E-complaint system especially in the present scenario, where a ten year high of domestic violence has been reported.

Various state governments and National Commission for Women have online portals for registering an e-complaint. It also published a WhatsApp number to report domestic violence incidents during the lockdown, considering the sudden spike in the same. In total, it received 2,043 complaints of crimes committed against women in June, of which 452 were cases of domestic violence.

A laudable change observed here is that such legal aids have instilled a fear among the perpetrators because they are dealt more seriously now. The fact that filing a complaint is easier now has certainly instilled more confidence in a major section of empowered women. Nevertheless, financially unstable women are still to come out of such atrocities.

Even though the system looked to be effective, the reality is that more than half of the domestic violence cases are still not reported. As commonly believed, it could be due to the victim's financial instability and insecurity, but the tedious aftermath of filing a complaint could also be a reason. The police inquiry following a complaint online in many cases has resulted in the ill-treatment of the victim. Further, a legal battle need not be affordable for many women.

Another scenario observed is that when such easily approachable legal aids are introduced,

society believes that women might take it for their advantage. It creates an inhibition in the women filing complaints as they are concerned if their complaints would be taken seriously or stigmatized.

Suggestions to develop more public trust in the system-

1. The confidentiality of the complaint shall be made at the discretion of the complainant. The victim shall have the liberty to choose how public the case should be.
2. The burden of proof shall be transferred to the accused, which will make the entire process easier for the aggrieved.
3. The officers in charge shall be given special training to respect the victim's privacy and ensure prompt proportionate responses.
4. There shall be complete transparency of the procedure followed between the investigating officer and the victim.

It can be concluded that even though the E-complaint system there is much to be improvised in this field. Making the process of filing a complaint easier would not deter the number of incidents. It shall also be ensured that the filed complaints are seriously dealt with.

V. CONCLUSION

The ever increasing number of crimes in India points to the shortcomings of our judicial system. Speedy justice is an integral part of a perfect judicial system provided that the judgment is fair and reasonable. The distinction between desirable fast justice and undesirable hurried justice should be recognized. A holistic approach should be taken to improve India's Fast Track Courts and E-complaint system. Privacy and comfort of the victims should be given utmost importance for domestic violence cases. An appropriate framework for an Ideal judicial system already exists in India. Diligent planning and proper utilization of resources can certainly reap better results.

A strict demarcation of the type of cases entertained in a Fast Track Court and clarity regarding its funding is important. A collaborative approach can be adopted to improve the infrastructure and administration of Fast Track Courts. Improving community engagement will be key to its better performance.

E-complaint system can be most effective if the procedure following it is made more victim friendly. It is important to make sure the victim does not go through further trauma while seeking justice. For this, transparency of the procedure between victim and investigating officers is a must. Special care shall be taken to ensure proportionate action is taken in every

reported case.

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