

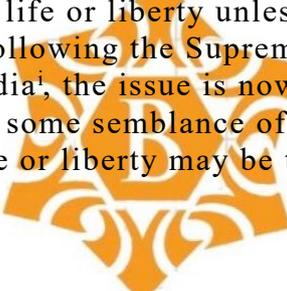
RIGHT TO FAIR TRIAL

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ABSTRACT

A trial that is primarily focused on determining the truth must be fair to all parties involved, including the accused, victims, and society as a whole. In a criminal trial, everyone has the right to be treated equally. Denying the accused a fair trial is as much an injustice to the victim as it is to society. A defendant has the right to a fair trial. The right to a timely trial is a basic right included in England's founding constitution, Magna Carta. The right to a fair trial is a core fundamental/human right under our Constitution as well as international treaties and agreements. As part of his human rights, he has the right to self-defense, which is embodied in Article 21 of the Indian Constitution, which states that no person shall be deprived of his life or liberty unless in compliance with the procedures provided by law. Following the Supreme Court's judgement in *Maneka Gandhi v. Union of India*¹, the issue is now thoroughly decided that it is not enough for the law to offer some semblance of procedure, but that the method by which a person's life or liberty may be taken away must be "reasonable," "fair," and "just."



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INTRODUCTION

A trial that is primarily focused on determining the truth must be fair to all parties involved, including the accused, victims, and society as a whole. In landmark instances like *Khatri v State of Bihar*ⁱⁱ each person has the right to be treated properly in a criminal trial where it was held that an accused is entitled to free legal services and in the case of *Mohd. Ajmal Amir Kasab v. State of Maharashtra*ⁱⁱⁱ, Art. 21, 22(1), and 39-A - Right to free legal assistance Consequences of failure to provide a lawyer at the pre-trial stage versus such failure at the trial stage - At the trial stage, such failure always vitiates trial unless the accused voluntarily makes an informed decision to defend himself without the assistance of a lawyer - However, at the pre-trial stage, such failure may not vitiate trial and would depend on the facts of each case. Such a failure in the pre-trial stage would void the trial if it resulted in serious prejudice to the accused. However, such a failure, whether at the pre-trial or trial phases, may allow the accused to seek compensation from the State may make Magistrate concerned liable for disciplinary proceedings), In *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna*^{iv} According to the Supreme Court, quick trial is a necessary component of the 'reasonable, fair, and just' procedure required by Article 21, and it is the State's constitutional responsibility to establish a method that ensures fast trial for the accused. One of the primary goals of the criminal justice system is to expedite the trial of criminal acts, because protracted delays might jeopardise justice. As a result, it is argued that swift justice is one of the defining characteristics of a well-organized society. It is usually argued that a case should be determined as soon as possible, but it is also stated that basic standards that assure justice cannot be neglected, because it is a well-known saying that 'justice delayed is justice denied'. Because the major goal of any legal system is to provide comprehensive justice to everybody, there should be a suitable balance between basic rules and rapid trials. and *Ranjan Dwivedi v CBI*^v. In light of current case law, the principles of double jeopardy and the right to self-incrimination have also been reviewed. such as *Selvi v State of Karnataka*^{vi} where the Court concluded that a Narco analysis test violates this accused right against self incrimination

(01) GENERAL PRINCIPLES OF FAIR TRIAL:-

India is a signatory to international treaties such as the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, both of which were signed in 1948. Various rights, such as presumption of innocence, are guaranteed to inhabitants of signatory states to the stated International Covenants. These beneficial elements of the International Covenants and the Universal Declaration of Human Rights are enshrined in our constitutional structure in Articles 14, 20, 21, 22, and 39-A, all of which relate with Fair Trial. The rule of law and the core of all modern civilised nations' criminal jurisprudence is the right to a fair trial. The denial of a fair trial is a kind of human rights abuse.

(I) WHAT IS TRIAL:-

The term "trial" has no definition under the Criminal Procedure Code. A criminal trial is a judicial investigation of the facts in a case in order to find the truth and resolve the facts in issues in order to reach a just verdict on the central question of the accused's guilt or innocence.

(II) FAIR TRIAL

India's criminal justice system is known as adversarial criminal justice.

The primary goal of the system is to provide individuals with a fair trial. A fair trial would presumably need 1) a trial before an impartial judge, 2) a fair prosecutor, and 3) a judicially calm setting.

A fair trial is one in which there is no bias or prejudice for or against the accused, the witness, or the cause being tried.

In a criminal case, the outcome of the proceedings cannot always be left totally in the hands of the parties, because a crime is a public wrong including the breach and violation of public rights and obligations that affects the whole community as a whole and is damaging to society as a whole. The courts have long been seen to have an overarching responsibility to sustain public trust in the administration of justice, which is commonly referred to as the obligation to vindicate and uphold the "Majesty of the Law."

Even though a fair trial is still conceivable, the court administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has happened in regard to proceedings, unless it risks damaging the judges' fair reputation and standing as impartial and independent adjudicators.

Human rights protection is inextricably related to the principles of the rule of law and due process. When a citizen has recourse to the courts, such rights can be properly maintained. It

must be clearly known that a trial whose primary goal is to discover the truth must be fair to all parties involved. There can be no analytical, all-encompassing, or thorough explanation of the notion of a fair trial, and it may have to be determined in an unlimited number of real-life scenarios with the end goal in mind, namely, justice. If something said or done before or during the trial degraded the level of fairness to the point where a miscarriage of justice occurred it will not be accurate to suggest that just the accused must be treated decently. That would include directing a Nelson's gaze to the demands of society as a whole, as well as the victims' families and relatives. In a criminal trial, everyone has the right to be treated equally. A fair trial would likewise be impossible if witnesses were threatened or compelled to give false testimony. The omission to hear crucial witnesses is unquestionably a violation of the right to a fair trial.

(II) THE SALIENT PRINCIPLES OF THE FAIR TRIAL:

The right to a fair trial is enshrined in Article 21 of the Indian Constitution, which states that no one shall be deprived of his or her "life" or "personal liberty" unless in accordance with legal procedures.

(I) ADVERSARIAL SYSTEM:-

The prosecution is responsible for producing evidence in the adversarial system, with the judge serving as a neutral referee. This method of criminal trial implies that the state, on the one hand, would pursue the offender using investigative agencies and government counsels, and that the person charged, on the other hand, would use the finest counsel available to contest and contradict the prosecution's evidence.

(II) PRESUMPTION OF INNOCENCE:

The presumption of innocence of the accused is one of the core concepts of criminal law. The prosecution bears the duty of demonstrating the accused's guilt beyond a reasonable doubt, and the court cannot record a finding of conviction until the prosecution discharges that burden.

This presumption may be traced back to the Latin legal principle *incumbit probatio qui dicit, not qui negat*, which states that the burden of evidence is with the person who claims, not with the one who denies. It is a fundamental right of the accused individual as well as a human right, as stated in the Constitution. *Narendra Singh Vs. State of Madhya Pradesh*^{vii}, and *State of U.P.*

Vs. Naresh and others^{viii}, wherein the Supreme Court observed that “Every accused is presumed to be innocent unless his guilt is proved.

The presumption of innocence is a human right subject to the statutory exceptions. The said principles form the basis of criminal jurisprudence in India.” and another decision in Baijnath and others Vs. State of Madhya Pradesh^{ix}, Two Judge Bench of the Supreme Court held that “ One of the essential ingredients of dowry death under Section 304-B of the Indian Penal Code is that the accused must have subjected the woman to cruelty in connection with the dowry demand soon before her death, and that this ingredient must be proven beyond reasonable doubt by the prosecution before the court will presume that the accused has committed the offence of dowry death undetected.

(III) TRIAL BEFORE INDEPENDENT, IMPARTIAL AND COMPETENT JUDGES:

Article 50 of the Constitution mandates that the state take efforts to separate the judiciary from the executive branch of government. No judge or magistrate shall try or commit for trial any matter to or in which he is a party or personally involved, and no judge or magistrate shall hear an appeal from any decision or order given or issued by himself, according to Section 479 of the Criminal Procedure Code. The Hon’ble Apex court in Devender Pal Singh Vs. State of NCT of Delhi and another,^x observed as follows: “Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law.” In Viscount Simon In Stirland Vs. Director Of Public Prosecutor^{xi}, Court held as follows: “A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape Both are public duties”

In the case of Zahira Habibullah Sheikh and another Vs. State of Gujarat and others^{xii}, If a criminal court is to be an effective instrument in dispensing justice, the presiding Judge must stop being a spectator and a mere recording machine and become a participant in the trial, demonstrating intelligence, active interest, and eliciting all relevant materials necessary for reaching the correct conclusion, finding the truth, and administering justice with fairness. Even though a fair trial is still conceivable, the courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that happened in the course of proceedings, otherwise they risk compromising the judges' fair reputation and reputation as impartial and independent adjudicators. However, in the case of Sister Mina Lalitha Baruwa Vs. State of Orissa and others^{xiii}, in The Hon’be Apex Court held that “a Criminal Court, while trying an

offence, acts in the interest of the society and in public interest. As has been held by this Court in *Zahira Habibullah H. Sheikh (supra)* A Criminal Court, on the other hand, cannot remain a mute observer. It has a participative role to play, and it has been given vast powers under Section 311 of the Criminal Procedure Code and Section 161 of the Evidence Act. "The Hon'ble High Court of Delhi stated that untruthful recording of court proceedings is unjust." The court stated that "it is human beings who are on trial," and that they "deserve to be regarded as human beings with the same dignity as any other individual." According to the Delhi High Court, a judge who does not accurately and fairly record the proceedings causes the most harm to the parties. In transferring the case to another court, Justice Sanghi stated that the Special Judge had conducted the proceedings unjustly in his eagerness to complete the trial, and that his attitude to the case, as well as the orders he issued, preclude him from continuing any further in the matter. The court observed, "I may only remind the learned Special Judge of the Oft repeated saying that "Justice should not only be done, but also shown to be done."

(IV) PROTECTION AGAINST DOUBLE JEOPARDY:-

The maxim "Autrefois Acquit and Autrefois Convict" holds that once a person has been tried and acquitted or convicted of a crime, he cannot be tried for the same crime or on the same circumstances for any subsequent crime. "No individual shall be prosecuted and punished for the same offence more than once," according to Article 20 (2) of our Constitution. This phrase enacts the common law principle of "nemo debet bis vexari," which states that no one should be punished twice for the same offence. If he is charged with the same crime for which he has already been charged, he can use his previous acquittal or conviction as a complete defence. Double jeopardy is likewise prohibited under Section 300 (1) of the Criminal Procedure Code. In the case of *Kola Veera Raghav Rao Vs. Gorantla Venkateshwara Rao*^{xiv}, "The wording employed in Section 300 (1) of the Criminal Procedure Code is distinct from the language used in Article 20 (2) of the constitution," the Supreme Court remarked. The former is more expansive than the latter. "No one can be tried and punished for the same offence more than once," according to Article 20 (2) of the Constitution. "A person who has been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall not be liable to be tried again for the same offence, nor on the same facts for any other offence, for which a different charge than the one made against him remains in force," according to Section 300 (1) of the Criminal Procedure Code.

(V) PROTECTION AGAINST EXPOST FACTO LAW:-

An ex post facto legislation is one that applies penalties retroactively, that is, on already committed offences, and enhances the punishment for those crimes. The legislature's capacity to make laws is limited by Article 20 (1) of the Indian Constitution. Ordinarily, a legislature can enact both prospective and retroactive legislation, however Article 20 clause (1) prohibits the legislature from enacting retrospective criminal legislation.

(III) ACCUSED RIGHTS:-

(I) KNOWLEDGE OF THE ACCUSATION

A fair trial necessitates that the accused be given a fair chance to defend himself. However, if the accused individual is not apprised of the charges levelled against him, this opportunity will be meaningless. Sections 228, 240, 246, 251 of the Code expressly indicate that when an accused person is brought before a court for trial, the particulars of the offence of which he is charged should be told to him. In the instance of a significant offence, the court must draught a formal accusation in writing, which must then be read and explained to the accused. A charge is a concrete accusation of an offence believed to have been committed by a person, rather than an allegation in the abstract.

(II) PROHIBITION AGAINST SELF INCRIMINATION

The accused has the right to stay quiet during the trial. No individual accused of a crime may be forced to testify against himself, according to Article 20 (3) of the Indian Constitution. To use the protection of Article 20 (3), it must be demonstrated that the accused was forced to make a statement that was likely to incriminate him. Compulsion is defined as the threat, beating, or imprisonment of a person's wife, parent, or kid. As a result, Article 20(3) does not apply when the accused offers a confession without any incentive, threat, or promise. According to Section 316 of the Criminal Procedure Code, no promise, threat, or other kind of coercion must be used to force an accused person to divulge or withhold any matter about which he is aware. In the case of Selvi Vs. State of Karnataka^{xv}, "Narcoanalysis, polygraphy, and brain finger printing (BEAP) tests constitute testimonial compulsions and are forbidden by Article 20(3) of the Constitution," the Supreme Court said. It was also decided that Lie Detector Tests can only be conducted with the approval of the accused in the presence of his lawyer, and that the permission of the accused should be recorded by the Judicial Magistrate.

(III) PROTECTION AGAINST ILLEGAL ARREST

Section 50 states that anyone detained without a warrant must be notified of the reason for his detention as soon as possible. When making an arrest without a warrant, the police must be fast to spot the likelihood of criminal activity, but they must be careful not to mistake the innocent for the guilty. The police officer has the burden of proving to the court that he had reasonable suspicions before the arrest is challenged. In *Pranab Chatterjee v. State of Bihar*^{xvi} Section 50 is necessary, according to the court. An accused person's arrest and custody are unconstitutional if the specifics of the offence are not conveyed to him. The grounds might be stated verbally or impliedly through behaviour. A person apprehended must be brought before a Judicial Magistrate within 24 hours after their arrest, according to Section 57 of the Criminal Procedure Code and Article 22(2) of the Constitution. In *State of Punjab v. Ajaib Singh*^{xvii} The court decided that arrests without a warrant require more protection, and that producing the evidence within 24 hours guarantees that the judicial mind is immediately applied to the validity of the arrest.

The decisions of the Supreme Court in *Joginder Kumar v. State of Uttar Pradesh*^{xviii} and *D.K. Basu v. State of West Bengal*^{xix}, Section 50-A was created, making it mandatory for the police officer to tell the arrested person's friend or family about his arrest, as well as to make an entry in the police record. This was done to guarantee that the arrest process was transparent and accountable. According to Section 160 of the Cr. P.C., any police officer investigating a male under the age of 15 or a woman can only do so in their household. Section 46(4) states that no woman may be arrested between sunset and sunrise, except in exceptional circumstances, and that in such cases, the woman police officer must obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made, by filing a written report.

(IV) RIGHT TO FREE LEGAL AID: -

Article 39A of the Indian Constitution directs the state to ensure that the legal system operates in a way that promotes justice on an equal footing, and in particular, to provide free legal aid, through appropriate legislation or schemes, or in any other way, to ensure that opportunities for obtaining justice are not denied to any citizen due to economic or other disabilities. "Where the accused is not represented by a pleader in a trial before the Court of Session, and it appears to the court that the accused has insufficient means to engage a pleader, the court shall assign

a pleader for his defence at the expense of the State,” according to Section 304 of the Criminal Procedure Code.

In the case of Mohd.Hussain @ Julfikar Ali Vs. the State of (Govt. of Nct) Delhi^{xx}, “The right of a person accused with a crime to obtain the services of a lawyer is fundamental and vital to a fair trial,” the Supreme Court stated. The right to be represented by a lawyer, guaranteed by Article 22(1) of the Constitution, has been strengthened by the 42nd Amendment Act of 1976, which included the Directive Principles of State Policy enshrined in Article 39 A of the Constitution and the enactment of Sub Section 1 of Section 304 of the Code of Criminal Procedure. Legal aid to a poor person facing a trial whose life and liberty are in peril is required not only by the Constitution and the Code of Criminal Procedure, but also by international covenants and human rights declarations. A trial that is conducted without the help of a lawyer for an accused who cannot afford one cannot be considered reasonable, fair, or just.”

(V) RIGHT TO BAIL

In circumstances where bailable offences are listed in the First Schedule to the Code, the accused can request bail as a matter of right under Section 436. Bail is essentially a release from detention, more specifically, from police custody. An order of bail restores the accused's freedom of movement on the condition that he appear in court for his trial. If the crime is bailable, bail will be given immediately. However, whether the offence is bailable or not, bail under Section 389(1) is not a matter of right after conviction^{xxi}. The accused in detention has the right to be freed on bond if no charge sheet is filed before the expiration of 60/90 days, as the case may be. If a charge sheet is not submitted within sixty days for non-bailable offences, the Magistrate has the authority to release the defendant on bail without notification to the other side. Bail for women, the sick, and the elderly is given precedence, depending on the severity of the offence.

(VI) RIGHT TO OPEN TRIAL:

The venue where any Criminal Court is convened for the purpose of enquiring into or trying any offence will be understood to be an open court, to which the general public may have access, according to Section 327 of the Criminal Procedure Code.

Evidence must be taken in the presence of the accused, according to Section 273 of the Criminal Procedure Code. In the case of Naresh Sridhar Mirajkar Vs. State of Maharashtra^{xxii}, The right to an open trial should not be denied unless there are extraordinary circumstances, according to the Supreme Court.

(IV) CONCLUSION:

The right to be tried by a competent, independent, and unbiased court is protected by Indian law, which is in line with current international legal norms. Before the court, everyone must be treated equally. Everyone has the right to a fair trial before a lawfully created, impartial court. One of the most important requirements of a fair trial is that it be conducted without unnecessary delay. Article 21 of the Constitution guarantees a quick trial at all phases, including investigation, inquiry, trial, appeal, revision, and retrial. A conviction in a criminal case cannot be relied on the evidence of witnesses whose principal examination is contradicted by their cross-examination. Basic concept behind a fair trial is succinctly explained in *Manu Sharma v. State (NCT of Delhi)*^{xxiii}, A well-thought-out decision decreases the likelihood of an appeal and relieves the courts of their workload. Evidence must be evaluated objectively and rationally. In every criminal trial, the degree of likelihood of guilt must be much greater, nearly to certainty; and if an accused has even the tiniest reasonable or plausible possibility of innocence, he must be given the benefit of the doubt.

If an innocent individual is found guilty, the ramifications are so severe that they are felt throughout entire society.

The accused is deemed innocent until proven guilty to guarantee that the court does not wrongfully convict an innocent person. During the course of a case's trial, the accused is never asked to establish his innocence. I would like to conclude with stanzas (14 &18) of *Manu Samhita* quoted by his lordship Arijit Pasayat in the famous "Best Bakery's case"^{xxiv} "where in the presence of Judges "dharma" is overcome by "adharma" and "truth" by "unfounded falsehood", at that place they (the Judges) are destroyed by sin. In the adharma flowing from wrong decision in a court of law, one fourth each is attributed to the person committing the adharma, witness, the judges and the ruler"

Last but not least, maintaining a balance between the two most common concepts - "justice delayed is justice denied" and "justice hastened is justice buried" - is critical. The speed with which justice is administered should not be compromised at the expense of the quality of trials and judgments, since this is the only way to realise the noble principles of justice - social, economic, and political - enshrined in the Preamble of our Constitution of India.

> REFERENCE

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