RIGHT TO SPEEDY TRIAL: ACCESS TO JUSTICE

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Abstract *– The English legal system and the United States Constitution have continuously recognised the right of criminal defendants to a speedy trial. However, an accused who asserts that he was refused an expedited trial has been put under a lot of pressure. Today's huge delays in the administration of justice have pushed lawmakers and court administrators to try to redefine what the fast trial guarantee means. There are several schemes that have established strict deadlines for when an accused person should be put to trial. These initiatives aim to lessen the significant cost of delay to the community, even though justice for the person being charged, particularly for the accused person that is imprisoned before trial is their main priority when a trial should be held for an accused person. These schemes are either enforced by court rules or statutes. In all criminal proceedings, their objective is to provide swift justice. Various common law interpretations of habeas corpus, the rules governing the writ in common law jurisdictions, the evolution of the right to a speedy trial in the United States, including the landmark case of Barker v. Wingo Case, the Speedy Trial Act of 1974, and the role of the judiciary in interpreting the right to a speedy trial are all brought together in this article.*

Keywords: *Criminal law, Speedy Trial, Access to Justice, Rule of Law, Fair Trial.*

INTRODUCTION

The following sources provide criminal law's procedural guarantee for a fast trial: (1) The United States Constitution's sixth amendment (2) State laws enforcing this fundamental right (3) Court procedures governed by the common law (4) the United States Constitution's Fifth Amendment's due process provision. This assurance of a fast trial is believed to have four goals: (1) To stop excessive and harsh detention before trials; (2) To lessen the fear and anxiety that come with being publicly accused; (3) To reduce the likelihood that a protracted delay will make it more difficult for person charged of to protect themselves; and (4) To safeguard society's desires for the efficient and peaceful functioning of fairness. Despite being one of the most fundamental rights guaranteed by our Constitution—a provision as essential as any one of the rights protected through the Sixth Amendment—the right to an expeditious trial is one that the Supreme Court has rarely upheld. As a result, lower courts in both states and federal court have virtually alone established its scope for the majority of the past few years.[1]

Over the years, scholars and judges have identified the common law's stance against the infringement of an individual's right to personal liberty as the fundamental principle of both the common law and the constitutional framework embraced by common law nations. Blackstone stated in his theory that the foremost and main goal of human laws is to safeguard individual liberty. According to this eminent eighteenth-century jurist, the right to liberty is the ability to move about freely, alter circumstances, or remove oneself to any location one's own inclination may dictate; it excludes confinement and constraint unless required by law, and under common law, it is unlawful to imprison someone against their will in a private residence, stock them, arrest them, or forcibly detain them in public. These liberties and rights are inherent to each and every one of us, unless the authorities restrict them. These rights pertained to people only in their natural state. According to Lord Halsbury, the subject's liberty is derived from two interconnected principles: public authorities are limited to acting in accordance with statutes or common law rules, while the subject is free to Speak or doing anything he wants, so long as he doesn't break the law or someone else's rights. The interdictum de libero

[1] Kevin J. Caplis, The Speedy Trial Guarantee: Criteria and Confusion in Interpreting its Violation, v. 22 n.4 DePaul L. Rev. (1973).

homine exhibendo, which is the legal term for the right to personal liberty and habeas corpus in Roman-Dutch law, has long been regarded by the courts as an inherent human birth right.[2]

The 1974 Speedy Trial Act has generated more controversy than other statutes. Congress's acknowledgment that both the public and a defendant have a right to a prompt trial is embodied in the Act. The Act's stringent requirements are unusual, although not being the first effort to protect society's desire for the timely resolution of criminal cases. The Act's permanent limitations go into effect on July 1, 1979, and a defendant is required to be tried within 100 days of being arrested, subject to any prohibited delays. The charges will be dismissed as punishment for the infringement. Congress included provisions to mitigate the impact, including a phase-in period of three years previous to that date during which the time limitations would be substantially reinforced and there would be no dismissal for violations of these conventional limits. However, the announcement of the final limits generated understandable protests from a federal system that had previously accepted multi-year pretrial postponement.[3]

1. ORIGIN OF THE RIGHT

The Assize of Clarendon, an act of Henry II of England in 1166, initiated a revolution of English law, leading to trial by jury in common law countries globally and creating Assize Courts. This act also created the entitlement to a prompt trial or trial devoid of unreasonable delays at common law. It contained a specific guarantee of a fast trial: if the justices are not going to arrive in the county in which those arrested were made anytime soon, the sheriffs ought to provide word, through an knowledgeable individual, to one of the justices who is closer to them that that these men have been apprehended;; the justices will then send word back to the sheriffs where they wish to have the men brought before them, and the sheriffs will bring them before the justices; additionally, they will bring two lawful men from the hundred and the village where the arrests have been made to carry the county and hundred record as to why the men were arrested, and there before the justices let them make their law.[4]

The right to a prompt trial is inherent in the rights to a "just trial" and "procedure under the law". It is a right that is also clearly protected by statute law and English common law. The Magna Carta,[5] also known as the Great Charter of the Liberties of England, is a royal charter of rights that King John of England consented to at Runnymede, near Windsor, on June 15, 1215. At the heart of Magna Carta, the two most well-known provisions, 39 and 40, which deal with rights and liberties. Clause 40 of Magna Carta in the assertion: "*Nulli vendemus, nulli negabimus aut differemus rectum aut justiciam*" means that "To no one will we sell, to no one will we delay right or justice." [6] Clause 39 of the Great Charter declared, "No free man shall be taken or imprisoned or dispossessed, or outlawed, or banished, or in any way destroyed, nor will we go upon him, nor send upon him, except by the legal judgment of his peers or by the law of the land." It was this charter that gave the entitlement to a quick trial its first formal embodiment in English common law. Similar to nearly all significant advancements in the history of the country, England experienced turmoil and civil war prior to the creation of the Great Charter. It was a kind of agreement between the rebellious English nobles and King John, who agreed to stay in charge in return for acknowledging the privileges outlined.[7] Scholars claim that because Magna Carta recorded the objections of the barons in particular and other people

[2] Chuks Okpaluba & Anthony Nwafor, The Common Law Remedy of Habeas Corpus Through the Prism of a Twelve-Point Construct, 2 Erasmus L.Rev. (2021).
[3] Linda M. Ariola & Deborah A. DeMasi & Edward D. Loughman III & Timothy G. Reynolds, The Speedy Trial Act: An Empirical Study, v. 47 n. 5 Fordham L.Rev. (1979).
[4] Cynthia Cline, Trial without undue delay, v.8 n 1 Brazilian Journal of public policy (2018).
[5] Magna Carta was the first document to put into writing the principle that the king and his government was not above the law. It sought to prevent the king from exploiting his power, and placed limits of royal authority by establishing law as a power in itself.
[6] Diana Theresa Harrison, The Right To Speedy Trial: A Comparative Analysis Of The Administration Of Criminal Justice In Jamaica, England And The United States Of America (1993).
[7] Amanda L. Tyler, A "Second Magna Carta": The English Habeas Corpus Act and the Statutory Origins of the Habeas Privilege, v. 91 n. 5 Notre Dame L. Rev. (2016).

against King John's capricious actions, it was the first constitutional charter to register citizens' liberty by protecting the absolute authority of the law.[8]

Magna Carta thus represents the first formal attempt to create a balance among the rights of citizens and the objectives of the state. Then, only when the feudal social framework is taken into account can the entire meaning of these rights be understood. It was necessary to buy remedy from the King in the early Middle Ages. The King was entitled to postpone a case's hearing or to refuse to use his writ until he was compensated for this privilege. After Magna Carta was ratified in 1215, the idea that Justice from the King was a privilege which was enjoyed by a selected few was disregarded, and instead the people began to perceive it as a right that they had rightfully earned from King John. Clause 39 was, in fact, intended to prohibit an accused person from being imprisoned for an extended period of time without finding someone guilty or innocent. Lord Coke wrote as follows: "The purpose of his incarceration is to enable him to be tried in accordance with the laws and customs of the realm in the future."[9]

DEVELOPMENT OF SPEEDY TRIAL

One of the aspects of the positive law was the right to a prompt trial. It is reasonable to consider this idea of positive law, which derives from natural law and predates Magna Carta, to be the conceptual forerunner of the rights codified in the document. It is possible to view the entitlement to a prompt trial as a basic human right that is fundamentally predicated on ideas of natural law. Legal theory was formulated by natural law theorists using concepts such as "God," "Nature," "Intuition," or "Reason." Excessive delay cannot serve as a social good since it delays justice and denies justice. The harm that might otherwise result from a delayed trial would be eliminated by the right to a prompt trial. Therefore, such an advantage is bound to benefit society. According to Locke, the natural law, which establishes natural rights, already governs the state of nature, which is a social state. This Theory was employed by Locke to defend the English Revolution in 1688.

Therefore, libertarianism, or liberal philosophy, provided theoretical basis for the liberties outlined in Magna Carta. The libertarian philosophy is a complete dedication to the idea of individual rights. Liberal ideologies, such as libertarianism, believe that "all men have a certain set of rights which are indefensible, cannot be given up and may not be taken away in the interest of the collective.[10] These rights go with him whenever he goes because they are inalienable, imprescriptible and indefeasible". The libertarian emphasises the necessity of a written constitution and a bill of rights in order to protect individual liberties. Thus, libertarian ideals of freedom from incarceration and impartial treatment of officials are reflected in concepts of due process, the right to a prompt trial, and autonomy. Libertarian remedies for unduly long delays could include, in addition to dropping the charges, a cost-plus award that accounts for the inconvenience, detention, and lost wages. The cost award would function as a sort of civil remedy to protect the person's welfare to the greatest extent feasible. In the framework of utilitarianism as a moral philosophy, the right to a prompt trial is an objective social benefit. Everyone would be most satisfied and safe as a result. Therefore, a rapid trial would be viewed as desirable by the utilitarian in order to achieve justice because it would increase the likelihood that the guilty would be found guilty and the innocent would be found not guilty.[11]

The American Constitution's first ten amendments incorporate the principle of natural rights, which establishes standards by which the Supreme Court can judge whether laws and executive orders are lawful. The Declarations of The Rights of Man, published in 1789, which embodied the principles of the French Revolution, also codified this extreme interpretation of natural law. The Preamble to the Charter of the United Nations reaffirms "faith in fundamental human rights and in the dignity and worth of the human person." Article 55 of its Charter declares: "The U.N shall promote Universal

[8] Goodhart, Arthur L., Law Of The Land, 1966.
[9] *Supra* Note 3.
[10] Robertson, D. A., Dictionary of Modern Politics, 1985, p. 188.
[11] *Supra* Note 3.

respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."[12]

The Universal Declaration of Human Rights was adopted by the General Assembly in 1948 following extensive deliberations inside the UN Human Rights Commission.[13] Under the Council's direction, a comparable set of human rights were added to the European Convention on Human Rights in 1951. Member states are legally required by the European Convention for the Protection of Human Rights and Fundamental Freedoms to make sure that their legal frameworks uphold this "collective guarantee" and to also make sure that there is a system in place to enforce compliance.[14]

THE ENGLISH HABEAS CORPUS ACT - A SECOND MAGNA CARTA

"If any person be restrained of his liberty, he shall, upon demand of his counsel, have a writ of habeas corpus. And by the habeas corpus act, the methods of obtaining this writ are so plainly pointed out and enforced, that, so long as this statute remains unimpeached, no subject of England can be long detained in prison, except in those cases in which the law requires and justifies such detainer." – Blackstone's Commentaries.

chief justice Coke said, hearing on a habeas case on King's Bench: "By the law of God, none ought to be imprisoned, but with the cause expressed." According to the story that has emerged to explain this early interpretation of habeas corpus, the writ of habeas corpus was created to guarantee that a prisoner would receive the due process that the Great Charter guaranteed, which in turn required a jailor to provide a valid reason for the prisoner's detention. The common law writ of habeas corpus ad subjiciendum et recipiendum, which literally means "to undergo and receive" the "corpus," or body, of the prisoner. [15]

The prerogative Writ of Habeas Corpus safeguarded the accused from rigorous pretrial detention, much as Magna Carta prohibited an accused person from being imprisoned for a long amount of time. For someone who has been detained without being charged, the Writ of Habeas Corpus may be used to force their release. However, even if Magna Carta and the Writ of Habeas Corpus achieved the same goal, it would be more accurate to define the Writ of Habeas Corpus as a "remedy" than a "right."[16]

In England, special writs were created to safeguard citizens from being imprisoned indefinitely in situations when bail was not permitted. These writs established the right to a prompt trial. The Habeas Corpus Act of 1679 was one such writ and has been considered as the predecessor of the sixth amendment right. The maxim, "justice delayed is justice denied" ultimately found its way into English criminal law and made its way to its colony- America. Some of the authors of the Bill of Rights believed that the right to a prompt trial was an inherent aspect of liberty under common law, and that the right could not be preserved without an amendment to the Constitution. The people, however, desired this right protected, and among the procedural rights protected by the sixth amendment, they emphasised the right to a prompt trial. The Fifth Amendment's due process clause, which ensures an impartial trial, is noteworthy. Therefore, it is possible to interpret the sixth amendment's emphasis on the necessity of speed as a way of highlighting this inherent right.[17]

2. THE RIGHT TO SPEEDY TRIAL IN THE UNITED STATES OF AMERICA

The criminal justice system in Anglo-America is strongly rooted on the right to a prompt trial. Magna Carta clause 39 was included in the first colonial Bill of Rights, which was written in Virginia. Article

[12] *Supra* Note 3.

[13] The Preamble expressed the hope for: "A common standard of achievement for all people and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance both among peoples of member states themselves and among the peoples under their jurisdiction."

[14] D. J. Harris had this to say about the practical value of embodying these rights in domestic constitutions: "The practical value of the guarantee is that it set a limit below which contracting parties could not allow their legal systems to fall."

[15] *Supra* Note 4.

[16] *Supra* Note 3

[17] *Supra* Note 12.

VIII of the Virginia Declaration of Rights, also known as the Bill of Rights, was adopted by the House of Delegates on the 12th of June 1776:" That in all capital or criminal prosecutions a man has a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favour, and to a speedy trial by an impartial jury twelve men of his vicinage, without whose unanimous consent he cannot be found guilty, nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the law of the land or the judgement of his peers." The United States Bill of Rights, the first ten amendments to the U.S. Constitution, was influenced by this and other guarantees in the Declaration of Rights. The Sixth Amendment's rights to a prompt trial, a jury trial, confrontation, the right to know the charges against oneself, and the right to mandatory procedure, for instance, are all mirrored in Article VIII of the Declaration of Rights. It also covers the Fifth Amendment's protections against self-incrimination and the right to due process prior to being taken away from one's freedom.[18] Thus, the United States of America's Constitution and its statutory provisions established the right to a quick trial.

A. Sixth Amendment

The right to a speedy trial in federal court proceedings is upheld and provided by the Sixth Amendment to the Constitution. The Sixth Amendment states the following: "In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process." The Speedy Trial Guarantee is not applicable to state law criminal prosecutions in state courts, according to federal law. State constitutions or statutory provisions protect the right. In reality, almost every state in the United States of America has adopted the right in its constitution. However, the Supreme Court ruled in *Klopfer v. North Carolina* [19] that the rights is protected in state courts by the Fourteenth Amendment to the Constitution.[20] In fact, the Federal Speedy Trial Act is a stronger representation of this entitlement.[21]

Determining and putting into practise the right to a speedy trial under the sixth amendment has proven challenging. Determining what constitutes an unjustified delay in trial and what remedies are acceptable when such a delay arises has proven to be the most tricky. The significant practical challenge of putting the sixth amendment into practise in the midst of growing court backlogs and the seemingly unavoidable delays in criminal cases is added to these challenges. Legislators and courts have offered differing answers to these issues. However, these differences simply highlight how important it is to have a consistent definition of the sixth amendment right.[22]

B. Barker v. Wingo Case

The most significant distinction between the United States and other States swift trial guarantees is that the former focuses on the amount of time that passes between an arrest or indictment and a conviction. As is typical in other jurisdictions, there is no right to a prompt appeal in the United States. *Barker v. Wingo*[23] is the landmark U.S. case involving a quick trial. Barker is noteworthy for a number of factors. Initially, it assigns the defendant or the prosecution the culpability for the delay through the application of a balancing test. Secondly, it acknowledges that the only way to address a denial of rights is by the dismissal of charges. Thirdly, the Court enumerated the primary factors supporting the right to a prompt trial. The Court determined that the right to a speedy trial

[18] *Supra* Note 1.
[19] 386 U.S. 213 (1967).
[20] The Fourteenth Amendment was ratified on July 9, 1868. The amendment granted citizenship to those born or naturalized in the United States and guaranteed freedom, due process, and equal protection under the law to all Americans. In doing so, it expanded the scope of the Constitution's protection of individual liberty; now the Constitution protected rights not only from infringement by the federal government, but from infringement by state and local government as well.
[21] Diana Theresa Harrison, The Right To Speedy Trial: A Comparative Analysis Of The Administration Of Criminal Justice In Jamaica, England And The United States Of America (1993).
[22] Stephen R. Lohman, The Speedy Trial Act of 1974: Defining the Sixth Amendment Right, v. 25 n.6 Catholic University L. Rev. (1976).
[23] 407 U.S. 514 (1972).

safeguards three interests: (i) preventing arbitrary pretrial detention; (ii) reducing the accused's fear and anxiety; and (iii) minimising the probability that the defence would be compromised.
Prejudices and damage outlined in *Barker v. Wingo* are the main targets of the defendant's right to a speedy trial under the Sixth Amendment. Even though a person might continue to get a fair trial, he may be entitled to a dismissal for violating the Sixth Amendment's right to a quick trial. Additionally, the government's and the public's interests in having criminal charges decided after a thorough trial are not taken into account in the Barker v. Wingo approach. Put simply, a person found to be factually guilty may be released from custody owing to a delay caused by the Sixth Amendment's Speedy Trial Clause. Cardona is a prime illustration. The United States Court of Appeals for the Fifth Circuit held that the government had the burden of demonstrating a lack of prejudice in light of the defendant's demand for a speedy trial following an inexplicable five-year delay between indictment and arrest. Despite this, the defendant was found guilty of drug conspiracy after a jury trial. Cardona is an anomaly because the government did not provide any evidence of attempts to apprehend him, but it is a case of how the right to a quick trial under American law can help a prisoner who did not demonstrate that his long pretrial detention had harmed. His innocence or guilt was not taken into consideration by the appeal court in its reasoning; in fact, it was only acknowledged in the decision when it said he was found guilty following a jury trial.[24]

C. RULE 48(b): FEDERAL PROTECTION AGAINST UNNECESSARY DELAY

According to Federal Rule of Criminal Procedure 48(b), the court may dismiss the indictment, information, or complaint if there is an unwarranted delay in filing an information towards the defendant, presenting the charge to a grand jury, or bringing the defendant to trial. Although this rule is based on the right to a speedy trial guaranteed by the sixth amendment, it is not a formal restatement of such right. The rule serves two purposes: (1) it gives accused parties a way to enforce their constitutional right to a prompt trial; and (2) it formalises the court's fundamental authority to reject a case for undue delay. Rule 48(b) allows the court to dismiss an indictment, information, or complaint for undue delay. This rule allows the court to dismiss an indictment, information, or complaint even in cases where there hasn't been a constitutional violation of the right to a speedy trial. But like the constitutional guarantee, this regulation is only applicable in post-arrest circumstances. A court would often take into account the same factors when deciding whether to dismiss someone under this rule as it would when deciding whether to dismiss someone under the quick trial clause.[25]

D. RULE 50 (b) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

The following is directed by Rule 50(b): Each court shall create plans for the quick disposal of criminal cases and undertake an ongoing examination of the criminal justice system in the court and before United States Magistrates of the district in order to reduce excessive delay and promote the speedy disposal of criminal cases. This effort, besides other things, developed reporting processes for checking compliance and urged district courts to make plans for reducing delays. It did not, however, specify any actions for reducing delays. In fact, Rule 50 (b) was not strictly followed. Furthermore, it was insufficient because there were no penalties for noncompliance. It was noted by Malcolm Feeley: "Although Rule 50 (b) directed each district to draw up its own plans for the prompt disposition of criminal cases neither the rule nor the Administrative Office set any criteria by which delay could be gauged. Nor did they provide for any penalties in the event guidelines were not met. Most telling, a great many courts undertook no planning process and simply resubmitted the model plan as their own. The constitutional Sixth Amendment and Rule 50 (b) provided no standards by which an accused person's right to a speedy trial could be judged." Thus, the Federal Speedy Trial Act was enacted in 1974 in an attempt to address the issue of delay.[26]

[24] *Supra* Note 1.
[25] Kevin J. Caplis, The Speedy Trial Guarantee: Criteria and Confusion in Interpreting its Violation, v. 22 n.4 DePaul L. Rev. (1973).
[26] *Supra* Note 21.

THE SPEEDY TRIAL ACT

The 1974 Speedy Trial Act has generated more controversy than other statutes. Congress passed the Speedy Trial Act of 1974 in January 1975. The Act was the result of several bills pertaining to expedited trials that were discussed in multiple sessions before the 93rd Congress. The Act is Congress's acknowledgement that both the accused and the general public have a right to a prompt trial. Congress passed the Speedy Trial Act of 1974 in response to public concerns about crime prevention and control because they believed that individuals had a right to a prompt resolution of criminal matters.[27] The Act's goals were to reduce the amount of crimes committed by defendants in criminal cases who were released before trial and to speed up the evaluation of federal criminal cases.

The Act creates automatic time restrictions on dealing with criminal matters, which the court may only extend in compliance with the Act's terms, with the aim of expediting the pace of criminal proceedings. The Act also mandates that cases that are not processed within the allotted time must be dismissed. But there has been a lot of debate about the Act's limitations on time and dismissing sanction ever since it was passed. Many observers think that the time constraints establish an arbitrary standard on how criminal cases are resolved, which hinders the ability of the courts, prosecutors, and defence attorneys to successfully litigate criminal matters. Others argue that the time constraints operate against defendants by not giving defence attorneys enough time to prepare their arguments, especially in circumstances when the defendants are charged with a crime.

Whether there have been appreciable reductions in the length of time it takes to process criminal cases since the Act's adoption is a key question in the debate surrounding it. To properly handle litigation, many courts, prosecutors, and defence attorneys may favour delaying the resolution of criminal cases. According to some commentators, by utilising the Act's time extension provisions—which were intended to account for unreasonably long litigation delays rather than to accept unjustified delays—these litigants are circumventing the intent of the Act. The Act may most likely have little effect on the delay issue if judges allow delays by granting extensions of processing time beyond the Act's limitations.[28]

The Act's stringent requirements are unusual, although not being the first attempt to protect society's interest in the timely resolution of criminal cases. The Act's permanent limitations go into effect on July 1, 1979, and a defendant must be tried within 100 days of being arrested, subject to any excluded delays. The charges are dismissed as a punishment for the infringement. Congress included provisions to mitigate the impact, including a phase-in period of three years previous to that date during which the time limitations would be substantially increased and there would be no dismissal for violations of these conventional limits.

LEGISLATIVE HISTORY OF THE SPEEDY TRIAL ACT

The public and the accused are both protected by the sixth amendment's right of a prompt trial, as the Supreme Court stated in a 1905 ruling. Nevertheless, the Court has also observed that the defendant's interests often conflict with society's need for swift disposal. Effective criminal case prosecution is important to the public because it can prevent potential offenders and hold those guilty accountable. In the same way that a delay could make it harder for the accused to defend themselves, it could also make it harder for the government to establish its case. Furthermore, an accused person that is at large has the potential of committing other crimes or become a fugitive from justice as they await trial. And the longer the time interval. the shorter the interval is among the offender's conviction and the committing of the offence, the less effective the conviction is as a deterrence. As a result, while a defendant may benefit from his decision to forego a prompt trial, there is a chance that it will seriously harm the public interest.

[27] Linda M. Ariola, Deborah A. DeMasi, Edward D. Loughman III, Timothy G. Reynolds, The Speedy Trial Act: An Empirical Study, v. 47, n.5 Fordham L. Rev. (1979)
[28] *Supra* Note 4.

Even though the public's right to prompt justice has long been seen as legitimate, not much has been done to lessen the negative effects that lengthy delays had on society till the late 1960s. Alarming increase in the backlog of cases on federal and state court calendars occurred during that period, largely due to the growing frequency of postponements when bringing criminal cases to trial. Because it relied on an ad hoc evaluation of each case's merits, the criteria used for determining a defendant's entitlement to a quick trial was insufficient to reduce the backlogs and frequently made matters worse. It soon became clear that certain guidelines for the timely resolution of criminal cases were necessary in order to safeguard the public's interest and decrease court congestion. In 1968, the American Bar Association (ABA) released the first set of these standards. According to its Standards Concerning Speedy Trial, every state should set a specific deadline for when a trial must start, which should be prompted by a particular event like arraignment or first appearance. The Standards recommended that the deadlines start even if the defendant doesn't ask for a quick trial.[29]

The ABA plan obliged the court to weigh the public interest when deciding whether to grant a continuation, but it also allowed the court to forego periods of delays based on specific occurrences. Courts should only issue continuances upon proof of sufficient grounds and for an appropriate period of time, according to the American Bar Association, which also argued that a rigorous excluded time policy was essential to the effectiveness of any quick trial legislation. The Standards stipulated that a defendant who violated the time constraints would have their accusations against them dismissed with prejudice, which served as an additional disincentive for delaying.

The states mostly disregarded the ABA Standards. They likewise had little effect on federal tribunals until the United States Court of Appeals for the Second Circuit adopted them as a template for its own criteria in 1971. The court declared that every district court criminal proceedings in the circuit will be governed by the Second Circuit Rules Regarding Prompt Disposition of Criminal Cases as of July 5, 1971. According to the Second Circuit Rules, the Government had to be prepared for trial no later than six months following the defendant's arrest, the serving of a summon, the detention, or the filing of a formal charge or complaint, whichever came first. Similar to the ABA Standards, the Rules stipulated that the only penalties for violations were excluded periods of delay and termination with prejudice. Furthermore, the limits did not have to be demanded by the defendant in order for them to be applied; rather, a guilty plea or trial before the right to discharge was requested became equivalent to a concession of that right.[30]

The Second Circuit Rules, in spite of their declared goals, only partially succeeded in releasing the impasse caused by pretrial delays. The most disappointing aspect of rule 4 was the "notice of readiness" requirement, which called for the Government to notify the court it was prepared to continue to trial during the allotted six months. Trials might start eight months or more after arrest or indictment, instead of the six months that the Rules apparently intended, unless the court called the matter for trial soon after the notification was submitted since there was no reason for doing so. Moreover, in situations not listed in the other prohibited time provisions, rule 5(h) allowed a delay as long as it was "occasioned by exceptional circumstances."

Concurrent with the implementation of the Second Circuit Rules, the United States Judicial Conference was formulating expedited trial guidelines that would be relevant to all federal courts. On October 1, 1972, one of these suggestions was accepted and became Federal Rule of Criminal Procedure 50(b). It mandated that all districts create and implement plans for the swift resolution of criminal cases and carry out ongoing research on the management of the criminal justice system. The Administrative Office of the United States Courts created and delivered a model strategy for the district courts for examination in accordance with rule 50(b).

Therefore, pretrial delays and court overcrowding persisted as a significant issue, and federal courts showed little incentive to address the condition in spite of all previous regulations and intentions to promote the faster resolution of criminal cases. Recent research showing that lengthy delays raised

[29] *Supra* note 26
[30] *Supra* note 22.

the risk of pretrial recidivism made the need for more precise rules increasingly imperative. The 1974 Speedy Trial Act was passed by Congress, as a result of these factors.[31]

A. TIME LIMITS AND SANCTIONS

The Act's passing signifies the most concerted attempt to uphold the public's right to prompt criminal judgements. While the Act formalised some elements of earlier schemes, it also includes significant changes aimed at more effectively advancing the public interest. By passing the Speedy Trial Act, Congress attempted to address the problem of delays in the handling of federal criminal prosecutions. The Speedy Trial Act's primary effect arises from the imposition of time constraints for three distinct intervals throughout the arrest to trial period.

section 3161 (b) Any information or indictment pertaining to the offence must be filed within 30 days of the accused's arrest or the day they were served with a summon, according to the first interval or restriction. As per Section 3161(c), The second interval, or limit, mandates that the accused's arraignment take place within ten days of the date the information or indictment was filed, or, if that date falls later, of the accused's order to appear before a judge in the court where the charge is pending and answer. In cases where a not guilty plea has been entered, the trial has to begin within 60 days of the date of arraignment, according to the third interval or time restriction.

The Speedy Trial Act contains provisions pertaining to deadlines following the dismissal of an indictment or information on the request of the prosecution or defence. According to Section 3161 (d), the time constraints of Sections 3161 (b) and (c) apply when an indictment or information is dismissed as a result of a move by the defence and is reintroduced on the basis of identical offences and allegations. A retrial must occur under the Act, 60 days following a mistrial, or 180days if the court orders one following the successful collateral attack.

Section 3162 (a) (1) states: "The charge against the person named in the complaint will be dismissed or dropped if, in the case of any individual against whom a complaint is filed charging that individual with an offence, no indictment or information has been filed within the time limit needed by section 3161 (b), as extended by section 3161 (h) of this chapter.[32] Furthermore, in those instances not specifically covered by the other excludable time provisions, section 3161(h)(8) of the Act stipulates that continuances might be granted at the trial judge's discretion (upon his own motion or that of counsel) whenever the "the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." The Senate Report referred to this clause as "the heart of the speedy trial scheme" enacted through the Act, as it gave the strict time limits sufficient flexibility to ensure compliance a realistic goal.[33]

There are also sanctions for violation of time period governing speedy trial if a case is not concluded within the allowable time period. In respect of the constitutional right to speedy trial, the most common sanction is dismissal of the charge against the accused. Failure to file within the specified time limits require the complaint to be dismissed unless the time limit under section 3161 (b) for instance, has been extended by section 3161 (h) Whether dismissal is with or without prejudice is within the discretion of the court. Section 3162 of the Federal Speedy Trial Act, which became effective July 1, 1979 states that if the accused is not brought to trial within the time limit, the indictment shall be dismissed on the motion of the accused. Section 3126 (c) provides that where the accused does not move for a dismissal prior to trial or an entry of a plea of guilty or nolo contendere it shall constitute a waiver of the right to dismissal under section 3162. Where the dismissal is "with prejudice", it precludes further prosecution. Where it is "without prejudice", the charge may be reinstituted. On these occasions it is usually with the approval of the court. The factors to be considered in that decision are the seriousness of the offense, the circumstances of the case that led to the dismissal, and the impact of reprosecution on the administration of the Act and justice. Quite apart from the sanction of dismissed, the Speedy Trial Act penalizes persons who directly involve in

[31] Linda M. Ariola & Deborah A. DeMasi & Edward D. Loughman III & Timothy G. Reynolds, The Speedy Trial Act: An Empirical Study, v. 47 n. 5 Fordham L.Rev. (1979).
[32] *Supra* note 3.
[33] *Supra* note 12.

the criminal process for delays. For instance, the court has a discretionary power under the Speedy Trial Act to fine, suspend, or report an attorney for delaying tactics in respect of a case

The time limits mandated by the Act are intended to achieve two basic goals. The first is to define and implement the sixth amendment right to a speedy trial in such a way as to make the right meaningful for criminal defendants. In considering the Act, Congress concluded that the case law and court rules dealing with speedy trial had been inadequate in achieving this goal.' A second basic goal of the Act is to benefit the public by making the deterrent value of punishment more substantial through swift and efficient justice. At the same time, swift imposition of punishment would reduce the time and opportunity available for persons released pending trial to commit other offenses. The time limits established in the Act are subject to numerous periods of "excludable delay"' which will not be counted toward the statutory time limit. Although the Act specifically states that the excludable delays listed are not exhaustive, given their wide scope and detailed treatment, they will probably comprise the bulk of those deemed legitimate by the courts.

A second significant provision of the Act is the section detailing sanctions for failure to meet the requisite time limits. The Act provides that on defendant's motion, the court must dismiss the charges against the accused if the time limit, excluding all legitimate delay, has expired.' The Act does not require, however, that the dismissal act as a bar to future prosecution.' Rather, it leaves that determination to the trial judge, subject to a number of guidelines. Dismissal on expiration of the time limits is characterized as mandatory but not automatic, since the defendant must make a timely motion to dismiss or waive his right to a dismissal. Many provisions of the Speedy Trial Act are responses to, and in some cases models of, earlier attempts to define the right to a speedy trial. Previous efforts have come from the common law, federal and state statutes, and court rules. In order to adequately evaluate the meaning and effect of the Speedy Trial Act, it is necessary to review these prior attempts at definition.[34]

B. CRITERIA FOR DETERMINING THE SPEEDY TRIAL RIGHT

There are two major issues to be discussed in interpreting the sixth amendment guarantee of a speedy trial. First, one must determine the criteria by which to judge the constitutionality of delays in regard to whether they violate the right. Second, at what point in time during the criminal process does the right attach.

The Criteria of Constitutionality

In determining whether a defendant has been deprived of his right to a speedy trial and has been unduly delayed there are four interrelated factors which a court will assess: (1) Length of delay; (2) reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant. Undue delay cannot be defined in terms of days, months, or even years. The burden is on the accused who asserts the denial of his right to a speedy trial to show that the delay was due to the neglect or wilfulness of the prosecution. The component parts of this statement provide a focus for analysis of the traditional and still prevailing view of the constitutional speedy trial guarantee. A court is to balance these factors in order to determine whether the constitutional right has been abridged-

1. Length of the Delay: The Supreme Court in 1905 noted that the right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. No precise time limit is expressed in the Constitution, nor have judicial decisions provided such a limit. The "essential ingredient" of the guarantee, in fact, has been said to be "orderly expedition, and not mere speed."' In some cases, however, if an "unreasonably" long delay occurs between indictment and trial, the defendant has been relieved of his burden of proving prejudice owing to the delay. [35]

Generally, no violation of this right will be proven solely by reference to periods of time nor will a delay be held reasonable merely because it is of short duration. Rather the length of delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance. There have been

[34] *Supra* note 19.

[35] Kevin J. Caplis, The Speedy Trial Guarantee: Criteria and Confusion in Interpreting its Violation, v. 22 n.4 DePaul L. Rev. (1973).

many proposals to set a time limit between arrest and trial beyond which the speedy trial right would be deemed violated and the charges would be dismissed. Two such proposed time limits for those in jail have been set at 60 days by the American Bar Association and the proposed Speedy Trial Act of 1971, 51 and 4 months by a presidential commission. [36]

2. Cause of the Delay: A defendant who by his own motions, continuances, or dilatory tactics causes a delay in bringing his case to trial cannot later claim that he was denied a speedy trial. Even when the prosecution is the cause of the delay, the defendant often must prove that the delay was "purposeful or oppressive." If the prosecution has not willfully caused the delay and is not grossly negligent in its duties, delay will generally be excused. It follows that if the prosecution is prepared to proceed with the case and delay is caused only by the congested condition of the criminal calendar, the defendant has no grounds to contend that he was denied his constitutional right to a prompt trial.[37]

In determining the reason for a delay the courts are actually seeking to discover who caused the delay, which is determined by finding: (1) the source of the delay, and (2) the motive or reason for the delay. **(a) Source of the Delay**-It is evident that a defendant cannot complain of delays attributable to himself, such as delays caused by his pre-trial motions or dilatory pleadings. Also, he may not complain of delays caused by his incompetency to stand trial, from his express or implied consent to delays caused by the government, or from his fleeing from justice. The presence of such factual circumstances would show that the defendant waived his constitutional right to a speedy trial. There is dictum to the effect that congestion in a court's docket and the lack of judicial manpower may excuse a delay. Some courts have accepted this delay as reasonable and have held it does not violate the right to a speedy trial, while others have held it is no excuse. Dictum in the Barker decision asserts that such delay is a "neutral reason" and it should be weighed less against the government than deliberate delay. Yet it is still a barrier to the attainment of a constitutional right and should not be countenanced as a source or a reason for a delay. **(b) Motive or Reason for The Delay-** This factor generally only comes into question where there is governmental delay, which must then be inspected to see if an objectionable motive or reason existed. A deliberate attempt by the prosecution to injure the defendant's case has been termed purposeful or oppressive and is clearly unjustifiable. Such a delay should be weighed heavily against the government. However, a bad faith intent by the government to harm the defendant is not necessary; it is enough that the government has made a deliberate choice for a supposed advantage. Therefore, delays resulting from unreasonably prolonging an investigation, from filing charges in a district of doubtful venue and from dismissing one charge and reindicting a defendant on a related charge have been held to violate the speedy trial and due process guarantees.

3. The Defendant's Assertion of His Right: A defendant can always waive his right to a speedy trial and, as noted previously, many actions are considered to waive this right. However, around the speedy trial guarantee there also grew what has been referred to as the "demand-waiver doctrine" under which an accused must demand a speedy trial in order to avail himself of his sixth amendment right. Failure to demand a speedy trial was considered to be an implied waiver of the right. At one time this doctrine was unanimously followed by the federal courts and most state courts. However, in the past few years there has been an eroding of demand-waiver unanimity, with some federal circuit courts placing a positive duty on the prosecution to secure a speedy trial, and not for the defendant to demand it. In *Barker v. Wingo*, the Supreme Court rejected the demand-waiver doctrine stating that: “a defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.”[38]

4. Burden of Proving Prejudice: The fourth factor used in determining if an accused has been denied his constitutional right to a speedy trial is prejudice. Under the traditional approach, before an accused may claim he was denied a speedy trial, he must allege and prove that he was prejudiced

[36] Diana Theresa Harrison, The Right To Speedy Trial: A Comparative Analysis Of The Administration Of Criminal Justice In Jamaica, England And The United States Of America (1993).
[37] *Supra* note 3.
[38] *Ibid.*

by the delay. Only in the rare case will prejudice be presumed, and then only if the delay is prima facie unreasonable. Despite Supreme Court dicta broadly delineating the dangers of trial delay, prejudice is often interpreted very narrowly-only delay which harms the defendant's ability to prepare his defense may be considered truly prejudicial.

There are three divisions of issues to be inspected in order to determine prejudice: (a) what are the different types of prejudice are, (b) whether a showing of prejudice is necessary, and (c) if so, who has the burden of proof

(a) Types Of Prejudice- Prejudice should always be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. Three such interests are: (1) to prevent undue and oppressive pre-trial incarceration; (2) to minimize anxiety and concern accompanying public accusation; and (3) to limit the possible impairment of the ability of an accused to defend himself. The first two types of prejudice can be referred to collectively as prejudice to the person of the accused, and appear to be relatively unimportant in most speedy trial determinations. The third factor, referred to as prejudice to the defense, is the most serious one because the inability of a defendant to adequately prepare his case shows the unfairness of the entire system upon which he is prosecuted. A delay which causes the loss of potential witnesses, memories to fade, and documents or physical evidence to be lost is clearly prejudicial to a defendant's case. Generally, the extent to which a delay has resulted in actual prejudice is an essential factor in determining whether there has been a violation of the speedy trial guarantee. Some courts require that both prejudice and improper cause be shown.'" Other courts, however, require only that prejudice or improper cause be shown.

(b) Whether a Showing of Prejudice is necessary - On the surface, it seems contradictory that demonstrating some level of bias is necessary given that proving bias is not a prerequisite for demonstrating a breach of one's other sixth amendments rights. Cases defining other rights under the sixth amendment focus on the idea that when a basic right is at stake, assessing the level of discrimination is superfluous. Regarding the basic right to a timely trial guaranteed by the sixth amendment, as stated in Mr. Justice Brennan's dissenting opinion in Dickey, "it may be equally realistic and necessary to assume prejudice once the accused shows that he was denied a rapid prosecution." Furthermore, the sixth amendment's plain language grants every one of the rights listed herein the same status. The amendment consists of a single sentence that enumerates certain rights that are allotted to an accused party in any criminal case. The Constitutional language provides certain rights to all accused citizens; therefore, there must be no obligation for a defendant to demonstrate bias just to get those rights, as the text provides some kind of assurance to an accused. The amendment talks about protecting rights that must inevitably "prejudice" an accused person by taking away from their liberty rather than prejudice. Eleven procedural protections found in the Bill of Rights also support the validity of the criminal guilt-determination procedure. With the exception of the due process and expedited trial guarantees, none of these require proof of real prejudice to be shown for a court to find that they have been breached. But prejudice does not always have to be demonstrated in cases involving due process; sometimes the State's system has such a high risk of producing prejudice that it is considered to be fundamentally devoid of due process. Therefore, amongst the criminal procedural rights of the Bill of Rights, the promise of a swift trial is seen to be unique in that it always necessitates the demonstration of real prejudice instead of assuming it comes from the process in question.

(c) Who has the burden of proving prejudice- One must then decide who bears the responsibility of proving prejudice—or lack thereof—because the accused's right to a quick trial is not inherently compromised when their sixth constitutional right to one is violated. The burden of proof in lower court matters seems to fall into one of three categories, however the Supreme Court has yet to decide who bears this responsibility: (1) Prejudice is expected from a protracted delay, and such inference is conclusive of the prejudice issue; (2) the accused must demonstrate prejudice, which is dispositive of the prejudice issue. 3) Prejudice should be demonstrated by the accused or inferred from a lengthy delay; however, the government may refute either proof or assumption by demonstrating that the accused suffered no significant harm beyond that which resulted from an

ordinary and inevitable delay or that the delay served a legitimate police purpose. According to one source, the length of the delay ought to be the determining factor in assigning blame. As a check on baseless claims, he proposed that in cases where there is a brief delay, the burden of proof should shift to the defendant to demonstrate prejudice and undue delay. When a "substantial" delay happens, though, the state should bear the responsibility of demonstrating why the delay was appropriate and essential. It is reasonable and fair for the state to demonstrate that the defendant has not been harmed by the delay if it is unable to accomplish this. By weighing the four criteria provided by the Barker decision, it may be concluded that none of them is required or sufficient to establish a violation of the sixth amendment's right to a quick trial. As a result, while it may not be essential for all four reasons to be found in favour of the accused or the government, one component by itself could fail to resolve the matter.

C. **Time of Attachment**

The precise time at which the right to a prompt trial attaches has been the subject of great debate in recent years. Courts have typically taken into account four stages of the criminal process when the guarantee may start: (1) the purported crime is conducted; (2) the government determines to prosecute and has sufficient evidence to do so; (3) the defendant is taken into custody; and (4) he is officially charged with a crime, either through an information or an indictment

1. **The Pre-prosecution Phase**: In the case of United States v. Marion, the US Supreme Court ruled that a pre-prosecution delay does not impede one's right to a prompt trial. The Court observed that, in cases where merely pre-indictment delay had occurred, no federal court of appeals had ever reversed a conviction or dismissed an indictment based merely on the sixth amendment's clause guaranteeing a prompt trial. The fairly universally accepted precedent held that this right was available in cases where the prosecution was actually legally started by an arrest or indictment, meaning that an accused person existed in accordance with the meaning of the sixth amendment.

2. The Prosecution Period: An individual may be entitled to a quick trial throughout the third and fourth phases of the criminal process, which include the arrest and formal charges. Although some courts used to hold that a right did not attach at the time of arrest, this view has now changed. According to the guarantee's common law development history, attachment was meant to occur preferably at the moment of arrest. Furthermore, a person who has been placed under arrest is unquestionably an accused in the strict sense of the sixth amendment.

SPEEDY TRIAL SCHEMES IN GENERAL

Statutes pertaining to expedited trials are not brand-new. The Habeas Corpus Act of 1679 gave an arrested person the right to ask his accuser to present his indictment during the first session following his incarceration and to be tried on it at the following session. If this was not successful, the arrested person was first entitled to bail and then, finally, to a final discharge from the charges. Numerous states in the US adapted the Habeas Corpus Act of 1679 in one way or another. Similar to the Habeas Corpus Act, the time restriction was typically determined by the total number of court terms that had passed. But as of right now, these outdated laws are inadequate to address the serious issues associated with postponed criminal justice.

Judges' interpretation of such statutes has largely followed the legal interpretation of the right to a quick trial guaranteed by the Constitution. As a result, the burden of proof for the accused has been placed heavily on them to demonstrate "purposeful or oppressive" prosecutorial delay, prove prejudice, and adhere at the demand rule. State statutes pertaining to expedited trials have been construed to incorporate the same requirements as the constitutional right, even if they have more precise time constraints. Modern quick trial plans vary in specifics, but they share some commonalities as well, such as time restrictions being imposed, extensions of the time limits being allowed for, and penalties for noncompliance.

A. **Time Restrictions:** According to the American Bar Association's Standards Concerning Speedy Trial, the amount of time allotted to the accused's trial must be determined "in the context of months or days commencing on a particular incident." Certain expedited trial plans discriminate between

defendants who are detained waiting trial and those who are released on bail or on their own recognisance.

B. Time Limit Extensions: Exemptions, Continuances, and Justification While assessing the likely impact and efficacy of such schemes, exemptions to the fast trial formula—conditions that either toll or permit the continuation of the time limit—must be taken into account. Specifically, the scope of the state's affirmative duty to provide expedited trials will often depend on the "good cause" exception, as determined by the courts or expressly stated in the plan.

C. **Sanctions:** According to Federal Rule of Criminal Procedure 48(b), the court may drop the charges against a defendant if there is an unwarranted delay in getting him to trial. Because of this, the dismissal is not required and might be granted without repercussions, which means that the accused could face new charges for the same crime or a different one related to the same criminal incident. When time constraints are surpassed, charges need to be withdrawn under several earlier state rules that were modelled after the English Habeas Corpus Act. However, the dismissal of charges does not prevent further prosecution.

3. JUDICIAL INTERPRETATION OF THE RIGHT TO A SPEEDY TRIAL

In a few number of cases, the Supreme Court has had the chance to determine the right to a quick trial. In such instances, the Court emphasised the distinct and elusive nature of the right relative to other constitutionally given rights. The Court has always maintained that there is no constitutional foundation for measuring the right to a speedy trial and that it is an issue that must be decided case by case. It is also a right that is inherently relative and cannot be quantified. There are several reasons why the right to a timely trial is distinct from other constitutional rights. Quick trials are advantageous for society as a whole as well as for the offender since they provide the general impression of prompt, competent justice and serve as a deterrence.

A defendant will frequently profit from a delay, which is a clear breach of the right to a quick trial, making it a distinctive right. A defendant may consent to the breach of his own constitutional right to a prompt trial if he believes that the delay will help his case. The recognition of this aspect has resulted in numerous courts mandating that the accused must explicitly request a prompt trial or risk having their right forfeited. The Supreme Court's most conclusive ruling on how courts must assess whether a defendant has received a speedy trial is provided by *Barker v. Wingo*. In keeping with its belief that the matter could not be resolved by applying an easy formula, the Court declined to establish stringent rules and deadlines for applying when assessing rights infringement. Instead, the Court recommended that each case be subjected to a balancing process that takes into account four factors: the duration of the delay, the reasons behind it, whether the defendant was prejudiced, and if the defendant has argued for a rapid trial. To try to make the suggested analysis obvious, the Court described each aspect separately. The Barker Court saw the amount of time that had passed as essentially a "triggering mechanism" that could decide whether or not a court would take up the task of considering a swift trial claim at all. Practically speaking, duration of delay is taken into account at this first phase and subsequently serves as one of the four components in determining if the right was actually deprived. The facts of the case will determine whether the duration of the delay is going to, in any event, be adequate for supporting the defendant's allegation of the rejection of a quick trial. The requirement that the delay be significant is the only generalisation that may be made. The courts have shown a great deal of tolerance for what they consider to be undue delay. In addition to determining the duration of the delay, courts additionally require to consider the causes of the delay. According to the Supreme Court, the government cannot intentionally delay things in order to gain an unfair advantage on the defendant. Such a deliberate delay finding is uncommon since courts give great weight to any justifiable government explanation. This tendency to accept nearly any justification has prevented the development of a criteria by which to assess the legality of delay. Certain authorities have proposed applying a reasonable criterion and disregarding any prosecutor-initiated delay as justifiable.

According to the Supreme Court, deliberate delay must be given more weight than traffic congestion, even though it should still be considered a factor against the government. The last two elements in

the quick trial analysis are arguably the most important. The primary obstacles to establishing the denial of a quick trial are the conditions that the claimed delay be adverse as well as that the defendant quickly claim his right to a quick trial. Many courts have considered the evidence of prejudice as precisely this requirement, even though the Supreme Court has made clear that it is not necessary to establish such a refusal. Unanswered is the crucial question of whether the Barker analysis should accept general court congestion as a valid justification for the delay.

The Court holds that while these are unquestionably important considerations, determining whether prejudice has arisen from delay must go beyond simply examining whether the prisoner spent a significant amount of time in pretrial custody or experienced difficulties in arranging his defence. More subdued factors like worry about unresolved charges, public criticism and derision, or restrictions on one's freedom of expression and movement can also lead to prejudice. Although it is difficult to quantify and prove this kind of bias, courts have typically required hard evidence for real injury. Furthermore, some judges appear hesitant to take the defendant's claims of prejudice at face value, and occasionally they may go beyond the accusations to determine what harm has actually occurred. The Barker Court's recommendation that the right to an expedited trial be asserted promptly is reflected in the practise of several courts, which states that the right is presumed that it has been abandoned in the absence of a demand for one from the defendant.

While the Barker Court noted that a defendant's claim of the right will be given powerful evidentiary weight when deciding whether a quick trial has been refused, the Court itself dismissed a rigid adherence to this "demand-waiver" rule because it felt that such a requirement had been contrary to the accepted criteria for exemption of other significant rights guaranteed by the Constitution. If the accused does not insist on a quick trial or fiercely object to any delays the prosecution requests, it will be more difficult for him to claim afterward that he was not given his sixth amendment rights. In *United States v. Marion* and *Strunk v. United States*, the Supreme Court considered two more questions that were seen to be crucial to figuring out the extent and implications of the sixth amendment right to a quick trial. The Court in Marion determined that the expedited trial provision did not apply before the moment at which a person is classified to be an "accused." In practical terms this generally means that the right attaches when the defendant is arrested and charged at a preliminary hearing, or when an indictment or information is filed.

The Speedy Trial Act follows this formulation by providing that the statutory right also attaches at this point. A defendant thus has no basis under either the Act or the sixth amendment for complaining of delay after the offense is committed but before he is formally charged. The second issue, addressed in Strunk, concerned the Court's belief that dismissal of the charges against the defendant is the only remedy for a violation of a speedy trial. Pointing out that the right, once lost, is irretrievable, the Court in Strunk rejected the "compensatory remedy" that had been fashioned by the lower court. Any remedy short of dismissal would not be appropriate in light of the importance of the right and the prejudice sustained by its violation.

Although the importance of the right is also implicit in the Speedy Trial Act, the remedy for a statutory violation may not be as severe. The Act requires that the charges be dismissed, but it allows the trial judge the discretion of making the dismissal with or without prejudice. Along with the judicial interpretation of the sixth amendment speedy trial clause, there has been considerable effort by state legislatures to define the speedy trial right found in all state constitutions. These efforts may profitably be compared with the Speedy Trial Act as a method of assessing the Act's strengths and weaknesses. In addition, this comparison demonstrates some of the differing perceptions of the state and federal legislatures as to what the speedy trial right entails.

STATUTORY VERSUS CONSTITUTIONAL STANDARDS

One way to evaluate the changes which the Speedy Trial Act will create is to compare the differences between the Act's requirements and those of the sixth amendment, as interpreted by the courts. The most obvious difference is, of course, the time limits which the Act sets. In every case under the speedy trial clause of the Constitution, the question of whether the alleged delay violated the right has depended on the circumstances of the case, the views of the particular trial judge, and the norm

for delay in each particular district. After the time limits of the Speedy Trial Act take effect, the 100- day limit from arrest to trial will be applied uniformly in every federal district court.

A second important difference between a Speedy Trial Act and a sixth amendment analysis is in the delay deemed legitimate. Most, if not all, of the "excludable delays" which the Speedy Trial Act enumerates are delays which would be viewed as legitimate by courts, given the courts' willingness to accept most justifiable delays. One reason for delay which courts have tended to accept and that the Act specifically excludes, however, is general court congestion. In addition, the Act requires that courts be more stringent in granting continuances at the request of either party. Whereas courts have traditionally allowed continuances at the request of the defendant as a matter of routine, the Act requires the trial judge to grant such a request only when the "ends of justice served by taking such action outweigh the best interest of the public. . . in a speedy trial."

Another significant difference between the right to a speedy trial as defined by the Speedy Trial Act and the right as interpreted under the sixth amendment is that in claiming a violation of this statutory right, the defendant is not required to show that he was prejudiced by the delay. The Speedy Trial Act represents Congress' judgment that delay beyond 100 days, when not excused, is presumptively harmful to the accused. The accused is thus relieved of the burden of proof in showing prejudicial delay.

Two final differences remain between the Speedy Trial Act and the sixth amendment approaches. The Speedy Trial Act contains no requirement that the defendant demand a speedy trial in order to start the statutory time period running. Under the Act, the accused must only make a timely motion to dismiss prior to a guilty plea or the beginning of trial. The remedy for a violation of the Act is a dismissal with or without prejudice depending on the discretion of the trial judge. Dismissal upon violation of the sixth amendment, on the other hand, has usually been interpreted to bar subsequent prosecution.

SPEEDY TRIAL SCHEMES AND CRIMINAL JUSTICE DELAY

The guarantee of a speedy trial for criminal defendants has long been recognized by the common law of England and by the Constitution of the United States. Heavy burdens, however, have been placed upon an accused who claims that he has been denied a speedy trial; American courts have traditionally been reluctant to place any affirmative duty upon the state to bring a criminal defendant promptly to trial. Today problems of delayed justice have reached massive proportions and have prompted court administrators and legislators to attempt redefinition of the nature of the speedy trial guarantee. Various schemes, implemented by either court rules or statutes, have recently set specific time limits within which an accused must be brought to trial. Although these plans are primarily concerned with fairness to the accused-especially the accused who is incarcerated prior to trial - they also seek to reduce the high cost of delay to the community. In addition, they may make preventive detention unnecessary and may compel state legislatures to allocate more resources to judicial operations. Their ultimate goal is to ensure justice without delay in all criminal prosecutions.[39]

As it was seen as a right granted to both citizens and society's security, this right is carried out in a distinct manner kept apart from the various criminal procedural rights of the Bill of Rights. As a result, rather than imposing a strict deadline, the decision will be left up to an analysis of each individual instance. This has given rise to a great deal of ambiguity regarding the proper use of this privilege as well as the belief that "smoothly expedition, not just speed, is the vital component. A defendant's capacity to protect oneself may be hampered by a delay in getting him to trial for three reasons: (1) witnesses may pass away, leave the area, or become inadmissible; (2) thoughts may deteriorate; and (3) there is a greater chance that documentary or additional evidence will be lost or damaged. These elements also have an impact on the prosecution, and when combined with the time delay, they could make them less inclined to pursue the case. As a result, a guilty plea for a

[39] Diana Theresa Harrison, The Right To Speedy Trial: A Comparative Analysis Of The Administration Of Criminal Justice In Jamaica, England And The United States Of America (1993).

lower offence frequently results in the case's effective resolution. Moreover, it's just one of the social costs associated with not upholding the right to a prompt trial.[40]

Whenever a defendant is freed on bail and the trial is postponed, there's always a chance that he can decide to forfeit his bail and skip the lengthy trial. A criminal may therefore be at loose and perpetrate crimes once more. Delays can be harmful to rehabilitation itself and cause any rehabilitation process to be delayed. In cases where an offender is compelled to stay in jail, they may forfeit their earnings, making society responsible for providing for any dependent families. His incarceration is financially burdensome for the state, and his existence frequently contributes to overpopulation, that can spark rioting. Furthermore, a prompt trial would support bail reform by removing the requirement for "preventive detention." Additionally, since society looks for deterrence at the moment a crime is discovered, it would strengthen the power of punishment as a deterrent. Respect for and confidence in the law deteriorate, if not completely collapse, if the system responds with unjustified delays.

But currently, neither state nor federal courts grant a timely trial to a large number of accused criminals. These defendants have a greater chance of being sentenced to jail than those who are freed on bail, when they are not released on bail, and they must spend a longer period of time behind bars due to shortcomings in the criminal justice system. But it is obvious that the assumption of innocence in our criminal justice system is inconsistent with this prolonged detention. There are a number of reasons for these delays, but the ones that are brought up often include: a rise in the number of cases, a shortage of resources, pre-trial procedural devices, scheduling issues, delays brought on by the prosecution and defence, and financing. By providing the courts with the workers and the "tools" necessary to decide criminal cases under 60 days of indictment, the delays caused by funding and resource shortages might be eliminated.

The theory which the legislature could not obstruct the activities of a coequal branch of government that "should have the inherent power to decide and require payment of such sums of money that are appropriate and required for carrying out its mandated obligations, and its powers and duties to administer Justice" may allow courts to order the payment of such sums if state legislatures and Congress are unable to do so. The Supreme Court ruled that the fourteenth amendment applies to state proceedings when determining the applicability of the sixth constitutional right to a quick trial.[41] This ruling has been construed as having retroactive effect. Reindictment shall not be permitted; instead, the charge will be dismissed with prejudice as a remedy for the infringement of this privilege. While some states disagree with this remedy in connection to state implementary statutes, it appears that this remedy was never challenged in federal courts.

CONCLUSION

Compared to earlier attempts by the states and by consistent federal and circuit regulations, the Speedy Trial Act administers the sixth amendment right in a way that is more favourable to criminal defendants. The Act increases the likelihood that the accused would effectively bring a sixth amendment claim by imposing strict time limits, freeing the accused of the burden of demonstrating a detrimental delay, and clearing the accused of the obligation to make a positive demand for a fast trial. Furthermore, by declining to absolve court congestion-related delays, the Act ought to force the legal system to address issues that are superfluous and generate delays.[42]

It is also believed that the Act's ambiguous language and complex structure will lead to a great deal of hearings and appeals, which will increase delay instead of decreasing it. The Speedy Trial Act contains other provisions that might not be as beneficial to the accused. The trial judge's ability to drop the charges without prejudice appears to suggest that, at least in cases involving serious offences, courts could be hesitant to exclude additional evidence based just on statutory violations, unless there is evidence of a sixth amendment violation. There have also been suggestions that some

[40] Kevin J. Caplis, The Speedy Trial Guarantee: Criteria and Confusion in Interpreting its Violation, v. 22 n.4 DePaul L. Rev. (1973).
[41] *Supra* note 39.
[42] Stephen R. Lohman, The Speedy Trial Act of 1974: Defining the Sixth Amendment Right, v. 25 n.6 Catholic University L. Rev. (1976).

rights of the defendant, which are frequently significant delays in the criminal justice system, may be restricted in an effort to expedite the process. It is quite unlikely, nevertheless, that courts are going to get so focused on expediency that they start to disregard the rights of the accused or the public's need for just and equitable justice. Finally, some words of support must be spoken for the type of legislative action that the Speedy Trial Act embodies. In Barker, the Supreme Court resorted to the legislative body in establishing ultimate restrictions on a quick trial, ruling that the Constitution did not mandate such restrictions. Congress has rendered a decision and established deadlines that the courts have to adhere to. This move must not just compel Congress to give the resources that will eventually be required to accomplish the goals it has set, but it ought to compel some improvement in the current delays.

Even though it is a basic right, the federal courts nonetheless place little weight on the rapid trial provision by itself. It is sometimes mistaken for the Fifth Amendment's due process requirement, leading to a number of contradictory and utterly ambiguous interpretations of this right both before and after the Supreme Court's ruling in Barker. Although the other criminal procedural protections of the Bill of Rights exclude such proof, the courts nevertheless need a demonstration of actual prejudice in order to establish a breach of the rights to a quick trial and fair process. Nonetheless, in cases involving protracted delays, the burden of proof would obviously rest with the prosecution to refute any prejudice. The demonstration of genuine prejudice is not necessary in these situations. The sixth amendment guarantee must be upheld based only on the negative consequences of denying an individual this right. However, the assurance of a swift trial could be viewed as a solution to containing the rising rate of crime if one considers the society's right to self-defense. The objective of the criminal law to deter will be strengthened if a prospective defendant is given the assurance that any criminal charges concerning him will be resolved quickly. Furthermore, society might have greater faith in the criminal justice system and report and appear in court for testimony to criminal conduct when it perceives such swift yet constitutionally appropriate prosecution.[43]

The writ of habeas corpus remains as a valuable tool that individuals can utilise to resist any infringement upon their individual freedom. Judicial declarations show how widely the writ is applied to protect personal freedom, offering relief from any illegal restrictions on an individual's freedom. People who are politically seen as combatants of enemies aren't ineligible for habeas corpus relief. The judicial position contrary to any effort by legislative or executive acts to limit the use of the writ is driven by the recognition of the essential role that personal liberty plays in the existence of humans. The detainee's position in requesting release by a writ of habeas corpus application is further strengthened by the courts' attitude that the person in custody of the detainee bears the burden of proof regarding the legitimacy of their detention. If widely accepted in other common law jurisdictions, the American position that grants locus standi to individuals who are not related to the detainee to petition for habeas corpus on the detainee's behalf and provide a reason or clarification that the court finds satisfactory might significantly promote human rights organisations and other non-governmental organisations to seek the release of individuals in prolonged detention whose opinions were unable to be heard due to different factors or indigence with the legal system. If the courts in those countries are prepared to uphold the writ with the same vigour as shown in the rulings of courts from the more developed democracies, then detainees would undoubtedly receive the much-needed assistance from using this common law mechanism of habeas corpus.[44]

While expedited trial plans might not be able to address every urgent issue related to criminal justice delays, a well-thought-out plan has the potential to be highly successful and an invaluable addition to other criminal justice system reforms. It's time for additional states, the federal government, and courts to review current laws and court regulations pertaining to the right to a quick trial and implement policies that would guarantee the accused's fairness in the procedure and judicial effectiveness.[45]

[43] *Supra* note 40.
[44] Chuks Okpaluba & Anthony Nwafor, The Common Law Remedy of Habeas Corpus Through the Prism of a Twelve-Point Construct, 2 Erasmus L.Rev. (2021).
[45] Allen P. Rubine, Speedy Trial Schemes and Criminal Justice Delay, 57 Cornell L. Rev. 794 (1972)

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