

**UGC**  
**MINOR RESEARCH PROJECT**

**Subject: law**

***(2012-14)***

**Title**

**“Right To Fair Trial: Issues &  
Challenges in India”**

**EXECUTIVE**

**SUMMARY**

**REPORT**

**BY**

**PRINCIPLE INVESTIGATOR**

**Dr. Ujwala Bendale**

**Assistant Professor**

**New Law College,**

**Bharati Vidyapeeth Deemed University,**

**Pune-411038.**

## **Introduction:**

Every person has the right to a fair trial both in civil and in criminal cases and the effective protection of all human rights very much depends on the practical availability at all times of access to competent, independent and impartial courts of law which can and will administer justice fairly. Add to this the professions of prosecutors and lawyers each of whom in his or her own field of competence is instrumental in making the right to a fair trial a reality and we have the legal pillar of a democratic society respectful of the rule of law.<sup>1</sup>

## **Research question:**

- 1) To find out different dimensions of fair trial.
- 2) To find out which are problems faced while protecting fair trial.
- 3) To find out what is the relationship between right of fair trial in access to justice.
- 4) Do we have enough law to protect right of fair trial?
- 5) Are the present laws effective in protecting the right of fair trial?
- 6) What the response of Indian judiciary?
- 7) What measures and social policies need to be adapted for protecting this right?
- 8) To find out relationship between right of fair trial and media.

## **International status**

The right to a fair trial is an ancient one and is synonymous with the trial process itself. It would be nonsense to speak of the permissibility of an unfair trial. After centuries of implementation in practice the right to a fair trial which was finally codified in the international human rights instruments following World War II is now universally recognized.<sup>2</sup>

## **National Status:**

---

<sup>1</sup> Amnesty International Fair Trials Manual, London, 1998, 187 pp

<sup>2</sup> The Right to a Fair Trial in International Law, with Specific Reference to the Work of the ICTY, Judge Patrick Robinson

A trial is a process by which a court decides on the innocence or guilt of an accused person. The procedure for the trial is found in the Code of Criminal Procedure 1973, The Indian Penal Code and the Indian Evidence Act, 1872. The broader principles underline the trial processes are also found in international law and constitution of India.<sup>3</sup>

In number of cases the judiciary mentions the importance of right to fair trial. In *Maneka Gandhi v Union of India* Supreme Court mention the importance of due process of law, which ultimately gives the fair trial. Under the constitution of Art. 21, Art. 14, Art. 20, Art.22 plays important role in the protection of right to fair trial. There are number of provisions under Civil Procedure Code, Criminal Procedure Code, and Indian Evidence Act which gives fair trial.

### **Significance of the study:**

Fairness in procedural terms principally aims to achieve equality before the law. That is both equality between the parties and equality of treatment with other defendants. Fairness in evidentiary terms attempts to regulate evidence that is unreliable or prejudicial the admission of which would be antithetical to the trial process.

### **Objectives:**

- 1) To pay attention towards the genuine problems in judiciary.
- 2) To ensure the access of justice.
- 3) To find out the lacunas under present legal system.
- 4) To protect the right of accused.
- 5) To find out the role of fair trial in cases involving terrorism.

### **Methodology:**

For the research of this topic I use doctrinal research work.

---

<sup>3</sup> Art. 20 of the Constitution of the Constitution provides: 1. No person shall be convicted of any offence except for violation of law in force at the time of the commission for the act charged as an offence, nor be subjected to a penalty greater than which might have been inflicted under the law in force at the time of the commission of the offence. 2. No person shall be compelled to be a witness against himself.

## **Chapterisation:**

- I. Conceptual Development & Meaning Of Fair Trial.**
- II. Analysis Of Legislations Ensuring Fair Trial**
- III. Right To Fair Trial And Judiciary**
- IV. Trial By Media: Free Speech Vs. Fair Trial**
- V. Conclusion & Recommendation**

## **Conclusion:**

Right to fair trial of the accused is one of the new term emerged under the international law. This is the right of accused person and it includes different rights till the judgment is pronounced by the court. Here meaning of fairness is also important. Fair means without bias or impartiality, free from self-interest, prejudice or favoritism.

Access to justice is also covered under the fair trial. Because if there is no such access then it is defiantly injustice. Access to justice in its general term means that individuals access to court or guarantee of legal representation. Access to justice have different elements like claim for relief, adjudication of grievances, enforcement of relief. There are some conditions for access to justice like equal access, physical access, legal aid, legal awareness, public confidence.

In case of international law there are various provisions under International Covenant on Civil and Political Rights, Universal Declaration of human Rights and International Covenant on Economic, Social and Cultural Rights specifically deal with fair trial. India is one of the signatory of these

international conventions. Hence it is obligatory to implement these principles in our legal system.

Besides this there are various angles of fair trial or we can call it as general principles. One of the important thing regarding this right is that it is not a single right but it covers different rights. Hence each and every right is important.

It is also necessary to have these principles under the laws made by the government. Different legislations specially the criminal law must contain fair trial principles. Fair trial principles are nothing but basic fundamental rights of the accused person. It includes right to inform about charge against him, right to have adequate time and facilities for the preparation of his defense, right to consult lawyer of his own choice, right to be tried without undue delay, right to be tried in his presence and with representation by the counsel of his own choice, right to examine witnesses in his defense, right to have free assistance of an interpreter if needed, right not to be compelled to be a witness against himself or to confess guilt, protection and rehabilitation of juveniles, judicial review of conviction by highest court, right to compensate for unlawful conviction, protection against double jeopardy, protection against ex-post-facto-laws. Hence it is not only the matter of procedural laws but also substantive laws also.

Judiciary also plays important role in protection of rights of accused person. Through various landmark judgments rights of accused which were recognised at international level now become fundamental right under Constitution of India. Right to have independent judiciary is also one of the important right. If judiciary is not independent then it might be affected by partiality or bias. Competent and impartial tribunal is mentioned under various

international instruments. Within the justice system, judges, lawyers and prosecutors must be free to carry out their professional duties without any types of interferences or disturbance. Integrity of judiciary is depends upon the independence, hence it must be free from external pressure or interference.

There is, however, a corollary to judicial independence, namely judicial responsibility. If judges are to be granted independence, it is critical that they exercise their authority with competence, impartiality, and integrity. Judicial independence can operate properly only when judges are learned in the law and comport themselves with integrity and impartiality. The law must be administered professionally and impartially, with equality for all persons. Judges must avoid even the appearance of impropriety as well as actual impropriety. Judges are important public officials who exercise a great deal of authority over individuals. As such, they are guardians of the public trust. They must be granted independence to fulfill their responsibility of enforcing the law, but that independence must be tempered with the highest degree of impartiality and integrity.

Public support of the judiciary is essential, and that support is only possible when members of the judiciary maintain an exacting standard of impartiality and integrity. While judicial independence should be respected and protected, that is not to say that the judiciary should be entirely free from accountability. In the United States, judicial independence is maintained by granting judges tenure in office and immunity from civil liability. Judicial accountability, however, is effectuated by state judicial conduct commissions and federal judicial councils that enforce the standards mandated in the Code of Judicial Conduct. At the same time, egregious judicial behavior, such as corruption, may be dealt with through the criminal process or through

impeachment by the legislature. In this way, judicial impartiality and integrity are upheld without compromising judicial independence. The goal is to foster an independent judiciary that will protect the rule of law, but a judiciary that is learned in the law, impartial, and honorable.

There is worldwide consensus on political front that democracy is not only the best but also the only legitimate method of organizing modern politics. But the problem and menace of terrorism is all against the democratic way of political systems. Therefore, Media must understand that democracy and democracy alone has provided them freedom of expression and this freedom has to be handled with care.