

Fair Trial: Right of An Accused in Criminal Prosecution

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Abstract:

In criminal administration system every nation must have a single ordinary tool is that to give rights of Fair Trail to every accused regardless of his / her status in the society. This right is the based on natural justice and is the very heart of constitution in India. The tern fair trial means giving every opportunity to the accused to represent his case in front of court. The criminal prosecution begin with the 'Presumption of Innocence' and prosecution has to prove the offence beyond reasonable doubt. In this paper the author will be analysing the rights of accused during trial with the help of judicial pronouncements in under Indian Criminal system.

Introduction

Fair trail is the inseparable element of Article 21 of Indian constitution. It is based on principle of presumption of innocence and principle of natural justice. It talks about the rights of accused with the rights of victim at the trail before court in criminal case. Accused also have pre and post trial rights which include right to know about accusation, right against self incrimination, right to be informed, right against illegal arrest etc. Fair trail is basic fundamental principle which is adopted by many civilised nations as its basis of its procedural law. It gives defence to a person for protecting his right related to trial and right to life and personal liberty. The system for the procedure of criminal trials related to natural justice and the rights of the accused is different in every civilised society as per their socialistic conditions. The important point of every law is to provide justice and affirmation related to the Fair Trial to every person.

Universal Declaration of Human Rights, 1948

The notion of the fair trial is considered as main ingredient of human rights jurisprudence. This form basis of the equitable criminal prosecution is under the protection of the Article 10 and 11 of the UDHR.ⁱ “Article 10[i] of UDHR states Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

International Covenant on Civil and Political Rightsⁱⁱ

“Article 14 of it states that Everyone shall be entitled to a Fair and Public hearing by a competent, independent, and impartial tribunal established by law.

Article 14(2) provides for the presumption of innocence, and

Article 14(3) sets out a list of minimum fair trial rights in criminal proceedings.

Article 14(5) establishes the rights of a convicted person to have a higher court review the conviction or sentence, and

Article 14(7) prohibits double jeopardy.”

The European Convention on Human Rights

“Article 6 of the European Convention on Human Rights provides the minimum rights, adequate time and facilities to prepare their defence, access to legal representation, right to examine witnesses against them or have them examined, right to the free assistance of an interpreter to everyone charged with a criminal offence”.

Indian constitution

The Constitution of India which is considered to be grundnorm of every law in India also provides right of Fair Trial in Article 21.ⁱⁱⁱ It reflects from the scheme of constitution and Indian judiciary also explained the importance of fair trial in the criminal cases. In **Vinubhai Haribhai Malaviya and ors v. The State of Gujarat and Anr.**^{iv} the SC justifies that the idea of fair trial must kick off only if the inquiry is fair and just. The conclusive purpose of the all the inspection and the inquiry is by the investigating officer or by the magistrate is to take responsibility that the person who actually is the guilty of that crime are to be in trials and the persons who have not indulged to any of the crime are not stand by the trial as per the

requirement of the Article 21 of the Indian Constitution. In the **Pooja Pal v. Union of India**^v the judgement itself explains about idea of speedy trial as fair trial. It means a trial which is unbiased and not against the accused or any witness who is being tried.^{vi}

Criminal Procedure Code, 1973 and Fair trial

The procedural law is designed in such a way that it gives protection to the individual from the unlawful curtailment and deprivation of their basic rights. The state and its agencies are under obligation to bring the offender in front of the law courts, but at the same time they have to keep in mind that the procedure follow by them should be just and fair. The main objective of the Procedural law is to guarantee fair trial. No one should be punished by the court unless he has been given an opportunity to defend himself.

It has been observed by the Supreme Court of India that everyone is having right of fair trial, if it will be refused than it will amount to cause injustice to accused as it will be with aggrieved person or with society. Fair trial means trial in front of independent judge and prosecutor who deals with the matter in fair manner.^{vii}

The process affirmed by the CrPC is on the basis of the adversary system. The party who seeks to established his case or guilt has the duty for the producing the evidence in front of the judge who is acting as a neutral adjudicator between the opposing parties and permitted them to institute evidence and cross examinations. The Supreme Court has observed that for giving effective justice the Criminal Court judges must be active participant, they must not sit like a spectator or a machine who is recording evidences only. He must act intelligently with active interest.

Indian Criminal Procedural Law or system is not rigidly adversarial.^{viii} The provisions of CRPC upholding the adversarial trial system in the regard of justice with the Sections are as follows:-

- **Section 240 & 228:-** The court is framing the charge on the accused not the prosecution.
- **Section 311:-** The court is having power to call a person for the purpose of examination.
- **Section 313:-** The court has the power to examine accused at any stage of the trial.

- **Section 321:-** The prosecution will not withdraw his case without the permission of the court.

In the case of **Mahendra Chawla and Ors v. Union of India**^{ix} the Supreme Court explains that the adversary system which is running in India the court has to be presumed to give decision on the basis of the evidence produced before the court.

Rights of Accused in criminal prosecution

- **Presumption of Innocence**

The main basis of this rule is that person is apparent to be innocence till his guilt proven. Our justice system worked on the fundamental principle that no person can be wrongfully convicted. The accused has the benefit of doubt in criminal procedure and the prosecution has to establish the trials. In the case of **State of U.P v. Naresh Kumar and Ors**^x the court observed that an accused is innocent person till the prosecution proved them guilty. This is a human right of accused, subject to statutory exceptions and is also forms base of criminal jurisprudence in India. **Kali Ram v. State of U.P**^{xi} the SC held that “it is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse; however is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot be felt in a civilized society. The accused has equitable right under many conventions.^{xii} It is the responsibility or obligation to every person indulged in a case to enable a presumption of innocence till the trial is to be conducted.”

- **Impartial, Independent and Competent Judges**

The constitution gives the concept of Independent Judiciary^{xiii}. Section 6 of the CRPC also enables to differentiate between the powers of Judiciary from the executive.^{xiv} The judiciary must do their work without biasness in their system and decision. The judge can-not take trial of the cases in which he has his own interested or he is the party to the case.^{xv} The decision of the judge is considered as a justice to the party or to the victim. The person cannot be try again for the same or similar offence.^{xvi}

- **Public Hearing and Trial**

The essential of the Fair Trial is open trial or public hearing except when there is interest of private lives of the persons, moral values, and national security. This right is also being

considered as a right of general public. The sections 177 to 189 deal with the place and time of the trials.^{xvii} The basic principle is to be stated that the inquiry and trials are to be proceeded as per the jurisdiction of the court within its local limits. “In **Naresh Sridhar v.State of Maharashtra** the court analysed that judicial system is based on public faith and it carries a great importance.^{xviii}

- **Information of the Accusation**

It is the limb of the fair trial that the accused person has knowledge about the charges which are framed against him and his arrest. It will give the opportunity to defend himself against his accusation. The person has given reasonable time to prepare for his defence.^{xix} If the arrest is made without warrant by police officer and any other person, has duty to tell the person regarding the charges of a particular offence. Any charged framed against the person read and explain in the language which he understood.^{xx}

- **Evidence and Trials in the presence of Accused**

The object of natural justice is that trial should not be continued in the absence of the accused. All the evidences, hearings are done in front of the accused.^{xxi} There is no direct provision in the code that the presence of the accused in the trial is compulsory but there are some provisions which indirectly explain the presence of the accused in the proceeding for certain circumstance^{xxii}.

- **Cross Examinations Prosecution Witnesses**

It is the procedure where the truth of witness can be checked. The recognition of criminal system is to be in two terms to examine, have examined. All the cross examination and statement of witnesses shall be recorded in front of the accused or in the presence of his counsel. The prosecution must inform the defendant about the witness so, the defence will have reasonable time to prepare for defence. The accused person has the rights to prove his innocence and disapprove the prosecution case. In **Badri v. State of Rajasthan**, it was held that if the defence has not been given an opportunity for cross examine the witness of prosecution on material fact than his evidence cannot be admitted in corroboration of his previous statements.

- **Prohibition against Double Jeopardy**

The person cannot be punished twice for the same offence .In the ICCPR Article 14(7) explains that if a person is already convicted or acquitted according to the law and procedure of that country he cannot be called in court for the same offence again for the second time.

The broad provision is mentioned in American constitution as compare to Indian Constitution related to this concept.^{xxiii}

- **Speedy Trial**

The main confidence in the people related to the judiciary is the fair trial. The quick and speedy disposal of the case amounts to fair trial. Delayed of the trial or the decisions regards to injustice and harassment of the victim or the accused. Section 309(1) states once the examination of witness get started in the court the inquiry of trial must run in speedy manner. The proceedings of court should be held day to day unless the court has sufficient reason to adjourn the case for the next date or a longer date for hearing. In the case of **Hussainara Khatoon v. State of Bihar**^{xxiv} its held that it's an obligation on the part of state to protect fundamental rights of its citizens and the state should take appropriate steps to guarantee the speedy and fair trial as it is the main essential of the Constitution.

- **Legal Aid Counsel**

In the criminal cases lawyers are the necessary parts to proceed a trial. The fair Trial based on two parts

- 1) the person has right to choose his counsel.
- 2) in free legal aid the state will provide counsel to the accused in certain conditions.

The ordinary person did not have certain knowledge to defend his case before the court. With the 6th Amendment in the American Constitution the accused person has given right to counsel of his own choice to represent his case. Article 39-A of the Constitution states that the state should provide free legal Aid and counselling. It is an action towards the step of equal justice. The state can provide him free legal aid services as his own state's cost for his defence.^{xxv} The state ensures to give free legal aid services to accused in criminal prosecution.^{xxvi} Magna Carta under clause 40 states that "to no one will we sell, to no one will we refuse or delay, right or justice."The provisions stated in the Code of Civil procedure 1973 related to the legal aid.^{xxvii}

In **Suk Das and Ors. v. Union Territory of Arunachal Pradesh**, the court held that free legal aid is fundamental right and the state should provide it free of cost. The magistrate is duty bound to inform the accused about free legal aid facilities even if the accused asked for the same or not, without providing an accused reasonable opportunity to represent his case will be violation of right of life and liberty.

- **Protection against illegal arrest**

Section 57 of Cr.P.C. and Article 22(2) of Constitution provides that once a person is arrested by police he should be produced before judicial court within 24 hours. In **Pranab Chatterjee v. State of Bihar** the court held that provisions of section 50 of CrPC to be pursued by the arresting person. The accused must be conveyed of grounds of his arrest otherwise his arrest will be illegal. In **State of Punjab v. Ajaib Singh** the court held if a person is being arrested without warrant then he needs to be produced within 24 hours before the magistrate, so that immediate action can be taken by applying the judicial mind for the protection of the accused. In **Joginder Kumar v. State of Uttar Pradesh and D.K. Basu v. State of West Bengal**, court held that it is mandatory for the police officer to inform friend or relative of the accused about his arrest under section 50-A. The police is also under obligation to maintain a register for the same.

- **Right against self-Incrimination**

Clause (3) of Article 20 provides that no one can 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”.

Conclusion

The Indian Judicial system and the code provides the balance between the two features 1) Adversarial 2) Inquisitorial. The provisions stated for Fair Trial is very attractive but in practical aspect use of these provisions is at ground level. Pendency of the cases in the court is amount to denial of justice and violation of the rules of Fair Trial. The notion of Fair Trial is the heart of the constitution because it deals with protection of fundamental rights of the person or citizen and Indian courts is considered as their guardian for the protection and preservation of the rights.

ⁱ Article 10 states that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

Article 11 states that “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to a law in a public trial at which he has had all the guarantees necessary for his defence.”

ⁱⁱ In UN general Assembly Resolution signed on 16 December 1996 with 74 Signatories, International covenant on Civil and Political Rights.

ⁱⁱⁱ Article 21 states that “No person shall be deprived of his life and personal liberty except according to the procedure established by law.”

^{iv} https://sci.gov.in/supremecourt/2013/35581/35581_2013_5_1501_17480_Judgement_16-Oct-2019.pdf (Assessed on 22-10-2019)

^v SCC 135, In Criminal Appeal no.77 of 2016, decided on, 22 Jan 2016.

^{vi} *Zahira Habibullah Sheikh and Ors v. State of Gujarat*(2004) SCC 158.S

^{vii} *Zahira Habibullah Sheikh and ors v. State of Gujarat and ors*

^{viii} Section 303 and 304 CRPC “Right of the person to be defended by pleader of his own choice”.” Legal Aid to the accused at state expenses”.

In the constitution Article 22(1) gave rights to the accused persons.

^{ix} https://sci.gov.in/supremecourt/2016/34388/34388_2016_Judgement_05-Dec-2018.pdf (assessed on 22-10-2019)

^x (2001,4 SCC 324)

^{xi} 1973 SCC. In the case of **Shivaji Sahabrao v. State of Maharashtra 1973** the question arises that this principle of giving benefit of doubt given to the accused is the judgment is used by incompetent judges.

^{xii} In European Conventions on Human Rights Article 6(2) According to the law that the person charged with the offence is presumed to be innocence until his guilt is proved. According to American convention on Human Rights Article 8(2) that the person is presumed to be innocent in the criminal offences till the time his guilt has not been proved as per the provisions.

^{xiii} Article 50 of the Constitution explains that state must have take measures to differentiate between judiciary and executive powers.

^{xiv} Section 6 of Code of Criminal Procedure,1973

^{xv} Section 479 of Code of Criminal Procedure,1973

^{xvi} Section 300 of Code of Criminal Procedure,1973

^{xvii} Code of Criminal Procedure,1973

^{xviii} AIR 1967 SC.

^{xix} Article 8(2)(c) of ACHR,Article 6 (3)(b)of ECHR.

^{xx} Sec 379 CRPC

^{xxi} Section 273 of CRPC,1973

^{xxii} Sec 205(1) of the code “whenever a magistrate issues summons, he may, if he sees reasons to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

^{xxiii} “No person shall be twice put in jeopardy of life or limb.” As per American Constitution.

^{xxiv} SCC 98 at 107 (1980)

^{xxv} Maneka Gandhi v. Union of India.

^{xxvi} Khatri v. State of Bihar

^{xxvii} Section 41 D states that the person has right to meet his lawyer of his own choice in the investigation or at the time of arrest.

Section 303 states that the person has its right to be defended by his pleader in the court.

Section 304(1) The court has the power to arrange a counsel for the defendant for the presence of the case at the state's cost.