CONCEPT OF FAIR TRIAL
by Y. Srinivasa Rao Judge

INTRODUCTORY:-

A trial primarily aimed at ascertaining truth has to be fair to all concerned which includes the accused, the victims and society at large. Each person has a 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 society. An accused has a right to fair trial.

Under our Constitution as also the international treaties and conventions, the right to get a fair trial is a basic fundamental/human right. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognized by the Parliament in terms of sub-section (2) of Section 243 of the Code of Criminal Procedure, 1973.

“Fair trial” includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. In a criminal case, denial of that right means denial of fair trial. This issue now stands concluded by decision of Ho’ble Apex Court in Kalyani Baskar (Mrs.) v. M.S. Sampoornam (Mrs.) [(2007) 2 SCC 258].

The following four sub-topics are succinctly discussed in this article:

1. General principles of Fair Trial
2. Arrest and Pre-Trial Detention –Role of Judge/Magistrate
3. From Investigation to the Trial Stage
4. From Trial to Final Judgment

1. GENERAL PRINCIPLES OF FAIR TRIAL: - The system adopted by the Criminal Procedure Code, 1973 is the adversary system based on the accusatorial method. As was well-said on 14th March, 1785 letter from Benjamin Franklin to Benjamin Vaughan, it is better that ten guilty escape than one innocent suffers.

Maxims: ‘Justice hurried is justice buried’ but there is another maxim “justice delayed is justice denied.”

Quick and prompt trial of criminal offences is the need of the hour to repose faith of the people in judiciary. For this purpose the constitutional guarantee of
speedy trial is an important safeguard. The right to speedy trial is implicit in Art. 21 of the constitution of India. See: Shiv Kumar Yadav vs State, Date of Decision: 04th March, 2015, CRL .M.C.725/2015 & Crl. MA 2765/2015. There is another maxim, Audi alteram partem which says that no one should be condemned unheard.

As was observed in Rabindra Kumar Dey vs State of Orissa : 1977 AIR 170, 1977 SCR (1) 439, (Also see: Jaikrishnadas Manohardas Desai and Anr. v. State of Bombay, [1960] 3 S.C.R. 319. 324 ), three principles of criminal jurisprudence which are well settled are as under :

(i) that the onus ties affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from weakness or falsity of the defence version while proving its case;

(ii) that in a criminal trial the accused must be presumed to be innocent until he is proved to be guilty; and

(iii) that the onus of the prosecution never shifts.

Accused is presumed to be innocent: In State of U.P. v. Naresh and Ors., [ (2001) 4 SCC 324] 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.”

Impartial Judicial Officers:

As was held in Shyam Singh v. State of Rajasthan., 1973 Cri LJ 441, 443, (Raj.), the 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 attributable to a judicial officer must have operated against him in the final decision of the case.

A person is tried and acquitted or convicted of an offence he cannot be tried again (Autrefois Acquit and Autrefois Convict):

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 doctrine has been substantially incorporated in the article 20(2) of the Constitution and is also embodied in section 300 of the Cr. P.C. The concepts of double jeopardy and the right against self incrimination have also been examined in the light of recent case laws such as Selvi v State of Karnataka.
where the Court concluded that a Narco analysis test violates this right. In *Kolla Veera Raghav Rao vs Gorantla Venkateswara Rao.*, (2011) 2 SCC 703, the Hon’ble Apex Court held that Section 300(1) of Cr.P.C. is wider than 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 offence more than once’, 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.

In *Hussainara Khatoon v State of Bihar*, it was held that a speedy trial is an essential ingredient of fair trial procedure and it is the constitutional obligation of the State to set up a procedure that would ensure the same.

In *Zahira Habibullah Sheikh and ors v. State of Gujrat and ors.*, (2006) 3 SCC 374 at 395, the Hon’ble Apex Court observed that “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.

2. ARREST AND PRE-TRIAL DETENTION –ROLE OF JUDGE/MAGISTRATE:

*Grounds of his arrest to be informed to accused:* Section 50 provides that any person arrested without warrant shall immediately be informed of the grounds of his arrest. The duty of the police when they arrest without warrant is to be quick to see the possibility of crime, but they ought to be anxious to avoid mistaking the innocent for the guilty. The burden is on the police officer to satisfy the court before which the arrest is challenged that he had reasonable grounds of suspicion.

In *Pranab Chatterjee v. State of Bihar*, (1970) 3 SCC 926, the Hon’ble Supreme Court held that Section 50 of Cr.P.C is mandatory. 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.

*Production of accused before a Judicial Magistrate within 24 hours of arrest:* Section 57 of Cr.P.C. and Article 22(2) of Constitution provide that a person arrested must be produced before a Judicial Magistrate within 24 hours of arrest. In *State of Punjab v. Ajaib Singh*, AIR 1953 SC 10, the Hon’ble Supreme 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.
Arrest of accused to be informed to his friend or relative:

The decisions of the Supreme Court in Joginder Kumar v. State of Uttar Pradesh, 1994 SCC (4) 260 and D.K. Basu v. State of West Bengal, 1997 (1) SCC 416, were enacted in Section 50-A making it obligatory on the part of the police officer to inform the friend or relative of the arrested person about his arrest and also to make an entry in the register maintained by the police. This was done to ensure transparency and accountability in arrest. Sec.160 of Cr. P.C provides that investigation by any police officer of any male below 15 years or any woman can be made only at the place of their residence.

Section 46 (4) provides that no woman shall be arrested after sunset and before sunrise, save in exceptional circumstances and where such exceptional circumstances exist, the woman police officer shall, by making a written report, 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.

Section 41A Cr.PC aimed to avoid unnecessary arrest:-

In Arnesh Kumar vs State Of Bihar & Anr, CRIMINAL APPEAL NO. 1277 OF 2014 (@SPECIAL LEAVE PETITION (CRL.) No.9127 of 2013), it was observed that Before a Magistrate authorises detention under Section 167, Cr.P.C, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused.

Arrest and Bail: – In Sanjay Chandra versus CBI – (2012) 1 SCC 40, what factors to be considered by Magistrate while granting or refusing to grant Bail are clearly explained. In Siddhram S. Mhetre versus State of Maharashtra (2011) 1 SCC 694, the scope of Anticipatory Bail is explained. In Gurbaksh Singh versus State of Punjab AIR 1980 SC 1632, the scope of Anticipatory Bail is considered. In Sajal Kumar Mitra Versus State Of Maharashtra – 2011 CrLJ 2744, it is discussed as to granting of Cash Bail initially to facilitate the accused to arrange for Surety in the mean time.

In K K Girdhar versus M S Kathuria – 1989 CrLJ 1094, it was observed that the Magistrate to decide Bail Application of the Accused along with Remand Application of the Police. In Lal Kamlendra Pratap Singh versus State of U.P, (2009) 4 SCC 437, the factors such as interim Bail by Magistrate till the final
decision in Bail Application; arrest is not a must in all cases of cognizable offences; and police officer must act according to the principles laid down in Joginder Kumar’s case are explained. In Joginder Kumar versus State of U.P – (1994) 4 SCC 260 (arrest is not a must in all cases of cognizable offences; police officer must act according to the principles laid down in this case); Arnesh Kumar versus State of Bihar [JT 2014 (7) SC 527. Joginder Kumar (AIR 1994 SC 1349) and Arnesh Kumar cases (JT 2014 (7) SC 527) are most relevant to follow for the best administration of criminal justice system. Under the Code of Criminal Procedure,1973, sections 167(2), 169, 436, 437, 438, 439, 389(1), 389(3), 436A, 437(6), 437A of Cr.P.C are dealt with bails.

3. FROM INVESTIGATION TO THE TRIAL STAGE

So far as rights implicated during the investigation stage is concerned, Article 21 of the Indian Constitution is relevant. Article 21 states: ‘No person shall be deprived of his life or personal liberty except according to procedure established by law.’ Our courts interpreted this Article in catena of decisions.

These judicial pronouncements provide valuable instructions to judicial officers on how to protect the rights of accused. In order to assure a fair trial, judicial officers are expected to follow every procedural safeguard and protect every assurance provided by the law to all parties. The law is settled that Magistrate should not authorize detention of an accused to any custody mechanically in routine.

Procedural safe guards:-

1. Section 163 of Cr.P.C prohibits investigating officer from obtaining statements from witnesses through threatening conduct.

2. Under Section 50A (1) of Cr.P.C, immediately on arrest, the arresting police officer has an obligation to give information about the arrest and the place of detention to any person nominated by the arrested person.

3. As was observed in D.K.Basu vs. State of West Bengal, AIR 1997 SC 610 preparation of ‘Arrest Memo’ indicating the date, place and time of arrest; signed by two independent witnesses and countersigned by the arrest officer is mandatory. Also see: Section 41 A,B,C,D of Cr.P.C.

4. Conducting medical examination of the accused at the time of arrest is essential. See. Section 54 of Cr.P.C.
5. Torture to accused is absolutely forbidden inasmuch as torture is a violation of fundamental rights. Section 330 IPC criminalizes torture during interrogation and investigation for the purposes of extracting a confession of accused.

6. The danger of illegal detention and torture of accused can be minimized by strict compliance of section 57 of Cr.P.C.


9. Under section 172, a police officer shall maintain a day-to-day case diary. Police records must be kept with scrupulous completeness, and investigations should be carried out with promptness, urgency and efficiency to achieve the object of discovery of truth in every case. Judicial Officer’s signature on each page of the case diary operates as a safeguard against manipulation and interpolation.


4. FROM TRIAL TO FINAL JUDGMENT:

To say in short, a trial of a criminal case is a process by which a Court decides on the innocence or guilt of an accused. The total trial process is governed and underpinned by the principles laid down in the Constitution of India. Accused is given every opportunity to defend himself.

The duty of a judicial officer is to ensure that witnesses are examined with great care and he has the duty to referee motions, weigh the facts and circumstances, draw logical conclusions and arrive at a reasoned decision about guilt or innocence by weighing the facts and circumstances, the evidence produced and the relevant law.

In Kali Ram v. State of H.P., [ (1973) 2 SCC 808] the Supreme Court observed “it is no doubt 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.”

In Himanshu Singh Sabharwa v. State of M.P,[MANU/SC/1193/2008], 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.

Settled principles in criminal justice system:-

1. An accused to be tried before a competent, independent and impartial tribunal/court.

2. The burden of proof tests on the prosecution.

3. The prosecution must establish guilt beyond reasonable doubt.

4. High probability is not enough to convict – where there are several possible accounts, the account supporting the accused should be upheld.

5. Accused has a right to remain silent.

6. Judicial Officer must ensure that the prosecution and the defence lawyer – are being diligent, honest and learned in their efforts to arrive at the truth.

7. Under section 479 of Cr.P.C, a judicial officer may not try or commit to trial any case in which he has a personal interest. The basic principle is such that a judge cannot sit in a case in which he has a financial or other interest.

8. A significant legal maxim is that “Justice must not only be done, but be seen to be done.”

9. If a criminal court is to be an effective instrument in dispensing justice, the presiding officer must cease to be a spectator and a mere recording machine.

10. Under section 327 of the Code, trial judges to invariably hold the trial of rape cases in camera, rather than in open court.

11. As seen from section 309 of Cr.P.C, it is known that the Code safeguards the right to a speedy trial.
12. Every accused should be provided the opportunity to be defended by a pleader.

13. The State is obliged to provide free legal aid to a prisoner who is indigent or otherwise disable from securing legal assistance where the ends of justice call for such service. Articles 21 and 39A to underline the importance of providing legal aid to accused who have no means to engage a pleader, especially for under trial prisoners. See *Suk Das vs. Union Territory of Arunachala Pradesh*, 2 (1986) SCC 401

14. Accused should be furnished the copies of Police report and other documents in a criminal case. See. Section 207 of Cr.P.C.

15. Under section 273 of Cr.P.C, evidence to be taken in the presence of the accused. However, in a recent times, it is interpreted that while recording the evidence through video-linkage, physical presence of accused is not necessary.

16. Under the provision of section 243 and 247 of the Code, accused has right to produce witnesses in his defence, and these provisions are applicable equally to cases instituted on a police report or private complaint. Sections 243 ad 246 of the Code afford the accused the right to cross-examine the prosecution witnesses.

17. The object of section 311 of the Code is to discover the truth and deliver a just decision.

18. Under section 279 of the Code, whenever any evidence is given in a language not understood by the accused, and he is present in court in person, it shall be interpreted to him in open court in a language understood by him.

19. The principle of double jeopardy is a safeguard provided under Article 20 (2) of the Constitution which prohibits prosecution or punishing a person for the same offence more than once.


21. Section 353 of the Code mandates that judgment must be delivered in an open court; be read out in court; or the operative part of the judgment read out and the substance of the judgment explained.
22. Section 354 (1) of the Code mandates that judgments must be reasoned.

23. When accused is sentenced to imprisonment, free of copy of judgment shall be furnished to him.

24. Every judgment of a court must be based on legal evidence, substantive by law and logic without having to resort to speculations or inferences.

25. In the operative part of the judgment, the court should state the conviction and the sentence in a specific and clear manner.

26. Benefit of doubt always goes to accused.

**Conclusion:-**

Indian law is in consonance with the prevailing international legal standards on the right to be tried by a competent and independent and impartial court. All persons must be equal before the court. Every one shall be entitled to a fair trial by an impartial court established by law. A salient requirement of fair trial is one without undue delay.

The right to a speedy trial flowing from Article 21 of the Constitution encompasses all the stages such as investigation, inquiry, trial, appeal, revision and re-trial. In a criminal case, a conviction cannot be based on the testimony of witnesses whose examination in chief stands contradicted by their cross-examination.

Basic concept behind a fair trial is succinctly explained in *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1. A reasoned judgment diminished the chances of appeal, and reduces the courts overload.

Appreciation of evidence must be rational and dispassionate. In every criminal trial the degree of probability of guilt has to be much higher, almost amounting to certainty; and if there is the slightest reasonable or probable chance of innocence of an accused the benefit must be given to him.

As was observed by His Lordship Justice Krishna Iyer, in *State of Rajasthan versus Bal Chand*, (AIR 1977 SC 2447), “the basic rule perhaps be tersely put as bail not jail, except where there are circumstances, suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the Petitioner who seeks enlargement on bail from the court.”