

# Role of Fast Track Special Courts in curbing crimes against Women: An Assessment

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## Abstract

The hallmark of any criminal justice system rests on some key robust principles. Access to justice, being a component of justice is one of them. It encompasses speedy and expeditious trial. Otherwise, justice loses its true value and essence. In the wake of an alarming number of crimes being committed against women and children, the government enacted a scheme for establishing Fast Track Court Special Courts for swift dispensation of justice. The pendency of cases at a mammoth level necessitates a novel conceptualization of dimensions of justice. In light of the above-mentioned, this paper attempts to explore the dynamics of Fast Track special courts including their evolution, their desirability, and shortcomings. It also throws light on international practices wherein similar mechanisms have been adopted. Lastly, the paper suggests some improvements to strengthen the existing framework. The purpose, in the end, is to enable a more meaningful justice delivery mechanism that upholds the rights of vulnerable citizens and invariably allows democratic values to prevail.

**Keywords:** Supreme court, Constitution, Fast Track courts, crimes, speedy justice.

## 1.Introduction

The concept of justice is perennially evolutionary, tendentious, and abstract. Society may have a unanimous opinion in defining ideal justice but, they may differ in their needs and means. The term justice can have different connotations for different sections of society. To a prisoner, it may mean the right to be informed about the grounds of his arrest and the

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right to consult and be defended by a legal practitioner of his choice.<sup>1</sup> Whereas, to the victim, it may mean fair treatment, restitution, compensation, and assistance.<sup>2</sup> The principle common to both, however, is that the hearing should be conducted in such a manner that “justice is done to the parties”, or that a party has a reasonable opportunity to put forth his case, whether as a victim or as a prisoner. In a welfare state, the criminal justice system ought to be based on a foundation of strong human rights and fundamental freedoms.

The 2030 Agenda for Sustainable Development envisions a world wherein there will be ubiquitous (universal) respect for human values, human dignity, rule of law, egalitarianism, justice, and the principle of non-discrimination.<sup>3</sup> For developing effective, accountable, and transparent institutions at all levels, the Constitutional landscape of India recognizes the judiciary as a pivotal pillar to champion the cause of justice. The judiciary is the guardian and custodian of the fundamental rights guaranteed in the Constitution. The primary subject of justice vests in which the way the major social institutions distribute fundamental rights and duties. Increased cases of sexual crimes against women and children as well as prolonged trials compelled the government to establish especially designated courts named, Fast Track Special Courts.

The Department of Justice, Ministry of Law suggested earmarked grants for the establishment of Fast Track Courts for speedy trials of cases involving not only heinous crimes but also offences against the elderly and children. The atrocities against women are a significant barrier to the development of society, that exists both at the global as well as national levels. It has roots in traditional notions of the patriarchal setup of gender discrimination, dominance, and power of male beliefs in the social and cultural set-up. Crimes against women are one of the gruesome forms of human rights violation which deprive women of their fundamental freedoms, liberties, and dignity.

Women and children as a class constitute the most suppressed, vulnerable, and marginalized section of society. As per the National Crime Records Bureau’s data, a total of 4,28,278 cases were registered against crimes

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<sup>1</sup> Article 22, Constitution of India

<sup>2</sup> The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985

<sup>3</sup> Transforming our world: the 2030 Agenda for Sustainable Development

against women in the year 2021. Out of these, 31,677 rape cases were lodged with the highest being recorded in Uttar Pradesh.<sup>1</sup> Similarly, a total of 1,49,404 cases were registered against crimes against children in the year 2021. Out of these 53,874 (approximately 30%) cases were lodged under the Protection of Children from Sexual Offences Act, of 2012.<sup>2</sup> This data suggests alarming figures and subjugation of both women and children that exists in the social structure of our society.

## 2. Defining the scope and evolution of Fast Track Courts

The idea of Fast Track Courts was first conceived by the eleventh Finance Commission (2002-2005). As a recommendation of the Commission, The Ministry of Home Affairs granted Rs 502.90 crore for establishing additional courts for the disposal of long pending cases. In light of the above-mentioned, 1734 Fast Track Courts were set up across India.

Further, as a result of the 188<sup>th</sup> Law Commission Report, 2003; 'Fast-Track, high-tech Commercial Divisions' in all the High Courts were constituted.<sup>3</sup> In 2008, the Law Commission again recommended the setting up of Fast Track Courts to deal with pending cheque bounce cases as an ad-hoc mechanism.<sup>4</sup> During the 2000s, the concept of Fast Track Courts thrived wherein often the Law Commission Reports suggested the creation of different kinds Fast Track Courts based on numerous subject matters.

Towards the end of the decade, there was a drastic shift in this perception. For, instance in 2011, the central government stopped granting funds for the functioning of Fast Track Courts. It is also pertinent to mention at this juncture, that the Fast Track Courts established up till now were purely

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<sup>1</sup> India lodged average 86 rapes daily, 49 offences against women per hour in 2021: NCRB data. (2022, August 31). *The Hindu*. Retrieved from

<https://www.thehindu.com/news/national/india-lodged-average-86-rapes-daily-49-offences-against-women-per-hour-in-2021-government-data/article65833488.ece>

<sup>2</sup> Roy Esha (2022, August 30). NCRB data, Crime against kids: a third still under POCSO. *The Indian Express*. Retrieved from

<https://indianexpress.com/article/india/crime-against-kids-a-third-still-under-pocso-8119689/>

<sup>3</sup> 188<sup>th</sup> Law Commission Report (2003). *Proposals for Constitution of Hi-tech Fast-Track Commercial Divisions in High Courts*. Retrieved from

<http://lawcommissionofindia.nic.in/reports/188threport.pdf>

<sup>4</sup> 213<sup>th</sup> Law Commission Report (2008). *Report on Fast Track Magisterial Courts for Dishonoured Cheque*. Retrieved from [https://indiankanoon.org/doc/72\\_803968/](https://indiankanoon.org/doc/72_803968/).

ad-hoc in nature and were established without any form of legislative backing.

This contention of the government was challenged in the Supreme Court in early 2012 in the case of Brij Mohan Lal v. Union of India & Others.<sup>1</sup> In this decision, the Supreme Court declined to strike down the policy decision of the Union of India not to fund the functioning of the Fast Track Court beyond March 2011. However, the Supreme Court passed several other guidelines to enhance the justice delivery system.

As an aftermath of the Nirbhaya case, JS Verma Committee<sup>2</sup> was constituted and it observed that speedy justice was essential to securing the legitimacy and efficacy of the legal framework, as well as to serve as an effective deterrent to crime. In compliance with the recommendations of the JS Verma Committee for securing speedy justice, states across India were directed to establish Fast Track Courts by appointing additional judges.

To champion the cause of safety for women as well as children, under the National Mission for Safety of Women (NMSW), Fast Track Special Courts (FTSCs) are being established. The execution of the scheme is being carried out by Department of Justice, Ministry of Law and Justice for expeditious trial of cases relating to rape and offenses against children under the Protection of Children from Sexual Offences Act (POCSO), 2012.<sup>3</sup> Furthermore, the Government provided stringent punishment including the death penalty for perpetrators of rape by passing the Criminal Law (Amendment) Act, of 2018. Rape and gang rape of girls below the age of 12 years will carry minimum imprisonment of twenty years and is extendable to life imprisonment or death.<sup>4</sup> Moreover, the Rape of girls below the age of 16 years is punishable with imprisonment of twenty years or life imprisonment.<sup>5</sup> This amendment will have deterrence

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<sup>1</sup> Brij Mohan Lal v. Union of India [2012] 5 S.C.R. 305.

<sup>2</sup> JS Verma Committee Report (2013). *Report of the Committee on Amendments to Criminal Law*. Retrieved from <http://csrindia.org/images/download/Amendments-To-Criminal-Law.pdf>

<sup>3</sup> Department of Justice, Ministry of Law and Justice (2019). Scheme on Fast Track Special Courts (FTSCS) For Expeditious Disposal of Cases of Rape and Protection of Children Against Sexual Offences (POCSO) Act. Retrieved from <https://doj.gov.in/fast-track-special-court-ftscs/>

<sup>4</sup> Section 376 AB, The Criminal Law Amendment Act, 2018

<sup>5</sup> Section 376 DA, The Criminal Law Amendment Act, 2018

and retributive value in society and will help in the prevention of such crimes.

Increased cases of sexual offenses and prolonged trials of the accused necessitated dedicated court machinery to provide immediate relief to the victim. These courts since their inception have disposed of more than 1,24,000 cases till October 2022. On the contrary, near about 1,93,000 cases are still pending in the Fast Track Special Court and therefore there is a necessity to stretch the scheme beyond 2023. Mr. Kiren Riju, the Law Minister has stated that the safety and security of our women, children as well as other marginalized categories are of paramount concern and thus the need for robust functioning of the Fast Track Courts and Fast Track Special Courts becomes highly imperative.<sup>1</sup>

### **3. Rationale**

There is a plethora of reasons for the creation of Fast Track Special Courts. Firstly, there are mammoth number of cases that have been instituted but have not been disposed of which has resulted in an increased pendency rate. As of August 2022, there is a total number of 71,411 pending cases in the Supreme court. Out of the abovementioned number, approximately 10,491 are awaiting disposal for more than a decade.<sup>2</sup> The Fast Track Courts have a greater clearance rate in comparison to the conventional courts. Thus, Fast Track Courts substantially bring down, if not eliminate the backlog of cases.

Secondly, these courts enable swift dispensation of justice. The right to a speedy trial is quintessential to the criminal justice system. This principle has also been upheld in the case of *Hussainara Khatoon v. Home Secretary, State of Bihar*<sup>3</sup> where the continued detention of under trail prisoners was considered against the constitutional ethos of Article 21 which consists of the bulwark of fundamental freedoms. On similar lines, in *Maneka Gandhi*

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<sup>1</sup> Expedite setting up of Fast Track Courts for speedy Justice, Law Min to HCs. (2022, September 17). *Latest Laws.com*. Retrieved from <https://www.latestlaws.com/latest-news/expedite-setting-up-of-fast-track-courts-for-speedy-justice-law-min-to-hcs-read-text-189614>

<sup>2</sup> Over 71,000 Cases Pending in Supreme Court, 59 Lakhs in High Courts: Law Minister Tells Rajya Sabha. (2022, August 5). *Livelaw News Network*. Retrieved from <https://www.livelaw.in/top-stories/over-71000-cases-pending-in-supreme-court-59-lakhs-in-high-courts-law-minister-tells-rajya-sabha-205784>

<sup>3</sup> *Hussainara Khatoon v. Home Secretary, State of Bihar* 1979 AIR 1369

v. Union of India<sup>1</sup> wherein the Honourable Supreme Court held that the right to a speedy trial is part and parcel of article 21 and that the state cannot deny equal access to justice.

Thirdly, it will curtail the number of undertrials languishing in prisons waiting for their trial to begin. An under-trial includes a person who is in judicial custody on remand during the investigation.<sup>2</sup> The number of under-trials witnessed a sharp increase of 14% in the year 2021 in comparison to 2020. The total number of under-trials in the year 2021 stood at 4,27,165.<sup>3</sup> The Law Commission Report titled Report on Fast Track Magisterial Courts for Dishonoured Cheque has also suggested that to restore the confidence of the people in the judiciary, the Fast Track Courts will facilitate the tackling of under-trial as the graph of such persons in jail has gone high.

Fourthly, it showcases the commitment of the judiciary to minimize sexual assault both against women as well as children. Since Fast Track is dedicated and specialized only to handle rape cases and offenses covered under the Protection of Children from Sexual Offences Act (POCSO), 2012; hence they possess the technical and subject matter expertise that the conventional courts may lack.

#### 4. International Scenario

There have been several progressive measures that have been taken all over the world to address the concerns surrounding women and children. Amongst these measures, the most significant step that has been undertaken is the setting up of specialized courts to tackle crimes against women and children. These courts are backed by specialized legislation to lay down the framework for their functioning and working. These countries present an illustrative precedent as to how they have moulded their criminal justice system to address the critical issues surrounding gender-based violence.

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<sup>1</sup> Maneka Gandhi v. Union of India AIR 1978 SC 597

<sup>2</sup> **78th Report of Law Commission** (1979). *Congestion of under trial prisoners in jails*. Retrieved from <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080559-2.pdf>

<sup>3</sup> National Crime Records Bureau (2021). *Prison Statistics India 2021*. Retrieved from [https://ncrb.gov.in/sites/default/files/PSI-2021/PSI\\_2021\\_as\\_on\\_31-12-2021.pdf](https://ncrb.gov.in/sites/default/files/PSI-2021/PSI_2021_as_on_31-12-2021.pdf)

As per a study conducted by the United Nations International Children's Emergency Fund (UNICEF) in Ghana, it has been reported that as an aftermath of the COVID-19 pandemic, there has been a surge in cases of abusive behaviour against children. Approximately 32 % of the young population has faced increased offensive behaviour at home during the aftermath of the lockdown. <sup>1</sup> Keeping in view the social and legal structure of Ghana, the government has established gender-based violence courts and children's circuit courts in the year 2021. They acknowledge that the repercussions of sexual crimes on children have far more reaching consequences than mere emotional, physical, and psychological impacts. Hence, children-friendly procedures have been incorporated to give due respect to the rights of children and their well-being. These include technical facilities like dedicated rooms where children can testify, a library, and a toy room. The judicial officers and those involved in the functioning of the judicial system are trained beforehand to provide effective justice to the survivors. The efforts taken by Ghana are laudable as they have enhanced the quality of justice and have added a new dimension and a ray of hope keeping the paramount interest of the survivors.

For facilitating gender equality, Spain has also formulated a legal response to combat discriminatory practices. Gender-based violence courts have been established for every judicial district.<sup>2</sup> These courts have jurisdiction to try cases of homicide, sexual crimes, abortion, crimes against freedom, crimes against moral integrity etc.<sup>3</sup> As per their domestic legislation, the judicial system is encouraged to have fast-track summary trials along with safety measures for both women and children. As on August 2021, these courts have a conviction rate of nearly 77 percent. Apart from this, a distress number has been issued to deal with emergency and critical cases.

As a recent in development in the year 2022, in Kenya, Ladyship Justice Martha Koome inaugurated the Sexual and Gender-based Violence court in Mombasa. These courts acknowledge that human rights violation owe their genesis to unequal power relations as well as structural inequalities

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<sup>1</sup> Kingsley E.hope (2021, November 16). Ghana: CJ Inaugurates Child Friendly Gender-Based Court at Asante Akropong. *Ghanian Times*. Retrieved from <https://allafrica.com/stories/202111160327.html>

<sup>2</sup> Article 43, Territorial Structure, Integrated Protection Measures against Gender Violence, 2004

<sup>3</sup> Article 44, Jurisdiction, Integrated Protection Measures against Gender Violence, 2004

that exist between men and women. Keeping in view the political, social, and economic conditions of Kenya, these courts will be an asset to advancing effective human rights protection and enforcement. Continuing on the same thread, specialized courts to deal with increasing crimes against women commonly known as “Court E” were established in 2008 to deal with sexual and gender-related crimes in Liberia. The necessity arose because the regular criminal courts were occupied with the case pertaining to theft, robbery, dacoity, murder etc. As a result, the survivors of rape were reluctant to pursue their cases as there was an undue delay in the prosecution of cases. These courts have jurisdiction to hear matters related to rape, gang rape, corruption of minors, and other forms of sexual harassment.<sup>1</sup> However, the efficiency, as well as efficacy of these courts, was significantly reduced in the light of heavy caseloads on these courts and the lack of support facilities for the victims/survivors.<sup>2</sup>

## 5. A critique

Though the efforts of the government have been laudable in upscaling the criminal justice system, however, the impact and essence Fast Track Special courts are yet to be seen. They are merely fast in the literal sense but are yet to prove themselves in their spirit. The victims of rape and POCSO have faith and high hopes in the Fast Track Special Courts for speedy justice. However, these victims continue to be deprived of their fundamental rights in dispensing timely justice. As on December 2021, an estimated 10,000 cases are pending before the FastTrack Courts thereby indicating that they are marred with similar issues that are lacking in the conventional courts.<sup>3</sup>

In the case of *Swaran Singh v. State of Punjab*<sup>4</sup>, the Honourable Supreme Court has categorically stated that in the absence of any valid and reasonable cause, the practice of delaying as well as adjourning the matters, the court becomes a party to a miscarriage of justice. There are

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<sup>1</sup> Section 25.2, Title 17 – Liberian Code of Laws Revised

<sup>2</sup> International Development Law Organization. Judicial Cooperation to End Sexual Violence in Liberia. Retrieved December 30, 2022, from <https://www.idlo.int/news/highlights/judicial-cooperation-end-sexual-violence-liberia>

<sup>3</sup> Pradeesp Thakur (2022, February 15). Fast-track courts going slow, pendency crosses 10L cases. *The Times of India*. Retrieved from <https://timesofindia.indiatimes.com/india/fast-track-courts-going-slow-pendency-crosses-10l-cases/articleshow/89581001.cms>

<sup>4</sup> *Swaran Singh v. State of Punjab*, (2000) 5 SCC 668.



several gaps in the performance of these courts across the country. For instance, Uttar Pradesh is the state which has the highest number of pending cases wherein more than 10,000 cases are awaiting disposal as of September 2022. This is followed by Maharashtra, wherein 43,000 cases are pending.<sup>1</sup> A research study by DAKSH has suggested that the Fast Track Courts on average take 122 days to dispose of a case, whereas the conventional courts take 133 days.<sup>2</sup> This indicates that there isn't much difference between them and that they have proved incompetent in fulfilling their actual objective. As per section 309 of The Code of Criminal procedure, the inquiry/trial in rape cases shall be concluded within a period of two months from the date of filing of the charge sheet.<sup>3</sup> The primary reason for this they are plagued by similar issues such as procedural delays, heavy caseloads, and lack of adherence to prescribed timelines. These courts also have poor conviction rates. To substantiate this, for sexual crimes the conviction rate is as low as 16.8 percent. Similarly, for sexual offenses against children, the conviction rate stands at 7.8 percent.<sup>4</sup>

There is a lack of a clear framework of the jurisdiction. There is a lack of clarity on the subject matter regarding the type of cases. To illustrate this, under the Nirbhaya Fund, there is a lack of understanding as to what categories of crimes qualify for adjudication vis a vis gender-based violence like stalking or domestic abuse. This is exacerbated by reasons plaguing the ordinary courts such as strained infrastructure and insufficient judges and staff members.

## 6. Recommendations

To gain maximum from the functioning of the Fast Track Courts some

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<sup>1</sup> (2022, September 15). Uttar Pradesh Tops Chart Among States in Trials Pending in Fast-Track Courts. *Outlook*. Retrieved from <https://www.outlookindia.com/national/uttar-pradesh-tops-chart-among-states-in-trials-pending-in-fast-track-courts-news-223629>

<sup>2</sup> Prachi Salve (2020, December 11). What's Slowing Down India's Fast-Track Courts. *India Spend*. Retrieved from <https://www.indiaspend.com/police-judicial-reforms/whats-slowing-down-indias-fast-track-courts-700397>

<sup>3</sup> Section 309, The Code of Criminal Procedure, 1973

<sup>4</sup> Bindu Gopal Rao (2020, January 16). Why 'Fast Track Courts' have been slow to ensure justice for women and children. *Citizen Matters*. Retrieved from <https://citizenmatters.in/fast-track-courts-justice-for-women-and-pocso-crimes-15297>

affirmative actions may be taken for their betterment. Firstly, there is a dire need for exclusive legislation that can form the backbone of the Fast Track Special Courts. To date, their work is governed merely under the disguise of governmental schemes. They are often established as a result of political pressure and public sentiments. Secondly, to lay down the structure of the Fast Track Special Courts, there is a requirement of redefining and reforming the procedural norms. In the case of *Zahira Habibullah Sheikh v. State of Gujarat*<sup>1</sup>, the Supreme Court had acknowledged there were grave issues in the manner the Fast Track Courts had recorded the evidence as no rules for cross-examination for witnesses were followed. Therefore, there is a need to comprehensively lay down the laws for procedure that ought to adhere to both pre-trial and post-trial should be laid. These laws must specifically include aspects relating to framing of charges, evidence by the prosecution, statement of the accused, defence evidence, final arguments, appeals etc.

Thirdly, there should be thorough training and sensitization of all employees either directly or indirectly in the process of dispensation of justice. These include judicial personnel, lawyers, prosecutors, court clerks, health workers, police, etc. Fourthly, sound infrastructural facilities must also be put in place. For instance, a separate room where children can testify, libraries, toy rooms, proper computer systems, sound video recording arrangements, and access to relevant legal resources must be there to enhance the quality of justice. Lastly, certain support facilities must be provided for the victim/ survivor along with their families. They may include psychologists, social workers etc. to reduce the trauma they might have encountered.

## **7. Conclusion**

Experience suggests the realization of Fast Track Courts is very different from what was conceived. Merely changing the nomenclature of courts is insufficient. There is a need to further strengthen the functioning of the Fast Track Courts. In the absence of any exclusive legislation dedicated to the Fast Track Courts find themselves hostage to political pressure and at the mercy of public sentiments. A more refined law with legislative backing, along with dedicated infrastructure and personnel, is the need of the hour. This can be effectively achieved only by a comprehensive and

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<sup>1</sup> *Zahira Habibullah Sheikh v. State of Gujarat*, 2004 (4) SCC 158.

immediate consultative process amongst the various stakeholders to fill in the existing gaps. In this endeavour to strengthen the existing structure, countries like Ghana, Spain, Kenya, etc. prove to be notable examples wherein Fast Track Courts have been successful. The 2030 Agenda for Sustainable Development intends to make judicial institutions more accessible and inclusive. Fast Track Courts have the potential to act as a catalyst to provide meaningful justice along with its integral component i.e. speedy justice. This would instill a ray of hope in society by safeguarding the rights of victims or survivors.

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