



“A CRITICAL ANALYSIS ON RIGHT TO FAIR TRIAL UNDER INDIAN LAWS”

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Abstract

Fair trials are guaranteed by Article 21 of India's Constitution and are based on the presumption of innocence. Everyone is treated equally by the law, and fair trials are a core part of legislation that guarantees equality. They are also guaranteed by many international treaties and laws, including the European Human Rights Convention's Article 6. To conduct a fair trial, an impartial and independent tribunal must be established.

The Indian legal system guarantees the right to a fair trial, a fundamental aspect of justice. This includes the right to legal representation, a fair and impartial judge, and the right to present evidence. However, challenges such as delays in the judicial process and lack of access to quality legal aid can impact the effective realization of this right. Balancing the principles of justice and ensuring fair trials for all remains a complex and ongoing endeavor in the Indian legal framework.

Furthermore, the use of technology in the legal system is also being explored as a means to improve access to justice and streamline court proceedings. Online platforms for case management, virtual court hearings, and digital evidence presentation are some of the technological advancements being implemented to enhance efficiency and transparency in legal processes. By embracing innovation and modernizing legal practices, India is striving to uphold the right to a fair trial while adapting to the evolving needs and complexities of its legal landscape.

Introduction

The right to fair trial has been established in many international instruments. The main elements of a fair criminal trial are maintained in the Universal Declaration of Human rights, 1948.

India is governed by the rule of law, which is embodied in the Constitution of India, which was created by the citizens of this nation¹. When there is a judicial system that is easily available and addresses citizens' demands and issues in a fair and non-discriminatory way, the rule of law is safeguarded. Rule of law is the idea that the law is paramount.

A fundamental rule states that the burden of proof rests with the prosecution and that an accused person is assumed innocent unless and until his guilt is shown beyond a reasonable doubt. The location of the investigation or trial shall be suitable for the parties.

The right to a fair trial and a prompt hearing has been designated a fundamental right under Article 21 of the Indian Constitution, however there are still many cases that are pending in Indian courts, which is of great concern to both the parties and the State. The most important and essential condition for judicial accountability is a fair trial.

Meaning of "Fair Trial":

A fair trial is the most important condition for administering justice. Fairness is always relative and cannot be measured in an absolute fashion⁶¹. The concept of a fair trial refers to the administration of justice in a fair and unbiased manner, with consideration for the accused, the State, and the vast majority of people whose protection criminal laws are intended to provide⁶². The state's primary goals are to create a tranquil social environment for its citizens and to keep them safe from offenders by administering just punishments. The 1973 Code of Criminal Procedure was written with the idea that an accused person should receive a fair

¹ Talab Haji Hussain v. Madhukar Purshottam Mondkar, 1958 SC 376, Iqbal Ismail Sodawala. v. State of Maharashtra ,(1975) 3 SCC 14.

trial in accordance with the fundamentals of natural justice and that the underprivileged should be treated fairly. Both the Indian Evidence Act of 1872 and the Criminal Procedure Code of 1973 contain provisions that deal with fair trials. A competent, independent and unbiased judge preside over a fair trial that is held in public¹.

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Fair Trial In India

The concept of fair trial is based on the basic ideology that State and its agencies have the duty to bring the offenders before the law. In their battle against crime and delinquency, The Indian courts have recognised that the primary object of criminal procedure is to ensure a fair trial of accused persons.²

The right to a fair trial is a fundamental safeguard to ensure that individuals are protected from unlawful or arbitrary deprivation of their human rights and freedoms, most importantly of the right to liberty and security of person.

DEVELOPMENT OF FAIR TRIAL IN INDIA BY JUDICIAL PROCESS

The judiciary plays a significant role in our political system and enjoys high levels of public support. The phrase "judiciary is our last hope" is frequently used. The court is a "temple of justice." Justice is the goal of the legal system.

In the *Maneka Gandhi*³ and *Hussainara Khatoon*⁴ instances, where a fair trial and a fast trial have been recognized as essential rights under Article 21 of the Indian Constitution.

² Talab Haji Hussain v. Madhukar Purshottam Mondkar, AIR 1958 SC 376 3 AIR 1978 SC 597. 4 AIR 1979 SC 1360 5 AIR 1955 SC 792.

Development by judicial interpretation

i. Examining the Accused to Ensure a Fair Trial

In the case **Manchander v. State of Hyderabad**⁵ The Hon'ble Supreme Court cleared the defendant and stated that it was not acceptable to put people facing life-or-death trials indefinitely in suspense due to improper conduct by trial judges. Justice is not one-dimensional. It has numerous facets, and we must strike a good balance between competing rights and obligations. While it is our because of their mistakes, an accused person should be given the chance to fill in any defense holes that he could have and should have filled in the lower courts. Justice must be administered in a fair and impartial manner in all situations, whether the accused is found guilty or not, and whether the State is favored or not. This mistake is not just a technicality.

The significance of Criminal Procedure Code Section 342 has been appropriately emphasized.

ii. Cancellation of Bail in Bailable Offences for Fair Trial

According to the Supreme Court, the High Court has the inherent authority to revoke any bail that has been granted to an accused of a crime that qualifies, and it may do so when doing so would serve the interests of justice. According to the Court, any threat to the continuation of a fair trial must be addressed if it is the primary goal of the criminal procedure.

iii. Delay in Obtaining Judgment Copy Impairs the Fairness of the Trial

In the case of *Iqbal Ismail Sodawala v. State of Maharashtra*³ the provisions of the Criminal Procedure Code, 1973, have been invoked because the accused received a copy of the judgment after a period of seven months had passed and the Session Judge had not yet issued the decision through the clerk.

The Supreme Court noted that in this case, "the object of the Code is to ensure that the accused has a full and fair trial in accordance with the principles of natural justice." If the law has been

³ (1975) 3 SCC 140.

followed in a significant way, a simple procedural error would not invalidate the trial unless it led to a miscarriage of justice.

iv. **Transfer of the Case Rejected for a Fair Trial**

In the case of *Maneka Gandhi v. Rani Jethmalani* the appellant was charged with defamation and filed a plea to have the case transferred from Bombay to Delhi on the grounds that legal representation was unavailable for the trial. The petition was denied. The Court ruled that ensuring a fair trial is the primary requirement of the administration of justice and the main factor that the court should take into account when an application for transfer is made.

v. **Special Courts for Fair Trial**

The establishment of specialized courts facilitates the resolution of cases more quickly. However, the Special Courts Bill does not permit the transfer of cases, which may jeopardize the parties' right to a fair trial. The fundamentals of Natural justice is compromised. When prejudice exists, a substitute is needed.

vi. **Anticipatory Bail**

A requirement must be met according to Section 438(1) of the Code in order to grant anticipatory bail. The petitioner must demonstrate that he has "reason to believe" that he may be detained for an offense for which bail is not available. The phrase "reason to believe" indicates that there must be good reason to think the applicant will be detained in this way. However the submission of a First Information Report is not a prerequisite for the use of the Section 438 power.

vii. **Right of Bail for under Trials**

Supreme Court Legal Aid Committee Representing **Under-Trial Prisoners v. Union of India** case⁴, a writ petition was filed in order to have the under trials released because cases under the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988, were taking too long to be resolved.

⁴ (1994) 6 SCC 731. 8 1995 SCC (1) 14.

viii. Rape victims

In **Delhi Domestic Working Women v. Union of India**⁸, the Delhi Domestic Working Women Forum filed a public interest lawsuit and invoked Article 32 of the Indian Constitution to draw attention to the pitiful situation of four or six domestic workers who were sexually assaulted by seven army personnel. In order to preserve the rights protected by Articles 14 and 21 of the Constitution, the Court has established guidelines for a trial inquiry that is conducted quickly. The Court provided broad guidelines in order to aid rape victims and to offer the fair trial.

Is FAIR TRIAL IS A SPEEDY TRIAL

In the *Maneka Gandhi case in 1978* that the right to a fair trial is a Fundamental Right and is implied in Article 21 of the Indian Constitution.

The concept of a fair trial and the protection of the victim and witness were expanded *in the Zahira Habibullah Sheikh case (2006)*, and the principles of natural justice were considered to be an essential component of a fair trial in the context of Article 21 of the Constitution and the Universal Declaration of Human Rights in *the Dhananjay Kumar Singh case (2006)*.

Principles of Fair Trial

1. Adversary trial system:

The system adopted by the Criminal Procedure Code, 1973. In adversarial system responsibility for the production of evidence is placed on the prosecution with the judge acting as a neutral referee. This system of criminal trial assumes that the state, on one hand, by using its investigative agencies and government counsels will prosecute the wrongdoer who, on the other hand, will also take recourse of best counsels to challenge and counter the evidences of the prosecution.

2. Presumption of innocence:

Every criminal trial begins with the presumption of innocence in favour of the accused. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused.

In *State of U.P. v. Naresh and Ors.*⁸ the Supreme Court observed “every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right subject to the statutory exceptions. The said principle forms the basis of criminal jurisprudence in India.

3. Independent, impartial and competent judges:

The basic principle of the right to a fair trial is that proceedings in any criminal case are to be conducted by a competent, independent and impartial court. In a criminal trial, as the state is the prosecuting party and the police is also an agency of the state, it is important that the judiciary is unchained of all suspicion of executive influence and control, direct or indirect.

The whole burden of fair and impartial trial thus rests on the shoulders of the judiciary in India. The primary principle is that no man shall be judge in his own cause.

Rights of Accused During Fair Trial

Pre-Trial Rights

The Cr. P.C. entitles an accused of certain rights during the course of any investigation, enquiry or trial of an offence with which he is charged.

1. Knowledge of the accusation:

Fair trial requires that the accused person is given adequate opportunity to defend himself. But this opportunity will have no meaning if the accused person is not informed of the accusation against him. The Code therefore provides in section 228, 240, 246, 251 in plain words that when an accused person is brought before the court for trial, the particulars of the offence of which he is accused shall be stated to him. In case of serious offences, the court is required to frame in writing a formal charge and then read and explain the charge to the accused person.

2. Right to open trial:

Fair trial also requires public hearing in an open court. The right to a public hearing means that the hearing should as a rule be conducted orally and publicly, without a specific request by the parties to that effect. A judgment is considered to have been made public either when it was orally pronounced in court or when it was published, or when it was made public by a combination of those methods.

3. Aid of counsel:

In India, right to counsel is recognised as fundamental right of an arrested person under article 22(1) which provides, inter alia, no person shall be denied the right to consult, and to be defended by, a legal practitioner of his choice. Sections 303 and 304 of the Code are manifestation of this constitutional mandate.

In *Khatri v. State of Bihar*⁵ the court held that the accused is entitled to free legal services not only at the stage of trial but also when first produced before the Magistrate and also when remanded.

Further, article 39-A was also inserted in the Constitution as per 42nd Amendment, 1976, which requires that the state should pass suitable legislations for promoting and providing free legal aid. To fulfill this Parliament enacted Legal Services Authorities Act, 1987. Section 12 of the Act provides legal services to the persons specified in it.

4. Expeditious trial:

In *Hussainara Khatoon (IV) v. State of Bihar*⁶ the Supreme Court declared that speedy trial is an essential ingredient of 'reasonable just and fair' procedure guaranteed by article 21 and it is the constitutional obligation of the state to set up such a procedure as would ensure speedy trial to the accused. The state cannot avoid its constitutional obligation by pleading financial or administrative inadequacy.

⁵ (1981) 2 SCC 493

⁶ (1980) 1 SCC 98 at 107

The Supreme Court in *A.R. Antulay v. R.S. Nayak*⁷ issued guidelines for the time period during which different classes of cases are to be concluded.

5. Protection against illegal arrest:

Section 50 provides that any person arrested without warrant shall immediately be informed of the grounds of his arrest. The duty of the police when they arrest without warrant is to be quick to see the possibility of crime, but they ought to be anxious to avoid mistaking the innocent for the guilty. The burden is on the police officer to satisfy the court before which the arrest is challenged that he had reasonable grounds of suspicion.

In *Pranab Chatterjee v. State of Bihar*⁸⁹ the court held that Section 50 is mandatory. If particulars of offence are not communicated to an arrested person, his arrest and detention are illegal. The grounds can be communicated orally or even impliedly by conduct.

Section 57 of Cr.P.C. and Article 22(2) of Constitution provides that a person arrested must be produced before a Judicial Magistrate within 24 hours of arrest.

The decisions of the Supreme Court in *Joginder Kumar v. State of Uttar Pradesh*¹³ and *D.K. Basu v. State of West Bengal*¹⁰, were enacted in Section 50-A making it obligatory on the part of the police officer to inform the friend or relative of the arrested person about his arrest and also to make an entry in the register maintained by the police. This was done to ensure transparency and accountability in arrest. Sec.160 of Cr. P.C provides that investigation by any police officer of any male below 15 years or any woman can be made only at the place of their residence. Section 46(4) provides that no woman shall be arrested after sunset and before sunrise, save in exceptional circumstances and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial

⁷ AIR 1992 SC 1701

⁸ (1970) 3 SCC 926

⁹ SCC (4) 260

¹⁰ 1997 (1) SCC 416

Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

6. Proceedings in the presence of the accused:

For the conduct of a fair trial, it is necessary that all proceedings related to the case should take place in the presence of the accused or his counsel. The underlying principle behind this is that in a criminal trial the court should not proceed *ex parte* against the accused person. It is also necessary for the reason that it facilitates the accused to understand properly the prosecution case and to know the witnesses against him so that he can prepare his defence. For fair trial, the accused person has to be given full opportunity to defend himself. This is possible only when he should be supplied with the copies of the charge sheet, all necessary documents pertaining to the investigation and the statements of the witnesses called by the police during investigation. Section 238 makes it obligatory on the Magistrate to supply copies of these documents to the accused free of cost.

7. Right to bail:

By virtue of Section 436 the accused can claim bail as a matter of right in cases which have been shown as bailable offences in the First schedule to the Code. Bail is basically release from restraint, more particularly, release from custody of the police. An order of bail gives back to the accused freedom of his movement on condition that he will appear to take his trial. If the offence is bailable, bail will be granted without more ado. But bail under Section 389(1) after conviction is not a matter of right whether the offence is bailable or nonbailable.⁸⁹ If no charge -sheet is filed before the expiry of 60/90 days as the case may be; the accused in custody has a right to be released on bail. In non-bailable offences, the Magistrate has the power to release on bail without notice to the other side if charge sheet is not filed within a period of sixty days. The provision of bail to women, sick and old age persons is given priority subject to the nature of the offence.

8. Prohibition on double jeopardy:

The concept of double jeopardy is based on the doctrine of ‘autrefois acquit’ and ‘autrefois convict’ which mean that if a person is tried and acquitted or convicted of an offence he cannot be tried again for the same offence or on the same facts for any other offence. This clause embodies the common law rule of *nemo debet vis vexari* which means that no man should be put twice in peril for the same offence.

Section 300 of the Code provides that persons once convicted or acquitted not to be tried for the same offence or on the same facts for any other offence. Plea of double jeopardy is not applicable in case the proceedings for which the accused is being tried are distinct and separate from the offence for which the accused has already been tried and convicted.

In *Kolla Veera Raghav Rao vs Gorantla Venkateswara Rao*¹¹ the Supreme Court

differentiated between Section 300(1) of Cr. P.C. and article 20(2) of the Constitution. While, Article 20(2) of the Constitution only states that ‘no one can be prosecuted and punished for the same offence more than once’, Section 300(1) of Cr.P.C. states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts.

Therefore the second prosecution would be barred by Section 300(1) of Cr.P.C.

9. Right against self-incrimination:

Clause (3) of Article 20 provides: “No person accused of any offence shall be compelled to be a witness against himself.” This Clause is based on the maxim *nemo tenetur prodere accusare seipsum*, which means that “no man is bound to accuse himself.” The Apex Court in *Selvi v. State of Karnataka*¹⁶ drew following conclusions:

1. The taking and retention of DNA samples which are in the nature of physical evidence, does not face constitutional hurdles in the Indian context.

¹¹ (2011) 2 SCC 703

2. Subjecting person to narco- analysis, Polygraphy and Brain fingerprinting tests involuntarily, amounts to forcible interference with person's mental processes, and hence violates the right of privacy as well as Article 20(3).
3. A person administered the narco-analysis technique is encouraged to speak in a drug-induced State and there is no reason why such an act should be treated any differently from verbal answers during an ordinary interrogation.

In *Dinesh Dalmia v. State of Madras*¹⁷, the court held that the scientific tests resorted to by the investigating does not amount to testimonial compulsion. Hence, the petition was dismissed.

16 AIR 2010 SC 1974

17 2006 Cr. LJ V-3, 2401

Post-Trial Rights

1. Lawful punishment:

Article 20(1) explains that a person can be convicted of an offence only if that act is made punishable by a law in force. It gives constitutional recognition to the rule that no one can be convicted except for the violation of a law in force.

2. Right to human treatment:

A prisoner does not become a non-person. Prison deprives liberty. Even while doing this, prison system must aim at reformation. In prison, treatment must be geared to psychic healing, release of stress, restoration of

self-respect apart from training to adapt oneself to the life outside.¹² Every prisoner has the right to a clean and sanitized environment in the jail, right to be medically examined by the medical officer, right to visit and access by family members, etc. Recognizing the right to medical facilities, the National Human Rights Commission recommended the award Rs. 1 Lakh to be paid as compensation by the Govt. of Maharashtra to the dependents of an under trial prisoner who died in the Nasik Road Prison due to lack of medical treatment.¹³

3. Right to file appeal:

Section 389(1) empowers the appellate court to suspend execution of sentence, or when the convicted person is in confinement, to grant bail pending any appeal to it. Court need not give notice to the public prosecutor before suspending sentence or releasing on bail. Existence of an appeal is a condition precedent for granting bail. Bail to a convicted person is not a matter of right irrespective of whether the offence is bailable or non-bailable and should be allowed only when after reading the judgement and hearing the accused it is considered justified.¹⁴

4. Proper execution of sentence:

India's criminal justice system is regarded as the greatest example of the expression "justice delayed, justice denied." The Indian judicial system has failed to bring justice in a timely manner.

Speedy trial is an important element of a fair trial, although in India it appears to be more of a secondary notion that cases would be disposed of as fast as feasible, as there are numerous variables responsible for the delay in processes:

- i. Cases are still pending.
- ii. Inadequate judicial strength and appointment issues
- iii. Lawyers are on strike.
- iv.

The absence of transparency.

¹² Phul Singh v. State of Haryana, (1979) 4 SCC 413

¹³ NHRC News Letter, September, 1999

¹⁴ Section 436 of Cr. P.C.

- v. Challenges and tribulations.
- vi. There is no contact between societies.
- vii. Lowered reliance on technology.

Despite the fact that the Indian judicial system is one of the best in the world, it is confronting some issues that are rendering it inefficient. People are losing trust in the legal system as a result of these obstacles, and they are hesitant to employ this organ to assist them to resolve their difficulties.

CONCLUSION

Indian law complies with international legal standards regarding the right to competent, impartial, and free trial. Everyone should be treated equally under the law. Everybody will be entitled to a fair trial by a legal court. An immediate necessity that stands out is one of a reasonable and fair trial..

SUGGESTIONS

A. change in statutes needed

1. The investigative officer shall provide the investigation report in the form of a questionnaire to ensure that all pertinent information is covered.
2. The executive and legislative branches of government should not be involved in the selection process for judicial officers; instead, appointments should only be made with the unanimous approval of the panel.
3. Applications for plea negotiations should be decided in open Court.
4. Maintaining a balance between "justified justice" and "rapid trial."
5. The copies of the judgment shall be given out right away, either by issuing photo state copies that must be confirmed by the court, or by making carbon copies to both parties.
6. Judges should be given laptops and website subscriptions to ensure effective computer use.
7. The victims must be made aware of their obligations, rights, and role in the proceedings.
8. The judge's retirement should be replaced six months in advance, or as an alternative, the departing judge may be permitted to hold the office until the replacement is hired.
9. Efforts should be made to ensure privacy and safety in order to lessen the annoyance to victims.
10. Information about the The accused and the victim(s) must be informed of the proceedings at every stage.

11. The advocate for the different parties that they represent must get notice of all court documents.
12. Reports about the cases handled by attorneys, cases decided, and adjournments with reasons provided as static data shall be prepared annually.
13. The most recent laws should be made accessible on reliable websites like Manupatra and SCC online.
14. Officers responsible for maintaining law and order and investigators should be kept apart.
15. To monitor public transactions, cameras should be installed at police stations.
16. There should be no delays between the witness' deposition and the lawyer's cross-examination.

B- Change in system working

1. The judiciary need more appointees and suitable infrastructure.
2. It is important to protect the judiciary's independence so that judges can exercise their authority with confidence and for the good of society.
3. The focus has to move from criminology to victimology.
4. Additional perks for prosecutors and investigative officers are required to address the causes of the low conviction rate.
5. In unique matters under special Acts, such as IPR cases, LAC cases, and Cyber crime cases, there is a need for specialized courts and specialized judges.
6. The timeline needs to be trimmed down. 6. The delay between getting the police report and filing charges needs to be shortened.
7. Long judgements should be avoided; instead, decisions should be made in a clear, brief, and uncomplicated manner.
8. It is necessary to use email and mobile devices to convey summonses or crucial information to the parties that must be made aware and documented in the case file.
9. Comprehensive legislation on quick trials is required to include all necessary rules, procedure, and punishment.
10. It's important to teach lawyers to respect the judges.
11. Integrity, ethics, and professionalism need to be instilled in lawyers.

12. The video conferencing between witnesses, the court, and active cases needs to be improved.
13. The judicial system requires a single access point with a single exit. It is necessary to abandon the current system.
14. It is necessary to exclude some types of offenses, such as violations of traffic regulations, from the category of offenses.

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