

Fair Trial In India

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Abstract:

Fair Trial is an integral part of Article 21 of our Constitution and rests on the basic principle of presumption of innocence. At the present stage of civilization, it has been universally accepted as a human value that a person accused of any offence should not be punished unless he has been given a fair trial and his guilt has been proved in such trial. The term “fair trial” like all other concepts incorporating fairness or reasonableness, cannot be explained in absolute terms. Fairness is a relative concept and therefore, fairness in criminal trial can be measured only in relation to the gravity of accusation, the time and resources which the society can reasonably afford to spend, the quality of available resources, the prevailing social values etc.

Introduction:

The right to a fair trial is a norm of international human rights law and also adopted by many countries in their procedural law. Countries like Canada, U.S.A, U.K. and India have adopted this norm and it is enshrined in their constitution. The right to fair trial has been defined in numerous international instruments. As far as Indian Legal system is concerned, the international promise of fair trial is very much reflected in its constitutional scheme as well as its procedural law. Indian judiciary has also highlighted the pivotal role of fair trial in a number of cases. The right to a fair trial is a fundamental safeguard to ensure that individuals are protected from unlawful or arbitrary deprivation of their human rights and freedoms, most importantly of the right to liberty and security of person.

Principles of Fair Trial:

1. Presumption of innocence:

The principle that the accused person is presumed to be innocent unless his guilt is proved beyond reasonable doubt, is of great importance in the administration of criminal justice. The burden of proving the guilt of the accused is upon the prosecution and unless

it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. Every criminal trial begins with the presumption of innocence in favour of the accused, and the provisions of the code are so framed that a criminal trial should begin with and be throughout governed by this essential presumption. This presumption is seen to flow from the Latin Legal principle i.e. “ei incumbit probatio qui dicit, non qui negat” i.e. the burden of proof rests on who asserts, not on who denies. In *State of U.P. versus Naresh and Others* the Supreme Court observed “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 principle forms the basis of the criminal jurisprudence in India”.

2. Independent, impartial and competent judges:

The most indispensable condition for a fair trial is to have an independent, impartial and competent judge to conduct the trial. In criminal trials, as the state is the prosecuting party and the police is also an agency of the state, it is important that the judiciary is unchained of all suspicion of executive influence and control, direct or indirect. The whole burden of fair and impartial trial thus rests on the shoulders of the judiciary in India.

3. Place of Trial:

The provisions regarding place of trial are contained in sections 177 to 189 in the code of criminal procedure, 1973. If the place of trial is highly inconvenient to the accused and causes various impediments in the defence preparation, the trial at such a place cannot be considered as fair trial. Except in exceptional circumstances, it would be convenient both to the prosecution and to the defence if the trial is conducted by a court within whose local jurisdiction the crime was committed. Trial at any other distant place would generally mean hardship to the parties in the production of evidence.

4. Right of accused to know of accusation:

Fair trial requires that the accused person is given adequate opportunity to defend himself. But this opportunity will have no meaning if the accused is not informed of accusation against him. The code of criminal procedure, 1973 therefore provides in section 228, 240, 246, 251 that when an accused person is brought before the court for trial, the particulars of the offence of which he is accused shall be stated to him. The right to have precise and specific accusation is contained in section 211.

5. Right to open Trial:

Fair trial also requires public hearing in an open court. The right to public hearing means that the hearing should as a rule be conducted orally and publicly, without a specific request by the parties to that effect section 327 of criminal code makes provision for public hearing.

6. Right to counsel and trial in presence of accused:

The fair trial also requires two things:

- a) An opportunity to the accused to secure a counsel of his own choice and
- b) The duty of the state to provide a counsel to accused in certain cases i.e. free legal aid to person of limited means.

The personal presence of the accused throughout his trial would enable him to understand properly the prosecution case.

7. Right to expeditious trial:

Justice delayed is justice denied'. This is all the more true in a criminal trial where the accused is not released on bail during the pendency of trial and the trial is inordinately delayed.

In *Hussainara Khatoon versus State of Bihar* the Supreme Court considered the problem in all its seriousness and declared that speedy trial is an essential ingredient of 'reasonable, fair and just' procedure granted by Article 21 of our Constitution and that if the constitutional obligation of the state to devise such a procedure as would ensure speedy trial to the accused.

8. Prohibition on double jeopardy:

The concept of double jeopardy is based on the doctrine of "autrefois acquit" and "autrefois convict" which means that if a person is tried and acquitted or convicted of an offence he cannot be tried again for the same offence or on the same facts for any other offence. This clause embodies the principle of common law rule of 'nemo debet bis vexari' which means no man should be put twice in peril for the same offence. This right is protected by Article 20 of our Constitution and also by section 300 of the Criminal Code.

Besides these rights, there are some more rights to protect the principle of fair trial like: - lawful punishment, Right to human treatment, Right to file appeal, proper execution of sentence, Right to bail etc.

Conclusion:

Thus having gone through the concept of Fair Trial in detail we come to the inference That fair trial is not only the basic principle of presumption of innocence, it is also the Pivot round which jurisprudence revolves. It is universally admitted fact that the accused person is presumed to be innocent unless his guilt is proved by the competent court of law. To ensure individual's protection from unlawful or arbitrary, fair trial is indispensable. Every criminal trial begins with the presumption of innocence in favour of the accused. Fair trial nurtures faith in the judiciary, the bench and the bar are not only morally but also duty fully bound to follow the concept of fair trial diligently. Fair Trial is said to be The Soul of Justice.

Reference:

1. Article 20, 21, 22 of the Constitution of India.
2. The Code of Criminal Procedure, 1973.
3. R.V. Kelkar's Criminal Procedure.
4. Hussainara Khatoon versus State of Bihar.
5. Sunil Batra's case.
6. State of U.P. versus Naresh and Others.