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## Critical analysis on the Fair Trial in India

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*A fair trial is regarded as a fundamental human right of all those who have been convicted. It has received national and international recognition. The principles of fair trial are robust and are implemented in such a way that a fair and unbiased result is reached, and so the rights of the guilty are also protected. The right to a fair trial is an intrinsic right that exists both before and after the trial. Benjamin Franklin famously observed, "It is better that ten wicked people escape than one innocent person suffer." This article provides a critical examination of how the right to a fair trial is crucial in today's world, as well as the issues confronting India's criminal justice system in light of several historic cases.*

**Keywords:** *fair trial, indian judiciary, indian penal code, trial.*

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### INTRODUCTION

In a fair trial, all parties are treated equally in front of an unbiased judge. The right to a fair trial is one of the most fundamental safeguards of human rights and the rule of law. Ensuring the proper administration of justice. A fair trial includes all legal opportunities for a fair and proper trial to demonstrate one's innocence. The definition of a fair trial is based on natural justice law, specifically the second principle of natural justice, Audi alteram partem - the rule of fair hearing or the rule that no one shall be condemned without having been heard.

**Zahira Habibullah Sheikh and Ors. vs The state of Gujarat and Ors.**<sup>1</sup>, in this case, the court observed and scripted the following fundamental rules of a fair trial:

1. An unbiased prosecutor
2. A just lawyer
3. A judicially calm atmosphere
4. There is no prejudice against the perpetrator, the witness, or the case's cause.
5. Witnesses are not intimidated, coerced, or enticed to testify.

The Supreme Court of India ruled that 'everyone has an inbuilt right to be held equally in a criminal trial.' Denial of a fair hearing is an insult to both the perpetrator and the victim, as well as to humanity.

### **TRIAL UNDER CRPC, 1973<sup>2</sup>**

After framing the charge, the trial begins and ends with a conviction or acquittal. In the Indian legal system, there are various types of trials. The accused's trial is divided into four types depending on the type of crime he may have committed.

- **Session trial** - If the offence is punished by more than seven years in jail, life imprisonment, or death, the trial must be placed in a Sessions court once the matter has been committed or submitted to the court by a magistrate.
- **Warrant Trial** - A warrant case includes an offence punishable by the death penalty, life imprisonment, or a jail sentence of more than two years. The initial stage in a warrant case trial is the filing of an FIR at a Police Station or before a Magistrate.
- **Summon trial** - A summons case is one in which the offence is punishable by less than two years in prison. It is not necessary to file charges in relation to this offence. The Magistrate issues a summons to the accused.

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<sup>1</sup> *Zahira Habibullah Sheikh & Ors v State of Gujarat & Ors* (2006) 3 SCC 374

<sup>2</sup> Criminal Procedure Code 1973

- **Summary trial** - Summary trials are those in which cases are resolved quickly and with a simple procedure to follow, and the trials are recorded summarily. Small disputes are resolved in this trial, while complicated cases are secured for summons and warrant trials.

## **HISTORY OF A FAIR TRIAL**

Benjamin Franklin famously observed, "It is better that ten wicked people escape than one innocent person suffer." The notion of a fair trial is fairly ancient, with the first indications found in 1215, Magna Carta, which granted all freemen the right to a jury trial. According to Black Law's Dictionary, a fair trial is one that takes place in the presence of an unbiased judge and jury. Every individual has a right to a fair trial, which is regarded as a basic right in the eyes of the law, and every person has a right to defend himself and denial of that right constitutes a denial of a fair trial.

## **WHY IS IT NECESSARY TO HAVE A FAIR TRIAL?**

It ensures fairness during the trial by appointing an independent, impartial judge who is competent, it ensures an open trial, and it ensures that no accused's rights are violated during the trial process. It presumes an accused's innocence until proven guilty, and so on. Articles 10 and 11 of the Universal Declaration of Human Rights enshrine the major characteristics of a fair criminal trial.

**Article 10:** Everyone has the right to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and responsibilities, as well as any criminal accusation leveled against him.

**Article 11:**<sup>3</sup>

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<sup>3</sup> Universal Declaration of Human Rights 1948, art 11

(1)<sup>4</sup> Everyone accused of a penal offence has the right to be assumed innocent unless proven guilty according to the law in a public trial in which he has received all essential assurances for his defense.

(2)<sup>5</sup> No one shall be judged guilty of a criminal offence for any conduct or omission that does not constitute a penal crime under national or international law at the time of its commission. No harsher punishment must be imposed than that which was in effect at the time the criminal offence was committed.

## PRINCIPLES OF A FAIR TRIAL

**1. Adversary system:** The adversary system based on the accusatorial method is the criminal trial system envisaged by the code. The adversarial procedure, also known as the adversary system, is a judicial system found in common law countries in which two proponents argue their respective parties' argument or position before a neutral party or body of persons, normally a judge or jury, who attempts to decide the facts and pass judgment accordingly.

**Accusatorial Method:** Method of accusation is a method of resolving a conflict between two parties by having one of them take the other to court and challenge the other on the issues. The judge's objective is to protect the game fairly; it's more of an umpiring task than a participating task). The statute, therefore, gives the convicted party an equal chance to defend himself. The criminal justice system requires that the state will prosecute the accused using its investigative capabilities and professional lawyers and that the accused will then use similarly competent defense care to contest the prosecution's case.

In **Suk Das vs Union Territory of Arunachal Pradesh**<sup>6</sup>, Justice P.N. Bhagwati emphasized the importance of raising legal consciousness among the poor, as they are unaware of their rights, especially the right to free legal assistance. He also noted that people in rural areas in India are illiterate and unaware of their inherent legal rights. Even literate people are unaware of their

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<sup>4</sup> Universal Declaration of Human Rights 1948, art 11(1)

<sup>5</sup> Universal Declaration of Human Rights 1948, art 11(2)

<sup>6</sup> *Suk Das v Union Territory of Arunachal Pradesh* 1986 AIR 991

legal rights. Because of their lack of legal knowledge, they are unable to take legal counsel from a lawyer. Apart from trying to offer legal support to indigent accused, the code has modified the definition of judge-umpire. While the adversarial method allows the magistrate to remain a spectator during the hearing, this would not absolve him of his duties to participate in the trials. The Magistrate assists the case for justice at different points during the decision-making period, with several significant exceptions.

The following are some examples:

- Sections 228<sup>7</sup> and 240<sup>8</sup> of the Code say that the Court, not the Prosecution, should frame the case against the accused. This encourages the court to refine the prosecution's allegations and only decide on matters that appear to be true.
- Section 311 of the Indian Evidence Act, 1872,<sup>9</sup> grants the court the right to question any person as a witness even though that person has not been called as a witness by any side. (A similar power is also granted to the court under Section 165 of the Indian Evidence Act, 1872)<sup>10</sup>.
- Section 313<sup>11</sup> allows the court to query the victim at any point during the trial to collect details about the prosecution.
- The prosecutor is prohibited from withdrawing the case without the Court's approval under Section 321.<sup>12</sup>

**2. Right to free legal aid:** Free legal aid is the provision of free legal services in civil and criminal cases to those who are vulnerable or disadvantaged who cannot afford to hire a lawyer to represent them in a lawsuit or legal action before any Court, Tribunal, or Authority. The National Legal Services Authority is in charge of these services, which are regulated by the Legal Services Authorities Act of 1987 (NALSA).<sup>13</sup> The preamble of the Indian constitution

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<sup>7</sup> Criminal Procedure Code 1973, s 228

<sup>8</sup> Criminal Procedure Code 1973, s 240

<sup>9</sup> Indian Evidence Act 1872, s 311

<sup>10</sup> Indian Evidence Act 1872, s 165

<sup>11</sup> Criminal Procedure Code 1973, s 313

<sup>12</sup> Criminal Procedure Code 1973, s 321

<sup>13</sup> National Legal Services Authority Act 1987

seeks to offer social, economic, and political justice to the people of India. Legal aid, as described by Justice P.N. Bhagwati, is "a structure of society that makes the machinery of administration of justice readily available and within reach of those who must turn to it for protection of rights granted by statute." According to **Article 39A of the Indian Constitution**,<sup>14</sup> the state shall ensure that the functioning of the legal system ensures justice on a basis of equal opportunity, and shall, in particular, offer free legal aid, by effective laws or schemes or in some other manner, to ensure that opportunities for accessing justice are not denied to any person due to economic or other disability. One of the fundamental rights granted to all people of the country is free legal aid.<sup>15</sup>

According to **Article 14 of the Indian constitution**,<sup>16</sup> "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." It requires that all parties to legal proceedings must have the same access to courts and the same opportunity to carry their cases to the court.<sup>17</sup> Also according to **Article 21 of the Constitution of India**,<sup>18</sup> "No person shall be deprived of his life or personal liberty except according to procedure established by law". Hence ensuring legal aid to everyone is necessary for ensuring substantive equality. Section 304 of the Code of Criminal Procedure of 1973,<sup>19</sup> discusses Legal Aid to Convicted at State Expense in certain circumstances, such as where the accused does not have ample means to engage a pleader; the Court shall appoint a pleader for his defense at the expense of the State. The CrPC offers that during all criminal prosecutions, the accused has a right to have the help of a recommendation, and the CrPC Also requires the court docket in all crook cases, where the accused is unable to engage recommend, to employ and suggest for him on the costs of the State.

Howsoever responsible the appellant upon the inquiry might have been, he's till convicted, presumed to be harmless. It turned into the obligation of the Court, having those instances in

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<sup>14</sup> Constitution of India, art 39(a)

<sup>15</sup> *Ibid*

<sup>16</sup> Constitution of India, art 14

<sup>17</sup> *Ibid*

<sup>18</sup> Constitution of India, art 21

<sup>19</sup> Criminal Procedure Code 1973, s 304

charge, to see that he is denied no important incident of a fair trial. It is similarly genuine that the absence of truthful and right trial might be a violation of fundamental principles of judicial method because of breach of obligatory provisions of Section 304 of Cr.P.C. The Supreme Court in **Sukh Das vs State of Arunachal Pradesh**<sup>20</sup> has ruled that a conviction of the victim in a court docket wherein he become denied legal illustration must be overturned as a contravention of Article 21 of the Constitution. However, if the accused pleads responsible without the assist of a legal professional below the felony useful resource gadget and is sentenced by way of the Magistrate, the trial and prosecution are not deemed void until the Magistrate is entirely convinced that the plea is voluntary, legitimate, and authentic.

The judiciary has made a significant contribution to advancing the legal aid scheme, as shown by the Supreme Court's enthusiastic declaration on the rights of the vulnerable and destitute in the **Hussainara Khatoon case**<sup>21</sup>. The court, in this case, emphasized the value of Article 39A, which states that free legal services are an inalienable part of a reasonable, equal, and just process, and that the right to free legal services is impliedly assured under Article 21 of the Indian Constitution (This was a Public Interest Litigation filed regarding the rights of under trial prisoners and the administration of prisons in Bihar). In **Khatri vs the State of Bihar**<sup>22</sup>, the court insisted on offering legal protection to the vulnerable or indigent accused not only during the trial but also during remand. **M.H. Hoskot vs State of Maharashtra**<sup>23</sup>, In this case, it was observed that a prisoner sentenced to imprisonment is not capable of exercising his constitutional and statutory right of appeal virtually inclusive of special leave to the Supreme Court for the legal assistance, but there is implicit power to assign counsel for such imprisoned individual in the Court under Article 142,<sup>24</sup> read with Articles 21 and 39-A of the Constitution.

**3. Presumption of innocence:** One well-known theory is that a person is presumed innocent unless proved guilty by a court of justice. This principle is known as the **presumption of**

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<sup>20</sup> *Sukh Das* (n 7)

<sup>21</sup> *Hussainara Khatoon v Union of India* 1979 AIR 1369

<sup>22</sup> *Khatri v State of Bihar* 1981 SCC (1) 627

<sup>23</sup> *MH Hoskot v State of Maharashtra* 1979 SCR (1) 192

<sup>24</sup> Constitution of India, art 142

**innocence.** This principle is derived from the Latin maxim *Ei incumbit probatio qui dicit, non qui negat*. It means that the responsibility of prosecuting the suspected offence falls on the one who declares rather than the one who refuses. In a criminal trial, the accused is not required to show his innocence; the prosecutor, and only the prosecution, is required to prove the accused's guilt. According to the provisions of Indian law, the judge still stays impartial and assists all sides in determining the truth in order for justice to prevail. If an accused is unaware of his legal rights, the court will assist him, and the court will ensure that the accused's rights are not violated.

According to Section 228 of the Criminal Procedure Code,<sup>25</sup> if the judge thinks there is probable cause to suspect the accused committed a crime, he shall frame a charge against the accused in writing. The right to be presumed innocent is recognized as a human right in Article 14(2)<sup>26</sup> of the International Covenant on Civil and Political Rights of 1966. According to Article 11(1) of the 1948 Universal Declaration of Human Rights,<sup>27</sup> each person accused of a criminal offence has the right to be assumed innocent unless proven guilty according to the law in a public trial in which he has all the safeguards essential for his defense.

**There are certain exceptions to this presumption/principle-**

- Many statutes do not require *mens rea* or criminal intent. When conducting such public welfare tasks, a presumption of guilt occurs. In this case, the victim must demonstrate that he is not guilty.
- It is believed that the perpetrator is convicted of many other offences such as holding stolen goods, crimes related to prohibition, crimes related to spiritual turpitude, adulteration of foodstuff, dowry cases, insurgency crimes, crimes against drugs, and so on. Evidence of premeditation may be used against such an accused, implying that the accused cannot be presumed to be innocent.

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<sup>25</sup> Criminal Procedure Code 1973, s 228

<sup>26</sup> International Covenant on Civil and Political Rights 1966, s 14(2)

<sup>27</sup> Universal Declaration of Human Rights 1948, art 11(1)



The criminal prosecutor carries the responsibility of arguing the accused's guilt in order for him to be guilty of the crime for which he is charged. The burden of proof consists of two components: The first concept is the evidentiary duty, which is the burden of presenting testimony in support of one's claim. The second feature is the duty of persuasion or legal burden, which is the obligation of the party to persuade the court on its sides, and therefore the testimony must prove the party's statement of truth.

“It is no doubt true 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 but be felt in a civilized society.”<sup>28</sup> **State of U.P. vs Naresh and Ors**<sup>29</sup>, the Supreme Court observed “every accused is assumed to be innocent unless his guilt is proved. The presumption of innocence is a human right subject to statutory exceptions. The said principle forms the basis of criminal jurisprudence in India.” The accusation leveled at the presumption of innocence tends to be aimed more at the way in which this idea of granting the innocent the benefit of the doubt has been extended and abused by incompetent judges.

**4. Independent, impartial, and competent judges:** This idea of a fair trial is said to have evolved from the natural justice principle "Nemo Judex in Causa Sua (Latin phrase that means, literally, no-one is a judge in his own cause)." Nemo Judex in Causa Sua is popularly known as the rule against bias. It is the minimal requirement of natural justice that the authority-giving decision must be composed of impartial persons acting fairly, without prejudice and bias. A fair trial is one that is conducted before an unbiased, neutral, and professional judge. The independence of the courts is a fundamental tenet of the Indian Constitution. Section 479 of the Code of Criminal Procedure,<sup>30</sup> expressly bars any judge or magistrate from hearing any case in which he is a party or has a vested interest, as well as hearing any appeal from any order or decision rendered by him.<sup>31</sup>

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<sup>28</sup> *Kali Ram v State of Himachal Pradesh* (1973) 2 SCC 808

<sup>29</sup> *State of UP v Naresh & Ors* (2001) 4 SCC 324

<sup>30</sup> Criminal Procedure Code 1973, s 479

<sup>31</sup> *Ibid*

The reasoning behind this provision is to eliminate the arbitrariness and prejudice that might result if criminal proceedings were settled on by a governmental or institutional entity. Since the state is the defending party in a criminal case and the investigation apparatus is also a state limb, it is critical that the courts be free of any suspicions of executive power and control, whether direct or indirect. Section 6 of the criminal procedure Code,<sup>32</sup> which distinguishes courts of Executive Magistrates from courts of Judicial Magistrates, is applicable in this respect. The Indian Constitution, in Article 50,<sup>33</sup> puts a similar obligation on the state to take action to distinguish the judiciary from the executive. The judge's action is referred to as impartiality. The most important factor in determining a court's impartiality is its bias. When a judge has previously participated in the trial in any capacity or has a vested interest in the proceedings, it may be put into doubt *prima facie*.

**5. Knowledge of the Accusation:** A fair trial necessitates that the victim is granted a fair chance to defend himself. However, if the convicted party is not aware of the charges leveled against him, this chance will be meaningless. Sections 228, 240, 246,<sup>34</sup> 251<sup>35</sup> of the Criminal Procedure Code expressly specify that when a convicted person is brought before a judge for trial, the specifics of the crime of which he is charged shall be specified to him. Article 22(1) of the Indian constitution,<sup>36</sup> renders the right to be informed about the grounds of arrest as a fundamental right. The charges against the accused must be conveyed to him or her in a language that he or she knows. It is important to communicate the charges against him or her in order to be properly defended. The right to a precise and specific allegation is included in Section 211 of the Criminal procedure code.<sup>37</sup>

**6. Right to open trial:** A trial's openness is linked to its justice. A fair trial necessitates that the proceedings take place in public. According to section 327(1) of the criminal procedure code,<sup>38</sup> the court's transparency ensures that not only individuals but also the general public have

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<sup>32</sup> Criminal Procedure Code 1973, s 6

<sup>33</sup> Constitution of India, art 50

<sup>34</sup> Criminal Procedure Code 1973, s 246

<sup>35</sup> Criminal Procedure Code 1973, s 251

<sup>36</sup> Constitution of India, art 22(1)

<sup>37</sup> Criminal Procedure Code 1973, s 211

<sup>38</sup> Criminal Procedure Code 1973, s 327(1)

access to the court's documents. However, there is an exception to the law set out in section 327(1). The court is required to attend the prosecution of rape crimes in camera under section 327(2).<sup>39</sup> Since rape cases involve confidentiality, hearings held in the camera do not constitute a breach of the right to a fair trial.

The Supreme Court ruled in **Naresh Sridhar Mirajkar vs the State of Maharashtra**,<sup>40</sup> that the right to an open trial cannot be withheld unless there are extraordinary circumstances. The High Court has the inherent authority to hold trials or portions of trials in-camera, as well as to prevent the disclosure of some sections of its proceedings. Some of the reasons for exclusion are morals, public order, national security in a democratic society, the parties' private lives, avoiding damage to the interests of justice, waiver of the right to a public hearing (which is not necessarily a basis), and so on. Other elements that may become impediments to a public hearing include hearing publicity, hearing venue, courtroom size, and admission requirements.

**7. Right to a speedy trial:** The right to a speedy trial was first recognized in the Magna Carta, a historic instrument of English law. The right to a speedy trial is a philosophy that focuses on resolving proceedings as quickly as possible in order to improve the efficiency and trustworthiness of the judiciary. The primary goal of the Right to a Speedy Trial is to instill justice in society. Speedy trial is a fundamental right enshrined in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution, and every accused who is denied this right can file a petition in the Supreme Court under Article 32 to have it enforced.<sup>41</sup> In *Hussainara Khatoon vs the State of Bihar*, the Supreme Court ruled that a quick trial is a requirement of Article 21 of the Indian Constitution. And it is the State's constitutional obligation to establish procedures that will ensure a time trial for the accused.

**8. Trial in presence of the accused:** All processes relating to the case must take place in the presence of the accused or his attorney in order for a fair trial to be conducted. The essential

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<sup>39</sup> Criminal Procedure Code 1973, s 327(2)

<sup>40</sup> *Naresh Sridhar Mirajkar v State of Maharashtra* AIR 1967 SC 1

<sup>41</sup> Constitution of India, art 32

idea is that in a criminal trial, the court must not proceed against the accused individual *ex parte*. Courts should insist on the accused's appearance only where it is in his best interests to do so or where the court believes that his attendance is required for the successful resolution of the case. The court should ensure that the accused that appears before them is not subjected to excessive harassment.

**9. Evidence to be taken in presence of the accused:** According to Section 273 of the Criminal Procedure Code,<sup>42</sup> all evidence collected throughout the course of the trial must be taken in the presence of the accused, or, if the accused's personal attendance is waived, in the presence of his pleader. The court does not need the accused to appear since section 317 of the code,<sup>43</sup> gives the Magistrate the authority to waive the accused's presence if his personal appearance is not required in the interest of justice. Section 279 of the Code,<sup>44</sup> states that if any evidence is provided to him in a language he does not understand, it must be explained to him in open court in a language he understands. Non-compliance with this clause, on the other hand, will not invalidate the trial but will be seen as an irregularity.<sup>45</sup>

**10. Protection against illegal arrest and detention:** The personal liberty of each character holds importance in a free society like ours. No man or woman may be detained without felony sanction. The proper to personal liberty is a basic human proper. There are three rights that stand unbiased of every other- the right to be made privy to the cause of arrest as quickly as an arrest is made, the proper to be produced earlier than a Magistrate inside twenty-4 hours and the proper to be defended by means of a lawyer of personal preference. Besides those rights, there may be a trendy assertion that no character will be deprived of his non-public liberty except through a method set up by means of regulation that insists on the legality of the action. The rights given by Article 22(1)<sup>46</sup> and (2)<sup>47</sup> are absolute in themselves and do no longer rely upon different legal guidelines. Even although Articles 21 and 22 cross together but they

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<sup>42</sup> Criminal Procedure Code 1973, s 273

<sup>43</sup> Criminal Procedure Code 1973, s 317

<sup>44</sup> Criminal Procedure Code 1973, s 279

<sup>45</sup> *Ibid*

<sup>46</sup> Constitution of India, art 22(1)

<sup>47</sup> Constitution of India, art 22(2)

cannot be treated as inter-associated or inter-structured. In a manner Article 22 advances the reason of Article 21 because it no longer only specifies some assured rights available to people arrested or detained however additionally lays down, the manner to cope with individuals detained preventively. Art. 22 (3)<sup>48</sup> & (4)<sup>49</sup> enact exceptions to the fundamental rights otherwise guaranteed to the arrested individuals under Clause (1) & (2), i.e., those protections aren't to be had in case of an enemy alien and someone arrested or detained beneath any regulation supplying for preventive detention. The right to are seeking a Constitutional remedy by the manner of Habeas Corpus is a right guaranteed to a detainee who has been detained or arrested/restricted illegally or without any justification.

**11. Right to bail:** Provisions as regard bail are contained in Sections 436-450 of Cr.P.C., 1973.<sup>50</sup> The bail provisions goal at securing the discharge of someone who has been put in the back of bars as an undertrial or charged with a fewailable and non-ailable offences. The motive is that someone wants now not to be saved in the police lock without being charged with any offence below the Criminal regulation. There are no tough and rapid guidelines regarding furnish or refusal of bail. Each case must be considered on its personal deserves. To be counted continually calls for the sensible workout of discretion by means of the courts.

Where the offence is of a critical nature the court docket has to determine the question of grant of bail in the mild of such issues as the nature and seriousness of the offence, the man or woman of the proof, instances which might be extraordinary to the accused, affordable opportunity of the presence of the accused now not being secured on the trial, the reasonable apprehension of a witness being tampered with, the larger hobby of the public or such similar different issues. In theailable instances, the provision of bail is an issue of the path. It may be given both by way of the police officer in fee of the police station having the accused in his custody or via the courtroom. The launch can be ordered at the accused executing a bond or even without surety.<sup>51</sup> In non-ailable instances, the accused may be released on bail both by

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<sup>48</sup> Constitution of India, art 22(3)

<sup>49</sup> Constitution of India, art 22(4)

<sup>50</sup> Criminal Procedure Code 1973, s 436-450

<sup>51</sup> *Ibid*

using the court docket or a police officer, but no bail can be granted where the accused appears on reasonable grounds to be responsible for an offence punishable both with demise and with imprisonment for existence. This rule does no longer follow to a person under 16 years of age, a female, or an ill or infirm man or woman.

No doubt, the liberty of someone have to be zealously safeguarded by using the court docket, nevertheless, whilst a person is accused of a severe offence like murder, and his successive bail programs are rejected on merit there being prima-facie cloth, the prosecution is entitled to region accurate information earlier than the court docket; liberty of the accused on bail need to now not be construed as the only issue of the court. (ninety-nine) The Supreme Court of India has, but, held that even though someone accused of aailable offence is entitled to be launched on bail pending his trial if his behavior subsequent to his launch is located to be prejudicial to an honest trial, he forfeits his proper to be released on bail and such forfeiture may be made powerful by way of invoking the inherent powers of the High Court underneath Section 482<sup>52</sup> of the Cr.P.C.<sup>53</sup>

**12. Prohibition on double jeopardy:** Safety from double jeopardy is provided by means of the precept of *Nemo debet bis vexari* (a person ought to now not be put in peril for the identical offence more than once), and if accused once more for the equal offence, he may enter the plea of *autrefois acquit* or *autrefois convict* (former acquittal or former conviction). This concept is diagnosed in cutting-edge crook law, which governs the technique of crook trials, among different matters. The superb courtroom of India has articulated the concept of double jeopardy safety in the following words: The constitutional right assured via art. 20(2)<sup>54</sup> against double jeopardy may be correctly invoked best if the earlier lawsuits on which reliance is located are of a criminal nature and had been instituted before a court of regulation or a tribunal according to the process prescribed in the statute that created the offence and controlled the technique.

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<sup>52</sup> Criminal Procedure Code 1973, s 482

<sup>53</sup> Dr K L Bhatia, 'Fair Trial in Criminal Proceedings in India' (*hrlibrary*, 2021)  
<<http://hrlibrary.umn.edu/fairtrial/wrft-kb.htm>> accessed 01 October 2021

<sup>54</sup> Constitution of India, art 20(2)

**13. Right against self-incrimination:** When evidence or a statement is coerced or intimidated out of an accused by police officials, only his case is jeopardized. Then the Right against Self-Incrimination kicks in, and the accused has the “right to stay silent” and not reveal anything under duress. As a result, it is critical to defend the accused until he or she is found guilty. It is a well-established legal concept that “no one may be seen with a guilty eye unless and unless proven guilty in a court of law.” Even if an accused admits to some extent in a court of law during the trial, it must be determined if the confession was voluntary or involuntary. It must be ensured that the accused was not exposed to improper influence. The fundamental goal of this constitutional provision is to preserve personal privacy and to establish certain defined norms in the criminal justice system.<sup>55</sup>

### CRITICAL ANALYSIS ON THE FAIR TRIAL IN INDIA

India's criminal justice system is regarded as the greatest example of the expression "justice delayed, justice denied."

The Indian judicial system has failed to bring justice in a timely manner. This delay in justice has proven to be one of the most serious flaws in the legal system. Delay in justice refers to the amount of time it takes to resolve a matter that exceeds the amount of time that the court should properly use to decide the case. Delays in justice not only produce dissatisfaction among litigants, but they also erode the court system's capabilities. One of the primary causes of justice delays is that the number of cases filed in the courts significantly outnumbers their capacity. The institution of the case is growing faster than the institution of cases.

Speedy trial is an important element of a fair trial, although in India it appears to be more of a secondary notion that cases would be disposed of as fast as feasible, as there are numerous variables responsible for the delay in processes:

- Cases are still pending.
- Inadequate judicial strength and appointment issues

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<sup>55</sup> *Ibid*

- Lawyers are on strike.
- The absence of transparency.
- Challenges and tribulations.
- There is no contact between societies.
- Lowered reliance on technology.

According to data, around this many cases are still outstanding in the courts for final rulings or additional hearings of any type:<sup>56</sup>

- 10331522-Total Civil Cases
- 28363978-Total Criminal Cases
- 38695500-Total Cases
- 8168184(79.06%)-Civil Cases More Than 1-Year-Old
- 22157191(78.12%)-Criminal Cases More Than 1-Year-Old
- 30325375(78.37%)-Cases More Than 1-Year-Old

Despite the fact that the Indian judicial system is one of the best in the world, it is confronting some issues that are rendering it inefficient. People are losing trust in the legal system as a result of these obstacles, and they are hesitant to employ this organ to assist them to resolve their difficulties.<sup>57</sup>

## **NEED TO SPEED UP THE INDIAN JUDICIAL SYSTEM**

As a result, it is critical that the judiciary resolves these obstacles as soon as possible so that Indian citizens do not hesitate to contact it.

- The formation of the Vohra Committee was India's first try at revamping the criminal justice system. The Vohra Committee file (1993) made a comment on the criminalization of politics and the relationship among criminals, politicians, and bureaucrats in India.

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<sup>56</sup> 'National Judicial Data Grid' (*njdg.ecourts.gov.in*)

<[https://njdg.ecourts.gov.in/njdgnew/?p=main/pend\\_dashboard](https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard)> accessed 01 October 2021

<sup>57</sup> *Ibid*



- In 2000, the government appointed a team led by former Chief Judicial of Kerala and Karnataka, Justice V.S. Malimath, to recommend reforms to the century-old criminal justice system.
- The Malimath Committee is a group of people who work together to solve problems. The old system, according to the Committee, “weighed in favour of the guilty and did not appropriately focus on justice for crime victims.”
- In 2003, the Malimath Committee on Reforms in India's Criminal Justice System (CJS) presented its findings. It proposed 158 amendments to the CJSI, but none of them were enacted.

**Inadequate judicial strength, appointment issues, and the absence of transparency:**

Favoritism, nepotism, corruption, and bribery have found their way into the legal system over the years and gradually established a permanent home, which is defended by the weapon of contempt of court and unaccountability. Among the many concerns concerning the judiciary, Judicial Accountability has been on the minds of many politicians and activists.<sup>58</sup>

**Judicial accountability:** Accountability is a posture in which a person accepts responsibility for his or her acts and performances by either providing justifications or avoiding penalties. Accountability only exists when you have a specific obligation to someone. The judiciary is a glaring example of unaccountability, as it is excluded from the Right to Information Act of 2002,<sup>59</sup> obscuring transparency. This Act was a major legislative amendment intended to increase openness and accountability, but it was ignored by the higher judiciary.

**Appointment of judges and transfer of cases:** Article 124A of the Constitution<sup>60</sup> hooked up the National Judicial Appointments Commission (hereinafter known as "the NJAC"), which consists of the Chief Justice of India, other senior Supreme Court judges, the Union Minister of Law and Justice, and eminent men and women nominated by using a committee comprised of the Prime Minister, the Chief Justice of India, and the Union Minister of Law and Justice.

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<sup>58</sup> *Ibid*

<sup>59</sup> Right to Information Act 2002

<sup>60</sup> Constitution of India, art 124A

The appointment of Supreme Court and High Court judges, as well as the transfer of justices from one High Court to some other, had to be accomplished in step with Articles 124,<sup>61</sup> 217,<sup>62</sup> and 222<sup>63</sup> of the Indian Constitution. Prior to the NJAC, judges have been appointed through the President alongside the Chief Justice and other justices. Similarly, the President made the actions after consulting with the Chief Justice. Despite the fact that it turned into now not explicitly said everywhere, the rule of seniority has continually been respected within the choice of Judges. However, in August 1969, the appointment of Justice A.N. Ray as Chief Justice of India sparked a heated debate while he was appointed as Chief Justice of India, changing three older justices.

## CONCLUSION

An in-depth study of trial courts is required to get appropriate insights into truthful trials functionally in place of architecture. Such studies could put off the criticism about its judicial system. As an end result, such objections are based on the perception that "higher courts are right because they are advanced, not proper because they may be advanced." In fact, the trial chosen conducts the general public of court docket enterprise. It must now not be assumed, however, that the justices do now not need the public to realize the judicial function; unfortunately, there are very few folks who apprehend, interpret, and provide an explanation for the courtroom's task in broader terms.

In a few ways, the public knows less approximately the case than they do approximately Parliament or political parties. Trial judges manage most people of court docket activity considering that they preside over trials, as well as oversee case processing, approve plea negotiating, supervise the settlement process, and screen remedial decrees—as such; they are uncovered to the drama of the antagonistic method. This continually has an impact on judicial choice-making and conduct. A trial judge is a human individual, not a mechanical scale or pc.<sup>64</sup> As a result, the trial judges vary in their intellect, angle, interest, and other mental and

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<sup>61</sup> Constitution of India, art 124

<sup>62</sup> Constitution of India, art 217

<sup>63</sup> Constitution of India, art 222

<sup>64</sup> Bhatia (n 54)

emotional aspects of operation whilst paying attention to and watching witnesses. Fatigue of the trial decide, that is, what a number of instances the trial decide cannot feature cozy and the cases heard and tried in fatigue may also hamper or affect the honest trial, can be one assumption among others to make an in-intensity observe of trial courts with a purpose to have a useful assessment of truthful trial in crook complaints.