
SPEEDY TRIAL: A COMPARATIVE ANALYSIS OF THE PROCEDURAL MECHANISMS IN INDIA AND AUSTRALIA

Jyotsana Singh, Symbiosis Law School, Hyderabad

Aparajita Singh, Symbiosis Law School, Pune

ABSTRACT

The right to a speedy trial means that justice must not only be done but must also be done well and in good time; and must protect the individual from excessive state power and slow legal procedures. This principle, which has a Latin parlance: “Justice delayed is justice denied,” is probably more significant in criminal cases where such delays affect the accused and victims, erode the public faith in the judiciary and jeopardise the evidence. Although Indian Constitution recognized a right to trial within a reasonable time under Article 21, some problems continue to manifest at the operational level, such as caseload backlog, processes and procedures and lack of adequate resources. On the other hand, whilst Australia has no entrenched right to a speedy trial, the legal systems stress on speedy trial and application of technology to minimise the dissemination of time. This paper provides a comparative analysis of procedural laws and judicial systems of India and Australia in relation to the right to speedy trial. Through the consideration of the legislative and judicial approaches and applying the techniques of innovative reforms, objects of similarity and disparity of the said systems are revealed by the present study. It is concerned with the effects of procedural formalities on justice dispensation and also considers the possibility of learning from one jurisdiction to another in order to achieve this facet of justice better. This paper also focuses on the significance of procedural laws in the preservation of human rights and enhancing the effectiveness of the criminal justice systems of both nations.

Keywords: Speedy trial, Indian Constitution, India, Australia, Judiciary, Justice

Introduction

The right to a speedy trial is one of the basic rights, which makes it effective, impartial and just. This right is implemented within the framework of procedural law which explains the legal processes through which the courts and law enforcement agencies operate. The speedy trial rights allow the accused not to be held for too long without trial or being detained unnecessarily in the criminal process. This right is designed to protect people against abuse of state authority and also to ensure that not only justice prevails but justice prevails without the undue delay.¹

The adage of “justice delayed is justice denied”² highlights the importance of synchronization between the timeliness of justice delivery and the mechanism of justice. Under the nature and consequence of criminal justice, timely justice is particularly relevant in criminal cases due to the high stakes for both the accused and victims. For the accused, a lengthy trial process could result in long periods of detention before the trial process, social ostracization, and the stress of living with an open case. Conversely, the delays to criminal trials affect other parties as well; victims are left waiting for justice and closure. This also impacts society since trials take longer to be heard and resolved, citizens lose faith in the judicial system and the sense of fairness disappears.

Several reasons can therefore contribute to a backlog of pending criminal cases, including delays in processing, congestion in works, and limited numbers of judges. These delays, however, can cause several implications as explained below. The longer a trial takes, it becomes hard to produce some evidence due to deterioration, the witnesses' memories may fade away or even they are unavailable. Due to this, the trial may be negatively affected and an innocent person may be convicted or a guilty person acquitted due to lack of sufficient or credible proof.

Furthermore, pretrial detention lasting for a long time affect individual rights and human rights. In many jurisdictions it is possible to detain a suspect for a long time before beginning the trial sometimes longer than the time that the suspect would have been required to spend in prison if he or she was convicted. It ignores the principle of ‘innocent until proven guilty’ and interferes

¹ Kamal Kumar Arya, "Right to Speedy Trial and Mercy Petitions in India," *Bharati Law Rev.*, Vol. 1, 168 (2016) <http://docs.manupatra.in/newsline/articles/Upload/BA797A43-0B75-4EB2-A2D6-1DA716E0A99E.pdf>.

² Melcarne, A., Ramello, G. B., & Spruk, R., “Is justice delayed justice denied? An empirical approach,” 65 *Int. Rev. Law Econ.* 105953, (2021) <https://www.sciencedirect.com/science/article/abs/pii/S0144818820301666>.

with people's, families, and communities lives. Therefore, Timely trials are vital in restoring and maintaining the balance of the criminal justice system.

As the two countries give their citizens the right to speedy trial both Indian and Australians understand the importance of timely justice. But the process in these countries is different from each other, which has a common feature of different legal systems of different countries, different administration, and different capacities of the judge.

Even in the Indian scenario, the right to speedy trial is another dimension of Article 21 of the Constitution, regarding protection of the right to life and personal liberty. The Indian Supreme Court in *Hussainara Khatoon v. State of Bihar (1979)*³, has held that right to speedy trial forms the part of right to life enshrined in Article 21 of the Constitution of India. The court noted that any delay in criminal matters has a derogatory effect on the constitutional provision accorded to the accused besides worsening the situation of the justice system in the country.

The procedural laws of India are mostly regulated by New and Old Criminal Procedure laws namely - Code of Criminal Procedure, 1973 (CrPC), and Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). These codes describe the procedure followed during trial or any criminal proceedings. The CrPC spells down various time limits in respect of investigation, trial and appeal. This, however, is not the case in the Indian judicial system which still faces numerous problems such as delays, which are occasioned by a large number of cases, fewer judges, and complicated procedures. The National Judicial Data Grid⁴ further reveals that currently there are more than millions of cases instituted in India court with many of the cases being criminal cases still awaiting trial. These are due to such factors as inadequate number of judicial staff, legal formalities, and constant cases postponing.

The right to speedy trial as provided in the constitution of India has been quite problematic to achieve. The judiciary has responded to the problem in some measure through releasing guidelines for handling cases with trial suspected victims or those that have involved the suspect to have been detained for long periods in prison without trial. Yet, the size of that gap between the written law and its implementation continues to be an issue that is hard to overcome.

Australia is another common law country and similar to India considers the aspect of delivering speedy trials as significant part of the criminal justice delivery system of the country. Australia

³ *Hussainara Khatoon v. State of Bihar*, 1980 (1) SCC 98.

⁴ National Judicial Data Grid, <https://njdg.ecourts.gov.in/njdgnew/index.php> (last visited September 17, 2024).

does not have a written constitution that contains sections that gives people a right to be tried speedy, nonetheless this law is protected under general laws of fairness and justice contained in the federal and state procedural laws. The Criminal Procedure Acts of various Australian states are very particular on the time within which trial has to be conducted. Of these acts, some set down procedures in how court business is programmed and conducted in such a way that trials are not unduly protracted.⁵

Australia has strong bureaucracy in the handling of their cases justice system especially in case management, a procedural methods which seek to decrease delay. Currently, the Australian judges and the court administrators closely control the cases' advancement through daily hearings, strict deadlines, and with limited adjournments. It is also possible to speak about such factors as the use of modern technologies, for instance, electronic filing and virtual hearings, which increases the efficiency of the trial process even more. Therefore, Australia's courts are generally better placed to guarantee that trials are conducted with as little delays as possible.

However, the fact remains that, like India, Australia also has problems with regard to timeliness of justice in some of these areas. For example, the level of difficulty in the cases, the constraints in availability of lawyers trained in them, and the congestion within stations can all hamper the progress of these courts. To deal with these challenges, over the recent past, Australia has embarked on some reforms which include hiring more judicial officers, promotion of ADR techniques and increasing the access to legal aid.

Given the importance of speedy trial rights and the procedural challenges faced by both India and Australia, this research seeks to answer a critical question: What procedures are in place to guarantee the swift trials in India and what procedures are in place in Australia; what can be learnt from the differences?

Specifically, this paper looks at the procedural statute of the countries, the case management systems and the judiciary systems of both the countries to evaluate their applicability and efficiency. This was done in an effort to compare and contrast which of the systems offers the right such right more protection and how the eventual speedy delivery of justice within the two jurisdictions can be actualized. Thus, the research will outline the general significance of procedural law in protecting the rights of people and in enhancing the operations of criminal justice systems.

⁵ Australian Law Reform Commission, https://www.alrc.gov.au/wp-content/uploads/2019/08/ir_127ch_10._fair_trial.pdf (last visited September 16, 2024).

Legal Framework and Procedural Mechanism in India

Right to speedy trial is one of the basic rights which is protected under the Indian constitution under the Article 21 of the Indian constitution⁶ that deals with protection of life and personal liberty. It may be noted that while Article 21 of the Constitution doesn't enshrine the right to speedy trial as a part of right to life, the Supreme Court of India through judicial activism has incorporated it in the right to life. The legal foundation for this right is primarily based on two sources: the Constitution and Statutory Provisions i.e. the Criminal Procedure Code which is 1973 and 2023 also known as the CrPC and BNSS.

1. Constitutional Provision

Over the years, Article 21 has been given a very wide meaning and encompasses a number of rights which are required to be protected to ensure that individuals receive fair treatment by the State and its instrumentalities. Wherein the case of *Hussainara Khatoon and Others v. State of Bihar and Another*⁷ has perhaps been the most iconic with regard to the right to a speedy trial. In this case, PIL was initiated on the plight of undertrial prisoners in Bihar most of whom had spent many years behind bars without trial. The apex court asserted that right to speedy trial is sustained in Article 21 and focused that delays in trials are infringement of the fundamental rights of the accused. Justice P. N. Bhagwati in his judgment while delivering has pointed out that constitutional protection for the right to Speedy trial falls within the meaning of the right to life and personal liberty.

In other cases the Supreme Court restated this right. Thus, in *Kadra Pahadiya v. State of Bihar*⁸, the court also stated that every accused person has the right to be tried as soon as possible or in other words there cannot be the detention of an accused person without trial for a long time which is an infringement of Article 21 of Indian Constitution. Likewise in *Sheela Barse v Union of India*⁹ the court pointed out that the delay in trial in the cases concerning women and children accused of offences is inadmissible and ordered the lower courts to avoid disadvantageous delays in the trial of rape and other crimes against women and children accused.

⁶ Supra note 3.

⁷ Supra note 4.

⁸ *Kadra Pahadiya v. State of Bihar*, 1997 (4) SCC 287.

⁹ *Sheela Barse v Union of India* 1986 SCR (3) 562.

2. Statutory Provisions:

- The Code of Criminal Procedure, 1973.

The Code of Criminal Procedure (CrPC), 1973 and Bharatiya Nagrik Suraksha Sanhita, 2023 has also provided some procedural provisions for that requires that the trials of criminal cases shall not be conducted in a disproportionate of time. Several provisions of the CrPC aim to prevent delays:

1. Section 167: This section contains provisions of the law that set limit to the time an accused can be held during in digression. If one is arrested and the investigation is not done within 60 or 90 days depending on the nature of the case then the suspect has to be released on bond.¹⁰
2. Section 309: It provides that when the trial has begun, the trial should go on daily till its completion and no useless adjournments should be allowed.¹¹
3. Section 437: This section contains the provisions of bailing of undertrial prisoners. It makes sure that an accused person should not be hold for a long time more than what they had been held already throughout the proceedings of the trial.¹²

- Bharatiya Nagrik Suraksha Sanhita, 2023

Several provisions of the BNSS, 2023, are mentioned below:

1. Section 193 (9) – This state that any other investigation in a trial shall be conducted within 90 days and the time could be extended by the court. This enhances efficiency since it does not allow for extended investigations to be made.¹³
2. Section 263 – This section lays down that the magistrate shall prefer a charge within 60 days after the first hearing of the case The above measures are quite important to ensure that one does not delay the trial of the case.¹⁴
3. Section 276 (2) – It states that systematic trials should start within one hundred and eighty days after the accused was committed for trial so as to avoid a one-stop-shop and delay

¹⁰ Criminal Procedure Code, § 167, No. 2 of 1974, Acts of Parliament, 1974 (India) (Repealed).

¹¹ Criminal Procedure Code, § 309, No. 2 of 1974, Acts of Parliament, 1974 (India). (Repealed).

¹² Criminal Procedure Code, § 437, No. 2 of 1974, Acts of Parliament, 1974 (India). (Repealed).

¹³ Bharatiya Nagrik Suraksha Sanhita, § 193(9), No. 2 of 2023, Acts of Parliament, 2023 (India).

¹⁴ Bharatiya Nagrik Suraksha Sanhita, § 263, No. 2 of 2023, Acts of Parliament, 2023 (India).

through setting the time-line.¹⁵

4. Section 283 – This section befits the efficient prosecution of cases especially the prosecution's obligation to present their case within a given number of days hence assists in the timely conduct of trials.¹⁶
5. Section 291 – The use of electronic form in recording evidence can in fact enhance the trial process so that court proceedings are fast.¹⁷
6. Section 302 – That prescribes rules on how to pronounce judgments helps to bring finality to the cases, thus advancing the delivery of justice on time.¹⁸

However, the Indian legal framework of judicial systems suffers from extreme delays and there are reasons such as; procedural formalities, case backlog and burdened judiciary. While the courts have given directions in this regard, to provide the right of speedy trial, its practical aspects are still a concern.

Legal Framework and Procedural Mechanism in Australia

Unlike India, however, Australia has no one document that is the Constitution of the country which guarantees an accused person the right to be tried without undue delay. However, this right can be said to be coming from common law, statute and constitutional *Stare Decisis*. Criminal procedure in Australia has federal, state, and territory criminal procedure acts.

1. Common Law Principle

The right to a fair trial as encompassing the right to a speedy trial, has also been identified as a part of the common law heritage in Australia. In *Dietrich v The Queen* [1992]¹⁹ it was established by the High Court of Australia that fairness is part of the criminal trial justice delivery model. The right to speedy trial was not mentioned in *Dietrich*, though the court pointed out that undue delay may well prejudice the fairness of a trial.

In the equal case of *Jago v. District Court of New South Wales*²⁰, the High Court confronted question of delayed trials directly. The court agreed to the fact that an unreasonable delay in either the beginning or the conclusion of the trial could result to a miscarriage of justice. The

¹⁵ Bharatiya Nagrik Suraksha Sanhita, § 276(2), No. 2 of 2023, Acts of Parliament, 2023 (India).

¹⁶ Bharatiya Nagrik Suraksha Sanhita, § 283, No. 2 of 2023, Acts of Parliament, 2023 (India).

¹⁷ Bharatiya Nagrik Suraksha Sanhita, § 291, No. 2 of 2023, Acts of Parliament, 2023 (India).

¹⁸ Bharatiya Nagrik Suraksha Sanhita, § 302, No. 2 of 2023, Acts of Parliament, 2023 (India).

¹⁹ *Dietrich v The Queen*, (1992) 177 CLR 292 (Austl.).

²⁰ *Jago v. District Court of New South Wales* (1989) 168 CLR 23.

learned Justice Deane further opined that if trial is seriously delayed beyond reasonable period it could not be free from being a trial which impinges on the rights of the accused persons. But the court also held that thus, a delay means a violation of fair trial, depends on the context of each case, the reasons for the delay or the things that the case include.

2. Criminal Procedure Laws

All the Australian states have their criminal procedure laws but apart from this, the accused has a right to a speedy trial in any state. For instance, the Criminal Procedure Act 1986 (New South Wales)²¹ has provisions on how delays in the process of criminal trials should be averted since there are strict time frame which are set for the trial. Further, most of the Australian courts apply the case management system, in which the judge becomes involved in the direction of the case and its development during various hearings and is able to require compliance with time limits to eliminate unnecessary procedural delays.

Of them, some states have special provisions concerning pretrial detention as a procedure. For example the Bail Act, 2013 (NSW)²² stated that a person charged with an offense cannot be detained for an extended period without an opportunity to be granted bail as they wait for trial. Bail conditions and trial timelines are put in place to reduce on the likely hood of too much delay.

Comparative Analysis of the Procedural Mechanisms in India and Australia

1. Structural Differences

On this matter of right to trial without undue delay, India and Australia are Worlds apart. In India, the right is a protected basic right under Article 21 of the Constitution followed by the National Legal Framework while in Australia it is based on the common law endorsed by enabling legislation and monitored by the judiciary.

In India most of the emphasis is placed on Statutory timelines like Section 167 CrPC which mentions the timeline for filing of chargesheet. But the Indian courts fail to begin trials and even if they have started, this takes ages due to the mountain of cases. On the other hand, Australia's case management system and that implies the involvement of judges from the starting stages of the case contribute to the retention of strict timeframes for the movement of trials.

²¹ Criminal Procedure Act, No. 209 of 1986, Acts of Parliament, 1986 (NSW).

²² Bail Act, No. 26 of 2013, Acts of Parliament, 2013 (NSW).

2. Practical Challenges:

Though, there is a strong legal framework in both the countries, however, the procedures take time more than required. Still, the delays in the cases, the shortage of enough judicial power and defected functioning of the judicial system in India doobüst the right to speedy trial. Among the causes of this situation one may mention frequent adjournments, inadequate legal assistance, and slow investigations.

In Australia, even though the case management system is considered better, there are always delays that are occasioned by the sophistication of some cases, limited resources, and lots of bureaucracy. For instance, where there are many defendants to a case or other complications with regard to the schedules of the people involved in the case, the case can be delayed. However comparatively, the Australian courts are able to ensure that trials are conducted in a reasonable amount of time unlike the Indian scenario.

1. Impacts of Trials on the Defendants, the Victims, and Society in General

Long trials adversely affect all stakeholders in the justice system including the accused persons, the victims and the entire justice system. Thus, in defendants 'cases the lengthy time frame results in pre-trial detentions that violates their rights to liberty and to be presumed innocent until proven guilty. This is true; the effects of being charged with a crime including the psychological and social aspects as well as the effects of trial unpredictable results, lead to high level of stress and anxiety. Also, defendants may lose employment, social status, and lose an opportunity to clear their names earlier thus leading to injustice being done.

Delays are usually hurtful to victim as it prolongs the time they have to wait before they can see justice being served. If they are forced to wait longer for a resolution to be given then it becomes extremely hard for them to begin the process of rebuilding their lives. Further, extended trials mean such factors as the erasure of significant evidence, the witnesses ' memories getting misconstrued, and, in some instances, victims 'trust in law enforcement decreasing. This is disadvantageous since justice should be delivered as fast as it is efficient, also excluding all the defendants and victims in the case.

From a systemic concern viewpoint, delays erode people's confidence in judicial processes and bring out increased caseload. Prolonged time in the court robs the people of justice not only for them but for society as well since there are legal consequences of not maintaining law and

order in society. More to it, a number of years can lead to the creation of a perception that the whole judicial system is a mess and wastes the time of the parties involved.

Conclusion and Recommendations

Hence, the right to a speedy trial is the corner stone, which plays a vital role in efficacy of justice delivery system across the borders of India and AUSTRALIA. In India this right is enshrined in the Constitution under Article 21 by which the Supreme Court has ensured this through various of its judgment like *Hussainara Khatoon v. State of Bihar*. Even though there are provisions in CrPC and the newly-introduced BNSS to reduce delays in India's judiciary the reality today is to encounter more bureaucratic hurdles because of pendency of cases, lack of adequate judicial strength and time. These challenges greatly affect the implementation of the right to a speedy trial, which consequently results in long pretrial detention, social exclusion and lack of confidence in the legal system.

On the other hand, no specific constitutional provision guarantees a right to a speedy trial in Australia but this is protected by the principles of common laws as well as the procedural statutes as part of the due process of the law. Australian courts have adopted efficiency in procedure through the concepts such as case management, daily trials and restricted adjournments. The following are some of the highlighted areas in which there was enhancement in the use of technology; for instance, there was the enhancement of the use of electronic filing and virtual hearing, among others. However, unlike other nations, Australia is not devoid of issues like the complexity of cases, scarcity of legal aid at times, and at times these cause some form of a delay. Thus, following are the recommendations and suggestions drawn in order to enhance speedy justice:

1. It is imperative for both India and Australia to improve judge availability especially with reference to specializations. This would be very helpful for over worked judges and lessen case loads as well as reduce back logs.
2. Another area where India may need to heed some advice on 'case management' is the Australian way of holding a 'tightly choreographed, 'hearing-at least five hearings a week, and almost no adjournments policy. This could be adopted into the Indian procedural law to facilitate that the trials do occur within the given lapse of time.
3. There are lessons that can be learnt from Australia and these include increased adoption of the technology in processes like electronic filing systems, virtual hearings, as well as the

management of digital evidence. This would reduce on procedural activities and assist in disposal of cases to do away with case backlog.

4. The citizens of both countries should increase their access to legal aid. Australia should increase its investment in LACs because doing so would guarantee that the struggling class is represented promptly. There is also room for amelioration in the legal aid system of India so as to avoid imprisonment of undertrial prisoners because of absence of legal assistance.
5. In India these amendments to the CrPC and BNSS should periodically be reviewed to avoid continued presence of unnecessary procedural steps that cause delay. Other provisions that could lead to better compliance include things like the provision of strict time frames to various phases of a trial.
6. More efforts should be made by both nations to encourage use of ADR approaches to fight the cases outside the court so that the number of cases in trial could be brought down.

These measures mean that quelling the rights of citizens and, at the same time, establishing justice will become possible if India and Australia seriously approach their criminal justice systems and the observation of the right to a speedy trial.