

**A CRITICAL ANALYSIS OF FAIR TRIAL IN CRIMINAL JUSTICE  
SYSTEM IN INDIA**

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**ABSTRACT**

*Every Country has this obligation to guarantee the citizen in their criminal administration, fair trial. Fair trial to all the accused irrespective of the crime, their status etc. Criminal Prosecution is proceeded with 'the presumption of innocence' and the guilt must be proved by the prosecution beyond the reasonable doubt. This paper will focus on the concept of fair trial in India. International instruments such as the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, European Convention on Human Rights and Canadian Charter of Rights and Freedoms have been referred to in order to enumerate the principles of the concept and the rights of the accused.*

*Fair trial is nothing but a means by which the rights of the accused is protected. Fair trial is conducting the trial means by all fair means that can be done. It includes trial has to be conducted by an impartial judge and that both the parties will be getting equal opportunity to be heard and to defend and protect themselves. Fair trial is a right guaranteed to all by the Code. The Criminal Procedure Code ensure that the procedure adopted by the State must be just, fair and reasonable. Fair trial ensures that any accused irrespective of the crime committed is not denied with his basic legal rights i.e. to defend himself/herself.*

*The author will deal with fair trial under the Criminal Procedure Code, 1973 and trace the history of fair trial in Indian, then the author will do a comprehensive study on the principles of fair trial that have been laid down in the criminal procedure code, 1973. The author in the third part discuss on the pre-trial rights of the accused. In the fourth part, The role of Indian Constitution on fair trial will be laid. And in the fifth*

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*and final part the author will provide suggestion and the prospects and conclude the research paper.*

### **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.<sup>2</sup> And in India The Code of Criminal Procedure has the basic objective to provide fair trial. Fair Trial under the Code of Criminal Procedure is designed to protect the accused from the unlawful and arbitrary curtailment or deprivation of the rights and freedom of the accused. The most important is protecting their right to life and liberty, which is one of the basic right enjoyed by the citizen of any country.

The substance of fair trial is accepted as human rights jurisprudence in the Universal Declaration of Human Rights, 1948. The UDHR highlights the major features of fair trial under Article 10 and 11<sup>3</sup>,

Article 10 “everyone is entitled in full equality to fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations of any criminal charge against him.”

Article 11 “everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

International Covenant on Civil and Political Rights<sup>4</sup> Article 14 reaffirmed the objects of UDHR and provides that

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<sup>2</sup> Countries like U.S.A., Canada, U.K., India have adopted this norm and it is enshrined in their Constitution. The Sixth Amendment to the United States Constitution is the part of the United States Bill of Rights which sets forth rights of accused person in relation to fair criminal trial. Section 11 of the Canadian Charter of Rights and Freedoms, which is part of the Canadian Constitution’s Charter of Rights, protects a person’s basic legal rights in criminal prosecution. Article 6 of the European Convention on Human Rights also provides detailed right to a fair trial, which is discussed hereinafter.

<sup>3</sup> Universal Declaration of Human Rights was adopted by the General Assembly on December 10, 1948.

<sup>4</sup> International Covenant on Civil and Political Rights, UN General Assembly resolution 2200A (XXI), December 16, 1966, entered into force March 23, 1976. <http://www2.ohchr.org/english/law/pdf/ccpr.pdf> (accessed on 10-11-09)

“Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

Section 11 of the Canadian Charter of Rights and Freedoms, protects a person’s basic legal rights in criminal prosecution.

Article 6 of the European Convention on Human Rights provides the minimum rights, adequate time and facilities to prepare their defence, access to legal representation, right to examine witnesses against them or have them examined, right to the free assistance of an interpreter to everyone charged with a criminal offence.

### **Fair Trial Under The Criminal Procedure Code, 1973**

In Indian legal system, the international promise of fair trial is reflected in its constitutional scheme as well as its procedural law. A number of cases in the Indian judiciary have highlighted the pivotal role of fair trial.

India follows the adversarial system of criminal trial in which the accused is presumed innocent. The burden is on the prosecution to prove the case beyond reasonable doubt and the benefit of doubt always goes to the accused person. Also the accused must be given fair opportunity to defend himself.

“This system of criminal trial assumes that the state, on one hand, by using its investigative agencies and government counsels will prosecute the wrongdoer who, on the other hand, will also take recourse of best counsels to challenge and counter the evidences of the prosecution”<sup>5</sup>

“But if we take a close look of the Code then we will find that there are some provisions which negate the strict adherence of the adversarial trial system.”<sup>6</sup>

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<sup>5</sup> K.N.C. Pillai (ed.), R.V. Kelkar’s Criminal Procedure, at 336 (5 th edn.).

<sup>6</sup> Provisions which show departure from the adversary trial system are sections 228 and 240 which suggest that charge against the accused is to be framed by the court and not by the prosecution, sections 303 and 304 which confers on the accused not only a right to be defended by a lawyer of his choice but also provide in case of an indigent accused person a right to get legal aid for his defence at state’s cost(Article 22(1) of our Constitution confers similar right on the accused person), section 311 which empowers the court to examine any person as a witness though such person has not been called by any party as a witness (similar power is also given to the court under section 165 of the Indian Evidence

As Principle of Natural Justice is an integral part of Article 14 and Article 21 of Indian Constitution and the same has been reaffirmed by the Apex Court in different cases.

In *Zahira Habibullah Sheikh and ors v. State of Gujrat and ors* the Supreme Court of India observed “each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and to society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witness or the cause which is being tried, is eliminated.”<sup>7</sup>

### **Principles Of Fair Trial**

#### **1. Adversary trial system**

The system adopted by the Indian Code is based on accusatorial method, the prosecution has to prove its point beyond reasonable doubt and the judge acts like an unbiased referee, the judge listens, examines both the sides and applies the rule of law to give the judgment. The investigating agencies and government counsels, will ensure prosecuting the wrongdoer, who will then take recourse of the counsels to challenge the prosecution and protect themselves.<sup>8</sup> This adversary system is based on the public and private interests, the public interest because it punishes the wrongdoer and also preventing the wrongdoer to commit more of the crimes, and the private interest as they prevent the wrongful convictions and protect the life and liberty of the accused.

In the case of *Ram Chander v. State of Haryana* the Supreme Court has observed “if a Criminal Court is to be an effective instrument in dispensing justice, the presiding

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Act, 1872), section 313 where the court can examine the accused at any time to get explanation from him, section 320 where certain offences to be compounded need prior permission of the court, section 321 where the prosecutor cannot withdraw the case without the consent of the court.

<sup>7</sup> *Zahira Habibullah Sheikh and ors v. State of Gujrat and ors* (MANU/SC/1344/2006)

<sup>8</sup> K.N.C. Pillai (ed.), R.V. Kelkar’s *Criminal Procedure*, at 336 (5 th edn.)

judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest.”<sup>9</sup>

In *Himanshu Singh Sabharwa v. State of M.P. and Ors.*, “the apex court observed that if fair trial envisaged under the Code is not imparted to the parties and court has reasons to believe that prosecuting agency or prosecutor is not acting in the requisite manner the court can exercise its power under section 311 of the Code or under section 165 of the Indian Evidence Act, 1872 to call in for the material witness and procure the relevant documents so as to sub serve the cause of justice.”<sup>10</sup>

## **2. Presumption of innocence**

In the case of *Babu Singh v. State of Punjab*, it has been observed that “the accused person is presumed to be innocent unless his guilt is proved beyond reasonable doubt is of cardinal importance in the administration of justice.”<sup>11</sup>

This principle is based on the principle by Benjamin Franklin that “it is better that ten criminals escape than that one innocent person is wrongfully convicted.”<sup>12</sup>

The basic component according to the Criminal Code is that the burden of proof is on the prosecution and the prosecution has to prove the case beyond reasonable doubt and the accused enjoys the benefit of doubt.

Presumption of innocence comes from the Latin Principle “*Ei incumbit probatio qui dicit, non qui negat*” the burden of proof rests on who asserts and not on the one who denies. It is a instrument for the accused as all people are not criminals. The state will always have the burden of proof, if the crime charged is committed or the defendant in the person who has committed it. The judge has to decide the case based on the evidence , in any circumstances the defendant will not have the burden of proof, he is

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<sup>9</sup> Ram Chander v. State of Haryana, (1981) 3 SCC 191

<sup>10</sup> Himanshu Singh Sabharwa v. State of M.P. and Ors., (MANU/SC/1193/2008.)

<sup>11</sup> Babu Singh v. State of Punjab (1964) 1 Cri. LJ 566 at 572

<sup>12</sup> Babu Singh v. State of Punjab (1964) 1 Cri. LJ 566 at 572

not to bring witnesses, present evidence or testify and this cannot be taken against him.<sup>13</sup>

Presumption of innocence is the fundamental principle and has its recognition in human rights. Article 11(1) of UDHR reads “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to the law in a public trial at which he has had all the guarantees necessary for his defence.”<sup>14</sup>

In *Kali Ram v. State of H.P.*, the Supreme Court observed “it is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse; however is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot be felt in a civilized society.”<sup>15</sup>

Pre-judging of the outcome should be refrained by the judge, the prosecutor, the defence counsel and all the public authorities involved in it.

In *State of U.P. v. Naresh and Ors.* 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 criminal jurisprudence in India.”<sup>16</sup>

### **3. Independent, impartial and competent judges**

Independent, impartial and competent judges it is the basin legal framework of Criminal Procedure. All the cases should be tried by Independent, impartial and competent judges, for the enjoyment of rights that every accused has of fair trial. The judiciary is an independent body and is protected from undue influence or by any kind

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<sup>13</sup> [http://en.wikipedia.org/wiki/presumption\\_of\\_innocence](http://en.wikipedia.org/wiki/presumption_of_innocence) (accessed on 11-12-09).

<sup>14</sup> Universal Declaration of Human Rights, 1948

<sup>15</sup> 1973 SCC (Cri) 1048 at 1061. Though in the same year in a previous case of Shivaji Sahabrao Bobade v. State of Maharashtra, 1973 SCC (Cri) 1033, this court questioned the frequent use of this principle. The doubt raised against the principle of ‘presumption of innocence’ appears to be more against the manner in which this principle and the principle of giving the accused the benefit of doubt, was been applied and misused by weak and incompetent judges.

<sup>16</sup> State of U.P. v. Naresh and Ors (2001) 4 SCC 324

of interference from outside i.e. the executive or the legislative.<sup>17</sup> It is so to avoid any kind of biasness or arbitrariness that would come in picture if the executive or the legislative interferes. Article 50 of the Indian Constitution also imposes this duty on the state to take steps to separate the judiciary from the executive.<sup>18</sup>

*Nemo Debet Esse Judex In Propria Causa*’ which means that no one ought to be a judge in his own case. It applies to two types of cases. Firstly, a judge is precluded from presiding over a case in which he directly appears as a party. Secondly a judge is precluded from decided a case in which he has an interest. Impartiality, absence of bias, fearlessness and assertion are the qualities highlighted by an unbiased approach to the judicial system.

Section 479 of the Criminal Procedure Code, prohibits any trial by a judge or a magistrate in which he has interest or is party to the suit.<sup>19</sup>

In the case of *Murlidhar vs. Kadam Singh*, the chairman of the election tribunal was declared as unfit for the position because his wife was a member of the party through which a party in the dispute emerged.<sup>20</sup>

In *Shyam Singh v. State of Rajasthan*, the court held that “question is not whether a bias has actually affected the judgement. The real test is whether there exists a circumstance according to which a litigant could reasonably apprehend that a bias

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<sup>17</sup> Though the appointments of the sessions judges and judicial magistrates are made by the state government in consultation with the high court but once the first appointment is made by the government, the judge or magistrate thereafter works only under the direct control and supervision of the high court and not of the government. So, in this way the independence in the subordinate level of judiciary is protected. Article 50 of the Indian Constitution has also incorporated the principle of separation of powers and states that the executive branch should be separated from judiciary

<sup>18</sup> Article 50 of the Indian Constitution Separation of judiciary from executive The State shall take steps to separate the judiciary from the executive in the public services of the State

<sup>19</sup> Section 479 in The Code Of Criminal Procedure, 1973 Case in which Judge or Magistrate is personally interested. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself. Explanation.- A Judge or Magistrate shall not be deemed to be a party to, or personally interested in, any case by reason only that he is concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed or any other place in which any other transaction material to the case is alleged to have occurred and made an inquiry in connection with the case.

<sup>20</sup> *Murlidhar vs. Kadam Singh* (AIR 1954 MP 111)

attributable to a judicial officer must have operated against him in the final decision of the case.”<sup>21</sup>

#### **4. Autrefois Acquit and Autrefois Convict**

It is a doctrine based on Article 20 (2)<sup>22</sup> of the Indian Constitution and is also provided in Section 300 of the Criminal Procedure Code. Autrefois Acquit and Autrefois Convict it means that when a person is acquitted or tried of any offence he cannot be again tried for that same offence.

In *Kolla Veera Raghav Rao vs Gorantla Venkateswara Rao* in this case the Supreme Court observed that section 300(1) is much wider than Article 20(2) of the Indian Constitution. Section 300(1) of Cr.P.C. states that “no one can be tried and convicted for the same offence or even for a different offence but on the same facts” whereas Article 20(2) states that “no one can be prosecuted and punished for the same offence more than once”

### **Pre-Trial Rights**

#### ***1. Knowledge of Accusation***

Under Fair trial is given an opportunity to defend himself, both sides have to be heard before giving any judgment. And to ensure this the accused Person has to be informed about the accusation that has been charged on him. Whenever a trial is about to proceed the, and the accused has to come for the trial, the accused has to be briefed about the offences that are alleged upon him, this has been mentioned in the provisions of the Cr.P.C.<sup>23</sup> An in case when the offence is heinous or serious, the court will have to take a formal approach i.e. write the charges and read and explain the charges to the accused in the language which the accused understands.

Also according to the Indian Constitution every accused has to be defended by a legal practitioner as envisaged under Article 22(1). And this right can only be exercised

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<sup>21</sup>Shyam Singh v. State of Rajasthan, 1973 Cri LJ 441, 443, (Raj.)

<sup>22</sup> Article 20(3) in The Constitution Of India 1949

No person accused of any offence shall be compelled to be a witness against himself

<sup>23</sup> Criminal Procedure Code  
Ss. 228(2), 240(2), 246(2), 25.



when the accused is well versed or has the knowledge about the accusation levied upon him. It also states that the accused has to be informed the ground of arrest if any, it is his/her fundamental right.

### **2. *Right to Open Trial***

A trial to take place in open is related to the fairness of the trial it requires public hearing. It should take place in an open court, as public hearing is a rule and should be conducted orally and publicly. Section 327 makes provisions for hearing in public but also give discretion to the judges to decide whatever deems fit. As per Section 327(1) of Cr.P.C. states that not only the parties but the people also have the right to hear the trial. But there is an exception to this rule under Section 372(2) it states that in exceptional circumstances like rape the trial will be observed in camera, as such cases require secrecy, and thus it would not amount to violation of the right to fair trial. Open trial is when the judgment is made public when orally pronounced in the court or published or by using both the means.

In *Naresh Sridhar Mirajkar v. the State of Maharashtra* the court held that “the right to open trial must not be denied except in exceptional circumstances. High Court has inherent jurisdiction to hold trials or part of a trial in camera or to prohibit publication of a part of its proceedings.”<sup>24</sup>

In *State of Punjab v. Gurmit* the court held that “the undue publicity is evidently harmful to the unfortunate women victims of rape and such other sexual offenses. Such publicity would mar their future in many ways and may make their life miserable in society. Section 327(2) provides that the inquiry into and trial of rape or an offense under Section 376, 376-A, 376-B, 376-C or 376-D of the Indian Penal Code shall be conducted in camera.”<sup>25</sup>

### **3. *Right to Free Legal Aid***

To ensure fair trial two important things are key in mind

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<sup>24</sup> Naresh Sridhar Mirajkar v. The state of Maharashtra, AIR 1967 SC 1

<sup>25</sup> State of Punjab v. Gurmit ,(1996) 2 SCC (Cri) 316

- That the counsel has a counsel of his own choice.
- And if not the State will have to prove the counsel in certain cases.

The accused needs to be defended by a counsel, and the accused has all means for the same. This is also guaranteed under the India Constitution under Article 39-A by the 42<sup>nd</sup> Amendment, 1976, provides for equal justice and free legal aid, 14<sup>th</sup> Report of the Law Commission of India states that free legal aid will be provided to persons who have limited means and it is the service that a Welfare State owes to its citizens and under Article 22(1) which states that, “no person shall be denied the right to consult, and to be defended by, a legal practitioner of his choice”. Also the Criminal Procedure Code provides for the legal aid to be provided by the State if the accused cannot afford or under any other circumstances, as it is important for the protection of his life and personal liberty. Section 303 and 304 of the Criminal Procedure Code are exposition of the constitution. In *Khatri v. the State of Bihar*, the court held that “the accused is entitled to free legal services not only at the stage of the trial but also when first produced before the Magistrate and also when remanded.”<sup>26</sup>

The Parliament also enacted Legal Services Authorities Act, 1987 in which Section 12 of the Act provides legal services to the persons specified in it. In *Suk Das and Ors. v. Union Territory of Arunachal Pradesh*, the court held that “free legal assistance at state cost is a fundamental right of a person accused of an offense which may involve jeopardy to his life or personal liberty. The exercise of this fundamental right is not conditional upon the accused applying for free legal assistance so that if he does not make an application for free legal assistance the trial may lawfully proceed without adequate legal representation being afforded to him. On the other hand, the Magistrate or the Sessions Judge before whom the accused appears is under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty is entitled to obtain free legal services at the cost of the State.”<sup>27</sup>

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<sup>26</sup> *Khatri v. the State of Bihar* (1981) 2 SCC 493

<sup>27</sup> *Suk Das and Ors. v. Union Territory of Arunachal Pradesh*, (1986) SCC 401

In *Mohd. Hussain @ Julfikar Ali Vs. The State (Govt. of NCT) Delhi* “the appellant was an illiterate foreign national and he was tried, convicted and sentenced to death by the trial court without assignment of counsel for his defense. Such a result is confirmed by the High Court. The convict is charged, convicted and sentenced under Sections 302/307 of Indian Penal Code and also under Section 3 of The Explosive Substances Act, 1908. Fifty-six witnesses and investigating officer were examined without appellant having a counsel and none were cross-examined by appellant. Only one witness cross-examined to complete the formality.

Therefore it was held that every person has a right to have a fair trial. A person accused of serious charges must not be denied of this valuable right. Appellant was provided with legal aid/counsel at the last stage which amounted to a denial of effective and substantial aid. Hence the appellant’s conviction and sentence was set aside. Section 304 does not confer any right upon the accused to have a pleader of his own choice for his defense at State expenses. If, however. He objects to the lawyer assigned to him, he must be left to defend himself at his own expense.”<sup>28</sup>Legal aid has its root not only in Constitution and Criminal laws but also in human rights

#### ***4. Right to Speedy Trial***

Speedy trial is one of the most important feature of Fair trial as it keeps the faith of the people in judiciary and also in gaining the confidence to the public. Justice Delayed is Justice Denied. Speedy trial ensures that the accused is protected against any harassment and the victim gets the justice. Article 21 of the Indian Constitution states speedy trial, and it is an integral part of it. In the case of *Moti Lal Saraf v. Union of India*, the court observed that “the concept of a fair trial is an integral part of article 21 of the Constitution.”<sup>29</sup>

As in the case of *Hussainara Khatoon (IV) v. State of Bihar* “the Supreme Court declared that speedy trial is an essential ingredient of ‘reasonable just and fair’ procedure guaranteed by article 21 and it is the constitutional obligation of the state to

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<sup>28</sup> *Mohd. Hussain @ Julfikar Ali Vs. The State (Govt. of NCT) Delhi*, Criminal Appeal No. 1091 of 2006

<sup>29</sup> *Moti Lal Saraf v. Union of India*, 2007 1 SCC [cri] 180.

set up such a procedure as would ensure speedy trial to the accused. The state cannot avoid its constitutional obligation by pleading financial or administrative inadequacy.”<sup>30</sup>

The Supreme Court in *A.R. Antulay v. R.S. Nayak*, issued guidelines for the time period during which different classes of cases are to be concluded. It was held “it is neither advisable nor feasible to draw or prescribe an outer time limit for conclusion of all criminal proceedings. While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions etc.- what is called systematic delay.”<sup>31</sup> The aforesaid decision came up for consideration in the case of *P. Ramachandra Rao*<sup>32</sup> and was upheld and reaffirmed.”

Section 309(1) of the Criminal Procedure Code provides “in every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.”<sup>33</sup>

### ***5. The trial in Presence of Accused***

For fair trial it is crucial that all the proceedings of the case take place in the presence of the accused or his lawyer, the court cannot proceed *ex parte* against the accused in the case. Although this is not an absolute rule but it is necessary for the accused to understand the prosecution case in order to defend himself. Under Section 317 of the Criminal Procedure “a magistrate may dispense with the attendance and proceed with the trial if personal presence of the accused is not necessary in the interests of justice or that the accused persistently disturbs the proceedings in court”. The court should

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<sup>30</sup>HusainaraKhatoon v State of Bihar, 1980 1 SCC 98.

<sup>31</sup> Supreme Court in *A.R. Antulay v. R.S. Nayak*, AIR 1992 SC 1701

<sup>32</sup>*P. Ramachandra Rao*, (2002) 4 SCC 578

<sup>33</sup> As provided under section 309(1) of the Criminal Procedure Code, 1973

make sure that there is no undue pressure on the accused to appear before the court and no harassment is caused by the same. Section 273 “all evidence taken in the course of the trial shall be taken in the presence of the accused or if the personal attendance of the accused is dispensed with then the evidence shall be taken in the presence of his pleader.” Section 238 makes it obligatory for the Magistrate to supply copies of the chargesheet and other documents of the investigation to the accused free of cost.

In *Badri v. State of Rajasthan*, the court held that “where a prosecution witness was not allowed to be cross-examined by the defense on a material point with reference to his earlier statement made before the police, his evidence stands untested by cross-examination and cannot be accepted as corroborating his previous statement.”<sup>34</sup>

#### **6. Protection against illegal arrest**

Under Section 57 of the Criminal Procedure Code and under the Indian Constitution Article 22(2) any person arrested should be produced before a Judicial Magistrate within 24 hours. It is a fundamental right under Article 22(2), and if the person is not presented before the Magistrate it will be an illegal detention.

In *Pranab Chatterjee v. State of Bihar* the court held “that Section 50 is mandatory and if particulars of offence are not communicated to an arrested person, his arrest and detention are illegal. The grounds can be communicated orally or even impliedly by conduct.”<sup>35</sup>

In *State of Punjab v. Ajaib Singh* the court held that “arrest without warrant call for greater protection and production within 24 hours ensures the immediate application of judicial mind to the legality of the arrest.”<sup>36</sup>

In *Joginder Kumar v. State of Uttar Pradesh*<sup>37</sup> and *D.K. Basu v. State of West Bengal*<sup>38</sup>, to have transparency and accountability the court held that the police officer

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<sup>34</sup> *Badri v. State of Rajasthan*, AIR 1976 SC 560

<sup>35</sup> *Pranab Chatterjee v. State of Bihar*, (1970) 3 SCC 926

<sup>36</sup> *State of Punjab v. Ajaib Singh*, AIR 1953 SC 10

<sup>37</sup> *Joginder Kumar v. State of Uttar Pradesh*, 1994 SCC (4) 260

<sup>38</sup> *D.K. Basu v. State of West Bengal*, 1997 (1) SCC 416

is under an obligation to inform a friend or relative of the arrested person about the arrest made and a register should be maintained for the same.

### ***7. Prohibition on Double Jeopardy***

Double jeopardy is a fundamental right based on the principle of ‘nemo debet vis vexari’ i.e. man should be put twice in peril for the same offense and the doctrine of ‘autrefois acquit’ and ‘autrefois convict’ which means if a person is tried and acquitted or convicted of an offense he cannot be tried again for the same offense or on the same facts for any other offense. Double Jeopardy comes from the Indian Constitution under Article 20(2) “no person shall be prosecuted and punished for the same offence more than once” The Criminal Procedure Code in its section 300(1) states that once a person has been acquitted or convicted he shall not be tried for the same offence or offence that has the same facts.

In *Kolla Veera Raghav Rao vs Gorantla Venkateswara Rao*, “the Supreme Court differentiated between Section 300(1) of Cr. P.C. and article 20(2) of the Constitution. While, Article 20(2) of the Constitution only states that ‘no one can be prosecuted and punished for the same offense more than once’, Section 300(1) of Cr.P.C. states that no one can be tried and convicted for the same offense or even for a different offense but on the same facts. Therefore the second prosecution would be barred by Section 300(1) of Cr.P.C.”<sup>39</sup>

### ***8. Right against Self – Incrimination***

Right against self incrimination is guaranteed under the Criminal Procedure Code and the Constitution of India. Article 20(3) provides “No person accused of any offence shall be compelled to be a witness against himself” and is based on the doctrine of nemo tenetur prodere accusare seipsum which means “no man is bound to accuse himself” This right ensures that no accused is threatened to give any statement against him/her. The accused is not required to give any statement or provide any evidence against him as it is on the prosecution to prove beyond the reasonable doubt.

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<sup>39</sup>Kolla Veera Raghav Rao vs Gorantla Venkateswara Rao, (2011) 2 SCC 703

In *Nandani Sathpathy v. P.L. Dani*, it was held that “a person is required to truthfully answer all the question except those which admit his personal guilt.”<sup>40</sup>

In *Selvi v. State of Karnataka* the court drew the following conclusions:

- “The taking and retention of DNA samples which are in the nature of physical evidence, does not face constitutional hurdles in the Indian context.
- Subjecting person to narco- analysis, Polygraphy and Brain fingerprinting tests involuntarily, amounts to forcible interference with person’s mental processes, and hence violates the right of privacy as well as Article 20(3).
- A person administered the narco-analysis technique is encouraged to speak in a drug-induced State and there is no reason why such an act should be treated any differently from verbal answers during an ordinary interrogation.”<sup>41</sup>

In *Dinesh Dalmia v. State of Madras*, the court held that “the scientific tests resorted to by the investigating does not amount to testimonial compulsion. Hence, the petition was dismissed.”<sup>42</sup>

### **Indian Constitution on Fair Trial**

India is a democratic country, and it has to ensure that all people have equal rights in the country, even if the person is an accused. Fair trial is embodied in the Indian Constitution keeping in mind Article 14<sup>43</sup> and Article 21<sup>44</sup>. According to the provision of the Indian Constitution fair trial is a part of life and personal liberty and it is guaranteed by the constitution. In a landmark case of *Rattiarum v. State of Madhya Pradesh* the court observed that “the fair trial is the heart of criminal jurisprudence. A

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<sup>40</sup> NandaniSathpathy v. P.L. Dani, 1978 AIR 1025, 1978 SCR (3) 608

<sup>41</sup> Selvi v. State of Karnataka , AIR 2010 SC 1974

<sup>42</sup> Dinesh Dalmia v. State of Madras , 2006 Cr. LJ V-3, 2401

<sup>43</sup> Article 14 in The Constitution Of India 1949 Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

<sup>44</sup> Article 21 in The Constitution Of India 1949 Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

fair trial is a fundamental right which flows from article 21 of the Constitution. Denial of the fair trial is the denial of human rights.”<sup>45</sup>

In *Mohd. Hussain @ Julfikar Ali v. The State (Govt. Of NCT)* the court stated that “every person, therefore, has a right to a fair trial by a competent court in the spirit of the right to life and personal liberty.”<sup>46</sup> According to the above stated Fair trial is a fundamental right by the India Constitution and it should not be denied to any accused or to any person.

### **CONCLUSION**

Equality, Justice and Liberty and the three basic concepts that is identified for fair trial. Fair trial ensures that all the people, the accused and the victims are treated equally, Justice is deliver without any arbitrariness and without any delay. The victims and the accused have the liberty to choose their counsel and their way to protect and defend themselves. Fair trial in India is guaranteed by the The Constitution of India, The Criminal Procedure Code and other code of the country. Justice and fair play require that no one be punished without a fair trial. It is necessary that every person accused of a crime is brought before the court for trial and that all the evidence appearing against him is made available to the court for deciding as to his guilt or innocence. Fair trial involves fairness and reasonableness.

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<sup>45</sup> Rattiaran v. State of Madhya Pradesh, AIR 2012 SC 1485.

<sup>46</sup> Mohd. Hussain @ Julfikar Ali v. The State (Govt. Of Nct),Criminal Appeal No. 1091 of 2006