

-
- **Facets of Justice: Social, Economic, and Political**
 - **Rule of Law & Role of judiciary**
 - **Expeditious & Accessible Justice: Experience, Challenges & Potential Solutions**
-

MUKTA GUPTA
FORMER JUDGE, HIGH COURT OF DELHI

FAIR TRIAL RIGHTS

- Fair trial rights are so simple & so basic yet they are followed in breach in daily routine & mostly illusory.
- For a judge there can't be a worse dereliction of duty if to it cannot assure the fair trial rights both to the accused & the prosecution.
- Judiciary is not a source of power but a source of empowerment to the litigant.
- There can be an error of judgement but there should be no error of intention on the part of the judge.
- In a trial particularly in a Criminal trial, the judge is not a mere referee but an active participant, navigating through the evidence in the quest for truth

PRINCIPLES OF EQUALITY, FAIRNESS AND RULE OF LAW

- Concept of Rule of Law was evolved by Dicey who called it as the fundamental principle of English Legal System
- Dicey attributed the following three meaning to this doctrine as:
 - Supremacy of Law,
 - Equality Before Law and
 - Predominance of Legal spirit
- **Supremacy of law**
 - It means absolute supremacy and predominance of regular law and excludes existence of arbitrariness, of prerogative or even wide discretionary powers on the part of the government
 - Man may be punished for a breach of law and nothing else

- Wade said that rule of law requires that the government should be subject to law, rather than law subject to the Government
- no man can be arrested, punished or lawfully made to suffer except by due process of law or for breach of law
- **Equality Before Law**
 - Equality before law and equal subjection of all classes to the ordinary law of land administered by ordinary law courts
 - All persons' subject to one and same law, no separate tribunal or court for government officials
 - Any encroachment on the jurisdiction of courts restrictions on the access to them jeopardizes his rights
- **Predominance of legal Spirit**
 - Courts act as guarantors of liberty
 - Rights are more secured if enforceable by courts rather than mere declaration of those rights.

CONCEPT OF RULE OF LAW IN INDIA

- Concept of Rule of law adopted and incorporated in Constitution
- Preamble to the Constitution of India talks of ideals of Justice, Liberty and Equality
- Fundamental rights in Part III of the Indian Constitution incorporates the ideals of justice, equality and liberty and are made enforceable
- In India, concept of supremacy of law is maintained and followed- Constitution acts as a supreme law and all three organs of government work under and subordinate to it
- Equality is talked under Article 14 of the Constitution of India - obligation on state to not to deny to any person equality before law or equal protection of law
- Government and public authority are also subject to the jurisdiction of ordinary court of law and similar wrongs are to be tried and punished similarly

- Courts in India act as both guardians and protector of the Constitution of India and play a proactive role in the protection of fundamental rights
- Recognized principle of law – “Justice Must Not Only Be Done but Seen to Be Done”
- Right of fair trial recognized as a basic human right

INDIAN JUDICIARY EMPHASISING ON IMPORTANCE OF A FAIR TRIAL

- Judicial Pronouncements emphasise on importance of fair trial
- In ***Talab Haji Hussain vs. Madhukar Purshottam Mondkar and Anr.*** AIR 1958 SC 376 - The Hon'ble Supreme Court held, ... “*the primary object of criminal procedure is to ensure a fair trial of accused persons. Every criminal trial begins with the presumption of innocence in favour of the accused; and provisions of the code are so framed that a criminal trial should begin with and be throughout governed by this essential presumption; but a fair trial has naturally two objects in view; it must be fair to the accused and must also be fair to the prosecution.*”
- In ***R.C.Cooper vs. Union Of India*** (AIR 1970 SC 564) - It was held that any law that deprives the life and liberty must be just and fair
- In ***Govindaraju @ Govinda vs. State Sriramaparam P.S. and Anr.*** (2012) 4 SCC 722 - The Hon'ble Supreme Court held, “*right to fair trial and presumption of innocence, which are the twin essentials of administration of criminal*

justice.”

- In *Zahira Habibullah Sheikhand Anr. vs. State of Gujrat and ors. (2006) 3 SCC 374* - The Hon'ble Supreme Court observed, “*Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial, the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences.*”

FAIRNESS TO PERMEATE THROUGHOUT THE PROCEEDINGS

- Fairness should exist through all stages of proceedings. Fairness should exist not only during the trial but should exist at the pre- trial stage also.
- Pre- trial fairness
 - In *D. K. Basu vs. State of West Bengal (1997)1 SCC 416* - The Hon'ble Supreme Court held, "*The action of the State, however, must be 'right, just and fair'*". *Using any form of torture for extracting any kind of information would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21. Such a crime-suspect must be interrogated- indeed subjected to sustained and scientific interrogation - determined in accordance with provisions of law.*" The Hon'ble Supreme Court laid down detailed guidelines such as – Legal aid, medical arrest, information etc.
 - In *Nandini Satpathy vs. P.L. Dani ATR 1978 SC 1025* - The Hon'ble

Supreme court has held that no person can be compelled to be witness against himself. Further that this ban operates in police interrogation also. It was observed, that although, the police are authorized to examine witness by virtue of Section 161 such authority does not extend to compel such witness to give testimony against himself and that compelled testimonies cannot form the basis of conviction

- During the trial fairness has to be ensured by providing witness protection, equal treatment, right of legal representation, presumption of innocence and right to be informed of the charges, etc.

PRESUMPTION OF INNOCENCE UNTIL PROVEN GUILTY

- Every accused is presumed to be innocent unless the guilt is proved.
- The presumption of innocence is a human right and should be the guiding principle for the right from the moment of suspicion, to investigation, trial and till the pronouncement of the judgement
- Based on the principle of presumption of innocence, the cardinal rules in a criminal trial are:
 - The burden of proof rests on prosecution
 - The prosecution must establish guilt beyond reasonable doubt
 - The benefit of doubt belongs to the accused
 - High probability is not sufficient to convict — where there are several possible accounts, the account supporting the accused should be upheld

PRESUMPTION OF INNOCENCE IS A HUMAN RIGHT

- The Supreme Court in its pronouncement have ensured that the presumption of innocence is a human right and is well-guarded.
- This presumption is seen as an extension of a Latin legal principle, '*ei incumbit probatio qui dicit, non qui negat*' that is, the burden of proof rests on who asserts, not on who denies.
- Section 101 of the Indian Evidence Act provides that whoever desires a court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove those facts. Thus, in criminal case the burden to prove guilt lies on the state subject to the exception like Sections 106 and 114, Evidence Act.
- The provision for reverse burden is not only provided for under the special acts but also under the general statutes like the penal code but all such provisions have to withstand the test of reasonableness and fairness.

- The presumption raised is one for shifting the burden subject to fulfillment of the conditions precedent. i.e. the prosecution is required to prove the foundational facts.
- The constitutionality of a penal provision placing burden of proof on an accused, thus, must be tested on the anvil of the state's responsibility to protect innocent citizens.

NO PERSON TO BE COMPELLED TO BE A WITNESS AGAIN SELF

- Right to remain silent is supported by 3 related underlying policies as held in *Miranda Vs. Arizona (1996)*
 - *Government should accord respect & dignity to citizens.*
 - *In attempting to punish an individual govt. must produce its own evidence through independent effort & not by cruel or shortcut practice.*
 - *By deterring coerced statements, the right to remain silent helps ensure that statements made by the accused are reliable.*
- Article 20(3) Constitution of India provides for rule against self-incrimination
- Confessions made under coercion, threat or inducement or made to a police officer or when an accused in the custody of the police cannot be proved against him under Sections 24, 25 and 26 respectively of the Indian Evidence Act.

ACCUSED ACCESS TO MATERIAL

1. Access to FIR:

In Youth Bar Association of India Vs. UOI (2016) 9 SCC 473

The Supreme Court held that an accused is entitled to a copy of the FIR before the stage of disclosure arises under Section 207 of the Cr.P.C. Towards this, the person can make an application seeking a copy before the concerned police station or court, and she must be supplied with a copy of the FIR within 24 hours (if from police) and within 2 working days (if from court). The Court also directed all state police agencies to upload FIRs online. At the same time, it recognised exceptions if an officer of the level of a Deputy Superintendent of Police decided that a specific FIR was "sensitive" (as it is illustratively explained in the judgment). For such cases, disclosure of the FIR becomes an issue of official discretion, and the police were directed to constitute a committee to handle requests for sharing the FIR which had been initially deemed "sensitive".

2. Access to material in possession of the Police:

- There are 3 different situation of denial of material to accused after the investigation is complete and charge sheet is filed:
 - I. At the stage of 207/208 CrPC.
 - II. Documents seized, relied with charge sheet but not exhibited by prosecution in the trial, and/or
 - III. Documents seized but not relied upon, so not filed with the charge sheet and kept back by the investigating agency.
- The issue of non-supply of documents under section 207/208 CrPC is dealt with by all the courts and thus generally pose no problem. However, the denial of the documents on the other two counts pose a problem.
- Supreme Court in *P. Ponnusamy vs. State of Tamilnadu (2022 SCC online SC 1543)* reiterated the law laid down in *(2010) 6 SCC (1) Siddharth Vashisht @Manu Sharma Vs. State (NCT of Delhi)*, *(2012) 9 SCC 771 V.K. Sasikala Vs. State and Suo Moto W.P. (Crl.) No. 1 of 2017* for the remedy on denial of access to documents under issues no. 2 and 3. It was held:

"11. Taking note of the case law in Siddharth Vasisht @ Manu Sharma vs.

State of NCT Delhi, this court in Manoj & Ors. v. State of Madhya Pradesh, Supreme Court highlighted the dual role played by the public prosecutor and the court in safeguarding the accused's right to fair investigation and trial, by scrutinizing the material and ensuring fair disclosure. In light of this, and the aforementioned draft Rule 4, and held in decision in Manoj: "...In view of the above discussion, this court holds that the prosecution, in the interests of fairness, should as a matter of rule, in all criminal trials, comply documents, with the above rule, and furnish the list of statements, material objects and exhibits which are not relied upon by the investigating officer. The presiding officers of courts in criminal trials shall ensure compliance with such rules."

12. In addition to the decision in Manu Sharma (as noticed in Manoj), there is another decision - Manjeet Singh Khera vs. State of Maharashtra - which had highlighted how the requirement of disclosure, is an intrinsic part of the right to fair trial under Article 21 of the Constitution. Relying upon its previous decision in V.K. Sasikala vs. State, this court noted in Manjeet Singh Khera:

"...In that case, the documents were forwarded to the court under Section

173(5) CrPC but were not relied upon by the prosecution and the accused wanted copies/inspection of those documents. This Court held that it was incumbent upon the trial court to supply the copies of these documents to the accused as that entitlement was a facet of just, fair and transparent investigation/trial and constituted an inalienable attribute of the process of a fair trial which Article 21 of the Constitution guarantees to every accused. We would like to reproduce the following portion of the said judgment discussing this aspect: (V.K. Sasikala case [V.K. Sasikala v. State, (2012) 9 SCC 771: (2013) 1 SCC (Cri) 1010], SCC p. 788, para 21) "21. The issue that has emerged before us is, therefore, somewhat larger than what has been projected by the State and what has been dealt with by the High Court. The question arising would no longer be one of compliance or non-compliance with the provisions of Section 207 CrPC and would travel beyond the confines of the strict language of the provisions of CrPC and touch upon the larger doctrine of a free and fair trial that has been painstakingly built up by the courts on a purposive interpretation of Article 21 of the Constitution.

It is not the stage of making of the request; the efflux of time that has

occurred or the prior conduct of the accused that is material. What is of significance is if in a given situation the accused comes to the court contending that some papers forwarded to the court by the investigating agency have not been exhibited by the prosecution as the same favours the accused the court must concede a right to the accused to have an access to the said documents, if so claimed. This, according to us, is the core issue in the case which must be answered affirmatively. In this regard, we would like to be specific in saying that we find it difficult to agree with the view [V.K. Sasikala vs. State, 2012 SCC On Line Kar 9209] taken by the High Court that the accused must be made to await the conclusion of the trial to test the plea of prejudice that he may have raised. Such a plea must be answered at the earliest and certainly before the conclusion of the trial, even though it may be raised by the accused belatedly. This is how the scales of justice our criminal jurisprudence have to be balanced."

13. It is true that this court in V.K. Sasikala (supra) was dealing with material/documents that were forwarded to the Magistrate under Section 73 CrPC, but were not being relied upon by the prosecution. However, it is undeniable that there could also arise a situation wherein the

investigating officer, ignores or does not rely on seized documents, material or evidence which favours the accused, and fails to forward it to the Magistrate [as required under Section 173 CrPC, specifically subsection (6)]. Merely because it is not already on the record of the court, cannot disentitle the accused from accessing material that may have exculpatory value. It is this gap, that was recognised and addressed (paragraph 11 of final order) in the suo-moto proceedings, and suitably codified in the text of the Draft Rule 4, by introducing a requirement of providing a list (at the commencement of the trial) of all documents, material, evidence, etc. seized during the course of investigation or in the possession of the prosecution, regardless of whether the prosecution plans to rely on it. The facts in Manoj, having reflected such a situation (of suppression of evidence that favoured the accused) similarly, necessitated elaboration of this right.

14. The framework that emerges (by reading Section 173, 207, 208 and Draft Rule 4) is that based on the list of statements, documents, etc. received at the commencement of the trial, the accused can seek appropriate orders under Section 91 of the CrPC, wherein the magistrate

on application of judicial mind, may decide on whether it ought to be called for. Additionally, by virtue of Section 391 of the CrPC, the appellate court, if it deems necessary, may take further evidence (or direct it be taken by a magistrate or court of sessions) upon recording reasoning. This safeguards the right of the accused in a situation where concern has been raised regarding evidence or material in possession of the prosecution, that had not been furnished, but was material to the trial and disposal of the case.

15. By way of Miscellaneous Application No. 505/2022 in SMW(Crl) No. 1 of 2017, this court was apprised of the fact that some states had complied, and other had not complied with the directions in final order dated 20.04.2021 regarding adoption of the Draft Rules and amending police manuals, etc. in a time-bound manner (6 months); the states were directed to comply within 8 weeks and the matter is still pending.

16. That some High Courts or governments of the States/Union territories have failed to comply with this court's order and are delayed in adopting the Draft Rules or amending the concerned police/practice manuals, cannot prejudice the right of an accused (to receive this list of the

statements, documents, material, etc. in the possession of the prosecution), which has unequivocally been recognized by this court in its final order of the suo-moto proceedings (paragraph 11, extracted above), itself. Further, to say that the judgment in Manoj in relation to this, and the right of the accused to receive the said list of documents, material, etc. would only apply after the draft rules are adopted - would lead to an anomalous situation where the right of the accused in one state, prejudicially differs from that afforded to an accused, in another.

17. As stated earlier, the requirement of disclosure elaborated on in Manoj, not only was premised on the formulation of draft rules, but normatively premised Sharma on the ratio of the three-judge bench decision in Manu (supra). In these circumstances, the proper and suitable interpretation of the disclosure requirement In Manoj (supra) would be that:

- a) It applies at the trial stage, after the charges are framed.*
- b) The court is required to give one opportunity of disclosure, and the accused may choose to avail of the facility at that stage.*
- c) In case documents are sought, the trial court should exercise its discretion, having regard to the rule of relevance in the context of the*

accused's right of defence. If the document or material is relevant and does not merely have remote bearing to the defence, its production may be directed. This opportunity cannot be sought repeatedly - the trial court can decline to issue orders, if it feels that the attempt is to delay.

d) At the appellate stage, the rights of the accused are to be worked out within the parameters of Section 391 CrPC.

18. That the accused, has a right to fair trial, was not in doubt; but what is reiterated is that this right is manifested in the fair disclosure requirement elaborated above. While the concern of delay in conclusion of trial undoubtedly weighs heavily in the mind of the judge, it cannot entail compromise of the right of the accused to fair investigation and trial."

3. In *INX Media*, the Delhi High Court directed as inspection to the accused of all the documents seized and not relied in charge sheet. The SLP against the said order was dismissed by the Supreme Court being *SLP No. 1274/2022- CBI Vs. M/s INX Media Pvt. Ltd. & Ors.* on 18th July 2023.

ROLE OF JUDGE

- In an adversarial system of trial, there is a tendency for a judge presiding over a trial to assume the role of an umpire or referee and to allow the trial to develop into a contest between the prosecution and defence.
- The presiding judge must cease to be a spectator and must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth.
- For this purpose, he is invested with Section 165 of the Indian Evidence Act with the right to ask any question, in any form, at any time, to any witness or to the parties, about any fact, relevant or irrelevant.
- Section 165 declares in unequivocal terms the supremacy of the Indian trial judge in conducting the trials. It deals with the Judge's power to put questions or to order production to discover or to obtain proper proof of relevant facts. Neither the parties nor their agents are entitled to make any objections to such question or order, nor, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question.

- Any questions put by the judge must be so as not to frighten, coerce, confuse or intimidate the witnesses.
- In ***Ram Chander v. State of Haryana, (1981) 3 SCC 191***, it was held that the questions put by the learned Sessions Judge, particularly the threats held out to the witnesses were certainly intimidating coming from the presiding judge. In an effort to compel them to speak what he thought must be the truth, he very wrongly, firmly rebuked them and virtually threatened them with prosecution for perjury. He left his seat and entered the ring, abandoning the principle of fair trial
- The Supreme Court in ***Kishore Samrite Vs.State of U.P. and Ors., (2013) 2 SCC 398***, it was held that the Court should not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings is the foundation of administration of justice. The balance between unequal has to be maintained by the judge.
- In ***Vikas Kumar Roorkewal Vs. State of Uttarakhand and Ors., (2011) 2 SCC 178***, the Petitioner sought transfer of the case pending in the court of learned

District Judge, Haridwar to competent court of jurisdiction at Delhi as the accused belong to powerful gang operating in U.P. The Petitioner was able to show the circumstances from which it could be reasonably inferred that it had become difficult for the witnesses to safely depose truth because of fear of being haunted by those against whom they had to depose. It was held that the learned Judge has failed to take participatory role in the trial. He was not expected to act like a mere tape recorder to record whatever has been stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confers vast and wide powers on Court to elicit all necessary materials by playing an active role in the evidence collecting process. However, the record does not indicate that the learned Judge presiding the trial had exercised powers under Section 165 of the Evidence Act which is in a way complimentary to his other powers.

- This Section does not however authorize any judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under Section 121 to 131, both inclusive, if the question were asked or the document were called by the adverse party; nor should the judge ask any question which it would be improper for any other

person to ask under Section 148 or 149 nor shall he dispense with primary evidence of any document except in cases hereinbefore excepted. While exercising power under Section 165 Evidence Act, the other provisions are required to be kept in mind.

- The court, the prosecution and the defense must work as a team whose goal is justice, a team whose captain is the judge. A trial is a quest for the truth and that can be done only without trampling on some one's rights/Fairness in a trial is an indispensable right & has to be ensured at all stages of the proceedings.

ENSURING SPEEDY & EFFICACIOUS TRIAL:

- Organise the calendar of the trial.
- Assess at the start of trial which witness needs protection.
- Take steps to ensure the presence of witnesses on the date
- See at which stage the trial is required to be culminated. Not in all cases it should need to record evidence of all witnesses
- Speedy justice must not lead to massacre of justice

RIGHT TO COUNSEL AND FREE LEGAL AID

- Article 22(1) of the Constitution of India provides for three fold rights to the person arrested: -
 - Right to be informed as soon as may be, the ground of arrest
 - Right to consult a legal practitioner
 - Right to be defended by a legal practitioner of his choice
- Section 303 CrPC provides that any person accused of an offence before a criminal court, or against whom proceedings are instituted under the Code, may be defended by a pleader of his choice as a matter of right
- Article 39-A Constitution of India provides that the state should pass suitable legislations for promoting and providing free legal aid to fulfill this constitutional mandate the Legal Services Authorities Act, 1987 was enacted by the Parliament in which, Section 12 of the Act provides legal services to the persons specified in it

RIGHT TO FREE LEGAL ASSISTANCE UPHELD BY COURTS

- The right of the accused to consult a legal practitioner of his choice was upheld by the Hon'ble Supreme Court *In re, Madhu Limaye AIR 1969 SC 1014*
- In *Suk Das and Ors. vs. Union Territory of Arunachal Pradesh AIR 1986 SC 991* it was held: "It may therefore now be taken as settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involved jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21".
- *Mohd. Hussain @ Julfikar Ali vs. The State (Govt. of NCT) Delhi 2012 (8) SCALE 308* the Hon'ble Supreme Court has held, "If an accused remains unrepresented by a lawyer, the trial court has a duty to ensure that he is

provided with proper legal aid."

- In *Nandini Satpathy vs. P.L. Dani AIR 1978 SC 1025* the Hon'ble Supreme Court extended the right of legal representation to a person who is, even though, not under arrest or custody but is under circumstances of near custodial interrogation
- In *Khatri and ors. vs. State of Bihar and ors. AIR 1981 SC 928* the Hon'ble Supreme Court held that the constitutional obligation to provide free legal services to an indigent accused does not arise only when the trial commences but also when the accused is for the first time produced before the magistrate.

TRIAL IN AN OPEN COURT

- In *Naresh Shridhar Mirajkar and Ors. v State of Maharashtra and Anr. AIR 1967 SC 1* Supreme Court emphasized the importance to conduct a trial in an open court – it ensures confidence in the mind of the consumers of Justice. When the litigant sees that a fair and equal treatment is met to each litigant, he goes back satisfied, irrespective of the outcome of his trial.
- Trial in open acts as a check to arbitrariness and a control over Court's power
- Right to a public trial has several exceptions. Proviso to Section 327(1) CrPC provides that presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room building used by the court
- Section 53 of the Indian Divorce Act which provides that the whole or any part

of any proceeding under this Act may be heard within closed doors if the court thinks fit

- Section 14 of the Official Secrets Act provides that in addition and without prejudice to any power which a court may possess to order the exclusion of the public from any proceedings. This is because in official secrets case the person is being tried for revealing state secrets particularly relating to security of the state.

JUSTICE DELAYED IS JUSTICE DENIED

- Indian courts recognize the right to a speedy trial as a basic right that works in consonance with the right to fair and a just trial
- Article 21 of the Constitution though does not expressly provide for a right to a speedy trial, yet with judicial pronouncements this right has been made as a mandatory and integral part of the fundamental right to life and personal liberty
- A judge is the person who can control the delay – At least one side in all cases is interested in delaying – this is to be avoided.
- In *Kartar Singh vs. State of Punjab (1994)3 SCC 569* speedy trial was held to be a means to prevent undue and oppressive incarceration and concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution.

- In *State of Maharashtra vs. Champalal Punjaji Shah (1981)3SCC610* the Supreme Court has stated that to decide whether there was a denial of the right to speedy trial a number of factors are to be considered such as whether the defendant himself was responsible for some of the delays and whether he was prejudiced in the preparation of his defence by reason of the delay, whether the delay was unintentional, caused by overcrowding of the court's docket, or understaffing of the prosecutors, and whether the accused contributed a fair part to delay unintentionally. Thus, it is also well recognized that in not all the cases where there is delay it can be held, that injustice was caused

PRINCIPLE OF NON-RETROACTIVITY

- Article 20(1) of the Constitution states: "No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence"
- This Article not only prohibits law purporting to create an ex post facto application, but also prohibits convictions or sentences based on laws not yet enacted when the charged offence occurred
- Therefore, when a newly enacted sentencing guidelines calls for harsher penalties for the same crime, the court cannot apply these newer penalties to crimes committed before these penalties came into force
- However, courts can still apply repealed criminal statutes if the accused committed the crimes prior to such statute's repeal
- Procedural law retrospective but substantive law cannot be retrospective

DEMOCRACY BASED ON FAIRNESS

- Equity, justice and good conscience have been the guiding principles of the legal system for decades now and after all what good is a legal system, which cannot ensure justice to all
- Constitution of India, in its Preamble, talks of justice, i.e, social, economic and political and rightly, so justice is one that is reflected in various forms and types at various stages of the proceeding
- A trial is a quest for the truth and that can be done only without trampling on someone's rights
- Fairness in a trial is an indispensable right and has to be assured at all the stages of the proceedings and has to be reflected in the attitude of all those who are in some way connected with the proceedings
- Judges, police, investigatory authority, advocates, pleaders, parties and witnesses are all to work in tandem to ensure that the trial proceed in a just and a fair manner to ensure that the judgement that is finally pronounces/stands the

test to all the principles of necessitating that justice is both done and seen to be done. However, of all these pillars a judge is the most important one who can make or break the case

- Judge in a Criminal trial is not a referee but an active participant

....