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2nd Year.**CRITICAL ANALYSIS ON RIGHT TO A FAIR TRIAL UNDER INDIAN LAWS****Abstract**

This article focuses on accused's rights to be rightly summoned and prosecuted. Preserving rights of the accused in a general crime can be done without much problems but when it comes to the accused who are trialed for the heinous crimes, it becomes more than difficult to safeguard his rights. As the society and community is affected at large. The following article will be throwing light on the need and importance to prosecute an accused fairly. It showcases which Laws protect the accused from depriving from his right to life and personal liberty. It consists of various landmark judgements in which the court held that it is the duty of the court to provide legal aid to accused in order to avoid miscarriage of justice. Additionally, mere providing of the counsel shall not be enough, the court should appoint a counsel who is skilled and expertized in the direction in which the accused is being prosecuted.

Keywords

Rightly summoned, prosecuted, heinous crimes, prosecuted fairly, right to life and personal liberty, miscarriage of justice, appointment of counsel.

Introduction

In a country like India, one cannot expect crimes to be negligible. There are various statues to protect or punish the wrongdoer under Indian Laws but has an accused have any right under Indian Law to be rightly summoned or punished. Following the basic statute of *No accused is a criminal until proven guilty*, can he ask for **fair trial** as his Fundamental Right?

In the fight against crime and delinquency, the state and its officials cannot, under any circumstances, abandon state morality in favor of extra-legal techniques of imprisonment of crimes and even criminals. When their own behavior is blameworthy, unjust, and illegal, the state should not demand positive conduct from others. As a result, the rights of the accused are protected in a democratic society; despite being accused of a crime, he does not become a non-person. The case

of *Kishore Singh Ravinder Dev v. State of Rajasthan 1981 AIR 625, 1981 SCR (1) 995*¹, it was stated that India's laws, including its Constitutional, Evidentiary, and Procedural laws, have made extensive provisions for safeguarding the rights of accused persons to protect their dignity as human beings and to provide them with the benefits of a just, fair, and impartial trial.

Analysis of Free Trial

Principles of Fair Trial are as follows-

- i) **Adversary trial system**- The adversarial trial system is based on the Code of Criminal Procedure, 1973. This method indicates that the prosecution has the burden of proving the accused's guilt, while the judge serves as a neutral arbitrator for both parties.
- ii) **Presumption of innocence**- Until proven guilty, an accused person is presumed innocent. The prosecutor bears the burden of proof that the accused is guilty. The proposition is extracted from the Latin maxim '*ei incumbit probatio qui dicit, non qui negat*,' which means that the onus lies with person who claims instead of the person who denies.
- iii) **Independent, Impartial and Competent judge**- This idea may be traced back to the natural justice principle of *nemo iudex in causa sua*, which states that no one can be a judge in his own case. Thus, if a trial is held before an independent, unbiased, and competent judge, it is considered to be fair. The judiciary's independence is a cornerstone of the Indian Constitution. Section 479 of the Code of Criminal Procedure expressly bans any judge or magistrate from trying any matter in which he is a party or has a personal interest, as well as from hearing any appeal from any order or decision issued by him.
- iv) **Knowledge of accusation**- Every accused person has the right to be represented by a lawyer, according to Article 22(1) of the Constitution. This privilege, however, may only be used if the accused is aware of the charges levelled against him. Article 22(1) also establishes the right to know the reasons for an arrest as a basic right.
- v) **Right to open trial**- A trial's transparency is linked to its fairness. A fair trial necessitates that the proceedings take place in public. According to section 327(1) of the Cr.P.C., the court's openness means that not only parties but also the general public have access to the court's records.
- vi) **Right to free legal aid** - A trial's transparency is linked to its fairness. A fair trial necessitates that the proceedings take place in public. According to section 327(1) of the Cr.P.C., the court's openness means that not only parties but also the general public have access to the court's records.
- vii) **Right to free legal aid** - If the accused is to be represented by a lawyer in order to ensure a fair trial, it is also vital to ensure that he has all of the required resources to hire a counsel. Article 39A of the Constitution guarantees this right by ensuring equal justice and free legal assistance. Legal aid at the expense of the state is also provided under Section 304 of the Cr.P.C. It is critical to provide legal aid to an accused individual

¹ Kishor Singh Ravinder Dev Etc vs State ... - indiankanoon.org

- who lacks the resources to defend himself in order to safeguard his life and personal liberty.
- viii) The trial in presence of accused - All procedures relating to the case should, in general, take place in the presence of the accused. The underlying concept is that the court is prohibited from issuing any ex-parte decisions. This is not an absolute norm, and the court has the authority to continue the case even if the accused is not present. If the court believes it is essential for the administration of justice, the accused must appear in court.
- ix) Evidence to be taken in presence of accused- The Indian judiciary relies heavily on evidence, and in order to guarantee a fair and unbiased administration of justice, evidence must be obtained in the presence of the accused. All evidence and processes must take place in the presence of the accused, according to Section 273 of the Criminal Procedure Code. There are deviations to this directive as well. In the absence of the accused, the court may accept evidence, and the accused will appear through his lawyer.
- x) Protection against illegal arrest- Section 57 of the Code states that no individual arrested will be held for more than 24 hours and will be brought before a magistrate within that time frame. Under Article 22(2) of the Constitution, it is also a basic right. Illegal detention is defined as a detention of a person for more than 24 hours without the consent of a magistrate.
- xi) Right to bail- Bail is the term used to describe a person's release from police custody. When someone is arrested for a bailable offence, they have the option of being released on bail. The police officer is required under section 50(2) of the Code to advise the arrested individual of his right to bail and to allow him to make arrangements for sureties.
- xii) Prohibition on double jeopardy- This idea is based on the notion of *nemo debet vis vexari*, which states that a person should not be put in danger again for the same offence. The right to be free of double jeopardy is guaranteed under Article 20(2) of the Indian Constitution, which states that no person shall be prosecuted and punished for the same wrong more than one time. The theory of *autrefois convict* and *autrefois acquit* hold up the doctrine of double jeopardy. This concept states that after a person has been prosecuted and convicted or acquitted for a crime, he or she cannot be tried for the same crime again. Section 300(1) of the Cr.P.C. further expressly states that a person who has been acquitted or convicted of one crime will not be prosecuted for the same crime or for any other crime based on the same circumstances.
- xiii) Right against Self-incrimination- “No person accused of any wrongdoing will be compelled to be a witness against himself,” says Article 20(3) of the Constitution. No one is obligated to accuse oneself, according to Article 20(3). The right has been established to guarantee that someone accused does not make a statement as a result of threats, persuasion, or any other form of coercion. Article 20(3), on the other hand, cannot be utilized if the accused acknowledges guilt without any incentive. According to this article, the accused does not have to make any statements against his will, and the prosecution has the burden of proof.

The laws which under which Fair Trial is protected

Certain rights of accused are not only protected under Indian Laws but also under Universal Declaration of Human Rights. Article 10 of the Universal Declaration of Human Rights states that everyone has the right to a fair and public hearing before an independent and impartial tribunal in the determination of his rights and liabilities, as well as any criminal charges brought against him. All citizens shall be equal before the court and tribunals, according to Article 14(1) of the International Covenants on Civil and Political Rights. There are several components to the right to a fair trial. In the case of *Zahira Habibullah Sheikh & Anr v. State of Gujarat*², the Supreme Court stated that “the idea of fair trial currently informs and empowers multitudinous areas of the law.” It is represented in a number of regulations and procedures a fair trial would certainly imply a trial before an impartial Judge, a fair prosecutor, and a judicial calm setting. A fair trial is one in which bias or prejudice, for or against, witnesses are eliminated against the accused. The meta of Fair Trial depends on various aspects as on the victim, accused, society and on the community that acts through States and Prosecuting agencies. The Code of Criminal Procedure, 1973 defines the procedure which has to be followed for the accused Fair Trial. It safeguards and ensures the right of the accused to be rightly prosecuted.

The Constitution of India also provides the right to be defended by a legal practitioner to the accused in the court of law which is derived from Article 22 (1) of the Constitution of India. It has been strengthened further by the introduction of the Directive Principles of State Policy embodied in Article 39 A of the Constitution by the 42nd Amendment Act of 1976 and the enactment of sub-section 1 of Section 304 of the Code of Criminal Procedure. Legal aid to a poor person facing trial whose life and personal liberty are at stake is protected not only by the Constitution of India but by the Code of Criminal Procedure too. At international level they are protected under International Covenants and Human Rights Declarations.

Fair Trial under Code of Criminal Procedure

Section 304 in The Code of Criminal Procedure, 1973.

Legal aid to accused at State expense in certain cases-

(1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rules providing for-

(a) the mode of selecting pleaders for defence under sub-section (1);

(b) the facilities to be allowed to such pleaders by the Courts;

² Indian Law Portal; Zahira Habibulla H. Sheikh and Another Vs State of Gujarat and Others

(c) the fees payable to such pleaders by the Government, and generally, for carrying out the purposes of sub- section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub- sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session.

The Civil Criminal Procedure Code states that in all criminal prosecutions, the accused has the right to the aid of legal counsel. It also requires the court to appoint counsel for him at the expense of the State in all criminal matters where the accused is unable to engage counsel. Regardless of how guilty the appellant was found to be throughout the investigation, he is deemed innocent until convicted. It is the Court's responsibility, the judge in charge of the cases, to ensure that he was not denied any required event of a fair trial. It will be regarded as violation of fundamental principles of Judicial procedure if there is absence of fair trial as per Section 304 of Code of Criminal Procedure. In the case of *Ram Awadh v. State of Uttar Pradesh*³, it was held that merely providing a counsel to an accused, who will be paid by the government does not mean assigning just anyone. He needs to be qualified and expertized in the field of law related to the proceedings of the crime. Appointing, a counsel to defend accused should be really able to safeguard him and must be an effective one. An accused of murder may be under execution for life imprisonment or death sentence, his case should be handled by a skilled counsel rather than a beginner or someone with no professional competence. Judges are obligated to select competent counsels for the defense of such indigent accused who are facing severe criminal charges and are unable to afford counsel. By cross-examining witnesses and presenting pertinent documents or evidence, a defense lawyer plays an essential role in bringing the truth to the attention of the Court. A lack of appropriate cross-examination can sometimes lead to a miscarriage of justice, and the Court must guard against this.

In the Sessions Court the accused once requested being provided the services by counsel of his choice at the expenses of the court under Section 304 of Code of Criminal Procedure to which the court stated that, if the State has to bear the expenses, then the statute of being defendant by the counsel of the accused's choice shall not be prevalent. The court is under no obligation to provide the lawyer of the accused choice if the state government is bearing the expenses. In that the accused has to be defended by the lawyer whom the court has been assigned. In the case of *Md. Ajmal Amir Kasab vs State of Maharashtra AIR (2012) SC 356*⁴ the court had provided counsels to the accused. His defense council had demanded and argued that Kasab was not fairly tried on the ground that the counsel was shuffled. To which the court had stated that due to the shuffling of counsels it does not amount that the accused has not been trial in a fair manner.

Fair Trial under Constitution of India

³ Ram Prakat Yadav S/O Late Ram Awadh ... vs State Of Uttar ...

⁴ Lawyersclubindia; Judicial Analysis on the case of Mohd. Ajmal Amir Kasab vs. State of Maharashtra AIR 2012 SC 3565

In a country democratic country like India, an accused also has the right to life and personal liberty, everyone has the right to a fair trial by a competent court. Article 21 of the Indian Constitution makes a fair trial a part of life and personal liberty. In the case of *Rattiram v. State of Madhya Pradesh*⁵, the Supreme Court stated that a fair trial lies at the heart of criminal law. A fair trial is a basic right guaranteed by Article 21 of the Constitution. Human rights are violated when a fair trial is denied. In *Mohd. Hussain @ Julfikar Ali v. The State (Govt. Of Nct) 2012 460 SC*⁶, the Court declared that, in the essence of the right to life and personal liberty, everyone has the right to a fair trial by a competent court. As a result, because the right to a fair trial is a basic right, it cannot be denied to anybody under the Constitution. In the case *Moti Lal Saraf v. Union of India, 2007 (1) SCC Cri,180*⁷. The court held that the intention of giving competent legal assistance to unrepresented and undefended accused people is to ensure that they get a free, fair, just, and reasonable trial of their charges in a criminal case. In *Maneka Gandhi V. Union of India, 1978 AIR 597, 1978 SCR 621*⁸, it was held that the procedure for depriving a person from his personal liberty, rights and life should be just. The court had stated that it would not be reasonable and fair, if the accused is proceeded without his defence counsel. The lawyer is the only person who can defend the accused in a criminal case. So, if the accused is punished without the counsel to defend him then it would be amounting to the violation of Article 21 of the Constitution of India of accused. The Supreme Court in *Sukh Das V. State of Arunachal Pradesh*⁹ stated that in a conviction where the accused is not provided with legal counsel to defend him should not be proceeded as it will be regarded as the breach of Article 21. This shall not be applicable if the accused himself voluntarily admits that the crime is committed by him and the magistrate is satisfied with his plea.

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

In *Husainera Khatoon and others v. Home Secretary, State of Bihar, AIR 1979 SC 1369*¹⁰ the court stated that speedy trial is an essential ingredient of right to life and liberty under Article 21 of the Constitution. It is the structural duty of the state to guard up procedure to ensure swift trial.

Conclusion

In my opinion, prosecuting an accused rightly is equally important as prosecuting any other person is. Being an accused, does not mean that he stops being a citizen of India or a person. Though, prosecuting an accused who has been alleged for heinous crime is the most difficult part for everyone concerned. But for that reason, we cannot set up a precedent for the upcoming cases by excusing an accused fundamental right for his degree of crime. The rights of the accused should be safeguarded in a same manner as they are protected of some other person.

⁵ Rattiram & Ors vs State Of M.P.Tr.Insp.Of Police on 17 ...

⁶ Latest Laws; Mohd. Hussain @ Julfikar Ali Vs. The State (Govt. of NCT) Delhi [August 31, 2012]

⁷ U.P. State Electricity Board vs Pooran ... - indiankanoon.org

⁸ iPleaders; Maneka Gandhi v. Union of India, 1978 AIR 597 1978 SCR (2) 621 197

⁹ Suk Das v. Union Territory Of Arunachal Pradesh - Casemine

¹⁰ Law Times Journal; Hussainara Khatoon & Ors. vs. Home Secretary, State of Bihar