

Right to Fair Trial

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What is a Fair Trial?

- A fair trial is an open trial by an impartial judge in which all parties are treated equally. The right to fair trial is one of the fundamental guarantees of human rights and rule of law, aimed at ensuring administration of justice. Fair trial includes fair and proper opportunities allowed by law to prove innocence.
- The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society. Most of these safeguards to ensure a fair trial are contained under the Code of Criminal Procedure, 1973 which contains and defines the procedure which has to be followed in criminal cases.
- The concept of a fair trial cannot be limited to a statute and the Courts have gradually expanded it to include various aspects of criminal procedure. For instance the Supreme Court has also in the past transferred cases from one state to another when it is reasonably anticipated that the accused will not be afforded a fair trial or the court process may be interfered with by extraneous considerations.

Sources of Law for Fair Trial

- Article 14 of the International Covenant on Civil and Political Rights: All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
- Article 10 of the Universal Declaration of Human Rights (iterates the same mentioned above).
- Article 21 of the Indian Constitution: No person shall

be deprived of his life and personal liberty except according to procedure established by law.

- The right to be defended by a legal practitioner, flowing from Article 22(1) of the Constitution has further been fortified by the introduction of the Directive Principles of State Policy embodied in Article 39A of the Constitution and enactment of Sec 304(1) of the Cr.PC (Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defense at the expense of the State).

Principles of a Fair Trial

- Presumption of innocence (The burden of proving the accused guilty is on the prosecution).
- Independent, impartial and competent judge (Sec 479 of the Cr.PC prohibits the trial of a criminal case by a judge who is either party to the suit or is personally interested in the case).
- Expeditious trial (SC in Hussainara Khaton v. State of Bihar, 1979 held that speedy trial is an essential ingredient of Article 21).
- Hearing should be in open court (Sec 327(1) of Cr.PC provides for a trial in an open court).
- Knowledge of accusation and adequate opportunity (Sec 211 of the Cr.PC provides for the right of the accused to have a precise and specific accusation).
- Trial in presence of accused.
- Evidence to be taken in presence of accused (Sec 273 of Cr.PC provides that all evidence to be taken in the presence of the accused or his pleader).
- Cross examination of prosecution witnesses.
- Prohibition of double jeopardy (Article 20(2) of the Constitution provides that no person shall be prosecuted

and punished for the same offence more than once).