



## **Fair Investigation and Trial Procedure: A Backbone to Criminal Justice System in Indian and Violation of Human Rights**

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### **Abstract**

*The cornerstone for creating a serene and tranquil environment is each nation's criminal justice system. It encompasses not just the legal system but also the tools used for investigations. One of the most important areas of human rights is criminal justice since the legal system is constantly put to the test in order to maintain social security and stability while also protecting the dignity of those who are accused of crimes and their victims. Therefore, the rule of law requires the investigation to be fair, transparent, and unbiased. "The foundation of freedom, peace, and justice in the world," as stated in the Universal Declaration of Human Rights, is respect for human rights and dignity.*

*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 rights to be assumed innocent unless and until proven fault. Ensuring adherence to fair trial standards, as guaranteed by the Indian Constitution and globally agreed upon, is his top priority. Human rights principles, such as police and prison violence, unlawful detention of innocent people, internet shutdowns, political unrest, etc., are violated by the criminal justice system. Failure to adhere to any one of these standards at any point can seriously affect the rights of all parties before the court, undermine any subsequent proceedings, and taint the entire process. 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**

Just by virtue of their birth, every person is entitled to certain human rights. They are inherent and unchangeable. Democracy is often considered the finest form of government to guarantee human rights, and its foundation is the rule of law. Every person's value and dignity are the cornerstones of a democracy's constitutional form of governance, which offers the best safeguards for the development of human resources and the defence of human rights. Democracy is founded on the rule of law and is seen as the best type of governance to ensure respect for human rights. The complete development of human resources while upholding the fundamental human right to be free from discrimination requires equal respect for the rights of all societal segments.

In India, human rights hold a special place since they are acknowledged as essential rights. Because they are regarded as fundamental to all citizens, these rights are significant because, in the event that they are violated, citizens have the right to petition the Supreme Court and the High Courts under Article 32 and Article 226 of the Indian Constitution, respectively. According to the UDHR, respect for human rights and human dignity is "the foundation of freedom, peace, and justice in the world," and they are based on the human desire for a life that affords respect and deference to each individual's inherent dignity".<sup>1</sup>

The criminal justice system's police, courts, and prisons are crucial to enforcing human rights and protecting citizens' constitutional values. Criminal justice is one of the most significant areas of human rights, where the judicial system is continuously tested to preserve social peace and security on the one hand, and to uphold the human dignity of both those who are accused of crimes and those who are their victims on the other. The police, the courts, and the prison system are the three main parts of the criminal justice 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 the country like India faces various problems against human rights violated due to lack of appropriate criminal procedure.

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<sup>1</sup> "Universal Declaration of Human Rights." United Nations, United Nations, [www.un.org/en/universal-declaration-human-rights/](http://www.un.org/en/universal-declaration-human-rights/).



The criminal justice system is based upon the theory *that 'It is better that ten guilty escape than one innocent suffers.'*<sup>2</sup> The idea (Blackstone's Formulation) that "there is hardly anything more undesirable in a legal system than the wrongful conviction of an innocent person" is reflected in this phrase. This is due to the fact that condemning an innocent person has such grave ramifications that they affect a civilised society as a whole..<sup>3</sup> In the case of **State of U.P. vs. Naresh & Ors**<sup>4</sup> the Supreme Court observed that 'every arrested person is presumed to be innocent unless his guilt is proved by the competent court. A human right that is subject to statutory exclusions is the presumption of innocence. The aforementioned idea serves as the cornerstone of Indian criminal law. "Innocent until proven guilty" is the cornerstone of criminal procedure, which is intended to uphold this privilege. 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.'<sup>5</sup>

Under the clause (h) of Section 2 of the Criminal procedure code, term 'investigation' 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 a proper procedure for recording the grievance.
2. The main object of the investigation proceeding should be to collect evidence.
3. Investigation can be committed by any police or a private individual but not by Magistrate.

The Supreme Court in **Nirmal Singh Kahlon vs. State of Punjab & Others**<sup>6</sup> suggested that liberal interpretation should be given to the expression 'investigation' and 'officer in-charge of the police station' in the process of investigation.

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<sup>2</sup> Benjamin Franklin write a letter to Benjamin Vaughan, 14 March 1785.

<sup>3</sup> Kali Ram vs. State of HP 1973 AIR SC 2773.

<sup>4</sup> (2001) 4 SCC 324].

<sup>5</sup> Glanville, William, 'The Proof of Guilt;', ed. 3, Stevens, 1963, pp. 184 -85.

<sup>6</sup> AIR 2009 SC 984.



In **State v. Pareshwar Ghosi**<sup>7</sup> the SC observe that in terms of etymology, the term "investigation" refers to any process that involves screening materials or searching for relevant information in order to determine the facts at issue in a particular subject.

The Apex Court in **H. N. Rishbud v. State of Delhi**.<sup>8</sup> 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.

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

### **Investigation Procedure:**

#### **1. FIR (First Information Report):**

Every criminal case is initiated with the filing of First Information Report at a police station for the purpose initiating proceeding against to the accused person. The information provided by the informant after the commission of an any crime that is punishable by law is documented in the formal complaint, or FIR.

In the case of **Lalita Kumari Vs. Govt. of U.P. & Ors**<sup>9</sup> the Supreme Court ruled that a formal complaint must be filed under Section 154(1) of the Code, or in any other case, under Section

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<sup>7</sup> AIR 1968 Ori. 20.

<sup>8</sup> AIR 1955 SC 196.

<sup>9</sup> 12 November, 2013.



157(1) of the Code, based on the information provided by the witness. The commitment to enroll FIR has inborn points of interest:

- a. It is a primarily stage 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 reduces instances of ante-dates or purposefully delayed FIRs and lessens manipulation in criminal cases.

## **2. Police's Investigation Proceedure:**

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 of the Cr. P.C., the power of police officer to investigate cognizable offence is wide and unfettered. Even the court has less control over the investigation proceedings and conduct of the police officer during any investigation.<sup>10</sup>

However, in some situations, the court may step in if it believes that failing to do so would lead to an injustice.<sup>11</sup> The Criminal Code's Section 157 grants the police discretion over whether or not to launch an investigation. Police are not held accountable for refusing to conduct an investigation, according to section 157(1)'s proviso (b). By requiring the police officer to record the reasons why they did not fully comply with the responsibilities of sub-section (1) and in the case stated under proviso (b), section 157(2) provides protection against its abuse.

## **3. Arrest & Interrogation:**

In a democracy, policing is viewed as protecting people's legal and constitutional rights and preserving their dignity. When the police consistently disregard due process of law and stop upholding citizens' legal and constitutional rights, democracy is put in jeopardy. Reports of police

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<sup>10</sup> Nazir Ahmed, (1944) 47 Born LR 245: (1945) 26 Lah 1: 71 IA 203.

<sup>11</sup> Eastern Spinning Mills vs. Rajiv Poddar, AIR 1985 SC 1668.



brutality and violence are continuously coming in from all throughout the nation.<sup>12</sup> The accused may be taken into custody by the police if they discover enough proof. The reason for the arrest must be explained to the person who has been arrested, and their rights must be upheld while being questioned.

The decisions in **Joginder Kumar v. State of Uttar Pradesh**<sup>13</sup> and **D.K. Basu v. State of West Bengal**<sup>14</sup>, were outlined in Section 50-A, which mandates that the police officer enter the information in the police registry and inform the arrested person's friend or family of his detention. This was carried out in order to guarantee transparency and accountability in arrests. A police officer may only question a woman or a boy under the age of fifteen at their residence, according to Section 160 of the Criminal Procedure Code. According to Section 46(4), no woman may be arrested after dusk or before dawn unless there are special circumstances. A formal request for permission from the first-class judicial magistrate whose local jurisdiction the offence was committed or where the arrest is to be made must be submitted by the female police officer in such a situation.

#### **4. Bail or Remand:**

Bail and remand are further steps in a criminal investigation. It is against the core values of liberty, freedom of life, and human dignity to restrict someone without a valid reason. Legally, an accused person is considered innocent until their guilt is proven beyond a reasonable doubt. After being arrested, the accused may ask to be released or remanded to police or court custody, depending on the gravity of the offence and other factors. Under Section 438 of the Cr.P.C., courts have the authority to grant anticipatory bail, which implies that if someone is detained, they will be released on bail; if a warrant is issued for their arrest, the warrant will also be subject to bail. When deciding whether to issue bail, judges typically examine the following factors. (4) whether the accused, if released on bail, is likely to (a) tamper with the prosecution's evidence or (b) obtain evidence in support of the defence; (3) the seriousness of the punishment that a conviction will entail; and (4) the nature of the accusation and the evidence supporting it.

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<sup>12</sup> Shankar Sen, "Human Rights in Criminal Justice System", Vikas Publishing House Pvt. Ltd., New Delhi, 1996, p.221.

<sup>13</sup> 1994 SCC (4) 260.

<sup>14</sup> 1997 (1) SCC 416.



## **5. Charge Sheet:**

According to Section 173 of the Code of Criminal Procedure (Cr.P.C.), a charge sheet is a final report that the investigating officer or police officers file following the conclusion of the investigation in a case that is either cognisable or not.

## **Trial System:**

In a trial where the main goal is to find the truth, everyone involved—the accused, the victims, and the public at large—must be treated equally. During a criminal trial, everyone is entitled to fair treatment. When a fair trial is denied, it hurts the victim, the accused, and society as a whole. A fair trial is a right of the accused. The right to a fair trial is a fundamental human right guaranteed by our Constitution as well as by international treaties and conventions.<sup>15</sup> 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. The following basic essentials of fair trial are:-

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

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<sup>15</sup> Dwarka Prasad Agarwal (D) By LRs. v. B.D. Agarwal and Others [(2003) 6 SCC 230].



In the case of **Zahira Habibullah Sheikh & Ors v. State of Gujarat & Ors**,<sup>16</sup> (Best Bakery Case) "Everyone has an inherent right to be treated fairly in a criminal trial," the Supreme Court of India noted. The accused, the victim, and society are all harmed when a fair trial is denied. Naturally, a fair trial would entail a trial before an unbiased judge, a fair prosecutor, and a peaceful judicial environment. A fair trial is one in which there is no bias or prejudice towards the accused, the witness, or the cause under trial."

In the case of **Shyam Singh vs. State of Rajasthan**<sup>17</sup> the Rajasthan High 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**

A speedy trial is necessary to restore public trust in the legal system. Delays in justice result in unnecessary harassment. One of the most significant fundamental rights to which individuals are entitled is the right to a speedy criminal trial, which is an essential part of the right to life and liberty guaranteed by Article 21 of the Constitution.

According to Section 309(1),<sup>18</sup>

"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 Apex Court ruled in **Hussainara Khatoon (IV) v. State of Bihar**<sup>19</sup> that the state has a constitutional obligation to set up a mechanism that would ensure the accused obtains a speedy trial, and that a prompt trial is an essential part of the "reasonable just and fair" process that Article

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<sup>16</sup> (2004) 4 SCC 158.

<sup>17</sup> 1973, Criminal. Law Journal 441, 443 (Raj),

<sup>18</sup> Cr.P.C., 1973, Section 309 (1).

<sup>19</sup> 1979 AIR 1369, 1979 SCR (3) 532.





21 mandates. Budgetary or administrative shortcomings cannot be used by the state to avoid fulfilling its constitutional obligations.

In **A.R. Antulay v. R.S. Nayak**,<sup>20</sup> Deadlines for the conclusion of specific case classes were set by the Supreme Court. The judge concluded 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 evaluates the purported delay by considering all relevant elements, such as the type of offence, the number of witnesses and accused, the court's workload, the local conditions at the time, etc.

### **Violation of Human Rights & Criminal Justice System**

The survival of our species depends on human rights. They are ubiquitous and cut across all political and national boundaries. The two World Wars caused humanity to acquire a desire for a good, civilized life in which the inherent dignity of every individual is respected and maintained. The UDHR, 1948 has been observed that as

“Common standard of achievement for all people and nations”. The preamble of UDHR 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.”

Humanity's quest and aspiration for justice is reflected in the preamble of the Indian Constitution, which addresses justice in all of its forms—social, economic, and political. The Indian Supreme Court has recognized that the Indian Constitution is influenced by international agreements, conferences, conventions, and the Universal Declaration of Human Rights.. In **Golak Nath vs. State of Punjab**,<sup>21</sup> 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**<sup>22</sup> , where The Supreme Court ruled that victims of unlawful or erroneous arrests were entitled to damages for the

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<sup>20</sup> 1984 AIR 718. 1984 SCR (2) 914. 1984 SCC (2) .

<sup>21</sup> AIR 1967 SC 1643.

<sup>22</sup> (1983) 4 SCC 141.



violation of their fundamental rights, in line with Part III of the Indian Constitution. It is critical to keep in mind that there are other ways to guarantee human rights within the framework of the criminal justice delivery system besides defending the rights of those who are convicted, detainees, or those awaiting trial.

The Apex Court of India has recognized the Fundamental Rights as Natural Rights in **Moti Lal v. State of UP**<sup>23</sup>. Indeed, it is reasonable to argue that the right to access legal proceedings is the most fundamental of all human rights in a system of criminal justice delivery. Its foundation is Article 10 of the Universal Declaration of Human Rights (UDHR), which states:

“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**<sup>24</sup>, the Supreme Court gave Article 21 of the Constitution a new meaning. It has been decided that Article 21 of the Constitution contains both affirmative and negative information, notwithstanding its negative wording. Accordingly, it has been decided that Article 21 of the Constitution grants positive rights. This case showed that Article 21 as interpreted in **A.K. Gopalan v. State of Madras**<sup>25</sup> could not play any role in providing protection against any harsh law seeking to deprive a person of his life or personal liberty.

The Constitution's Article 21 guarantees the broadest scope of the right to life and personal liberty, and it encompasses a number of unrecognized rights. The right to a speedy trial is one of these rights.;<sup>26</sup> Right to legal assistance<sup>27</sup> Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment<sup>28</sup>, Right against Solitary Confinement;<sup>29</sup> Right against Bar

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<sup>23</sup> LR 1951, Allahabad, p. 369.

<sup>24</sup> AIR 1978 SC 597.

<sup>25</sup> AIR 1950 SC 27 : 1950 SCR 88

<sup>26</sup> In *Hussainara Khatoon (IV) v. Home Secretary v. State of Bihar, Patna*, AIR 1979 SC 1360.

<sup>27</sup> *M. H. Hoskot v. State of Maharashtra (1978) 3 SSC 554.*

<sup>28</sup> *Hussainara Khatoon (IV) v. Home Secretary v. State of Bihar, Patna, AIR 1979 SC 1360, Dayal Singh v. Union of India, AIR, 1991 SC 1548*

<sup>29</sup> *Sunil Batra v. Delhi Administration (1978) 4 SSC 494.*



## Conclusion

In 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 “adharmā” and “truth” by “unfounded falsehood”, at that place they (the Judges) are destroyed by sin. In the adharmā flowing from wrong decision in a Court of Law, one fourth each is attributed to the person committing the adharmā, witness, the Judges and the ruler”.*

In line with current international legal norms, Indian law protects the right to a trial by a court that is qualified, independent, and impartial. Everyone must be treated equally in the eyes of the law. Everybody has the legal right to a fair trial in an unbiased court. Unnecessary delay is one of the most crucial conditions for a fair trial. The right to a speedy trial derives from Article 21 of the Constitution covers all stages, including investigation, inquiry, trial, appeal, revision, and retry. The Right to fair trial incorporates 'Fair Investigation',<sup>36</sup> To obtain the equity that the parties are legally entitled to, a fair trial and investigation are prerequisites, and fair justice cannot be upheld without the other. A victim of a crime has the right to a fair inquiry, and the case can be trusted to a particular office, such as the CBI, when necessary. The courts are also capable of providing the parties with full justice by providing adequate oversight.

In conclusion, there is an urgent need for the development of human rights jurisprudence. The difficulty lies in creating a positive culture, raising awareness, implementing preventative

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<sup>30</sup> *Charles Gurmukh Sobhraj v. Delhi Administration (1978) 4 SSC 494.*

<sup>31</sup> *Prem Shankar Shukla v. Delhi Administration (1980) 3 SCC 373.*

<sup>32</sup> *Vatheeswaran v. State of Tamil Nadu, AIR, 1983 SC 36.*

<sup>33</sup> *Sheela Barse v. State of Maharashtra (1983) 2 SCC 96.*

<sup>34</sup> *Attorney General of India v. Lachma Devi, AIR 1986, SC 467.*

<sup>35</sup> *Rudul Sahu v. State of Bihar AIR 1983 SC 1107.*

<sup>36</sup> *Kalyani Baskar Vs. M.S.Sampoornam, (2007)2 SCC P.259.*



measures, using tactful strategies, and establishing humanist organisations that will heal injured hearts when the legal system is called upon to defend persons who are not well known. Whether a prisoner's rights are violated because of the Constitution or laws, the court's writ power can and should step in to defend them.

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