



‘HOW LONG IS TOO LONG’ - ISSUES & CHALLENGES IN FIXATION OF OUTER TIME LIMIT FOR DISPOSAL OF CRIMINAL CASES IN INDIA: COMPARATIVE STUDY OF INDIA & CANADA

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ABSTRACT

Timely delivery of justice is part of human rights. Right to a speedy trial is integral part of Rule of Law and Constitutionalism. Not only India, many countries across the globe are suffering with backlogs in criminal adjudications. Inordinate delay in disposal of criminal cases, reduces the trust of common man in the criminal justice administration. Hon'ble Supreme Court of India in Hussainara Khatoon v. Union of India recognized right to a speedy trial as part of Article 21 of the Indian Constitution. From pre-independence to till date executive, legislature and judiciary took several steps to address the problem through legislative, administrative and judicial reforms. Despite of efforts, pendency rate in criminal trials is increasing day-by-day in India. Questions were raised before the Hon'ble Supreme Court about the fixation of outer time limit for disposal of criminal cases. In Raj Deo Sharma v. State of Bihar I & II, the apex court rejected the idea of fixing a time frame for speedy disposal of criminal cases, stating that acquittal of accused on the basis non-disposal of the case within the prescribed limitation period, is a danger to the existence of the criminal justice system. In 2016, Supreme Court of Canada in R. Jordan prescribed a presumptive ceiling limit for ensuring the right to a speedy trial of the accused with an exception to criminal cases involving adults. In 2020, R v. K.G.K, the similar presumptive ceiling limit has been extended to the cases involving youth. However, the apex court of Canada laid down the caution rule, how long is too long, will depend on a host of factors, the existence of which will depend on the peculiar circumstances of each case. The article analyzed the stand of Indian judiciary over fixing an outer time limit for the conclusion of criminal trial and comparing the India's position with Canada.

Key words: Right to a Speedy Trial, Criminal trial, Fixation of Outer Time Limit, Presumptive ceiling limit, How long is too Long

1. INTRODUCTION

Timely delivery of justice is a part of human rights. Denial of speedy justice is a threat to public confidence in the administration of criminal justice. The fundamental requirement of a good criminal justice system is the speedy justice. The constitutional values enshrined in the preamble of the Indian Constitution i.e., social, economic and political Justice, liberty of thought and expression, equality of status and opportunity and fraternity assuring the dignity of the individual and unity and integrity of the nation cannot be achieved, if there is denial of right to a speedy trial.

The Magna Carta provides that, '*Clause 40 - To no one will we sell, to no one will we refuse or delay, right or justice*'. According to the International Covenant on Civil and Political Rights (ICCPR), 1966 provides that '*Article 14(3): everyone shall be entitled.... To be tried without undue delay*'. Canadian Charter of Rights and Freedoms provides that '*Article 11 - any person charged with an offence has the right... (b) to be tried within a reasonable time*'. European Convention on Human Rights (ECHR) provides that, '*Article 6(1) - 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.*'

In *Hussainara Khatoon v UOI*³, the apex court established that right to fair and speedy trial is integral part of right to life and personal liberty guaranteed under Article 21 of the Constitution. The apex court held that delay in disposal of criminal cases violates the right to a speedy trial leading to violation of right to fair trial.

Further, the apex court in *Imitiyaz Ahmad v. State of UP and Ors*⁴, observed that long delay has the effect of blatant violation of rule of law and adverse impact on access to justice which is a fundamental right. The apex court in *Anita Kushwaha v. Pushap Sudan*⁵ held that providing effective adjudicatory mechanism, reasonably accessible and speedy, was part of access to justice.

In *Noor Mohammed v. Jethanand and Anr*⁶, the apex court directed the Chief justice of the High Court of Rajasthan and other Chief Justices of different High Courts to avoid inordinate delay in matters which can really be dealt with in an expeditious manner. The court opined that '*putting a step forward is a step towards the destination. A sensible individual inspiration and a committed collective endeavor would indubitably help in this regard...*'.

Indian judiciary is criticized for increasing backlogs in criminal trials and for inordinate delay in disposal of cases. The critics pointed out that delay in conclusion of criminal trials not only frustrates the accused, victim and society, but also the justice itself. The Hon'ble Supreme Court in plethora of cases held that social justice includes legal justice and delay in disposal of criminal cases amounts to clear violation of social and legal justice.

The Criminal Procedure Code, 1973 lays down various provisions for expediting the criminal trial. The Central Government and State Government established various committees and commissions for developing plan of action for reducing the arrears. From Rankin Committee, 1924 to 245th Law Commission report (2009), there

³ *Hussainara Khatoon v UOI* [1978] 2 SCR 621

⁴ *Imitiyaz Ahmad v. State of UP and Ors* (2012) 2 SCC 688

⁵ *Anita Kushwaha v. Pushap Sudan* AIR 2016 SC 3506

⁶ *Noor Mohammed v. Jethanand and Anr* 2013 (2) SCALE 94

was acknowledgement of increasing backlogs and various reforms and structural changes were brought in to equip the judiciary to combat the increasing litigation and pendency rate.

Despite of all efforts, there is still the existence of the backlogs and pendency of cases for more than 10 years. According to the National Judicial Grid Data (NJGD), as on 7th July 2020 there are a total of 24.46% of criminal cases pending for more than 5 years (0.21% cases - above 30 years; 1.30% cases - 20-30 years; 7.64% cases - 10-20 years old; 15.30% cases - 5-10 years old).⁷

This reflects that the efforts taken for reducing the arrears are giving results to some extent, but not providing a complete solution to the problem. Time and again, the questions were raised by the critics about the possibility of fixing an outer time limit for conclusion of criminal trial.

The apex court plethora of cases rejected the possibility of fixation of outer time limit for the disposal of criminal cases by stating that the same will go against the right to fair trial of the accused. According to the apex court, justice delivered in haste cannot guarantee the fairness of the procedure. In *A.R.Antulay v. R.S.Nayak*⁸, the apex court opined that *each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. It cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate.*

But the question is about defining the delay. How long a delay to be considered as acceptable delay or reasonable delay? whether fixation of outer time limit for conclusion of criminal trials can improvise the situation of the accused who is innocent sufferer of the delayed proceedings. What is the methodology or technique adopted by the other countries for combating the menace of inordinate delay in conclusion of criminal trials?

In *Raj Deo Sharma (I) v. State of Bihar*⁹, the apex court rejected to fix an outer limit for conclusion of criminal trials by stating that the same would hamper the right to fair trial of the accused. According to the apex court justice delivered in haste of concluding the criminal trial, may result into an adoption of unfair procedure. The same stand is being taken by the apex court in recent case *Hussain and Anr v. UOI*¹⁰.

Though Supreme Court of Canada in *R. Morin*¹¹ adopted the same approach as like Indian Supreme Court, still in 2016 stepped towards the fixation of outer time limit for the conclusion of criminal trial in *R v. Jordan*¹². In 2020, the Supreme Court of Canada in *R. v. K.G.K*¹³. attempted to adopt and interpret the ruling of *Jordan*, and while assessing the delay at the end of the trial judge, held that the trial judge took a long time, but not “markedly longer” than he should have.

This reflects that the problem of inordinate delay in disposal of criminal cases is a global problem and Supreme Court of Canada is also adopting *sui generis* tailored method to cope up with the issue.

⁷ <<https://njdg.ecourts.gov.in/njdgnew/index.php>> accessed on 7th July 2020

⁸ *A.R.Antulay v. R.S.Nayak* [1984] 2 SCR 495

⁹ *Raj Deo Sharma (I) v. State of Bihar* (1998) 7 SCC 507

¹⁰ *Hussain and Anr v. UOI* (2017) 5 SCC 702

¹¹ *R v. Morin* [1992] 1 SCR 771

¹² *R v. Jordan* 2016 SCC 27 (CanLII), [2016] 1 SCR 631

¹³ *R v. KGK* 2020 SCC 7

This article attempts to dwell upon the problem of inordinate delay in disposal of criminal cases in India, the legislative framework under Cr.P.C, 1973 to ensure right to a speedy trial, the efforts taken by the executive and judiciary to regulate the inordinate delay; issues and challenges in fixing the outer time limit for disposal of criminal cases; the methodology adopted by the Supreme Court of Canada in combating the menace of delay in disposal of criminal cases.

2. LEGISLATIVE INTENT OF CRIMINAL PROCEDURE CODE, 1973 VIS-À-VIS SPEEDY TRIAL

Criminal Procedure Code, 1973 provides for fair and speedy procedure for disposal of criminal cases. Several amendments were inserted into the Criminal Procedure Code, 1973 for ensuring right to a speedy trial. The following provisions of the Criminal Procedure Code, 1973 provides for expeditious disposal of the criminal trial:

Section 76 provides that *person arrested to be brought before the Court without delay.*

Section 158 provides that *the investigation report be sent to the magistrate without delay.*

Section 164A provides for *conduction of a medical examination of a rape victim without delay and also provides that such medical report to be forwarded to the investigating officer by the registered medical practitioner without delay.*

Section 173 provides for *completion of investigation without unnecessary delay. The provision provides that the investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station. Further, it provides that as soon as the investigation is completed, the officer in charge of the police station shall forward to a magistrate empowered to take cognizance of the offence on a police report.*

Section 207 provides that *the Magistrate shall supply to the accused a copy of the police report and other documents by the Magistrate without delay.*

Section 208 provides that *the Magistrate shall while committing the case to the Court of Sessions shall furnish the accused, free of cost the copies of statements and documents without delay.*

Section 217 provides that *the Magistrate is competent to deny the recall of witnesses when charge altered, if it appears that the same is for the purpose of vexation or delay or for defeating the ends of justice.*

Section 233 & 243 provides that *the judge shall deny the plea of the accused who applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, if it appears to him that such plea was made for the purpose of vexation or delay or for defeating the ends of justice.*

Section 284 empowers the Magistrate to dispense with the attendance of accused, when it appears that the attendance cannot be procured without an amount of delay.

Section 299 empowers the court to dispense the examination of witness whose statement is recorded during the abscondence of the accused, on the arrest of such person, when the presence of such witness cannot be procured without an amount of delay.

Section 309 limits the power of the court to postpone or adjourn proceedings. The provision provides mandatory for the trial court to hold the trial on day-to-day basis until all the witnesses in attendance have been examined. Further the provision provides that the trial of cases under Sections 376, 376A, 376B or 376D of the IPC should as far as possible be completed within a period of two months from the date of filing of the charge sheet.

Section 353 empowers *the Criminal Court to pronounce the judgment when one or two accused are absent, in cases involving multiple accused in order to avoid undue delay in disposal of the case.*

Section 468 provides for *Bar to taking cognizance after lapse of the period of limitation after the lapse of, Six months if the offence is punishable with fine only; One year with the offence is punishable with imprisonment for a term not exceeding one year; three years, if the s punishable with imprisonment for a term exceeding one year but not exceeding three years.*

To ensure fair trial parallel to right to a speedy trial, the Code, 1973 provides that the functionaries of criminal justice system are to register the reasons for the delay caused in each stage of the trial.

3. POLICY AND ADMINISTRATIVE INITIATIVES TAKEN UP BY THE EXECUTIVE AND LEGISLATURE TO ENSURE RIGHT TO A SPEEDY TRIAL

From the era of pre-independence, the problem of backlog criminal cases has been existing. Time and again, several committees and commissions were constituted to find out the possible solutions curbing the delay in criminal trials. The following are the initiatives taken up by the executive and judiciary to address the problem:

- Report of the Rankin Committee, 1924
- Report of the High Court Arrears Committee 1949 set up by the Central Government under Chairmanship of Justice S.R.Das
- 14th Law Commission Report on the Reform of Judicial Administration, 1958
- Survey Report 1967
- Report of the High Court Arrears Committee, 1972
- 77th Law Commission Report on 'Delay and Arrears in Trial Courts, 1978
- 79th Law Commission Report on Delay and Arrears in High Courts and Other Appellate Courts, 1979
- 120th Law Commission Report on the High Court Arrears: A Fresh Look, 1988
- Arrears Committee, 1990 headed by Justice V.S.Malimath
- 213th Law Commission Report on Reforms in the Judiciary, 2009
- 245th Law Commission Report on Arrears and Backlog: Creating Additional Judicial (Wo)manpower, 2014

Apart from the above, time and again the Hon'ble Supreme Court of India through judicial and administrative directions, addressed the issue of inordinate delay in disposal of criminal cases.

The apex court in *Hussainara Khatoon v. State of Bihar*¹⁴ observed that it is the constitutional obligation of the State to devise such procedure as would ensure speedy trial to the accused and the State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy justice.

¹⁴ *Hussainara Khatoon v. State of Bihar* [1978] 2 SCR 621

The apex court further held that *it is also the constitutional obligation of this Court, as the guardian of the fundamental rights of the people, as a sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures calculated to ensure speedy trial.*

In *Thana Singh v. Central Bureau of Narcotics*¹⁵, the apex court directed that liberal adjournments must be avoided, and witnesses produced must be examined on consecutive dates.

In *Gurnaib Singh v. State of Punjab*¹⁶, the apex court emphasized that it is the primary duty of the trial judge to monitor the criminal trial process and ensure that it takes place in accordance with the provisions of the Cr.P.C. the trial court should not allow the parties or their counsel to control the trial process. Based on the records of examination-in-chief, cross examination and adjournments granted in this case the court found that the case was conducted in a piecemeal manner and the entire trial was at the mercy of the counsel.

The apex court in *Imtiyaz Ahmad v. State of UP and Ors*¹⁷ observed that long delay has the effect of blatant violation of rule of law and adverse impact on access to justice which is a fundamental right.¹⁸ The court in this case noted that serious cases involving murder, rape, kidnapping, dacoiting were pending for long period, hence the High Courts are directed to dispose of cases in which proceedings were stayed preferably within six months from the date of stay orders.

The apex court in *Bhim Singh v. UOI*¹⁹, observed that central government must take steps in consultation with the State Governments in fast tracking all types of criminal cases so that criminal justice is delivered timely and expeditiously.

In *Hussain and Anr v. UOI*²⁰, the apex court while summing up held that the High Courts may issue following directions to subordinate courts to deal with the arrears:

- Bail applications be disposed of normally within one week;
- Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years;
- Efforts be made to dispose of all cases which are five years old by the end of the year;
- As a supplement to Section 436A, but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the concerned trial courts from time to time;

¹⁵ *Thana Singh v. Central Bureau of Narcotics* (2013) 2 SCC 603

¹⁶ *Gurnaib Singh v. State of Punjab* Writ Petition (Criminal) NO.310 of 2005

¹⁷ *Imtiyaz Ahmad v. State of UP and Ors*

¹⁸ See also *Anita Kushwaha v. Pushap Sudan*, AIR 2016 SC 3506 Providing effective adjudicatory mechanism, reasonably accessible and speedy, was part of access to justice.

¹⁹ *Imtiyaz Ahmad v. State of UP and Ors* (2012) 2 SCC 688

²⁰ *Bhim Singh v. UOI* (2012) 13 SCC 471

- The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports;
- The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal appeals where accused are in custody for more than five years are concluded at the earliest;
- The High Courts may prepare, issue and monitor appropriate action plans for the subordinate courts;
- The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time;

Finally, the apex court requested the Chief Justices of the High Courts to take appropriate steps consistent with the directions given in *Hussainara Khatoon* case²¹, *Akhtari Bi*²², *Noor Mohammed*²³, *Thana Singh*²⁴, *S.C. Legal Aid Committee*²⁵, *Imtiaz Ahmad*²⁶, *Ex.Captain Harish Uppal*²⁷ and Resolution of Chief Justices' Conference²⁸ to have appropriate monitoring mechanism in place on the administrative side as well as on the judicial side for speeding up disposal of cases pending in subordinate courts.

In *National Initiative to Reduce Pendency and Delay in Judicial System*²⁹ organized by Supreme Court of India in collaboration with the Indian Law Institute, held on 27-28 July 2018, the following immediate possible solutions were suggested for reducing the pendency and delay in judicial system:

- Developing infrastructure and human resource
- Conducting training of judges for effective use of technology
- Strengthening Pre-trial mediation
- Stressing upon clearing the backlog cases by incorporating the performance as one of the factors in internal assessment of the judges
- Effective enforcement of court management and case management and developing integrated case management information system
- Increasing the number of fast track courts and Increasing the working time of the courts
- Time limit was set to dispose of technical pleas by courts
- Mechanism has been developed to monitor progress of cases from filing till disposal, categorize cases on the basis of urgency and priority and also grouping of cases

²¹ *Hussainara Khatoon v. State of Bihar* [1978] 2 SCR 621

²² *Akhtari Bi v. State of MP*, 2001 SCC 714

²³ *Noor Mohammed v. Jetha Nand & Anr* (2013) 5 SCC 202

²⁴ *Thana Singh v. Central Bureau of Narcotics* (2013) 2 SCC 603

²⁵ *SC Legal Aid Committee v. UOI* 1994 SCC (6) 731

²⁶ *Imtiaz Ahmad v. State of UP and Ors* (2012) 2 SCC 688

²⁷ *Ex.Captain Harish Uppal v. UOI* AIR 2003 SC 739

²⁸ Resolutions adopted in the Chief Justices Conference, 2016 held on 22nd & 23rd April 2016, <
<https://doj.gov.in/sites/default/files/MINUES%20OF%20CMCJ%20CONFERENCE%202024TH%20APRIL%20202016.pdf>>
accessed on 30th June 2020

²⁹ *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System*, organized by the Supreme Court of India in collaboration with the Indian Law Institute, New Delhi, on 27th – 28th July 2018 <
<http://nagaonjudiciary.gov.in/statement/ProceedingSC.pdf>>, accessed on 28th June 2020

- Set annual targets and action plans for subordinate judiciary and High Courts to dispose of old cases and maintain a bi-monthly or quarterly performance review to ensure transparency and accountability
- Keeping track to bridge the gap between institution and disposal of cases so that there is not much backlog
- Modernization, computerization and technology – court automation systems, e-courts, digitalization of court records, access to information about cases
- Framing of strict guidelines for grant of adjournments especially at the trial stage, also stricter timelines for cases
- Explore options of Saturday courts for ensuring the speedy disposal of cases
- Strengthening the alternative dispute mechanism

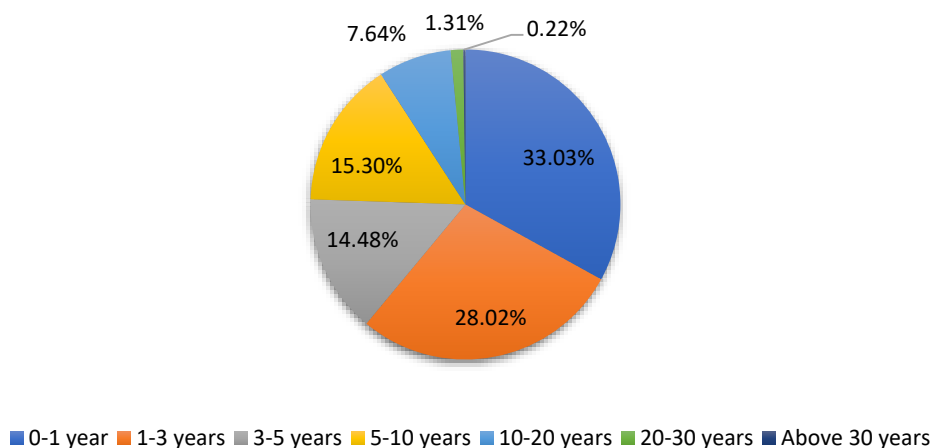
4. PRESENT STATUS OF PENDENCY

Despite of the amendments and modifications made to the Criminal Procedure Code, 1973 for expediting the criminal trial, the following is the status of the pending criminal cases as on 7th July 2020, as provided in the National Judicial Data Grid (NJDG)³⁰ is as follows:

Pendency period	Total Number of Pending cases	% of Pendency
0-1 year	7923637	33.02%
1-3 years	6721338	28.01%
3-5 years	3474942	14.48%
5-10 years	3670786	15.30%
10-20 years	1833709	7.64%
20-30 years	314107	1.30%
Above 30 years	51781	0.21%
Total cases	23990300	100%

³⁰ <<https://njdg.ecourts.gov.in/njdgnew/index.php>> accessed on 7th July 2020

Age-wise pendency of criminal cases



The aforementioned statistics shows that a total of 24.46% (0.21% - above 30 years; 1.30% - 20-30 years; 7.64% - 10-20 years old; 15.30% - 5-10 years old).

5. REPURCUSSIONS OF CONTINUING PROBLEM OF INORDINATE DELAY IN CONCLUSION OF CRIMINAL TRIALS

Whatever may be the causes for such inordinate delay in disposal of criminal cases, the following are the repercussions of such inordinate delay in disposal of criminal cases:

- Frustrates the innocent accused by violating his right to a speedy trial
- Frustrates the victim and witnesses by causing physical and psychological trauma especially in heinous crime cases such as rape, fades away their memories, finally turning them to hostile witnesses
- Frustrates the functionaries of the criminal justice system as the delay mocks and creates a helpless situation
- Frustrates the society as the criminals are encouraged to turn into a habitual offender as the fear of punishment becomes mockery.
- Violates the public interest
- Fails the legislative intent behind legislating the Criminal Procedure Code, 1973
- Low rate of conviction

6. LACK OF DEFINITION TO THE EXPRESSION 'DELAY' IN Cr.P.C, 1973 – MAJOR REASON FOR INORDINATE DELAY IN CONCLUSION OF CRIMINAL TRIAL

The 77th Law Commission Report on 'Delays and Arrears in Trial Courts'³¹, while addressing the question, 'what should be the criterion to determine as to when a judicial case can be treated as an old case in a trial court?', provided that the average life span of a criminal case to be four to six months. According to the commission the following is the method of calculation of delay:

³¹ 77th Law Commission Report on 'Delays and Arrears in Trial Courts', <<http://lawcommissionofindia.nic.in/51-100/Report77.pdf>> accessed on 1st July 2020

**Date of pronouncement of final judgment – date of filing of charge sheet or complaint
= life span of a criminal trial**

The Law Commission of India Report No.245³² defines delay as ‘A case that has been in the Court/Judicial system for longer than the normal time that it should take for a case of that type to be disposed of’. The Hon’ble Supreme Court of India through the National Court Management Systems (NCMS) 2012³³, introduced the ‘five plus free’ policy. It reflects that if a criminal case is pending for more than five years, that can be considered as unacceptable delay.

In *A.R.Antulay v. R.S.Nayak*,³⁴ the Constitution Bench of the Hon’ble Supreme Court laid down the following propositions:

- Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.
- Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial.
- The courts while administering the criminal trial shall keep in mind that the worry, anxiety, expense and disturbance to the vocation and peace of accused, resulting from an unduly prolonged investigation, inquiry or trial should be minimized;

Further, in this case, the apex court held that while determining whether undue delay has occurred, one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on, what is called, the systemic delays.

In *Kartar Singh v. State of Punjab*³⁵, the apex court held that ‘the concept of speedy trial is read into Article 21 as an essential part of fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed on arrest and consequent incarceration and continues to all stages, namely the stage of investigation, enquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted’.

In this case, the apex court held that, ‘the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay

³² Law Commission of India Report No.245, < http://lawcommissionofindia.nic.in/reports/Report_No.245.pdf> accessed on 1st July 2020

³³ National Court Management Systems (NCMS), Policy & Action Plan, Released by the Hon’ble Chief Justice of India, (2012), < <https://main.sci.gov.in/pdf/NCMSP/ncmspap.pdf>> accessed on 1st July 2020

³⁴ *A.R.Antulay v. R.S.Nayak* (1992) 1 SCC 225

³⁵ *Kartar Singh v. State of Punjab* (1994) 3 SCC 569

which could be identified by the factors – (1) length of delay; (2) the justification for the delay; (3) the accused's assertion of his right to speedy trial; and (4) prejudice caused to the accused by such delay.

7. POSSIBILITY OF FIXATION OF OUTERTIME LIMIT FOR SPEEDY DISPOSAL OF CRIMINAL CASES: ISSUES AND CHALLENGES

As mentioned earlier, time and again there is a raising debate about possibility of fixation of outer time limit for speedy disposal of criminal cases.

In *A.R.Antulay v. R.S.Nayak*³⁶, while answering the question, whether an outer limit can be fixed for expeditious disposal of criminal case, the apex court held that *it is neither advisable nor practicable to fix any time limit for trial of offences. Any such rule is bound to be a qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. at the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint.*

It is neither advisable nor feasible to draw or prescribe an outer time limit for conclusion of all criminal proceedings. (*A.R.Antulay v. R.S.Nayak*³⁷)

Referring to the Sixth amendment of the US Supreme Court and the Supreme Court of USA's repeated refusal to fix any such outer time limit, the apex court held that *we do not think that fixing any such outer time limit effectuates the guarantee of right to speedy trial.*

In *Raj Deo Sharma v. The State of Bihar (I)*³⁸, the apex court attempted to fix an outer time limit for disposal of criminal cases by issuing the following directions:

- *In cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not, within the said period and the court can proceed to the next step provided by law for the trial of the case.*
- *In such cases as mentioned above, if the accused has been in jail for a period of not less than one half of the maximum period of punishment prescribed for the offence, the trial court shall release the accused on bail forthwith on such conditions as it deems fit.*
- *If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next step provided by law for the trial of the case, unless for very exceptional reasons to be recorded and in the interest of justice the court*

³⁶ *A.R.Antulay v. R.S.Nayak*, [1984] 2 SCR 495

³⁷ *A.R.Antulay v. R.S.Nayak*, [1984] 2 SCR 495

³⁸ *Raj Deo Sharma v. The State of Bihar (I)* (1998) 7 SCC 507

considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time limit.

- *But if the inability for completing the prosecution within the aforesaid period is attributable to the conduct of the accused in protracting the trial, no court is obliged to close the prosecution evidence within the aforesaid period in any of the cases covered by clauses*

But the apex court reversed its judgment in the subsequent case, i.e., *Raj Deo Sharma v. State of Bihar (II)*³⁹. In this case, two following questions were raised before the apex court observed that ‘*what can be the yardstick to measure delay is a subject on which there can be sharp cleavage of views. Different committees established in different jurisdictions attempted without much success to come to an unanimous conclusion as to when a criminal case can be termed to have suffered delay*’.

M.B.Shah, J., in this case stated that, ‘*It is true that the ideal situation may be where criminal cases are tried within six months from the date of institution, and appeals are disposed of within a period of one year from the date of filing. For achieving this ideal situation, if there is a lack of infrastructure and procedural delays for various reasons, then what is required to be done? In such a situation, would it be justifiable to acquit the accused after lapse of a particular time if the prosecution has failed to examine all witnesses? And, whether the appeal could be dismissed if the appellate authority fails to decide the same within a particular time? To do so, in my view, would not be just and fair for the society and the victims affected by the crimes.*

Critically appraising the ruling of *Raj Deo Sharma (I)*⁴⁰, M.B.Shah J., held that fixing of an outer time limit for disposal of criminal trial gives the scope of acquittal for the accused on the ground of delay without considering the fact that in a number of cases delay might be because of a large number of cases pending before the court and insufficient strength of judges to cope up with the workload. Hence, M.B.Shah J., held that fixing an outer time limit for conclusion of criminal trial will lead to injustice to the society, to the victims or the heirs of the victim who is murdered, for such delay in trial they are not responsible.

Further the apex court in *P.Ramchandra Rao*⁴¹ case held that time limit to conclude criminal trial cannot be prescribed. It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer time limit for conclusion of all criminal proceedings. The time limits or bars of limitation prescribed in the several directions made in the *Common Cause (I)*, *Raj Deo Sharma (I)* and *Raj Deo Sharma (II)* could not have been so prescribed or drawn and are not good law. The criminal courts are not obligated to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in the aforementioned cases.... A watchful and diligent trial judge can prove to be better protector of such right than any guidelines.

In *P.Ramchandra Rao v. State of Karnataka*⁴², the apex court reiterated that speedy trial is a relative term depending on a variety of circumstances and relative factors by their very nature cannot be enwrapped by absolutism. In the circumstances prescribing an inflexible period of limitation for completion of trial failure of which results in

³⁹ *Raj Deo Sharma v. State of Bihar (II)*, 1999 (7) SC 317

⁴⁰ *Raj Deo Sharma v. The State of Bihar (I)* (1998) 7 SCC 507

⁴¹ *P.Ramchandra Rao v. State of Karnataka* (2012) 9 SCC 430

⁴² *P.Ramchandra Rao v. State of Karnataka* (2012) 9 SCC 430

discharge or acquittal is neither warranted by Article 21 nor Section 309 of Cr.P.C. According to the apex court, limitation has already been prescribed by Section 468 Cr.P.C for taking cognizance. No further rule of limitation can be prescribed. Even when statutes require an action to be completed within a time frame, they have been held to be directory. The court in this case mentioned that discharge/acquittal of an accused does not depend on any fortuitous circumstances but can only be a resultant consequence of application of Secs.169, 239 245 Cr.P.C or for lack of evidence at trial.

8. SUPREME COURT OF CANADA ON FIXATION OF OUTER TIME LIMIT FOR DISPOSAL OF CRIMINAL CASES

Section 11(b) of the *Canadian Charter of Rights and Freedoms* states:

11. Proceedings in criminal and penal matters – Any person charged with an offence has the right, (b) to be tried within a reasonable time;

The objective of Sec.11(b) is to protect the individual rights of an accused person from anxiety, concern and stigma of exposure to the delayed criminal proceedings.

In *R v. Askov*⁴³, the Supreme Court of Canada stated that the objective of the sixth amendment of the US Constitution guaranteeing fair and decent procedures in criminal trial are:

- (i) To prevent oppressive pre-trial incarceration;
- (ii) To minimize the anxiety and concern of the accused; and
- (iii) To limit the possibility that the defence will be impaired and prejudiced.

Powell J., observed that unlike other constitutional rights which only have an individual interest, the right to a speedy trial involved the added dimension of a social interest. According to him, a delay in criminal trial could result in increased financial cost to society and as well, could have a negative effect upon the credibility of the justice system. He mentioned that delay in criminal trial could work to the advantage of the accused, as the fostering of a delay could become a defence tactic designed to take advantage of failing memories or missing witnesses or could permit the accused to manipulate the system in order to bargain for a lesser sentence.

According to him, *a more vague concept than other procedural rights. It is for example, impossible to determine with precision when the right has been denied. We cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate. As a consequence, there is no fixed point in the criminal process when the State can put the defendant to the choice of either exercising or waiving the right to a speedy trial.*

In *R. v. Morin*⁴⁴, the Supreme court of Canada held that the general approach to a determination of whether the Section 11(b) right has been denied is not achieved by applying a mathematical or administrative formula, but rather by a judicial determination balancing the interests which the section is designed to protect against factors which have led to the delay. The factors to be considered are:

⁴³ *R v. Askov* [1990] 2 SCR 1199

⁴⁴ *R v. Morin* [1992] 1 SCR 771

- (i) The length of the delay;
- (ii) Any waiver of time periods by any of the parties to the trial;
- (iii) The reasons for the delay, including:
 - a. The inherent time requirements of the case,
 - b. Actions of the accused,
 - c. Actions of the Crown,
 - d. Limits on institutional resources, and
 - e. Other reasons for delay; and
- (iv) Prejudice to the accused.

The Supreme Court of Canada laid down the following formula for delay-analysis:

Date of end of the trial *minus* Date of the charge

According to the court, an inquiry into unreasonable delay will only take place if the different period between the date of the charge and date of the end of the trial is of sufficient length to raise an issue as to its reasonableness. The court classified the cases on the basis of types of offences and held that each type of offence will have its own inherent time required by both the defence and the Crown to review and prepare for the trial. The court opined that the more complex the case, the greater its inherent time requirements. To identify the delay, the court had to consider whose actions have led to delay, whether accused's or the Crown's.

The court introduced the concept 'institutional delay' factor in computing the delay and held that the limitations of the institutional resources also must be kept in mind. The court held that the institutional delay runs from the time the parties are ready for trial and continues until the system can accommodate the proceedings.

Finally, the court laid down the following tentative guidelines regarding how long each case should take in both Provincial and Superior Court:

Provincial Court	8-10 Months
If matter moves up to Superior Court	Additional 6-8 Months

Here, the court laid down the caution rule stating that the aforementioned time frame is not a limitation period *per se*, nor does it fix a ceiling on delay. The courts dealing with the trial should not act in a mechanical fashion in disposing of the case based on the aforementioned time frame but must give-way to other factors when it is appropriate. According to the court, logically then, the greater the prejudice, the shorter the acceptable period of institutional delay. Further the court classified prejudice into two forms, *first* actual prejudice; *second* inferred prejudice. Actual prejudice is based on pre-trial incarceration and restrictive bail. The longer the delay, the possibility of applying the inferred prejudice. Hence, where there is no existence of both the forms of prejudices, the basis of the enforcement of right to a speedy trial can be interpreted to be seriously undermined.

Important Points laid down

1. **The purpose of the right to a speedy trial is to expedite trials and minimize prejudice, and not to avoid trials on the merits**
2. **How long is too long, will depend on a host of factors, the existence of which will depend on the peculiar circumstances of each case.**

Interestingly, the Supreme Court of Canada in recent case *R. V. Jordan*⁴⁵ set up two separate hard limits on the duration of the criminal proceedings involving adults. The court in *R v. Jordan*⁴⁶ critically analysed the framework set out in *R v. Morin*⁴⁷ stating that the ruling gave rise to both doctrinal and practical problem, contributing to a culture of delay and complacency towards it. According to the court, the guidelines laid down in *Morin* expects some tolerance for institutional delay, by considering the same to be reasonable. The court stated that *Morin* ruling suffers the following shortcomings:

- It permits endless flexibility, and it is difficult to determine where a breach has occurred;
- It is confusing, hard to prove and highly subjective. Actual prejudice can be quite difficult to establish, particularly prejudice to security of the person or fair trial interests.
- As *Morin* framework requires a retrospective inquiry (i.e., analysis of delay after the delay has occurred), the courts are working not to prevent the problem of delay, but to redress it. Courts are instead left to pick up the pieces once the delay has transpired. This after-the-fact review of past delay is understandably frustrating for the trial judges, who have only one remedial tool at their disposal, a stay of proceedings.

Finally, the court in *Jodran*, held that *Morin* framework is unduly complex. The minute accounting it requires might fairly be considered the bane of every trial judge's existence.

While delivering the judgment in *Jordan*, the court referred to *R v. Godin*⁴⁸, where Cromwell J., held that courts must avoid failing to see the forest for the trees, courts and litigants have often done just that. Each day of the proceedings from charge to trial is argued about, accounted for, and explained away. This micro-counting is inefficient, relies on judicious 'guesstimations', and has been applied in a way that allows for tolerance of ever-increasing delay.

9. THE NEW TIME FRAME: R V. JORDAN

The Supreme Court of Canada in *Jordan* laid down a following new framework i.e., presumptive ceiling, which is a ceiling beyond which delay is presumptively unreasonable⁴⁹:

PRESUMPTIVE CEILING	
Cases undergoing to trial in the provincial court	18 months

⁴⁵ *R v. Jordan* 2016 SCC 27 (CanLII), [2016]1 SCR 631

⁴⁶

⁴⁷

⁴⁸ *R. v Godin* 2009 SCC 26 [2009]2 S.C.R. 3

⁴⁹ A presumptive ceiling is required in order to give meaningful direction to the state on its constitutional obligations and to those who play an important role in ensuring that the trial concludes within a reasonable time: court administration, the police, Crown prosecutors, accused persons and their counsel, and judges. It is also intended to provide some assurance to accused persons, to victims and their families, to witnesses, and to the public that [s. 11\(b\)](#) is not a hollow promise. *R v. Jordan*

Cases undergoing to trial in the Supreme Court	30 months
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The following formula has been developed by the *Jordan* court for computing the unreasonable delay:

If the total delay from the charge to the actual or anticipated end of trial (minus defence delay) *exceeds* the ceiling, then the delay is presumptively unreasonable.

Important Points

- To rebut this presumption, the Crown must establish the presence of exceptional circumstances. If it cannot, the delay is unreasonable, and a stay will follow.
- If the total delay from the charge to the actual or anticipated end of trial (minus defence delay or a period of delay attributable to exceptional circumstances) falls *below* the presumptive ceiling, then the onus is on the defence to show that the delay is unreasonable.
- To do so, the defence must establish that (1) it took meaningful steps that demonstrate a sustained effort to expedite the proceedings, *and* (2) the case took markedly longer than it reasonably should have

Once the presumptive ceiling is exceeded, the burden shifts to the Crown to rebut the presumption of unreasonableness on the basis of the following exceptional circumstances which lie outside the Crown's control:

- a. reasonably unforeseen or reasonably unavoidable, and
- b. cannot reasonably be remedied.

If the exceptional circumstance relates to a discrete event, the delay reasonably attributable to that event is subtracted. If the exceptional circumstance arises from the case's complexity, the delay is reasonable.

In a judgment delivered on 20th March 2020 i.e., *R v. K.G.K*⁵⁰, the Supreme Court of Canada extended the time limits fixed for conclusion of criminal trials in *Jordan* to the cases involving children.

10. CONCLUSION

A Strong criminal justice system is a guarantee for the crime free and orderly society.⁵¹ The international human rights instruments enshrined that right to fair and speedy trial is an integral part of human rights. The focus is on completing the criminal trial within a reasonable time frame. But what is reasonable time frame for conclusion of a criminal trial is the nations to decide.

Justice delayed is justice denied. Delay in disposal of criminal cases leads to the failure of criminal justice system. The right to a trial within a reasonable time has aptly been described as "discipline for the justice system", in that it may cause "discomfort in the short term but it will bring achievement in the long term".

⁵⁰ R v. KGK 2020 SCC 7

⁵¹ State of J & K v. Unknown (J & K High Court) 25 May 2012

While inaugurating a nationwide project for computerization of courts in the first week of October, 2005, the then Hon'ble Prime Minister Dr. Manmohan Singh asked the Union Law Ministry as well as the Supreme Court to devise ways in which securing justice becomes easier, faster and cheaper.⁵² Addressing the gathering, the then Hon'ble Prime Minister of India expressed that 'equality before law' becomes an unattainable ideal, if the present system of dispensation of justice continues.

The right to be tried within a reasonable time is easy to state and understand: people charged with offences should be tried within a reasonable time. Determining whether the right has been breached in a specific case, however, may be far from straightforward. Real change will require the efforts and coordination of all participants in the criminal justice system.

The inordinate delay in disposal of criminal case is a world-wide problem. Every country is struggling with increasing litigation rate, inadequate human resource and infrastructure.

Whatever may be the reasons, the right to a speedy trial of the accused is violated when a criminal case is delayed unreasonably. Several attempts were made in different jurisdictions to fix an outer time frame for the conclusion of criminal trial. The only question which was raised is how to ensure a fair trial by balancing the right to a speedy trial. Acquitting accused simply on the ground of mechanical computation of delay will harm the balance in the criminal justice system.

Introspecting the issues and challenges, the following questions were raised:

- What is the yardstick to determine a delay as reasonable or unreasonable?
- Whether counting institutional delay is unreasonable?
- How to adopt a balanced approach between right to fair trial and right to a speedy trial?

In India, the apex court in plethora of cases discussed above, clarified that it is not feasible and practical to fix an outer time limit for the disposal of a criminal case. The efforts were made to introspect the system and achieve the objective of ensuring right to a speedy trial through administrative and judicial directions.

In Canada, the *Morin* framework attempted to identify and describe the factors that are relevant in deciding whether a delay is reasonable or unreasonable. The courts in Canada, stated that the right to speedy trial is by its very nature fact-sensitive and case-specific. The court in *Jordan* fixed an outer time limit for conclusion of criminal trial by stating certain standard procedures required to be followed in computing the unreasonable delay. The court in this case stated that the right to be tried in a reasonable time is multi-factored, fact-sensitive and case-specific. The complexities of each criminal trial are unique in itself, and requires a unique model of dealing.

In *Jordan* the dissenting judgment, however states that the fixation of time frame for disposal of criminal cases seems like rather than avoiding complexity, it simply moving the complexities of the analysis to a new location.

⁵² <https://www.hindustantimes.com/india/unnecessary-delay-in-disposal-of-cases/story-ghADQQoKUC5M6X4a6dMyON.html>

Keeping in mind the caution approach adopted by the Canada in *Jordan*, Indian Supreme Court can re-look into its decision of not fixing any outer time frame for the expedited disposal of criminal cases delivered a decade before i.e., in the year 1999⁵³, and develop an outer time limit for the speedy disposal of criminal trials to uphold the right to a speedy trial, a right guaranteed to the accused under the umbrella of Article 21 of the Indian Constitution.



⁵³ *Raj Deo Sharma v. State of Bihar (II)*