



Critical Analysis of Right to a fair trial under Indian law

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Abstract: “Lex uno ore omnesalloquitur” which means that everyone is equal before the eyes of the law which is an important principle which forms the basis of judicial proceedings across the world. The law treats everyone equally and this principle is enshrined in various provisions of the Indian Constitution. Article 14 of the Indian Constitution exclusively deals with the Right to Equality. Trials are an indispensable part of any proceeding. Conducting fair trials is an important aspect of the law which ensures equality. The concept of a fair trial is not just a right provided in our country but it is also guaranteed by various other legislations all over the world. Article 6 of the European Convention on Human Rights deals with the Right to a fair trial. According to this Article, everyone is entitled to a fair and public hearing within a reasonable time. The trial must be conducted by an independent and impartial tribunal established by law.

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Introduction:

All parties involved, including the accused, the victims, and society at large, must be treated fairly in a trial that has as its primary goal discovering the truth. In a criminal prosecution, everyone has a right to a fair trial. "Fair trial" involves opportunities for her to show her innocence that is appropriate and allowed by the law. A vital right is the ability to provide evidence in support of the defence. Denial of that privilege in a criminal case equates to a denial of a fair trial. "Fair trial" involves opportunities for her to show her innocence that is appropriate and allowed by the law. A vital right is the ability to provide evidence in support of the defence. Denying such a right in a criminal case entail denying the right to a fair trial. Protection for the convicts is provided by Article 21 of the Indian Constitution. There are several principles of impartial trial which will be discussed further. Every convict has a right to a fair trial. There are several articles and sections which govern this right. A fair trial is very important for the protection of Human Rights.

Many people suffered and are suffering due to the unfair trials. Unfair trials effects deeply a person's rights, mental health and reputation. The right to a fair trial also comes under the protection of human rights. Unfair trials are a violation of Human rights. There are different provisions in our Indian law which protect these rights. Free legal should also be provided to the people. A speedy trial is a right of every accused.

In a trial with the primary purpose of learning the truth, all parties concerned, including the accused,

victims, and society at large, must be treated equally. Everyone has the right to a fair trial in criminal prosecution. Denying the accused fair trial results in injustice for them, the victim, and society.

A defendant has the right to a fair trial. Under our Constitution and international treaties and conventions, the right to a fair trial is a fundamental human right. Without a fair trial, innocent individuals are convicted, which undermines the basics of the rule of law and the public agrees with the justice gadget. The right to a fair trial is assured using Article 6 of the Human Rights Act. The rule of law makes sure the management of justice refers to the fair trial of convicts.

Fair trial is an important aspect of our society without fair trial innocent people are convicted this hinders the principles of rule of law and public faith in justice system. The right to a fair trial is a right under article 6 of human right act . Rule of law ensuring administration of justice talk about the fair trial of the convicts. Fair trial gives fair and proper opportunities to prove innocence to the convict. An impartial judge shall treat all parties equally which is the most important part of the judicial system.

In *Zahira Habibullah Sheikh and ors. Vs. State of Gujarat and ors,* The Supreme Court of India states that each one has a right to fair trial . Refusal of a fair trial is not only an injustice to the accused but also to the victim and to society. Fair trial means a trial before an impartial judge, a fair prosecutor . Trial in which bias or prejudice for or against the accused, are present should be eliminated.

A trial primarily aimed at ascertaining truth has to be fair to all concerned which includes the accused, the victims and society at large. Each person has a right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and society. An accused has a right to fair trial. Under our Constitution as also the international treaties and conventions, the right to get a fair trial is a basic fundamental/human right¹. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognized by the Parliament in terms of sub-section (2) of Section 243 of the Code of Criminal Procedure, 1973. "Fair trial" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. In a criminal case, denial of that right means denial of fair trial. This issue now stands concluded by decision of Hon'ble Apex Court in Kalyani Baskar (Mrs.) v. M.S. Sampornam (Mrs.) [(2007) 2 SCC 258].

Concept of a fair trial

The concept of a fair trial is not just a right provided in our country but it is also guaranteed by various other legislations all over the world. Article 6 of the European Convention on Human Rights deals with the Right to a fair trial. According to this Article, everyone is entitled to a fair and public hearing within a reasonable time. The trial must be conducted by an independent and impartial tribunal established by law. The African Charter of Human Rights protects the dignity of humans and prevents exploitation under Article 5. Article 6 of the African Charter of Human Rights guarantees individual liberty and security to a person. The right to a fair trial is guaranteed under Article 7 which includes various rights like:

- Right to appeal to the competent jurisdiction.
- Right to defense.
- Right to be tried.
- Right to be presumed innocent until proven otherwise.

Article 14 of the International Convention on Civil and Political Rights (ICCPR) guarantees the right to a fair trial and Article 16 provides a right to recognition everywhere as a person before the law. Article 10 of the Universal Declaration of Human Rights (UDHR), which guarantees the right to a fair trial. The provisions related to a fair trial in the International Convention on Civil and Political Rights (ICCPR) are more exhaustive and detailed than the provisions in the Universal Declaration of Human Rights (UDHR).

Indian Constitution: fair trial is the fundamental right

Article 21 of the Indian Constitution provides protection to the convicts. It says no person shall be deprived of his life and personal liberty except to the procedure established by law and it adds the quality of life right to live with human dignity, right to livelihood is the primary aspect of human being life. It provide right to a reasonable, fair, and just trial.

In *Maneka Gandhi v. Union of India* the supreme court held that right to live is not a physical right but includes right to live with human dignity. the procedural rights also includes right to information and document which being used against him will deprive him, of a due opportunity to defend himself which is the human right to free and fair trial

In the case *P. Ramachandra Rao v. the State of Karnataka* (2002), the Court established that under Sections 309, 311, and 258 of the Code of Criminal Procedure provides the right provides for speedy trial. The High Court under Section 482 of the Criminal Procedure Code and Articles 226 and 227 of the Constitution can be used to seek appropriate remedy and directives. fundamental right under Article 21 focuses on right to quick and fair trial.

Sec 243 CRPC : evidence for defence

It is obligatory on the part of the trial court to issue process when the accused seeks summoning of any witnesses or production of any document in his defence.

Principles of impartial trial

Adversary system

Our country adopts human system of criminal trial. in step with this any dispute on the criminal responsibility of someone is to be resolved by the judicature when giving truthful and adequate chance to the person before the court of their several cases. It permits associate Impartial and competent court to own correct perspective of the case and it's a more robust device to get the reality in an exceedingly truthful manner. In such, state represent the victim and therefore the state starts an attempt against the suspect.

This system recognized equal right and chance to each the parties. Further, the code needs the judicature to play a a lot of active and positive role than that of mere referee within the combat between the prosecutor-state and therefore the suspect person. The charge against the suspect is to be framed not by the prosecution however by the court when considering the circumstance of the case and lawyer cannot withdraw from the case while not the consent of the court.

Himanshu v. State of MP two case apex court fanciful that below free trial the Code is not granted to the gatherings and court has motivations to simply accept that organization or examiner is not acting within the imperative means and therefore the court will observe its power below section 311 and 165 of the Code of the Indian evidence Act, 1872 to bring for the material witness and acquire the necessary reports so as to serve the reason for equity.

Presumption of innocence

An accused has the right to be presumed innocent until he is proven guilty and this is a central role of our criminal justice system. It is the responsibility of the state to prove the guilty. If the accused is silent, it should not be used as evidence of guilt or as a reason to place them in pre-trial detention.

State of U.P. V. Naresh and Ors in (2001) 4 SCC 324, the Supreme Court observed every accused is assumed 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.”

Independent, impartial and competent judge

The most essential feature of a fair criminal trial is to have an independent, impartial and competent Judge to conduct the trial. The Code has provided for the separation of the judicial from the executive and it would ensure the independent functioning of judicial free of all suspicion of executive influence or control. The right to an independent and impartial tribunal established by law is a right of every convict

Expeditious trial

Article 21 of the Constitution confers an inviolable fundamental right of expeditious trial to the applicant main purpose of expeditious trial (1) to set off the right of the accused to a speedy trial; (2) timely resolution of criminal cases in a fair and accurate manner according to public interest and (3) ensuring the effective utilization of resources.

Doctrine of double jeopardy under article 20 (2)

According to this doctrine if someone is tried and not guilty of any offence he can't be tried more than once for same offence or on same facts for the other offence. This doctrine has been considerably incorporated in Article 20(2) of the constitution and is additionally embodied in section 300 of the code. The second or future trial in violation of the higher than doctrine would mean unjust harassment of the suspect person and may be thought of as something however truthful and has prohibited each by the code and the constitution.

In S.A. Venkatraman V. Union of India case the Supreme Court states that the procedure taken before the Enquiry Commissioner did not add up to a commission for an offence. It had been within the plan of truth finding to prompt the govt for disciplinary activity against the appellant. It cannot be aforesaid that the individual has been indicted.

Hearing ought to be in open court

Fair trial needs public hearing in associate open court. Section 327 of the Code makes provision for open court usually accessible to the members of the general public.

According to section 327 the place wherever the court is in command shall be open court that the general public might have access. Public trial in open court is an incredible instrument for creating certainty of public in reasonableness, sound judgement and fair mindedness of the organization

In the case of Naresh Sridhar Mirajkar V. State of Maharashtra AIR 1967 SC 1, the apex court observed that the right to open trial must not be denied except in exceptional circumstances. High Court has inherent jurisdiction to hold trials or part of a trial in camera or to prohibit publication of a part of its proceedings.

According to section 479

1. No judge or magistrate shall expect with permission of the upper court strive or commit for trial any case to or during which he's a party or personally interested

2. No judge or a magistrate shall hear any appeal from any judgement or order passed or created by himself.

3. Transfer of case to secure impartial trial- in step with section a hundred ninety (1) c, a magistrate has power to require cognizance of any offence might do upon his own knowledge concerning the commission of any such offence. However, in such case the suspect should be told before any proof is taken that he's entitled to own the case tried by another magistrate sec. 191

Secondly, whenever it's created to look to the high court that a good and impartial inquiry or trial can't be command in any criminal court subordinate thereto might subject to condition set down in section 407, order that (I) any offence be inquired into or tried by the other competent court or

(ii) that any explicit case or category of case be transferred from a court subordinate to its authority to the other judicature. Similarly, the ability of transfer of cause given to the Supreme court and therefore the session court by section 406 and 408.

In Ambazhagan V. Superintendent of police four, Supreme court command that party interested

about sec 406(2) would comprehend political opponents of the suspect spoken communication they're the watch dogs of the govt. . in power. The petitioner wished the criminal case filed against the Chief Minister of the state to be transferred out of the state. The Supreme court ordered spoken communication that The petitioner has raised several excusable and affordable apprehensions of miscarriage of justice would need our interference in exercise of power below sec.406 CrPC.

Knowledge to the accused of his accusation and adequate opportunity

Accused ought to be truthful opportunity to defend himself and therefore the particulars of the offence of that he's suspect shall be declared to him. The proper to own precise and specific accusation is contained in Section 211 of the Code.

he particulars of the offence of that he's suspect shall be declared to him. [Ss.228, 240, 246, 25]. Just in case of serious offence, the court is needed to border in writing a proper charge and so to explain and make a case for the charge to the suspect

The right to have precise and specific accusation is contained in section 211 Criminal procedure code The right to adequate time and facilities for the preparation of a defence applies not only to the defendant but to his or her defence counsel as well.

Trial in presence of accused

The presence of the suspect throughout his trial will be understood from the provisions which permit the Court to dispense with the non-public attending of the suspect person under certain circumstances , a magistrate issuing summons might dispense with the non-public attending of the suspect and allow him to look by his advocate (Section 205). Section 317 empowers the court to dispense with personal attendance of the accused person at his trial.

This power will be exercised on condition that the suspect person is represented by a lawyer. The Court is additionally needed to record its reasons for such order.

Evidence to be taken in presence of accused

Section 273 of the Code contemplated that evidence to be taken in presence of accused.

According to section 273 all evidences taken in presence of the accused or when his personal attendance is dispensed with in the presence of his pleader. according to sec. 279 , any evidence can be given in any language and if not understood it shall be converted in language understood by him . if any accused is of unsound mind and is unable to understand the proceeding in such case special provision in section 328 -339 shall be applied .

Cross-examination of prosecution witnesses

Evidence given by witnesses may become more reliable if given on oath and tested by cross-examination. Though the burden of proving the guilt is entirely on the prosecution and though the law does not require the accused to lead evidence to prove his innocence, yet a criminal trial in which the accused is not permitted to give evidence to disprove the prosecution case, or to prove any special defence available to him, cannot by any standard be considered as just and equitable.

RIGHT TO FREE LEGAL AID

The requirement of fair trial involves an opportunity to the accused to have a counsel of his own choice, and the duty of the state to provide a counsel to the accused in certain cases. The Law Commission of India in its 14th Report has mentioned that free legal aid to persons of limited means is a service which a Welfare State owes to its citizens. The right to be defended by a legal practitioner, flowing from Article 22(1) of the Constitution has further been stated in the Directive Principles of State Policy embodied in Article 39 A of the Constitution . The 42nd Amendment Act of 1976 and enactment of sub-section 1 of Section 304 of the Code of Criminal Procedure. Legal assistance to a poor person facing trial whose life and personal liberty is violated is provided not only by the Constitution and the Code of Criminal Procedure but also by International Covenants and Human Rights Declarations. Every person, therefore, has a right to a fair trial by a competent court The object and purpose of providing competent legal aid to undefended and unrepresented accused persons are to see that the accused gets free and fair, just and reasonable trial of charge in a criminal case.

SPEEDY TRIAL

Speedy trial is a right of every accused. Delayed justice leads to unnecessary harassment. Sec.309(1) provides "in every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

Sada Shiv Manohar Parkar Vs. State of Maharashtra, 1998 CrL LJ 3755).

The right to speedy criminal trial is one of the most valuable fundamental rights guaranteed to a citizen under the Constitution, which right is integral

part of right to life and liberty guaranteed under Article 21.

SOME LATEST CASES

Krishan kumar v. State of delhi

Fair trial is the hallmark of criminal procedure it entails not only rights of victims but also interest of accused. It is the duty of the court to ensure fair and proper opportunities are granted to the accused for just decision of the case. Adducing of evidence by the accused in support of his defence is also a valuable right and allowing the same in the interest of justice.

Bhagwani v. State of Madhya Pradesh

Conviction and death sentence on the same day for kidnapping, rape and murder of an 11 year old. Adequate opportunity to produce relevant material on the question of death sentence should be provided to the accused by the trial. In court opinion death sentence required to be commuted to life imprisonment.

Vikas Chawla v State of NCT Delhi

Pre trial detention are grave in nature and keeping an under trial in custody would impact right to defend himself during trial and his right to fair trial gets violated.

Conclusion

The right to have a case heard by a judge who is qualified, independent, and unbiased is protected by Indian law under current international legal norms. Everyone must be treated equally before the court. Everyone is entitled to a fair trial before a lawfully created, independent court.

A fair trial must not be delayed excessively, and this is a key need. Article 21 of the Constitution's guarantee of a fast trial applies to all phases of the legal process, including investigation, inquiry, trial, appeal, revision, and retrial. A criminal conviction cannot rely on the testimony of witnesses whose cross-examination conflicts with their testimony during the trial. Briefly presented is the fundamental idea underlying a fair trial.

In *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1 A well-supported decision decreases the likelihood of an appeal and the workload on the courts. Evidence must be evaluated logically and impartially. Every criminal trial must have a far greater degree of probability of guilt nearly a certainty and the accused must be given the benefit of the doubt if there is even a remote possibility that he is innocent.

Every single person in our country has a right to equality, liberty, and justice, which are the three main themes of our preamble. Equal access to justice and essential principles of a fair trial are guaranteed by

the criminal justice system and the constitution. Criminal procedure is characterised by a fair trial, and the court must provide the accused with fair and appropriate chances to prove their innocence. Every accused person has a basic right to a fair trial.

People start to develop faith in the judicial system when they believe in the idea of a fair trial. Each of the aforementioned requirements must be satisfied to guarantee that there are no biases present during the trial. In addition to national legislation, several international treaties also protect these rights. Therefore, the idea of a fair trial serves as the foundation for all procedures.

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