

Fair Session Trial



Presented by :

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What is Fair Trial?

A fair trial is a trial which is "conducted fairly, justly, and with procedural regularity by an impartial judge".

What is Fair Trial?

- 1) A trial before an impartial judge,
- 2) conducted by a fair prosecutor
in an atmosphere of judicial calm.

“A 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.”

Fair trial at what stage?

- **Investigation**
- **Pre-trial**
- **Trial**
- **Post Trial**

First Imperative of Dispensation of Justice

***Is Sine qua non* of Art. 21.**

Not only a Fundamental Right

but a Human Right.

Imbalance in fair trial could be also a

Violation of Art.14.

Universal Declaration of H.R. 1948

- *Right to inherent dignity, equality.*
- *Art. 3- Right to life, liberty and security.*
- *Art. 4- Right against Slavery, servitude.*
- *Art. 5- Right against torture, cruel, inhuman or degrading treatment or punishment.*
- *Art. 6- Right to recognition as a person.*
- *Art.8- Right to an Effective remedy.*
- *Art.9 - Not to be subjected to arbitrary arrest, Detention or exile.*

Universal Declaration of H.R. 1948

- *Art. 10-Full equality to a fair and public hearing by an independent and impartial tribunal in determination of Criminal charge.*
- *Art. 11(1)- To be presumed innocent until proved guilty according to law in a public trial at which he had all the guarantees necessary for his defence.*
- *Art. 11(2)- No one shall be held guilty for any offence or punishment by retrospective effect.*

International Convention on Civil and Political Rights 1966

- *Art.6(4)- Anyone sentenced to death shall have right to seek pardon or commutation of sentence.*
- *Art.6(5)- Sentence of death shall not be imposed on persons below 18 years of age and not to be carried on pregnant woman.*
- *Art.9(2)- Anyone arrested shall be informed of the reasons for arrest and charges promptly.*
- *Art.9(3)- to be brought before a judge promptly.*

International Convention on Civil and Political Rights 1966

- *Art.9(5)- Right to compensation against unlawful arrest.*
- *Art. 10(1)- All persons deprived of liberty to be treated with humanity and respect for the inherent dignity of human being.*
- *Art. 10(2)- Juveniles- to be given separate treatment.*

Attributes of Fair Trial

- Presumption of Innocence.
- Burden of Proof.
- Principles of Natural Justice
- Right to remain Silent -Art. 20(3)
- Right against Self- incrimination.
- Right against Double Jeopardy.
- Right to Legal Assistance- able, competent-
amicus curie.

Attributes of Fair Trial

- S. 316- No influence, by promise, threats or otherwise to induce Accused to disclose or withhold any matter within his knowledge.
- Right to be heard on the question of sentence.
- Right to bail- including right to anticipatory Bail.
- Right to be not arrested unnecessarily

Attributes of Fair Trial

- Right to know nature of accusation.-Entitled to get copies of all the documents on which Prosecution proposes to rely upon.
- Trial to be in Open Court.
- Right of hearing- evidence to be recorded in his presence.
- Right to give his own version of case- All adverse circumstances to be put to him.S.313 – Not a mere formality.- simple language

- Right to cross examine the prosecution witnesses.
- Prosecution – not by Victim- but by App- independent Agency.
- Judgment-proper analysis of evidence, good reasons, given in time
- Judge- to be impartial, competent, fair, sensitive- not allowing own prejudices, biases to creep in even unknowingly.

Attributes of Fair Trial

- Speedy Trial-Qualitative difference between Speedy and fair trial- Day to Day trial.
- Speedy trial may not be necessarily fair Trial but converse is true.

Attributes of Fair Trial

Art. 21- No deprivation of life and personal liberty-
except by following the procedure established by
law.

Such Procedure- has to be reasonable and fair.(
Maneka Gandhi J.)

Whether Fair trial refer only after Charge is Framed?

No.

Fairness must begin the moment person is a suspect in crime.

Only if investigation is fair, trial can be fair.

Whether Arrest, seizures, remand-conducted properly?

Whether F.I.R. is received without delay and without tampering?

Whether the process of taking cognizance/ ordering issue of process- mechanical?

Whether Fair trial refers to only after Charge is Framed?

- *Pre-charge hearing – not to be ritualistic.*
At this stage examination of accused can be done.
- *Forensic tests- Polygraph, Narco, Brain mapping- (Selvi v/s State of Karnataka)*
- *Precautions of recording Confessional Statement of Accused.*
- *Use of Statements of witnesses recorded by Police- only for the purpose of contradiction.*
- *Right to lawyer even at the stage of Remand, bail.*

Fair Trial- For whom?

Accused?

Victim?

Society?

Zahira Shaikh v/s State of Gujrat

(2006) 3 SCC 374

Explained the evolving horizons of fair trial and observed it is reflected in many rules and practices

In its ambit and its sweep it covers interests of Accused, of Prosecution and victim

Victim may be singular or collective.

Interests of society at large cannot be disregarded while applying the test of Fair Trial.

Ample powers given to the Court to have fair trial-
Section-311, 313 of Cr.P.C. and Section 165 of Evidence Act

Zahira Shaikh v/s State of Gujrat
(2006) 3 SCC 374

“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 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.”

Zahira Shaikh v/s State of Gujrat

(2006) 3 SCC 374

The Courts have to play a participatory role in trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses.

Sec.311 Cr.P,C. and Sec. 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process.

They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant is not unnecessarily brought into record.

Zahira Shaikh v/s State of Gujrat
(2006) 3 SCC 374

The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency.

The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.

Himanshu Singh Sabharwal Vs. State of M.P. and others,

Witnesses are the eyes and ears of justice. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralyzed, and it no longer can constitute a fair trial.

The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the court or due to negligence or ignorance or some corrupt collusion.

Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the Court and justice triumphs and the trial is not reduced to mockery.

P. Sanjeev Rao v/s State of A.P.
(2012) 7, SCC 56

*“Grant of fairest opportunity to the accused to
prove his innocence is the object of every fair
trial.”*

A.G. V/s Shiv kumar Yadav
(2016) 2, SCC 402

“ Fairness of trial has to be seen not only from the point of view of the accused but also from the point of view of the victim and society. In the name of fair trial the system cannot be held to ransom.”

Each and every irregularity cannot be imparted to the arena of fair trial. There may be situations where injustice to victim play a pivotal role.”

A.G. V/s Shiv kumar Yadav
(2016) 2, SCC 402

“ Fair trial should be kept on its own pedestal. It ought to remain in its desired height.

However when the process of the court is abused in the name of fair trial, at the drop of the hat, there is a miscarriage of justice . And Justice, queen of all virtues sheds tears.”

