

# Principal Features Of A Fair Trial

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## Introduction

"Lex uno ore omnes alloquitur" which means that everyone is equal before the eyes of the law which is an important principle which forms the basis of judicial proceedings across the world. The law treats everyone equally and this principle is enshrined in various provisions of the Indian Constitution. [Article 14](#) of the Indian Constitution

exclusively deals with the Right to Equality. Trials are an indispensable part of any proceeding. Conducting fair trials is an important aspect of the law which ensures equality.

## Concept of a fair trial

The concept of a fair trial is not just a right provided in our country but it is also guaranteed by various other legislations all over the world. [Article 6](#) of the European Convention on Human Rights deals with the Right to a fair trial. According to this Article, everyone is entitled to a fair and public hearing within a reasonable time. The trial must be conducted by an independent and impartial tribunal established by law. The African Charter of Human Rights protects the dignity of humans and prevents exploitation under [Article 5](#). [Article 6](#) of the African Charter of Human Rights guarantees individual liberty and security to a person. The right to a fair trial is guaranteed under [Article 7](#) which includes various rights like:

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- Right to appeal to the competent jurisdiction.
- Right to defence.
- Right to be tried.
- Right to be presumed innocent until proven otherwise.

[Article 14](#) of the International Convention on Civil and Political Rights (ICCPR) guarantees the right to a fair trial and [Article 16](#) provides a right to recognition everywhere as a person before the law. [Article 10](#) of the Universal Declaration of Human Rights (UDHR), which guarantees the right to a fair trial. The provisions related to a fair trial in the International Convention on Civil and Political Rights (ICCPR) is more exhaustive and detailed than the provisions in the Universal Declaration of Human Rights (UDHR).

## Adversary system

The Court proceedings in the countries which follow common law are adversarial in nature. The right to equality is protected in this system as both parties have an equal voice of representation. In this system, the counsels of both the parties defend their parties and establish the facts which are supporting them. The Judge decides on the behalf of the facts mentioned, whereas in the inquisitorial system the involvement of judges are more. The court is actively involved in collecting evidence. In the inquisitorial system, the judges themselves might conduct the investigation and in certain scenarios, sometimes it can be biased. The inquisitorial system is mostly used in the civil legal systems like France and Italy.



## Trials

Trials are an inevitable aspect to bring out justice. Trials have to be conducted properly following all the procedures and steps so that it would be fair and free from influences. There is no proper definition of the term trial in the Code of Criminal Procedure, 1973. Trials are an examination of offence by the judicial bodies which have jurisdiction over it. [Section 225](#) of the Code of Criminal Procedure, 1973 mandates that in every trial before the Court of Session, the Public Prosecutor will conduct the prosecution. [Section 304](#) of the Code of Criminal Procedure, 1973 deals provides that it is the duty of the State to provide legal assistance to an accused if the Court feels that the accused has no sufficient means to appoint a pleader for his defence. The Court itself will appoint a pleader in that case at the expense of the State. This provision ensures that the trial is not biased as there is equal representation from both sides. The High Court with the previous approval of the State Government makes rules under various aspects for:

- The mode of selecting pleaders for defence;
- The facilities to be allowed to such pleaders by the Courts;
- The fee which is payable to such pleaders by the Government.

## Presumption of Innocence


Presumption of innocence is an important factor to conduct a fair trial as it prevents wrongful convictions. This presumption of innocence is based on the Blackstone's ratio, which is the idea that "It is better that ten guilty persons escape than that one innocent suffer". This concept of presumption of innocence is also derived from the Latin term 'Ei incumbit probatio qui dicit, non qui negat', which basically means the burden of proof is on the one who declares, not on the one who denies. It is the duty of the prosecution to prove that the accused is guilty with proper evidence beyond any reasonable doubts.

[Article 14\(2\)](#) of the International Convention on Civil and Political Rights also provides that everyone who is accused is presumed to be innocent as long as it is proved otherwise. [Article 11](#) of the Universal Declaration of Human Rights, also deals with the presumption of innocence.

The same principle is also enshrined under [Article 6\(2\)](#) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

This principle is also followed in various cases decided by the Indian Courts, in the case of [Dataram Singh v State of Uttar Pradesh](#), it was held that the individual freedom cannot be cut off for an infinite period as long as the person is proved guilty. This freedom can only be affected when the guilt is proved. There are certain provisions in the Indian Evidence Act like [Section 111A](#) which acts as an exception for this presumption of innocence. According to this Section, if a person has tampered the peace and security in certain places, or if they commit any offences under [Section 121](#), [Section 121 A](#), [Section 122](#) and [Section 123](#) of the Indian Penal Code, then they are not presumed to be innocent. Section 121 of the Indian Penal Code deals with the offence of waging war or planning to war against the Government of India. Section 121A of the Indian Penal Code punishes the person who conspires to commit the offence of war against the Government. Section 122 deals with the offence of collecting arms with an intention to wage war against the Government. Section 123 deals with the offence of concealing certain facts which would facilitate the waging of war. There is also an exception to the presumption of innocence in offences like dowry death.

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## Independent, Impartial and Competent Judges

The independence of the judiciary is an indispensable aspect of every fair trial. The separation of powers protects the independence of the judiciary. The competency of judges is an important factor that will decide the fate of the judiciary. If the judges appointed are incompetent then the whole process of trial is damaged. [Article 217](#) of the Indian Constitution deals with the appointment of the Judges of the High Court. According to this article, there are various qualifications that have to be followed while appointing the Judges like,

- The Judges of the High Court are appointed by the President after consultation with the Chief Justice of India.
- The person appointed has to be a Citizen of India.
- The person must have held a judicial office for at least ten years in India.
- The person has to be an advocate of a High Court or of two or more such Courts in succession for at least ten years.

There were recommendations to form the National Judicial Appointments Commission under the 99th amendment by bringing in a new Article 124A and the main functions of the commission would be,

- To recommend persons for an appointment for the post of Chief Justice of India and Judges of various courts in India.
- To ensure that the person recommended has all the eligibility and integrity.
- To recommend persons for transfer from one Court to another Court.

The Supreme Court struck down the amendment and held it to be unconstitutional and thus the old collegium system of appointing the Judges was retained. The Supreme Court later brought in new developments to bring transparency in the collegium system like the Central Government will not prepare a draft memorandum for judicial appointment.

## Venue of Trial

The venue of the trial also plays an important role in ensuring the fairness of the trial. The Court has to be competent to deal with the cases. [Section 177](#) of the Code of Criminal Procedure, 1973 provides that the ordinary place of enquiry or trial would be the Court within whose local jurisdiction it was committed. [Section 178](#) of the Code of Criminal Procedure, 1973 deals with the place of trial. According to this Section, the jurisdiction can be changed in certain situations like when it is uncertain in which of several local areas an offence is completed or when an offence is committed partly in one place and partly in another place and when an offence is a continuing one. According to [Section 181](#) of the Code of Criminal Procedure, 1973 sometimes the place of a trial depends on certain types of offences, for example, offences like kidnapping or abduction can be tried by the Court where the person was kidnapped or abducted.

## Right of the Accused to Know the Accusation

[Article 22](#) of the Indian Constitution provides that no person can be detained in custody without giving proper information. The Sixth Amendment of the Constitution of the United States also provides this right of the accused to know the accusation. The accused should be aware of the reason why he is being detained. [Section 50](#) of the Code of Criminal Procedure also provides that it is the right of every accused to be informed about the various grounds of arrest. The police officer has to inform the person of the various reasons for arrest if the arrest is done without a warrant.

## Accused Person to be tried in his Presence

It is necessary for the accused to be tried in his presence, however, there are certain situations where the magistrate can dispense the attendance after considering relevant factors. [Section 317](#) of the Code of Criminal Procedure, 1973 grants the Magistrate this power. The Magistrate can only dispense the attendance only if it does not affect the process of the trial in any manner. This principle is also supported by Article 14 of the Indian Constitution which guarantees equality.

## Evidence to be taken in the Presence of Accused

[Section 273](#) of the Code of Criminal Procedure, 1973 provides that the evidence should be taken in the presence of the accused. This provision should not be followed only in rare situations like cases relating to the rape of a minor woman. [Section 299](#) of the Code of Criminal Procedure, 1973 provides the conditions to record evidence in the absence of the accused.

## Right of accused person to cross-examine prosecution witnesses and to produce evidence in defence

The accused person has the right to cross-examine any number of witnesses so that it would ensure the fairness of the trial. In the case of [Mohd. Hussain Julfikar Ali v. The State \(Govt. of NCT\) Delhi](#), the appellant was not provided with an opportunity to cross-examine the fifty-six witnesses. Only one witness was cross-examined to complete the

formality. Hence the appellant's conviction and sentence was set aside for the same reasons.

## Right of the Accused Person to have an Expeditious Trial

The concept of speedy trial increases the public confidence in the judiciary. The concept of speedy trial is enshrined in [Article 21](#) of the Indian Constitution. In the case of [Babu Singh v State of Uttar Pradesh](#), it was said that the speedy trial is also part of the fair trial. In the case of [Kartar Singh v State of Punjab](#), it was declared that the speedy trial is a part of the right to life and personal liberty. The same principle is also enforced in various other cases like [Husainera Khatoon and others v. Home Secretary, State of Bihar](#). The undue delay must be avoided and it must be also ensured that all the proceedings of the trial are followed properly.

## The doctrine of "Autrefois Convict" and "Autrefois Acquit"

The principle autrefois convict means 'formerly convicted' and the principle autrefois acquit means 'formerly acquitted'. The same principle is also accepted by the various Australian courts by the name "issue-estoppel". Autrefois convict is a defence plea that is followed and accepted by the common law countries. This plea ensures that no person is convicted twice for the same offence. This plea will stop the entire proceeding. The concept of double jeopardy is also prevented by our Indian Constitution. [Section 300](#) of the Code of Criminal Procedure, 1973 provides that the person once convicted or acquitted not to be tried for the same offence. There are certain exceptions to the above-mentioned rule in subsection (2) and (4) of Section 300 of the Code of Criminal Procedure, 1973. According to this section the person acquitted or convicted can be tried again if the prior trial was not done by a competent court. The person acquitted or convicted can be tried again with the consent of the State Government for any different offence for which a separate charge has been made against the accused in the formal trial.

## Conclusion

The Right to get a fair trial is an essential right of every accused. The concept of fair trial brings confidence in the public and the people start to believe in the judiciary. It is necessary to follow every above-mentioned aspect in order to ensure that the trial is free from biases. These rights are not just domestic rights but also the various international conventions guarantee these rights. Thus the concept of a fair trial is an essential aspect of every proceeding.

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