FAST TRACK COURTS FOR ELECTED REPRESENTATIVES BILL 2014:
AN ANALYSIS

* Dr Sunaina

Abstract:
In criminal justice system of India, justice delivery is a slow process. Despite various measures taken by the judiciary and the legislature, the loopholes in the criminal justice system make it convenient for the affluent accused to delay the judicial proceedings to escape punishment. To do away with this problem of delayed justice delivery system, the Parliament of India introduced Fast Track Courts for Elected Representatives Bill, 2014 in the House of People to establish Fast Track Courts for trial of cases involving criminal charges against elected representatives. The paper is an attempt to highlight the anomalies existing in the proposed Bill which need to be removed for benefit of society and also endeavours to incorporate concrete suggestions for improvement of the Bill.

Keywords: Bill, Elected, Fast track, Judiciary, Representatives.

Introduction:
The phrase fast track court implies a court in which justice is expected to be given in a reasonable time. Unfortunate but true, that, in the criminal justice system of India, justice dispensation is not only slow but also tedious, laborious and a costly affair. Despite various measures taken by the legislature and the judiciary, the loopholes in the Indian criminal justice system make it feasible for the affluent accused to delay the judicial proceedings to escape punishment. Vohra Committee reported that all over India, crime syndicates have become a law unto themselves even in rural areas and small towns muscle men have become the order of the day. 1 It also found a link between media and anti-national elements on one hand and bureaucrats and politicians on the other hand. 2 The Fast Track Courts were established to expeditiously dispose off long pending cases before the subordinate judiciary.

A brief background of Fast Track Courts in India
Fast track courts were setup by the Central Government to dispose off long pending cases with the aid of grant from the 11th Finance Commission 3 from which 1,734 fast track courts were established across the country. The term of this grant came to an end in 2005, and was renewed by the 12th Finance Commission for the maintenance of 1,562 existing fast track

---

1 http://lawmin.nic.in/legislative/ereforms/bgp.doc accessed on 11-05-2016
2 Ibid
3 2000-2005

© Universal Multidisciplinary Research Institute Pvt Ltd
courts for another five years, i.e., up to 2010.\textsuperscript{4} In 2003, the 188\textsuperscript{th} report of the Law Commission, recommended setting up of a fast-track commercial division at every High Court as a permanent fast track mechanism to deal with high value commercial disputes.\textsuperscript{5} In 2008, the Law Commission again recommended the setting up of fast track courts, as an ad hoc measure only for the clearance of backlogs but not as a permanent feature.\textsuperscript{6} The Central Government stopped funding fast track courts from April 2011 and resultantly most of them were wound up. The stoppage of funding was challenged in the Supreme Court in the case of Brij Mohan Lal Vs Union of India and Others\textsuperscript{7}. In this case the Court upheld the policy decision of the central government of not to finance the scheme beyond 31 March 2011. The Court held that States were at liberty to either discontinue the fast track courts scheme or to continue the fast track courts scheme as a permanent feature, but that States may not choose to continue the scheme on an ad hoc and temporary basis. Despite the cessation of Central Government funding, some of the fast track courts that had been set up to try sessions court cases continued to function in several states.\textsuperscript{8}

\section*{Judicial Introspection:}

To do away with the problem of slow process of justice delivery system the Parliament of India introduced Fast Track Courts for Elected Representatives Bill, 2014 in the House of People to establish Fast Track Courts for trial of cases involving criminal charges against elected representatives.\textsuperscript{9} The Bill will extend to the whole of India.\textsuperscript{10} Establishment of Fast Track Courts is an indirect attempt to restrict the entry of criminals in the electoral system. Though, the endeavour on the part of the State is commendable for having introduced this Bill, nevertheless, the Bill has certain flaws and is limited in its scope and extent. Section 2 (c) of the Bill defines Fast Track Courts as a Fast Track Court established under Section 3 (1) and Section 3 (2). The purpose of establishing judiciary is to give justice to the people but due to huge litigation pending in the courts, in many cases, by the time justice is delivered, it is either too late or the so called justice becomes infructuous. Moreover, offenders also try to take undue advantages of the flawed criminal justice system by delaying and prolonging their litigation. The Constitution of India provides democratic setup for our

\begin{footnotesize}
\begin{enumerate}
\item http://lawcommissionofindia.nic.in/reports/188th\%20report.pdf accessed on 12-05-2016
\item http://lawcommissionofindia.nic.in accessed on 12-05-2016
\item [2012] 5 S.C.R. 305
\item Section 1 (2)
\end{enumerate}
\end{footnotesize}
country’s governance. People have been given the right to choose their representatives, to know the antecedents and credentials of their chosen representatives. ‘Democracy as a form of governance was the central plinth of the constitutional scheme envisaged by the framers of the Constitution of India. The ultimate aim, as evidenced in the Constituent Assembly debates and gleaned from their personal writings, was the empowering of each and every Indian citizen to become a stakeholder in the political process. To this end, the citizen was given the power to elect members of the Parliament and their respective State Legislative Assemblies through the exercise of their vote, a system that the framers believed would ensure that only the most worthy candidates would be elected to posts of influence and authority. Representative government, sourcing its legitimacy from the People, who were the ultimate sovereign, was thus the kernel of the democratic system envisaged by the Constitution’.\(^{11}\)

This has also been held to be a part of the basic structure of the Constitution by the Supreme Court of India by declaring, ‘It is beyond the pale of reasonable controversy that if there be any unamendable features of the Constitution on the score that they form a part of the basic structure of Constitution, it is that India is a Sovereign Democratic Republic.’\(^{12}\)

In Mohinder Singh Gill Vs Chief Election Commissioner\(^{13}\), the Supreme Court held that ‘democracy is government by the people. It is a continual participative operation, not a cataclysmic periodic exercise. The little man, in his multitude, marking his vote at the poll does a social audit of his Parliament plus political choice of this proxy. Although the full flower of participative government rarely blossoms, the minimum credential of popular government is appeal to the people after every term for a renewal of confidence. So we have adult franchise and general elections as constitutional compulsions... It needs little argument to hold that the heart of the Parliamentary system is free and fair elections periodically held, based on adult franchise, although social and economic democracy may demand much more’.

Anti-corruption activist Anna Hazare once said, ‘The country is reeling under the problems of corruption, price rise and hooliganism and it would be in the interests of society at large if these issues were addressed’.\(^{14}\) Hence democracy in India is in danger. The 245th Report\(^{15}\) submitted by the Law Commission of India to the Law Ministry attempts to measure the

---

\(^{11}\) http://lawcommissionofindia.nic.in/reports/report244.pdf accessed on 13-05-2016

\(^{12}\) Indira Gandhi Vs Raj Narain and Others 1975 Supp SCC 1 252 para 664

\(^{13}\) (1978) 1 SCC 405, 424 at para 23


backlog in India’s subordinate courts and observed, ‘Denial of timely justice amounts to denial of justice itself. Two are integral to each other. Timely disposal of cases is essential for maintaining the rule of law and providing access to justice which is a guaranteed fundamental right. However, the judicial system is unable to deliver timely justice because of huge backlog of cases for which the current judge strength is completely inadequate. Further, in addition to the already backlogged cases, the system is not being able to keep pace with the new cases being instituted, and is not being able to dispose of a comparable number of cases. The already severe problem of backlogs is, therefore, getting exacerbated by the day, leading to a dilution of the Constitutional guarantee of access to timely justice and erosion of the rule of law.’

In P. Ramchandra Rao Vs State of Karnataka\(^\text{16}\) the court held that, ‘...The root cause for delay in dispensation of justice in our country is poor-judge population ratio’. In India the Supreme Court has advocated the use of case-specific time tables for the timely disposal of cases. In the case of Ramrameshwari Devi Vs Nirmala Devi,\(^\text{17}\) the court observed, ‘As a staple part of systematic case management strategies, such timetables provide clear time frames for dispute resolution, define litigant expectations of timeliness, and thus impact the litigant experience of delay. They allow the judge flexibility to take into account the specific aspects of an individual case in framing a time schedule for that case. When accompanied by general time frame guidelines, the possibility of abuse of the power by setting long time frames can be avoided’.

In All India Judges Association and Others Vs Union of India and Others\(^\text{18}\) the court held:

‘An independent and efficient judicial system is one of the basic structures of our Constitution. If sufficient numbers of judges are not appointed, justice would not be available to the people, thereby undermining the basic structure. It is well known that justice delayed is justice denied. Time and again the inadequacy in the number of judges has adversely been commented upon. Not only have the Law Commission and the standing committee of the Parliament made observations in this regard, but even the head of judiciary, namely, the Chief Justice of India has had more occasions than once to make observations in regard

\(^{16}\) (2002) 4 SCC 578
\(^{17}\) (2011) 8 SCC 249 As per the Court, ‘At the time of filing of the plaint, the trial Court should prepare complete schedule and fix dates for all the stages of the suit, right from filing of the written statement till pronouncement of judgment and the Courts should strictly adhere to the said dates and the said time table as far as possible. If any interlocutory application is filed then the same [can] be disposed of in between the said dates of hearings fixed in the said suit itself so that the date fixed for the main suit may not be disturbed.’
\(^{18}\) (2002) 4 SCC 247
thereto. Under the circumstances, we feel, it is our constitutional obligation to ensure that backlog of cases is decreased and efforts are made to increase the disposal of cases. Apart from the steps which may be necessary for increasing the efficiency of the judicial officers, we are of the opinion that time has now come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increase, in the first instance, in the judge strength from the existing ratio of 10.5 or 13 per 10 lakh people to 50 judges for 10 lakh people. We are conscious of the fact that overnight these vacancies cannot be filled...The increase in the judge strength to 50 judges per 10 lakh people should be effected and implemented with the filling up of the posts in a phased manner to be determined and directed by the union ministry of law, but this process should be completed and the increased vacancies and posts filled within a period of five years from today.’

Apart from terrorism, criminalization of politics has become an endemic being faced by the Indian democracy and is proving lethal to electoral politics in the country. Purity and sanctity of electoral process, sine qua non for a sound system of governance appears to have become a forgotten concept in view of the entry of a large number of criminals in the supreme legislative bodies at central and state level. Shri G.V.C Krishnamurthy, the former Election Commissioner, pointed out that almost forty members facing criminal charges were the members of the Eleventh Lok Sabha and seven hundred members of similar background were in the State legislatures. Even the political parties do not hesitate in giving tickets to the criminals and also use them for winning the elections or other benefits.

Analysis of the proposed Bill and suggestions:

When a criminal charge is pending against the elected representatives, it becomes all the more pertinent to find out at the earliest, whether such a person should be allowed to hold public office or not. In India, adversarial system is followed i.e. a person is presumed to be innocent until his guilt is proved and that too, beyond reasonable doubt. He can be removed from office only if he is proved guilty in the end by the competent court. The ordinary course of judiciary may take a number of years to decide the guilt or innocence of the accused. Since such elected members are conferred with public duty to protect the society and their interest, it is all the more necessary that the pending litigation against such a member be decided at the earliest so as to avoid any further harm to the society. The taking of undue advantage of the flawed criminal justice system not only delays the judicial process but also acts as a

20 Ibid
hindrance in the removal of such elected representatives from public offices. Hence to protect
the democratic setup it is necessary that such matters should be decided on priority basis. In
order to implement this objective, the proposed Bill has been introduced. The statement of
objectives and reasons of the Bill states as under:\(^{21}\)

\[ \text{The systemic flaws that pervade our judicial system have come into sharp focus in recent}
\] 
\[ \text{times. India is infamous for its snail-paced judiciary and the gargantuan pendency of cases in}
\] 
\[ \text{the subordinate and High Courts. As on 31st December 2011, a massive three crore cases}
\] 
\[ \text{were pending in the High Courts and subordinate courts across the country; ten per cent of}
\] 
\[ \text{such cases were pending for more than a decade. At the level of the subordinate judiciary,}
\] 
\[ \text{criminal cases constitute seventy-one per cent of the total cases pending before the courts.}
\] 
\[ \text{This shocking figure displays the apathy of the State towards the protection of its citizens.}
\] 
\[ \text{The ultimate aim of criminal law is the protection of personal liberty against invasion by}
\] 
\[ \text{others. In the words of Judge Curtis-Raleigh, ‘The law should not be seen to sit by limply,}
\] 
\[ \text{while those who defy it go free, and those who seek its protection lose hope’. India has an}
\] 
\[ \text{overworked and understaffed judiciary. According to the Chief Justice of India, there are six}
\] 
\[ \text{judges per million people in India, an abysmally low number as compared to developed}
\] 
\[ \text{countries; the United States of America boasts of a ratio as high as 125 judges per million}
\] 
\[ \text{people. Despite the report of the Law Commission in 1987, which had recommended}
\] 
\[ \text{immediately raising this ratio to 50 and to 100 by the year 2000, no significant steps have}
\] 
\[ \text{been taken. The judicial system needs a complete overhaul to facilitate fair trial and speedy}
\] 
\[ \text{justice. However, it must be recognized that improving the entire system will require}
\] 
\[ \text{significant investment and political will. Until such time that a complete overhaul can be}
\] 
\[ \text{undertaken, at the very least, we can initiate changes by attacking the roots of the problem.}
\] 
\[ \text{One of the most cancerous of these roots is the criminalization of politics. As per the report}
\] 
\[ \text{of the Association for Democratic Reforms, 76 of the 543 members elected to the Lok Sabha in}
\] 
\[ \text{2009 had been charged with serious charges such as murder, rape and dacoity. Not only does}
\] 
\[ \text{this reflect poorly on the country, but it is also highly demoralizing for the general public.}
\] 
\[ \text{There is an urgent need to break this criminal-political nexus, which can be facilitated only if}
\] 
\[ \text{criminal cases against elected representatives are expeditiously disposed. Under the present}
\] 
\[ \text{system, political patronage and a culture of adjournment collude to prevent speedy trial}
\] 
\[ \text{against elected representatives. In a country where the judicial system is overburdened, a}
\] 
\[ \text{simple tweak would be to fast track criminal cases against elected representatives with a}
\] 

\(^{21}\) http://164.100.47.4/BillsTexts/LSBillTexts/asintroducted/1429LS.pdf accessed on 14-05-2016

© Universal Multidisciplinary Research Institute Pvt Ltd
mandate that all relevant cases be adjudicated within ninety days. If this provision is put in place it will go a long way towards resolving the issue. Unlike some other proposals that bar candidates from contesting elections if charged with criminal cases, this solution does not vitiate the presumption of innocence. This Bill seeks to establish Fast Track Courts in all States and Union territories of India with a mandate to ensure speedy trial of cases involving criminal offences by elected representatives. Cases involving elected representatives that are presently being tried across different courts in the country will stand transferred to the Fast Track Courts having jurisdiction in the area. Barring exceptional circumstances, a Fast Track Court shall complete trial within ninety days from the date of filing of charge-sheet. To ensure that these Fast Track Courts don’t suffer from the same impediments as regular courts, this Bill provides that the number of Judges to be appointed to each court must be decided based on an objective criteria that takes into account caseload, pendency and most importantly, the percentage of cases that remain unresolved even after the stipulated deadline of ninety days. This provision will act as a check on the power of the executive to change the judicial strength of these courts. Furthermore, to ensure that proceedings do not suffer due to ineffective or biased prosecution, this Bill prescribes that the Government must appoint public prosecutors with the concurrence of the Chief Justice of the High Court having jurisdiction in the area. The number of prosecutors required for effective distribution of workload must also be decided based on an objective criteria, similar to the one used above. This will reduce Government discretion in appointment of prosecutors. All Members of Parliament, Members of State Legislatures and Members of Panchayats and Municipalities established under the State Panchayati Raj Legislations are sought to be covered under the provisions of the Bill. This implies that all elected representatives at the Centre, in the States and in local self-Government institutions such as Gram Panchayats, Block Panchayats or Panchayat Samitis, District Panchayats or Zila Parishads, Nagar Panchayats, Municipal Councils and Municipal Corporations will be subjected to the provisions of this Bill. It is strongly felt that any attempt at decriminalizing politics will have to begin with this amendment. This will go a long way in restoring the confidence of our people in the judiciary and in redeeming the commitment of the political class towards justice.’

Repercussions of the Bill and suggestions:

With the above objectives, the legislature intended to introduce the said Bill. However, there are certain anomalies in the Bill which are discussed below. These shortcomings, if removed,
will help a long way in the outcome of the proposed law and will be more beneficial to the society.

1. Section 4(8)\textsuperscript{22} of the Bill provides that the proceedings may take place at any place other than the ordinary place and the proviso further provides that the trial may take place at any place other than the ordinary place only if the Public Prosecutor \textit{certifies} to that extent. This provision casts a doubt upon the matter revolving protection of witnesses. If the witness reasonably apprehends that his life is in danger and the Public Prosecutor either deliberately or non-deliberately refuses to certify in that regard, it will be that poor witness who will suffer in the end. The Bill does not deal with any solution as to what should be the liability of the Public Prosecutor in case he wrongly or with mala fide intention refuses to certify the taking place of trial at some other place. The Bill also does not specify as to making of application directly to the court so that the witness should be in a position to repose faith in the justice delivery system. Hence, the liability of the Public Prosecutor should be clearly stated in the Bill.

2. Section 8(2) of the Bill provides that the Fast Track Court shall complete every trial within a period of ninety days from the \textit{date of filing of the charge sheet} in the Court. In Indian criminal justice system even the filing of charge sheet consumes lot of time. Hence for the filing of charge sheet as well, the time limit must be prescribed for the police as well, as the delay of the process starts from the first State agency i.e. the Police. Moreover, such an amendment will help in sincere execution of the proposed Bill.

3. The Bill does not contain even a single provision pertaining to the \textit{protection of victim} or the kin of the deceased victim though it does talk about the protection of witnesses to a certain extent but it appears that the framers of the Bill completely forgot about the hapless victims. The person due to whom the entire criminal justice system is set into motion has been made a forgotten man in the proposed Bill. The protection of victim is equally important with that of protection of the accused.

\textsuperscript{22} Section 4(8): A Fast Track Court may, if it considers it expedient or desirable so to do, sit for any of its proceedings at any place, other than the ordinary place of its sitting, in the State or the Union territory in which it is established:

Provided that if the Public Prosecutor-certifies to the Fast Track Court that in his opinion it is necessary for the protection of the accused or any witness or it is expedient in the interest of justice that the whole or any part of the trial should be held at some place other than the ordinary place of its sitting, the Fast Track Court may, after hearing the accused, make an order to that effect unless, for reasons to be recorded in writing, the Fast Track Court thinks it fit to make any other order.
principle of rule of law which runs through the entire Constitution of India inter alia implicit in itself that equality of treatment need to be accorded to everyone. The accused in the present case will be an elected representative and hence not without power. On the other hand the victim may not be as powerful as the accused. If protection is accorded to one party, i.e. the accused, the principle of rule of law also requires to accord protection to the victim as well as witnesses. Failure to do so will certainly amount to violation of constitutional spirit. The Bill, therefore, should contain provision regarding protection of the victim as well.

4. Section 10\(^{23}\) deals with protection of witnesses by providing that the proceedings to be held at a protected place, non-disclosure of identity of the witnesses etc. However, the Bill does not mention the protection of witnesses during travelling. The right to life has been accorded a very sacred place in our Constitution of India but if the same life is endangered then it becomes the primary concern of the State as well as the Judiciary to provide all possible help in protecting the precious lives of the witnesses who help the State agencies to nab and try the offenders. The Bill must include a provision for providing complete protection to the witness from his place of residence to the place of his appearance and other security measures at the place of residence of the witness in case security is demanded. The safety measures become even more important where the witness is a girl or a woman or a child. The Bill should also include a provision of compensating the witness in case the State fails to protect the lives of such witnesses. Where on one side the accused is a powerful man of dominance and on the other side the witness is an ordinary person, the responsibility over the State agencies become even more onerous. In India the major problem in criminal justice system is the witnesses turning hostile. The reason is not difficult to ascertain. In most of the cases it is the danger to the life of the witness and in other cases money or both. Free and fair trial is sine qua non of Article 21 of the

---

\(^{23}\) Section 10: (1)A Fast Track Court may, on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, give such directions, as it deem fit, for keeping the identity and address of the witness secret.

(2) In particular and without prejudice to the generality of the provisions of subsection (1), the directions which a Fast Track Court may give shall include-

(a) holding of the proceedings at a protected place;

(b) avoiding the mention of names and addresses of witnesses in its orders, judgements or any records of the case having access to the public; and

(c) ensuring that the identity and addresses of the witnesses are not disclosed.

(3) Any person who contravenes any direction issued under this section shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.
Constitution. It is trite law that justice should not only be done but it should be seen to have been done. If the criminal trial is not free and fair and not free from bias, judicial fairness and the criminal justice system would be at stake shaking the confidence of the public in the system and woe would be the rule of law. The Law Commission in its 14th Report (1958) in a limited sense mentioned about witness-protection. It referred to proper arrangements to be provided in the court, travelling allowance, daily allowance for the witnesses etc. The National Police Commission Report (1980) again dealt with the inadequacy of daily allowance for the witnesses, but nothing more. The 154th Report of the Law Commission (1996) inter alia dealt with Protection and facilities to Witnesses. The recommendations mostly related to allowances and facilities to be made available for the witnesses. However, one of the recommendations was: ‘Witnesses should be protected from the wrath of the accused in any eventuality’, but the report did not suggest any measures for the physical protection of witnesses. The 178th Report of Law Commission, again referred to the fact of witness turning hostile, and the recommendations were only to prevent witnesses from turning hostile. There is a dire need to have separate rooms for recording witness’s statements so as to avoid direct confrontation with the accused.

5. The quantum of fine has not been specified under Section 10 of the Bill for non-compliance of court direction pertaining to non-disclosure of identity of the witness. This implies that the court may impose a meagre sum of fine as well. Some minimum amount of fine must be specified so as to ensure the affected witness that appropriate justice will be done to him and moreover even the judiciary will not be in a position to arbitrarily exercise its discretion. The fines so collected may be utilised in affording protection to the witnesses etc. Moreover, nothing has been stated as to what shall be the liability of the person in case he is not in a sound condition to pay the fine.

6. One of the major flaws of the Bill lies in the fact that the Bill only proposes for a limitation period of ninety days for the Fast Track Courts within which the trial is to

---

24 K. Anbazhagan Vs Superintendent of Police (2004) 3 SCC 767
26 Section 10(3): Any person who contravenes any direction issued under this section shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.
27 Section 8: (1) Notwithstanding anything contained in the Code, the Fast Track Court shall conduct its proceedings on a day-to-day basis excluding public holidays. (2) The Fast Track Court shall complete every trial within a period of ninety days from the date of filing of the charge sheet in the Court.
be completed. However, it does not specify any limitation period within which the appeal is to be heard by the High Court or the Supreme Court. The matter may be decided expeditiously by the Fast Track Court but in order to make the Bill effective in real sense the similar limitation period should be imposed upon the High Courts as well as the Supreme Court also so that the offender is not in a position to delay the disposal of his case before the higher judicial fora. The very purpose of establishing Fast Track Courts gets vitiated when the offender is still in a position to delay his litigation before the higher judicial fora.

**Conclusion:**

Criminalization of politics needs to be prevented and reduced to a certain extent. The roots of the problem lie in the political system of the country. There is lack of political will to curb the menace. The political parties bypass the ethical and democratic norms. Setting up of special courts is the way to prevent and control criminalisation of politics. To maintain sanctity and purity of elections, it would be more beneficial to the society to try all cases of politicians by special courts. Although, the proposed Bill is a small gesture towards improving the falling standards of Indian political scenario, nevertheless it requires certain changes in it so as to avoid future legal repercussions.

***************

Provided that where the trial cannot be completed within a period of ninety days, the Fast Track Court shall record in writing the reasons thereof and shall complete the trial within a further period of not more than ninety days.

(3) Subject to the provisions of this Act, a Fast Track Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence, as if it were a Court of Sessions, in accordance with such procedure as is specified in the Code for trial before a Court of Session.