

FAIR INVESTIGATION AND TRIAL PROCEDURE: A BACKBONE TO INDIAN CRIMINAL JUSTICE SYSTEM AND VIOLATION OF HUMAN RIGHTS

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ABSTRACT :

Any nation's criminal justice system is the cornerstone of creating a peaceful and tranquility environment. It encompasses the investigative apparatus in addition to the legal system. One of the most important areas of human rights is criminal justice, where the legal system is constantly put to the test to maintain social stability and security while also protecting the dignity of those who are accused of committing crimes and those who are their victims. Thus, impartiality, openness, and discernment in the investigation are prerequisites for the rule of law. The Universal Declaration of Human Rights clearly states that respect for human rights and human dignity is "the foundation of freedom, peace, and justice in the world". An investigation or trial cannot be investigate or trial in a way that is contaminated or biased in order to deny the accused their fundamental right to be assumed innocent unless and until proven guilty. It is his paramount duty to ensure that fair trial norms that have been assured by the Indian Constitution as well as internationally agreed to are adhered to. The criminal justice system go against human rights principles such as violence in police and prison detention, illegal detention of innocents, internet shutdown, unrest in politics, etc. and such non-compliance with any single norm at any stage can subvert all further proceedings, taint the entire process and gravely impinge on the rights of all parties before the court. But these egregious crimes continue to be violated of human rights, even with the court system's constant involvement to curb them.

Keywords: Criminal Justice System, Adversarial System, Police, Investigation, Trial, Constitutional Remedies and Human Rights.

INTRODUCTION :

Human rights are those that each and every person has by virtue of their birth. They are unalienable and innate. Democracy, which is often regarded as the finest form of government to guarantee respect for human rights, is built on the foundation of the rule of law. A democracy's foundation is based on the value and dignity of the person, and its constitutional form of government offers the best safeguards for the preservation of human rights and the advancement of human resources. Rule of law is the bedrock of democracy, which is acknowledged as the best system of governance to ensure respect for human rights. Equal respect for the rights of all sections of the society is necessary to obtain full human resource development respecting the basic human right of non-discrimination. Human rights are accorded a unique position in India, where they are recognized as fundamental rights. Fundamental Rights are important for the fact that they are considered inherent for every citizen and thus, their violation gives the citizens, the right to move to the Supreme Court and the High Courts under Article 32 and Article 226 of the Indian Constitution¹ respectively. They are founded on the human need for a life that accords respect and deference to the intrinsic dignity of every individual as stated under the Universal Declaration of Human Rights that respect to human rights and human dignity is "the foundation of freedom, peace, and justice in the world".²

The Criminal Justice System, which is consisted by the combination of police, courts, and prisons, which are plays crucial roles into the implementation of human rights and preservation of constitutional values of their citizens. Criminal Justice is one of the critical areas of human rights where the legal system is tested on a continuous basis for preservation of peace and security in

¹Writ jurisdiction powers of Supreme Court and High Courts respectively.

²"Universal Declaration of Human Rights." United Nations, United Nations, www.un.org/en/universal-declaration-human-rights/.

society on the one hand, and prevention of human dignity of both victims of crime and person accused of it, on the other. The three primary components of the criminal justice system are the judiciary, the police, and the prison system. To achieve complete human resource development that upholds the fundamental human right of non-discrimination, equal regard for the rights of all segments of society is required. We encounter many situations in which a person in a nation like India faces the risk of having his human rights violated due to lack of appropriate criminal procedure.

CONCEPT AND MEANING OF FAIR INVESTIGATION AND TRIAL :

The criminal law is based upon the theory that “It is better that ten guilty escape than one innocent suffers.”³ This quote reflects the principle, known in criminal law as Blackstone’s Formulation which means “that there is hardly anything more undesirable in a legal system than the wrongful conviction of an innocent person”. This is because the consequences of convicting an innocent person are so significantly serious that its reverberations are felt throughout a civilized society.⁴ In **State of U.P. v. Naresh and Ors**⁵ 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.” Criminal procedure is built around the principle of “innocent until proven guilty” and is designed to protect this right. When it is said that a defendant to a criminal charge is presumed to be innocent, what is really meant is that the burden of proving his guilt lies on the prosecution.”⁶

The term ‘investigation’ as per clause (h) of Section 2 of the Criminal procedure code means and includes all the proceedings under this code which is required for the collection of evidence by the police officer or by any person authorized by a Magistrate.

Following are the three essential elements of investigation under section 2(h):

1. It must be as a procedure and not simply one act, for example, recording the grievance.
2. The intention of the investigation ought to be to gather evidence.
3. Investigation can be led by police or a private individual yet not by Magistrate.

The Hon’ble Supreme Court in the case of **Nirmal Singh Kahlon v. State of Punjab And Others**⁷ opined that liberal interpretation should be given to the Definition and scope of the expression ‘investigation’ and ‘officer in-charge of the police station’.

In the case of **State v. Pareshwar Ghosi**⁸ Apex Court observe that etymologically, the term ‘investigation’ implies any procedure that includes filtering of materials or quest of pertinent information with the end goal of ascertainment of facts in issue in a matter in hand.

The Supreme Court in the Case of **H. N. Rishbud v. State of Delhi**.⁹ Has very categorically defined the term investigation and says it includes:

1. Proceedings to the scene of the offence,
2. Verification and foundation of the facts of the case and the scenario under which it occurred.
3. Filtering of materials to aggregate the evidence related with the commission of the offense.
4. formation of opinion, for example, ending up whether, based on the material and data loaded up, the suspects are the genuine accused and if fulfills, set up the last report for the Magistrate.

³ 1 Letter from Benjamin Franklin to Benjamin Vaughan, 14 March 1785.

⁴ Kali Ram v State of Himachal Pradesh 1973 AIR SC 2773.

⁵ (2001) 4 SCC 324].

⁶ William Glanville, The Proof of Guilt; edn.3, Stevens, 1963, pp. 184 -85.

⁷ AIR 2009 SC 984.

⁸ AIR 1968 Ori. 20.

⁹ AIR 1955 SC 196.

The investigation procedure and trial system in Indian criminal cases are primarily governed by the Code of Criminal Procedure (Cr.P.C.), 1973, along with various other statutes and regulations. Here's an overview of the process:

INVESTIGATION PROCEDURE:

1. FIR (First Information Report):

Criminal cases in India usually begin with the filing of an FIR at a police station. The FIR is a written document that records the information given by the informant regarding the commission of a cognizable offense.

In the case of **Lalita Kumarivs Govt. Of U.P.&Ors**¹⁰ Supreme Court of India held that the enlistment of FIR either based on the information furnished by the witness under Section 154(1) of the Code or in any case under Section 157(1) of the Code is required. The commitment to enroll FIR has inborn points of interest:

- a. It is the initial step to access to justice for a victim.
- b. It maintains the Rule of Law because of the fact that the ordinary individual brings forth the commission of a cognizable crime in the information on the State.
- c. It likewise encourages quick investigation and, in some cases, even prevention of the crime. In the two cases, it just effectuates the system of law.
- d. It leads to less manipulation in criminal cases and lessens incidents of ante-dates FIR or deliberately delayed FIR.

2. INVESTIGATION BY POLICE:

Upon receiving the FIR, the police investigate the case. This involves collecting evidence, examining witnesses, and gathering information to ascertain the truth. Under section 156 the power of the police officer to investigate cognizable offence are wide and unfettered. Even the court has no control over the investigation or over the conduct of the police officer carrying such investigation.¹¹

But the court is allowed to interfere in certain circumstances if the court is of the opinion that non-interference would result in the miscarriage of justice.¹² Section 157 of the Cr.P.C. gives the police discretion over whether or not to conduct an investigation. Proviso (b) to section 157(1) states that police are not liable for declining to conduct an inquiry. However, section 157(2) offers protection against its abuse by requiring the police officer to document the reasons why they did not completely comply with sub-section (1)'s obligations and in the instance specified under proviso (b).

3. ARREST AND INTERROGATION:

Policing in a democratic society is seen as upholding the dignity of the individual by safeguarding the constitutional and legal rights. Democracy gets threatened when the police cease to respect the legal and constitutional rights of the citizens and persistently disregard the due process of law. Allegations of the police violence and brutality are being constantly received from different parts of the country.¹³ If the police find sufficient evidence, they may arrest the accused. The arrested person must be informed of the grounds of arrest, and their rights must be respected during interrogation.

¹⁰12 November, 2013.

¹¹Nazir Ahmed, (1944) 47 Born LR 245: (1945) 26 Lah 1: 71 1A 203. See Ratanlal and Dhirajlal's The Code of Criminal Procedure by Ratanlal Ranchhoddas and Dhirajlal K Thakore, 15th Edition (Revised by Justice Y.V. Chandrachud, et al), Wadhwa and Company Law Publishers, Nagpur, 2002, pp. 221-28.

¹²Eastern Spinning Mills v. Rajiv Poddar, AIR 1985 SC 1668. See Ratanlal and Dhirajlal's The Code of Criminal Procedure, *ibid*, p. 222.

¹³Shankar Sen, "Human Rights in Criminal Justice System", in Vijay K. Gupta, ed., Perspective on Human Rights, Vikas Publishing House Pvt. Ltd., New Delhi, 1996, p.221.

The decisions of the Supreme Court in **Joginder Kumar v. State of Uttar Pradesh**¹⁴ and **D.K. Basu v. State of West Bengal**¹⁵, 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. In order to guarantee responsibility and openness in arrests, this was done. According to Section 160 of the Criminal Procedure Code, a police officer may only conduct an inquiry at the house of a woman or a boy under the age of fifteen. According to Section 46(4), no woman may be arrested after dusk or before dawn unless there are extraordinary circumstances. In those cases, the woman police officer must request permission in writing from the Judicial Magistrate of the first class, whose local jurisdiction the offence is committed or where the arrest is to be made.

4. BAIL OR REMAND:

Bail and remand is yet another phase investigation of crimes. It is against the cardinal principle of human dignity and right to freedom of life and liberty to confine a person without valid grounds. An accused person is presumed under law to be innocent till his guilt is proved beyond reasonable doubt. After arrest, the accused may seek bail or be remanded to police or judicial custody depending on the severity of the offense and other factors. Section 438 of Cr.P.C. enables the courts to grant anticipatory bail, which means that if a person is arrested, bail shall be granted to him, or if a warrant is issued for his arrest, the warrant shall be bailable. In granting or refusing bail, courts generally take into consideration the following points (1) the nature of the accusation; (2) the nature of the evidence in support of the accusation; (3) the severity of the punishment which the conviction will entail; and (4) whether the accused, if released on bail, is likely (a) to tamper with the prosecution evidence, or (b) to get up false evidence in support of the defence.

5. CHARGE SHEET:

A charge sheet is a final report that is filed by the investigating officer or police officials under Section 173 of the Code of Criminal Procedure (Cr.P.C.) after the completion of the investigation in a cognizable or non-cognizable case.

TRIAL SYSTEM:

A trial that is primarily focused on finding the truth must be equitable for all parties involved, including the accused, the victims, and the general public. In a criminal trial, every individual has the right to receive fair treatment. 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 right¹⁶. 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. Principles of fair trial: the following are the principles of fair trial:-

- a. Adversary trial system :
- b. Presumption of innocence
- c. Independent, Impartial and Competent judge:
- d. Knowledge of accusation:
- e. Right to open trial

¹⁴1994 SCC (4) 260.

¹⁵1997 (1) SCC 416.

¹⁶Dwarka Prasad Agarwal (D) By LRs. v. B.D. Agarwal and Others [(2003) 6 SCC 230].

- f. Right to free legal aid
- g. Right to free legal aid
- h. The trial in presence of accused
- i. Evidence to be taken in presence of accused
- j. Protection against illegal arrest
- k. Right to bail
- l. Prohibition on double jeopardy
- m. Right against self-incrimination

In **ZahiraHabibullah Sheikh &Ors v. State of Gujarat &Ors**,¹⁷(Best Bakery Case)the Supreme Court of India observed “each one has an inbuilt 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 to society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witness or the cause which is being tried, is eliminated.” In **Shyam Singh vs. State of Rajasthan**¹⁸ the court observed that the question is not whether a bias has actually affected the judgment. The real test is whether there exists a circumstance according to which a litigant could reasonably apprehend that a bias attributable to a judicial officer must have operated against him in the final decision of the case.

SPEEDY TRIAL :

In order to rebuild public trust in the judiciary, a speedy trial is essential. Unnecessary harassment results from delayed justice. 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.

According to Section 309(1),¹⁹

"within every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, once the witness examination has commenced, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds that the adjournment of the same beyond the following day is necessary for reasons to be recorded."

The Supreme Court ruled in **HussainaraKhatoon (IV) v. State of Bihar**²⁰ that a prompt trial is a necessary component of the "reasonable just and fair" process that Article 21 guarantees, and that the state has a constitutional duty to establish a procedure that would guarantee a prompt trial for the accused. The state cannot use administrative or budgetary deficiency as a way out of its constitutional duty.

In the case of **A.R. Antulay v. R.S. Nayak**,²¹ the Supreme Court established deadlines for the resolution of certain case classes. The ruling said that "drawing or prescribing an outer time limit for the conclusion of all criminal proceedings is neither advisable nor feasible." The phrase "systematic delay" refers to the process by which the court determines the claimed delay by considering all relevant variables, such as the type of the offence, the number of accused and witnesses, the court's workload, the local conditions at the time, etc.

VIOLATION OF HUMAN RIGHTS AND CRIMINAL JUSTICE SYSTEM :

Human rights are essential to our continued survival as species. They transcend all national and political barriers and are universal. Due to the two World Wars, humanity developed an aspiration

¹⁷(2004) 4 SCC 158.

¹⁸1973 CrL LJ 441, 443 (Raj),

¹⁹Section 309 (1), Cr.P.C., 1973.

²⁰1979 AIR 1369, 1979 SCR (3) 532.

²¹1984 AIR 718.1984 SCR (2) 914. 1984 SCC (2) .

for a decent, civilised existence where each person's intrinsic dignity is valued and upheld. The Universal Declaration of Human Rights, 1948 (UDHR) has been hailed as

“common standard of achievement for all people and nations”. The preamble of Universal Declaration of Human Rights proclaims: Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”

Constitution of India reflects the quest and aspiration of the mankind for justice when its preamble speaks of justice in all its forms: social, economic and political. The Indian Constitution bears the impact of the Universal Declaration of Human Rights, International Covenants, conventions and Conferences and this has been recognized by the Supreme Court of India. In **GolakNath v. State of Punjab**,²² the Supreme Court observed that fundamental rights are the modern name for what have been traditionally known as ‘natural rights’. The protection of human rights, one may also turn the pages of the landmark judgment in **Rudul Shah v. State of Bihar**²³, where the Supreme Court ruled that the victims of unlawful or illegal arrest were entitled to compensation for violation of their fundamental rights under Part III of the Indian Constitution. It must be borne in mind that ensuring human rights within the framework of the criminal justice delivery system cannot be narrowly construed to mean merely the protection of the rights of the under-trials, or detainees, or convicts.

The Supreme Court of India has recognized the Fundamental Rights as Natural Rights in **MotiLal v. State of UP**²⁴. In fact, it can rightly be contended that the most essential of all human rights in a criminal justice delivery system, is the right of access to courts of law. It is based on Article 10 of Universal Declaration (UDHR) which provides that:

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

In **Maneka Gandhi V. Union of India**²⁵, the Supreme Court gave a new dimension to Article 21 of the constitution. Though worded in negative terms, it has been held that Article 21 of the constitution has both negative and affirmative contents. Positive rights have, thus been held to be well conferred under Article 21 of the constitution. This case showed that Article 21 as interpreted in **A.K. Gopalan v. State of Madras**²⁶ could not play any role in providing protection against any harsh law seeking to deprive a person of his life or personal liberty.

Right to life and personal liberty enshrined in Article 21 of Constitution is of widest amplitude and several unremunerated rights fall within Art. These rights are the Right to Speedy Trial;²⁷ Right to legal assistance²⁸ Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment²⁹, Right against Solitary Confinement;³⁰ Right against Bar Fetters;³¹ Right against

²²AIR 1967 SC 1643.

²³(1983) 4 SCC 141.

²⁴LR 1951, Allahabad, p. 369.

²⁵AIR 1978 SC 597.

²⁶ AIR 1950 SC 27 : 1950 SCR 88

²⁷HussainaraKhatoon (IV) v. Home Secretary v. State of Bihar, Patna, AIR 1979 SC 1360.

²⁸M. H. Hoskot v. State of Maharashtra (1978) 3 SSC 554.

²⁹HussainaraKhatoon (IV) v. Home Secretary v. State of Bihar, Patna, AIR 1979 SC 1360, Dayal Singh v. Union of India, AIR, 1991 SC 1548

³⁰Sunil Batra v. Delhi Administration (1978) 4 SSC 494.

³¹Charles GurmukhSobhraj v. Delhi Administration (1978) 4 SSC 494.

Handcuffing;³² Right against delayed execution;³³ Right against Custodial Violence;³⁴ Right against Public Hanging;³⁵ Right to compensation for unlawful arrest and detention.³⁶

CONCLUSION :

In the famous Best Bakery's case, His Lordship Arijit Pasayat by quoting stanzas (14 & 18) of Eight Chapter of Manu Samhita observed that

- "where in the presence of Judges "dharma" is overcome by "adharma" and "truth" by "unfounded falsehood", at that place they (the Judges) are destroyed by sin. In the adharma flowing from wrong decision in a Court of Law, one fourth each is attributed to the person committing the adharma, witness, the Judges and the ruler".

The right to have a trial by a qualified, independent, and unbiased court is protected by Indian law, which complies with current international legal norms. Everyone must be treated equally in front of the law. Everybody is entitled to a fair trial before an unbiased court that has been created by law. Unnecessary delay is a crucial condition for a fair trial. All phases, including investigation, inquiry, trial, appeal, revision, and retrial, are covered under the right to a quick trial derived from Article 21 of the Constitution. The Right to fair trial incorporates 'Fair Investigation',³⁷ Fair trial and fair investigation is pre-essentials to get equity which the parties deserve on the basis of law, and one without the other can't respect fair justice. A victim of a crime is entitled to fair investigation³⁸ and whenever required the case can be depended to a specific office like CBI and the courts have enough capacity to do complete justice to the parties by giving proper supervision. In summary, the development of human rights jurisprudence is critically needed. When the legal system is asked to protect those who are under the radar, the challenge is in developing a good culture, elevating consciousness; preventative mechanisms, sensitive tactics, and humanist organizations that will soothe wounded hearts. The court's writ power can and ought to intervene on behalf of a prisoner whose rights are infringed, whether they are due to the Constitution or legislation.

³²Prem Shankar Shukla v. Delhi Administration (1980) 3 SCC 373.

³³Vatheeswaran v. State of Tamil Nadu, AIR, 1983 SC 36.

³⁴Sheela Barse v. State of Maharashtra (1983) 2 SCC 96.

³⁵Attorney General of India v. Lachma Devi, AIR 1986, SC 467.

³⁶Rudul Sahu v. State of Bihar AIR 1983 SC 1107.

³⁷Kalyani Baskar Vs. M.S. Sampooram, (2007)2 SCC P.259.

³⁸Nirmal Singh Kahlon's case, AIR 2006 SC P.1367.