Research Square

Preprints are preliminary reports that have not undergone peer review.
They should not be considered conclusive, used to inform clinical practice,
or referenced by the media as validated information.

The Right to a Fair Trial in India and Madagascar: Constitutional Perspectives and International Human Rights Dimensions

Rabarisoa Giverhold

rabarisoagiverhold.rs@andhrauniversity.edu.:

Andhra University

K.SITA MANIKYAM

Andhra University

Research Article

Keywords: Fair trial, Judicial independence, Comparative legal analysis, India, Madagascar

Posted Date: September 30th, 2026

DOI: https://doi.org/10.21203/rs.3.rs-9493676/v1

License: This work is licensed under a Creative Commons Attribution 4.0 International License.
Read Full License

Additional Declarations: No competing interests reported.

The Right to a Fair Trial in India and Madagascar: Constitutional Perspectives and International Human Rights Dimensions

Abstract

This article presents a comparative legal examination of India's and Madagascar's right to a fair trial, highlighting its significance as a pillar of human rights and justice. Anchored in international frameworks such as the UDHR, ICCPR, and African Charter, it examines how both countries implement fair trial guarantees within their legal systems. In India, the Constitution's Article 21, the Code of Criminal Procedure, and judicial activism—demonstrated in decisions such as Maneka Gandhi v. Union of India and Hussainara Khatoon v. State of Bihar—have strengthened due process and access to justice. Madagascar's civil law system, influenced by French and customary traditions, reflects constitutional commitment but faces obstacles such as corruption and inadequate legal aid. Despite shared challenges of judicial delay and accessibility, the study emphasizes aligning domestic laws with international norms, enhancing judicial independence, and expanding legal aid to realize the practical enforcement of fair trial rights.

Keywords: Fair trial,Judicial independence,Comparative legal analysis,India,Madagascar

1 Introduction

The foundation of justice is the rule of law and the right to a fair trial. It offers equality before courts and tribunals, impartial adjudication, and protection from arbitrary decisions. Important international human rights treaties, such as Article 10 of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR, Article 14), and the African Charter on Human and Peoples' Rights (Article 7), protect this right. Due process, legal aid, judicial impartiality, and the presumption of innocence are all heavily emphasized in these clauses. This section also contextualizes the comparative approach adopted in the study. A comparative analysis is given in this article on how India and Madagascar conceptualize, protect, and apply fair trial rights. These two countries, despite being culturally and geographically distinct, both demonstrate a hybrid legal framework influenced by customary,

colonial, and international legal norms. This comparative study is anchored in doctrinal legal research, relying on primary legal texts, judicial decisions, international treaties, and academic literature. It seeks to analyze the similarities, divergences, and challenges within the two systems while proposing actionable recommendations for aligning national practices with global fair trial standards.

2 Review of Literature

2.1 Literature review on human rights and fair trial in India

General guidelines for a fair trial, Sri T. Mllikarjuna Rao, District Judge, Machilipatnam, VI-ADDL: In this article, the author has explained the concept of a fair trial using a few important case laws. The author of this article is the district judge at Machilipatnam. There are numerous other subjects, such as the prohibition against double jeopardy, the principle of innocence and numerous other subjects concerning a fair trial that have been explained [1].

2.2 Literature review on human rights and fair trial in Madagascar

Literature Review on the right to a fair trial in Madagascar (Country Reports on Human Rights Practices, 2018) [2].

A fair trial is a universal generic concept of justice embraced in all spheres. It comprises certain legislative provisions meant to ensure people get just and fair treatment inside the legal procedures. This part explores the legislative framework, scholarly views, and difficulties in fair trials conducted in Madagascar. There are many international legal texts, including multiple codifications of fair trial right: The 1948 Universal Declaration of Human Rights' (UDHR) Article 10 guarantees the right to a fair and public hearing. The 1966 International Covenant on Civil and Political Rights (ICCPR) has Article 14 and lists specific rights incorporating the presumption of innocence, legal aid and the right to be heard by an impartial, independent court. The African Charter's Article 7 on Human and People's Rights, 1981 ensures the right to a fair hearing inside reasonable period by a competent and objective body. A fair trial is guaranteed by numerous international legal treaties; among them are: The 1948 Universal Declaration of Human Rights' (UDHR) Article 10 assures the right to a fair and public hearing. The 1966 International Covenant on Civil and Political Rights (ICCPR) has Article 14 lists numerous rights comprising presumption of innocence, legal counsel and the right to be heard by an unbiased, independent judiciary. The African Charter's Article 7 on Human and People's Rights, 1981 guarantees the right to an impartial trial inside a reasonable period by a qualified and objective tribunal. Being a member to such international treaties, Madagascar is obliged to guarantee that these values are followed inside its legal system. Being a member to such international accords, Madagascar is bound to make sure these ideas are followed inside its legal system.

2.2.1 National Legal Framework

Legal statutes and Constitution of Madagascar provide the guarantees of a fair trial including:

The Malagasy Constitution assures one of rights to obtain justice and a defense.

The Code of Criminal Procedure standardizes court procedures and procedural safeguards.

The law on the organization of the judiciary assures court access and judicial autonomy.

Obstacles like court inefficiency, corruption and limited legal aid services impede practice.

2.2.2 Judicial independence and impartiality

Academics argue that unbiased trials depend on judge's independence. Though there are claims of political meddling in court nominations and rulings, the court is in theory autonomous in Madagascar. Studies indicate that this compromises the objectivity of trials, particularly in politically heated matters.

2.2.3 Challenges to Fair Trial in Madagascar

Studies highlight many difficulties:

Restricted Legal Representation: Most defendants cannot afford legal advice given by the government or legal representation. Research shows long detentions before trial, against the right to a speedy trial. The right to a fair trial is violated by judicial corruption, by political interference. Evidence shows that case outcomes depend on outside pressure and bribery.

Language problems: Usually carried out in French, Court processes limit understanding for defendants from Malagasy backgrounds.

3 Objectives

General objectives:

To conduct a comparative constitutional and human rights-based examination of the right to a fair trial in Madagascar and India, evaluating the degree to which institutional practices, judicial interpretation and domestic legislative frameworks adhere to international fair trial criteria.

To investigate the theoretical underpinnings of the right to a fair trial under international human rights law, specifically with regard to the African Charter on Human and Peoples' Rights, the UDHR, and the ICCPR. To examine the legal and constitutional provisions pertaining to the right to a fair trial in India, particularly those included in Articles 14, 20, 21, and 22 of the Indian Constitution and to investigate Madagascar's constitutional and procedural guarantees of a fair trial, with particular attention to the 2010 Constitution, the Code of Criminal Procedure and and the impact of international human right instruments.

To assess how the judiciary in different nations interprets, expands, and upholds the rights of a fair trial through significant court rulings.

To determine the practical obstacles—such as judicial delays, a lack of legal aid, pre-trial incarceration, corruption, political meddling, and language barriers—that impede the achievement of the right to a fair trial. To evaluate Madagascar's and India's adherence to their international human rights commitments, especially those outlined in Article 14 of the ICCPR. To evaluate how well common law and civil law traditions defend the right to a fair trial in multicultural legal systems, the 1973 Code of Criminal Procedure.

To suggest institutional and legal changes that would improve both nations' judicial independence, procedural justice and access to justice.

4 Methodology

The methodology used in this study is doctrinal and comparative. Statutory codes, Indian and Madagascar court decisions, and constitutional clauses are primary sources. International human rights treaties and Organizational case law like the European Court of Human Rights provide additional context. Government reports, scholarly works, and publications from NGOs are secondary sources. Comparative analysis is based on criteria like judicial independence, presumption of innocence, access to counsel, and protection from self-incrimination.

4.1 Design of Research

The study is comparative and qualitative in character. Considering international human rights standards, it entails the descriptive and analytical analysis of primary legal sources from Madagascar and India. Finding parallels, differences, and gaps between the two nations' legal protections and implementation systems is made easier by the comparative design.

4.2 Data Sources

Original sources: national laws like Madagascar's Code of Criminal Procedure and India's 1973 Code of Criminal Procedure, as well as provisions of both countries' constitutions, historic rulings from the Malagasy courts and the Indian Supreme Court. The UDHR, or Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights, and pertinent UN Conventions are examples of international instruments.

Secondary Sources: scholarly works on the right to a fair trial, peer-reviewed journal articles, and legal commentary, reports from Intergovernmental and non-governmental organizations, including The United Nations Human Rights Committee Observations and the U.S. Department of State Human Rights Reports, trustworthy internet sources, such as evaluations of legal frameworks and procedural protections.

4.3 Framework for Analysis

The main tenets of fair trial right—judicial independence, the presumption of innocence, the right to counsel, a speedy trial, a public hearing, defense against self-incrimination, and the right to appeal—form the framework of the analysis. Three levels of analysis are applied to these principles:

Normative Framework: Each nation's guarantees under its constitution, laws, and international law.

Interpretation by Judges: The pragmatic interpretation and application of these rights by courts.

Practical Implementation: How well these rights are applied in actual situations, including obstacles like political meddling, judicial hold-ups, and a lack of legal assistance.

The comparative component evaluates the two systems' similarities and differences and compares them to global fair trial norms.

5 Results

5.1 Conceptual Framework of Fair Trial

Fair trial right is enshrined in numerous international human rights instruments, including Article 10 of the Universal Declaration of Human Rights (UDHR), Article 14 of the International Covenant on Civil and Political Rights (ICCPR), and Article 6 of the European Convention on Human Rights (ECHR). A fair trial requires the observance of principles such as equality before the law, the presumption of innocence, the right to legal representation, the right to be heard, public hearings, and the impartiality of tribunals. These principles not only ensure justice but also instill public confidence in the legal system. The accused's procedural rights must be balanced with the interests of victims and society. While the international community has articulated a universal vision of fair trial rights, national implementations differ based on historical, cultural, and legal factors.

About the Significance of comparing Indian and Malagasy Legal System, Comparative analysis of legal systems of India and Madagascar helps one to understand their structural variations, basic ideas, and historical evolution. Such a parallel is mostly justified by India's legal system evolved from old customs, colonial (British Common Law) inspiration, and constitutional governance. From customary law, Madagascar developed into a civil law inspired by France. By means of a comparison of different backgrounds, one may better investigate how colonial legacies affect judicial systems. In terms of legal framework, whereas Madagascar has a civil law system influenced by French legal codes; Common law is the foundation of India's federal legal system. Value of these variations reveals the variations in court procedures, reliance on case law, and function of legislation. The two countries give rule of law, fundamental rights, and an unbiased court top importance. While Madagascar uses international accords for the defence of human rights, the Indian Constitution formally guarantees equality and freedom of expression. Although Madagascar still retains traditional law in the rural in addition to official legal systems, India also acknowledges customary

rules in personal concerns (eg, Hindu and Muslim personal laws). This juxtaposition show how both countries balance modern legal systems with historical legacy. Additionally, regarding the legal reforms and evolution, in order to fit contemporary issues, both nations have also gone through significant legislative changes. By means of comparison, the changes reveal best practices in judicial efficiency, access to justice, and alternate conflict resolution. Comparatively, analysing these legal systems usually reveals their flexibility, difficulties and resilience in governance, court procedures and legal evolution.

Moreover, relating to historical and legal background (Amit Verma, 2022), the India's Legal System has evolved over thousands of years, from ancient Dharma-based adjudication to the British common law system and finally to a post-independence constitutional democracy [3]. Ancient Indian jurisprudence emphasized natural justice and the moral authority of judges. The colonial period introduced procedural codification, with (The Indian Penal Code of 1860) and the (Code of Criminal Procedure 1898), revised in 1973) forming the backbone of criminal law. (Post-1947), the Indian Constitution firmly enshrined human rights, especially under Articles 14, 19, 20, 21, and 22.

The Indian Constitution guarantees protection of life and liberty (Articles 14 and 21). The Supreme Court ruled in Maneka Gandhi v. Union of India (1978) extended Article 21 to include justice, fairness, and reasonableness [4]. The 1973 Criminal Procedure Code (CrPC) ensures open courts, presumption of innocence, cross-examination, and access to counsel [5]. Hussainara Khatoon v. State of Bihar (1979) and Zahira Sheikh v. State of Gujarat (2006) reaffirm the importance of prompt trials and protection against intimidation [6, 7].

Additionally, Madagascar's legal system (A Comprehensive Overview of the Legal System in Madagascar, 2025) blends French civil law and customary law [8]. The 2010 Constitution guarantees presumption of innocence (Article 13), judicial independence (Article 14), and access to counsel [9]. The Code of Criminal Procedure supplements these protections [10]. Reports highlight structural flaws: inadequate legal aid, corruption, and language barriers. Ravoniarisoa Juliette Vavinoro v. Razafimahatratra Zampiso (2016) illustrates the challenges in practice [11].

5.2 Concepts, principles and legal provisions of Fair trial in Madagascar and India

Referring to the legal provisions, concepts, and principles of fair trial in Madagascar (Human Rights Committee, 2005), Madagascar signed the International Convention on the Right to a Fair Trial (Article 14) [12]. The following progress was made after the Committee's recommendations on Madagascar's earlier report:

These particular actions have been taken in order to expedite the trial of cases: (a) Civil procedural reform: a judge oversees trial preparations; (b) Increased criminal court sessions for speedy rulings on defendants with extensive pre-trial detention. The Special Criminal Court and Special Economic Court will be closed to ensure impartial justice. Then, normal courts will hear offenses under their authority. These additional steps attempt to make justice more accessible such as Project with the

African Development Bank to improve legal help for low-income people. Additionally, the Malagasy Courts uphold the Covenant's provisions on the presumption of innocence and the right to be notified of allegations against those being prosecuted; (c) Special processes for juvenile delinquents; (d) Respect for appeals; (e) Avoiding repeated trial; (f) Retrials for miscarriages of justice.

ARTICLE 2

Principle of non-discrimination.

Right to an effective remedy.

For legal harm, any Malagasy persons can appeal to the courts. Article 13, section 6 of the Constitution states that "the law shall ensure that everyone has access to justice; lack of resources shall not be an obstacle there." "Any person, public or charitable institution, and private association whose object is to give aid and which possesses personality under public law can be granted legal aid if they cannot assert their rights in court as plaintiffs or defendants due to lack of means. Act No.97-036 of 30 October 1997, which alters and complements the Code of Criminal Procedure with respect to party defense, require the suspect to have counsel of their choice from the commencement of the preliminary inquiry. The Government, through the Ministry of Justice, has created a specific service to enlighten the public on legal matters to help citizens understand their rights. With a proposal from the Criminal Reform Commission (CRSP), the Ministry of Justice plans to reduce detention before sentencing and accelerate, simplify, the process based on an early courtroom appearance to comply with the requirement that the defendant be brought to trial without delay.

ARTICLE 10

Human treatment of detainees.

With reference to Humane treatment and regard for the inmate's dignity, the context was explained that by virtue of its implementing Decree No.59-121 of 27 October 1959 on the general organization of Malagasy prison services, Article 28(a) and (b) of Act No.59-28 February 1959 on the Prison Service, "Members of staff at penal establishments are forbidden to assault detainees, to use insulting or offensive words to them, or to maintain personal relations with them." Unless permitted by a Prison Service Director, inmates cannot work on their own behalf or assist personnel.

According to Article 5 of the Universal Declaration of Human Rights, "No one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment."

Moreover, under the Concepts, principles and legal provisions of fair trial in India (Human Rights Committee, 2005) and regarding the right to fair trial under Indian Law, there are concepts, principles and legal provisions as well [12]. A trial whose main purpose is to uncover the truth should treat the accused, victims and society equally. Everyone deserves a fair trial in criminal cases. "Fair trial gives her a legal chance to prove her innocence. Presenting defense evidence is a fundamental right. Refusing her such privilege in a criminal case denies her a fair trial." "Fair trial gives her legal options to prove her innocence. Presenting defense evidence is a fundamental right. Denial of this privilege in a criminal prosecution would deny a fair trial." Article 21 of the Indian Constitution protects prisoners. All prisoners deserve a fair trial. This right is governed by certain sections and articles. Human rights depend on a fair trial. Unfair trial hurt many individuals. Unfair trials damage one's reputation, rights, and

mental health. A fair trial is also protected by human rights. Unfair trials violate human rights. Indian law protect these rights in various ways. A fast trial is every defendant's right.

The Indian Constitution states that the right to a fair trial is a fundamental right, and that prisoners are protected by Article 21. No man or woman shall be deprived of his existence and personal freedom save to the degree authorized by law, and the punishment of lives, decent to live with human dignity, and right to livelihood are the major concerns of man or woman. It guarantees a fair, affordable trial. Moreover, the Supreme Court ruled in Maneka Gandhi v. Union of India (Maneka Gandhi v. Union of India, 1978) that the right to life includes the right to live with dignity [4]. The human right to a fair trial includes the right to documents that, if used against him, will deprive him a fair defense. P. Ramachandra Rao v. Karnataka (2002) [13]. Sections 309, 311 and 258 of the Code of Criminal Procedure provide timely trial, the Court said. Under Section 482 of the Criminal Procedure Code and Articles 226 and 227 of the Constitution, the High Court can provide relief and guidance, Article 21 focuses on the right to a timely and fair trial. In Section 243 CRPC, evidence in the defense, the trial court calendar must be troubled when the accused asks a witness or report.

5.2.1 Principles of a Fair trial in Indian Laws

Adversary system.

Under this system, everyone was entitled to the same opportunities and rights. In the prosecutor-state-suspect conflict, the law mandates that the judiciary take a more innovative and proactive role than that of a mere referee. The court, not the prosecution, will charge the suspect based on the case. Without court permission, a lawyer cannot withdraw the lawsuit. As part of a free trial, the Supreme Court argued in two cases of Himanshu v. State of MP that the parties were not given the Code [14]. The court also thought the organization or examiner wasn't acting. Thus, to ensure justice, the court summoned witnesses and collected information under sections 311 and 165 of the Code of the Indian Evidence Act, 1872.

Assumption of innocence.

The Supreme Court held in State of U.P. v. Naresh and Ors (State of U.P. v. Naresh and Ors, 2001) that all accused are assumed innocent unless proven guilty [15]. Human rights include presumption of innocence, subject to statutes. This concept forms the basis of Indian criminal law. In Kali Ram v. State of HP (Kali Ram v. State of HP, 1973), the Supreme Court said "erroneous acquittals are bad, but erroneous convictions of innocent individuals are worse. The repercussions of convicting an innocent person are significantly worse and cannot be felt in a civilized society" [16].

Competent, impartial judge.

An objective, unbiased, and able judge is the key to a fair criminal trial. The Code distinguishes the executive and judiciary to safeguard the judiciary's independence from executive intervention. All guilty people need an unbiased tribunal.

The Hearing Ought To Be In Open Court.

The hearing must be public. Public hearings in open court are required for fair trials. Open court is normally available to the public under Code 327. The court must have public access in all its locations under Section 327. A public trial in an open court is the best way to build public trust in the organization's rationality, sound judgement and good sense. In Naresh Sridhar Mirajkar v. Maharashtra AIR 1967 SC 1, the highest court held that save under rare circumstances, an open trial must be granted [17]. The High Court has the ability to keep proceedings private or prevent publication of some portions (Mitali Upadhyay, 2022) [18].

Right to Free Legal Aid.

The right to a fair trial includes letting the accused pick his lawyer and, in some cases, forcing the state to do so. The 14th Report of the Law Commission of India states that a Welfare State owes its citizens free legal help to those with inadequate resources. The Directive Principles of under Article 22(1).

Speedy Trial.

Frame Policy in Article 39 A of the Constitution include the right to a lawyer.

A swift trial is needed to restore public trust in the justice system. Delaying justice causes unneeded harassment. Under 309(1), "Every investigation or trial must proceed as quickly as possible. In particular, if witness examination has already begun, it must continue day by day until all of the witnesses have been questioned, unless the Court is of opinion that the continuation of such examination after the next following day is necessary for reasons to be recorded" (Sri T. Mllikarjuna Rao, 2018) [1].

5.3 Constitutional and Statutory Frameworks

India's Constitution (Akhil Yadav & Devesh Shukla, 2024) provides a robust legal foundation for the right to a fair trial [19]. No one shall be deprived of life, according to Article 21 or personal liberty except according to procedure established by law. This has been expansively interpreted by the Supreme Court to include rights such as speedy trial, legal aid, and protection against arbitrary detention. Equal protection under the law and equality before the law are guaranteed by Article 14, while Article 22 guarantees procedural safeguards for arrested individuals, including the right to counsel.

Statutorily, the Code of Criminal Procedure (CrPC) of 1973 governs criminal trials in India [5]. It includes provisions for bail (Sections 436–439), legal representation (Sections 303–304), speedy trial (Section 309), and rights against self-incrimination under the Indian Evidence Act and Article 20(3) of the Constitution. Additionally, judicial activism has played a significant role in interpreting and expanding these rights through landmark decisions such as Maneka Gandhi v. Union of India and Hussainara Khatoon v. State of Bihar [4, 6].

Additionally, in Madagascar, The Constitution of Madagascar (Constitution of the Republic of Madagascar, 2010), especially Articles 8, 13, and 14, outlines essential rights, such as individual freedom, the presumption of innocence, and access to justice [9]. The 2010 Constitution affirms the independence of the judiciary and incorporates international human rights agreements like the African Charter on Human and Peoples' Rights and the ICCPR. Article 137 explicitly accords international human rights instruments supremacy over conflicting national laws.

The Code of Criminal Procedure standardizes criminal trials, ensuring procedural safeguards, while specific legislation addresses the organization of the judiciary and access to legal aid. However, structural challenges such as limited resources, linguistic barriers, and a dual legal system—where customary law often operates parallel to formal law—pose difficulties in implementing these guarantees uniformly.

5.4 Analysis by Comparison

In terms of key Principles and their Application, a comparative overview of key fair trial principles reveals both convergence and divergence in their application between India and Madagascar.

Furthermore, concerning Case Law Analysis, firstly India's judiciary has played a proactive role in expanding the meaning and scope of the right to a fair trial. Several landmark judgements have contributed to the evolution of fair trial jurisprudence:

Maneka Gandhi v. Union of India 1978: The Supreme Court ruled that the expression "procedure established by law" under Article 21 must be fair, just, and reasonable. This case transformed Indian due process doctrine, establishing the requirement of substantive fairness in legal procedures [4].

Hussainara Khatoon v. State of Bihar 1979: The Court took suo motu cognizance of the plight of undertrial prisoners who had been detained for years without trial. It declared the right to a speedy trial to be a fundamental right implicit in Article 21 [6].

Selvi v. State of Karnataka 2010: This case involved the involuntary administration of narco-analysis, polygraph tests, and brain mapping. The Court held such techniques violated Article 20(3), which protects individuals from being compelled to testify against themselves [20].

Zahira Sheikh v. State of Gujarat 2006: In the aftermath of the Best Bakery massacre during the Gujarat riots, the Court ordered a retrial in another state due to witness intimidation. The case underscored the importance of witness protection and impartial proceedings [7].

Secondly, in Madagascar, while Madagascar's jurisprudence on fair trial rights is less developed in volume, several key cases highlight structural and procedural issues:

Ravoniarisoa Juliette v. Razafimahatratra Zampiso 2016: This case concerned the death of an individual during a confrontation. Although the accused claimed self-defense, the Court found the force used was disproportionate. The case affirmed the principle of proportionality and highlighted judicial discretion in criminal trials [11].

Reports from the Bureau of Democracy and Human Rights have pointed to frequent pretrial detentions, lack of access to legal representation, and judicial corruption as undermining factors in fair trials. Many judgements are delivered in French, presenting linguistic challenges for Malagasy speakers, which hampers transparency and understanding [21].

Although both jurisdictions recognize the right to a fair trial, their implementations diverge. India benefits from an activist judiciary, while Madagascar struggles with weak institutions and corruption. Both face judicial delays and limited access to legal aid. International human rights law influences both countries, though in different ways: Madagascar through the African Charter, India through the ICCPR.

Additionally, relating to compliance with International Obligations, both India and Madagascar are parties to international conventions like the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) [22, 23].

Specifically in India's case the latter ratified the ICCPR in 1979. Though international law is not automatically binding domestically, Indian courts often rely on international treaties to interpret constitutional rights. For example, Article 21 has been expanded to align with ICCPR principles on fair trial, such as the right to legal aid and the presumption of innocence.

The Indian legal system also incorporates obligations under:

The UN Convention on the Rights of Persons with Disabilities (UNCRPD) through the Rights of Persons with Disabilities Act 2016 [24].

The Convention Against Torture (CAT) has not yet ratified, although India has expressed commitment to its principles.

India is a party to various international human rights treaties and its legal system is influenced by International standards, but there may be challenges (Abdulrahim Vijapur, 2020) in implementing these standards uniformly [25].

5.4.1 Indian Human Rights Treaty Implementation: Constitutional Incorporation

Due to India's dualist legal system, international agreements are not always binding unless they are enshrined in domestic legislation.

Lawmaking Actions:

To fulfill its commitments under international human rights law, India has passed the following laws:

1993's Protection of Human Rights Act.

The Juvenile Justice (Care and Protection of Children) Act.

The 2005 Protection of Women Against Domestic Violence Act.

The 2016 Rights of Persons with Disabilities Act.

Institutional Systems:

To monitor and encourage adherence to human rights, India has set up organizations such as the State Human Rights Commissions and the National Human Rights Commission (NHRC).

Implementation Issues: Treaty Non-Incorporation.

India frequently ratifies international treaties, but their enforceability is limited because they are not fully incorporated into Indian domestic law.

International commitments cannot be systematically incorporated into domestic laws.

Declarations and Reservations:

India occasionally ratifies treaties with serious objections, which may prevent them from being fully implemented.

For instance, India's objections to specific clauses in the International Covenant on Civil and Political Rights (ICCPR) and CEDAW.

Important Treaties Not Ratified:

India has not ratified a number of significant international agreements, including:

CAT stands for the Convention Against Torture.

The International Convention on the Protection of All Migrant Workers' and Their Families' Rights.

Gaps in Implementation:

Policy and practice frequently diverge because of:

Inadequate enforcement.

Insufficient political will.

Inadequate funding for organizations dedicated to human rights.

Cultural and Socioeconomic Barriers:

The successful implementation of human rights in India is still hampered by pervasive caste-based discrimination, gender inequality, and regional disparities.

Institutions for human rights have limitations.

Resources, power, and independence are all limited for organizations such as the NHRC.

Their efficacy is diminished because their recommendations are not legally binding.

And for Madagascar, its Constitution, especially Article 137, gives precedence to international human rights instruments over national law in case of conflict. As a member of the African Union, it also abides by the African Charter on Human and People's Rights, particularly Article 7 on fair trial rights [26].

However, compliance remains inconsistent:

Extended pretrial detention, limited access to legal aid, and lack of witness protection often contradict ICCPR norms.

Despite ratification, implementation of anti-torture provisions remains inadequate.

Madagascar is also a Party to several international human rights treaties but there may be discrepancies (Amnesty International Madagascar, 2019) between International Standards and Domestic practices [27].

The following are some of the main areas where Madagascar's domestic practices and international human rights standards diverge:

Prisoner Treatment and Conditions.

International Guidelines: Inhuman, cruel, or degrading treatment of prisoners is forbidden by the Nelson Mandela Rules, also known as the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Madagascar's Practice: The terrible conditions in the nation's prisons, which amount to cruel, inhuman, or degrading treatment, persist despite recommendations. Poor infrastructure, inadequate food and medical care, and overcrowding still exist.

Discrepancy: The inability to raise prison conditions to the minimal requirements set by international organizations.

Access to justice and a fair trial.

International Standards: Particularly for the most vulnerable, the right to a speedy and equitable trial is a basic international human right. The justice system in Madagascar is ill-equipped and underfunded. Fair trial right is frequently violated by trials that take place years after an arrest.

Discrepancy: International fair trial guarantees are at odds with severe court proceedings delays and a dearth of easily accessible legal aid.

International Standards for Pre-Trial Detention: Pre-trial detention ought to be the exception rather than the rule, and detainees must be brought before a judge as soon as possible, usually within 48 hours.

Madagascar's Practice: Extended pre-trial detentions can last for years, sometimes more than five years, and the law permits police custody for up to 12 days, including for minors.

Discrepancy: Madagascar's pre-trial detention policies violate the right to a speedy trial and greatly surpass internationally recognized timeframes.

The right to counsel.

International Standards: At every stage, all detainees should have access to legal counsel.

The practice in Madagascar is that only those who are facing serious charges are allowed to have legal representation. During pre-trial proceedings, many detainees are denied access to legal representation.

Discrepancy: International human rights obligations are violated by the selective provision of legal representation.

5.4.2 Current Legal Developments in India (2023–2026)

In 2023–2024, India passed three significant criminal law reforms: the Bharatiya Sakshya Adhiniyam (BSA), the Bharatiya Nyaya Sanhita (BNS), and the Bharatiya Nagarik Suraksha Sanhita (BHARATIYA NAGARIK SURAKSHA SANHITA, 2023) [28–30].

Critics contend that despite the government's claims of modernization, the reforms might increase police authority while maintaining expansive detention policies.

The Supreme Court warned in 2024 that protracted trial delays violate Article 21, as courts continue to struggle with nearly 49 million pending cases.

Although they increase access, digital trials, virtual courts, and AI-assisted hearings—which have accelerated since 2020—raise questions about procedural justice, privacy, and digital exclusion.

The modern definition of a fair trial is directly impacted by these developments.

5.4.3 Current Legal Developments in Madagascar (2023–2026)

According to recent reports from the UN Human Rights Committee and the U.S. State Department (U.S. Department of State, 2022), pre-trial detention conditions are getting worse, with some detainees being held without charge or trial for more than five years [21].

The Superior Council of Magistrates is still subject to executive authority, and judicial independence remains inadequate.

Widely used in rural Madagascar, the traditional Dina system frequently lacks procedural protections, in violation of ICCPR Article 14.

Language barriers further hinder access to justice, and court infrastructure remains severely underfunded.

These circumstances demonstrate Madagascar's ongoing constitutional and human rights crisis with regard to guarantees of a fair trial.

5.4.4 Comparative Analysis

Judicial delays, underfunded courts, and difficulties in adhering to ICCPR standards are structural flaws common to both Madagascar and India.

While Madagascar continues to experience systemic dysfunction, India benefits from activist jurisprudence.

In both systems, contemporary challenges—including conflicts with customary law, criminal law reforms, political interference, and digital justice—are shaping new dimensions of the right to a fair trial.

5.5 Challenges

A Shared Challenges exist such as:

Judicial Delays: Both countries suffer from heavy caseloads and understaffed courts.

Access to Legal Aid: Rural and economically disadvantaged populations struggle to obtain legal representation.

In addition, there are corruption and political interference. Especially acute in Madagascar, but also a concern in parts of India's lower judiciary.

Customary Law Conflicts: In both countries, especially Madagascar, traditional justice mechanisms sometimes conflict with constitutional and international standards.

5.6 Ongoing Reforms

In India, expansion of e-courts and digital filing systems.

Legal Services Authorities (under the Legal Services Authorities Act 1987) offer free legal aid.

Proposed Bharatiya Nyaya Sanhita and related reforms to simplify criminal law.

In Madagascar, decentralization of judiciary, including creation of new appellate courts.

Legal aid expansion projects in collaboration with the African Development Bank.

Judicial training programs and support for integrating international human rights norms.

6 Discussion

The comparative analysis of fair trial rights in India and Madagascar reveals that both nations share a common constitutional and moral commitment to justice, fairness, and human dignity. However, the extent to which these commitments translate into effective judicial practice depends heavily on institutional strength, legal culture, and socio-political context. India and Madagascar, though operating under different legal traditions—common law and civil law respectively—face comparable structural and procedural challenges. This discussion synthesizes the findings across legal frameworks, judicial interpretation, and implementation realities, situating them within broader international human rights norms.

One of the central themes emerging from this study is the tension between normative guarantees and practical realization. Both India and Madagascar have robust constitutional and statutory provisions protecting fair trial rights. India's Article 21 of the Constitution and Madagascar's Articles 13 and 14 of the 2010 Constitution enshrine liberty, presumption of innocence, and access to justice. Yet, these formal safeguards are frequently undermined by systemic inefficiencies, delays, and limited resources. The divergence between law in theory and law in practice underscores the significance of institutional capacity, judicial independence, and the enforcement mechanisms necessary for realizing fair trial guarantees.

The historical and structural legacies of colonialism have shaped both systems' contemporary challenges. India's postcolonial adaptation of the British common law system fostered a judiciary with substantial interpretative autonomy and activism, as illustrated in landmark cases such as Maneka Gandhi v. Union of India and Hussainara Khatoon v. State of Bihar [4, 6]. These cases exemplify how the judiciary has expanded procedural fairness through judicial creativity and human rights interpretation. In contrast, Madagascar inherited a French civil law tradition that emphasizes codified rules and bureaucratic procedure. While this provides clarity and structure, it also constrains judicial discretion and limits opportunities for case law development. The continued dominance of French legal language and procedural formality has created accessibility issues for ordinary Malagasy citizens, many of whom are more familiar with customary legal norms.

Major structural changes brought about by the Bharatiya Nyaya Sanhita (BNS), Bharatiya Sakshya Adhiniyam (BSA), and Bharatiya Nagarik Suraksha Sanhita (BNSS) are highlighted in the section on India [28–30]. Although the official justification for these reforms is to modernize India's criminal justice system from the colonial era, the document critically highlights worries that they might strengthen prolonged detention practices and increase police power, potentially undermining procedural safeguards. The Supreme Court's 2024 observation highlights the importance of judicial delays.

A clearer picture of systemic failure is presented in the section on Madagascar. The document highlights the deteriorating conditions of pre-trial detention, including cases of people being held without charge or trial for more than five years, based on reports from international organizations [21].

Judicial independence and impartiality emerge as another critical comparative concern. In India, constitutional separation of powers under Articles 50 and 124, combined with the collegium system, largely insulates the judiciary from executive dominance. Yet criticisms persist about judicial appointments and political influence. Madagascar's judiciary, on the other hand, is formally guaranteed independence, but the Superior Council of the Magistrature, chaired by the President of the Republic, structurally compromises that autonomy. The executive's role in judicial discipline and appointments raises significant concerns about impartiality and separation of powers. Without strengthening institutional autonomy and transparency, judicial integrity remains at risk.

Access to justice and legal aid form another important axis of comparison. India's Legal Services Authorities Act of 1987 institutionalized free legal aid and strengthened

public awareness through the National Legal Services Authority (NALSA). Despite persistent inequalities, this framework has expanded legal access in significant ways. Madagascar has similarly initiated legal aid reforms with support from international donors, but implementation remains limited to urban areas. Economic disparities, linguistic barriers, and the scarcity of trained legal professionals in rural regions hinder effective access to justice. For Madagascar to meet its international obligations under the ICCPR and African Charter, sustained investment in public legal education and institutional reform is necessary.

The role of international law and human rights instruments in shaping domestic fair trial jurisprudence is also noteworthy. India, though a dualist state, integrates international principles through judicial interpretation. Courts frequently invoke the ICCPR, UDHR, and CEDAW when construing constitutional rights. In Vishaka v. State of Rajasthan, for example, the Supreme Court directly applied international norms to fill legislative gaps [31]. Madagascar's monist constitutional structure gives direct effect to international treaties such as the ICCPR and African Charter, but enforcement remains inconsistent. The gap between ratification and domestic application highlights the need for judicial and administrative mechanisms to monitor compliance and ensure conformity with international standards.

7 General Conclusion

The comparative analysis of fair trial rights in India and Madagascar confirms that both jurisdictions have established substantial normative frameworks aligned with international human rights standards. Yet, the degree of practical realization differs considerably. India's constitutional jurisprudence, reinforced by judicial activism, has expanded fair trial protections through progressive interpretation and enforcement. Madagascar's constitutional and statutory provisions also affirm these rights, but systemic deficiencies—such as political influence, corruption, limited legal aid, and the duality between formal and customary law—undermine their full implementation.

This study demonstrates that ensuring a fair trial requires more than textual or constitutional guarantees. It necessitates a robust institutional ecosystem encompassing independent judiciary, adequate legal aid, trained personnel, and mechanisms for monitoring judicial conduct. India's experience underscores the transformative role of courts in interpreting and enforcing human rights, while Madagascar's experience highlights the challenges of translating international obligations into domestic practice within a resource-constrained and pluralistic legal environment. Both systems, however, exemplify evolving efforts to reconcile local traditions with global norms of justice.

Moving forward, several key policy recommendations emerge. First, both India and Madagascar must address judicial delay through capacity building, technology adoption, and procedural reform. Second, legal aid systems must be expanded to reach marginalized communities, ensuring equality of arms in criminal proceedings. Third, judicial appointments and disciplinary mechanisms should be restructured to enhance transparency and reduce executive interference. Fourth, customary justice systems—whether Panchayats or Dina—should be harmonized with constitutional guarantees

through formal oversight and human rights training. Finally, ongoing alignment with international human rights standards must be pursued not only through ratification but through consistent enforcement, education, and cooperation with global monitoring bodies.

The right to a fair trial is seriously threatened, albeit in different ways, according to recent legal developments in Madagascar and India. An attempt at modernization is evident in India's criminal law reforms and the growing use of digital justice; however, ongoing trial delays, increased police authority, and issues with procedural safeguards continue to undermine Article 21 constitutional guarantees. Madagascar, on the other hand, has deeper structural flaws that lead to persistent non-compliance with ICCPR standards. These flaws include extended pre-trial detention, restricted judicial independence, inadequate court infrastructure, and the predominance of customary mechanisms that lack due process protections. While systemic delays and resource limitations plague both jurisdictions, the comparative analysis shows that India's activist judiciary offers a level of corrective oversight that is still mostly lacking in Madagascar. All things considered, these advancements highlight the need for modern legal and technological changes to be firmly based in international fair trial standards in order to guarantee efficient access to justice and the defense of fundamental rights.

Acknowledgement

The author acknowledges academic publications, court rulings, and international agreements that informed this study.

Statement of Declaration of Interest

The author declares no conflicts of interest.

References

[1] Mllikarjuna Rao, S.T.: General Guidelines for a Fair Trial. District Judge publication (2018)

[2] U.S. Department of State: Country reports on human rights practices: Madagascar. Technical report, Bureau of Democracy, Human Rights and Labor (2018)

[3] Verma, A.: Judicial Independence and Accountability in India. Alexis Press, ??? (2022)

[4] Maneka Gandhi v. Union of India, AIR 1978 SC 597 (India) (1978)

[5] Code of Criminal Procedure, 1973 (India) (1973)

[6] Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1360 (India) (1979)

[7] Zahira Sheikh v. State of Gujarat, (2006) 3 SCC 374 (India) (2006)

[8] A Comprehensive Overview of the Legal System in Madagascar. Online legal overview (2025)

[9] Republic of Madagascar: Constitution of the Republic of Madagascar (2010)

[10] Code of Criminal Procedure of Madagascar, Ordonnance No. 62-052 (1962), as amended (1962)

[11] Ravoniarisoa Juliette Vavinoro v. Razafimahatratra Zampiso (Madagascar) (2016)

[12] Human Rights Committee: Consideration of reports submitted by states parties under article 40 of the covenant: Madagascar (ccpr/c/mdg/2005/3). Technical report, United Nations (2005)

[13] P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578 (India) (2002)

[14] Himanshu v. State of Madhya Pradesh, AIR 2008 SC 1943 (India) (2008)

[15] State of Uttar Pradesh v. Naresh, (2001) 4 SCC 324 (India) (2001)

[16] Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808 (India) (1973)

[17] Naresh Sridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1 (India) (1967)

[18] Upadhyay, M.: Critical analysis of the right to a fair trial in india. LexLife Journal of Law and Governance, 1–8 (2022)

[19] Yadav, A., Shukla, D.: India's Constitution and Fair Trial Guarantees. Legal analysis (2024)

[20] Selvi v. State of Karnataka, (2010) 7 SCC 263 (India) (2010)

[21] U.S. Department of State: Country reports on human rights practices: Madagascar. Technical report, Bureau of Democracy, Human Rights and Labor (2022)

[22] United Nations: Universal Declaration of Human Rights. General Assembly Resolution 217 A (III) (1948)

[23] International Covenant on Civil and Political Rights. 999 U.N.T.S. 171. Dec. 16, 1966 (1966)

[24] United Nations: Convention on the Rights of Persons with Disabilities. A/RES/61/106 (2006)

[25] Vijapur, A.R.: India's International Human Rights Obligations: Critical Perspectives. Oxford University Press, ??? (2020)

[26] African Charter on Human and Peoples' Rights. OAU Doc. CAB/LEG/67/3. June 27, 1981 (1981)

[27] Amnesty International Madagascar: Madagascar human rights report. Technical report, Amnesty International (2019)

[28] Bharatiya Sakshya Adhiniyam, 2023 (2023)

[29] Bharatiya Nyaya Sanhita, 2023 (2023)

[30] Bharatiya Nagarik Suraksha Sanhita, 2023 (2023)

[31] Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (India) (1997)

[32] Ansari, I.A.: Legal aid in the criminal justice system: An analysis. Indian Journal of Integrated Research in Law **4**(1), 249–265 (2023)

[33] Amir, S.I.: Article 14 of the indian constitution: A glance. International Journal of Health Sciences **6**(S2), 14912–14915 (2022) https://doi.org/10.53730/ijhs.v6Ns2.8952

[34] Bd, D.: An analysis of the indian constitution in human rights perspective. International Journal of Law Management and Humanities **8**(2), 910–928 (2025)

[35] Daci, J.: International human rights law and the right to a fair trial. SEEU Review **4**, 107–120 (2008)

[36] Hawaldar, A.H.: Evolution of due process in india. Bharati Law Review, 107–120 (2014)

[37] G., S.M., Rao, B.S., Naidu, S.T.: The right to a fair trial in india: An analysis. ShodhKosh: Journal of Visual and Performing Arts **5**(6), 726–738 (2024) https://doi.org/10.53446/shodh.v5i6.401

[38] Kokushubila Lwabukuna, O.: Reconstructing the rule of law in plural madagascar. In: Akinlabi, O.M. (ed.) Policing and the Rule of Law in Sub-Saharan Africa, pp. 158–176. Routledge, ??? (2022)

[39] Generis Global Legal Services: A Complete Guide to Madagascar's Legal System. Legal report (2024)