in realize to the lowest of the workers are treated get treated:

> "… The poor too have civil and political rights and the Rule of law is meant for them also, though today it exists only on paper and not in reality. If the sugar barons and the alcohol kings have the Fundamental Rights to carry on their business and to fatten their purses by exploiting the consuming public, certainly the "chamaras" to belonging to the lowest strata of society have Fundamental Right to earn on honest living through their sweat and toil…"

THE CONCEPT OF FAIR TRIAL

By

—M. BABU
Senior Civil Judge,
Rajam, Srikakulam District, A.P.

"*Not only must justice be done but it must also be seen to be done*" — Lord *Hewart* CJ, *R v. Sussex Justices*.

Introduction

The accused has a right to fair trial under Article 21 of the Constitution of India. This right includes a right to be considered as innocent until proven guilty. The right to a fair trial is a norm of international humans rights which designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedom. Fair trial is an open trial by impartial Judge in which all parties are treated equally. It is guaranteed under Article 14 of the Constitution of India, which provides every one equal before law. The right to fair trial is applicable to both the determination of an individuals rights and duties in a suit at law and either in respect to the determination of any criminal charge against him or her. Fair trial is an integral part of Article 21 of the Constitution of India and it rests on the basic principle of presumption of innocence. An accused has got several pre-trial and post-trial rights to have knowledge regarding what accusation in the Code of Criminal Procedure, 1908. Pre-trial rights include the right to have knowledge regarding what one has been accusation of, right to engage a Lawyer and to have an opportunity to defend himself. The right of fair trial has been defined in numerous international instruments. The major features of fair criminal trial are preserved in universal Declaration of Human Rights, 1948.

Fair trial

There can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object of mind, whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and an atmosphere of judicial calm.

The concept of fair trial is based on the basic ideology that State and its agencies have a duty to bring the offenders before law. In their battle against crime and delinquency, State and its officers cannot on any account forsake the decency of state behaviour and have recourse to extra-legal methods for the sake of detection of crime

and even criminals. For how can they insist on good behaviour from other when their own behaviour is blameworthy, unjust and illegal, therefore the procedure adopted by the State must be just, fair and reasonable. The Indian Courts have recognized that the primary object of criminal procedure is to ensure a fair trial of accused. In the case of *Zahira Habibullah Sheikh and others v. State of Gujarat and others* reported in (2006) 3 SCC 374. The Honourable Supreme Court of India observed that "each one has an inbuilt right to be dealt with fairly in a criminal trial". Denial of fair trial is as much as injustice to the accused as it is to the victim and to society. Fair trial means a trial in which No bias or No prejudice against the accused, the witness or the case which being tried is eliminated. The right to fair trial is a fundamental safeguard to ensure that individuals are protected from unlawful or arbitrary deprivation of their human rights and freedoms, most importantly of the right to liberty of life and security of person.

The Basic fair trial Principles are as follows:

It is well known that while the Constitution of India and statutes generally provide for some measure of fairness in criminal proceedings, implementation by Courts is often not adequate. The right to fair trial on criminal charge is considered to start running not only upon the formal lodging of a charge but rather on the date on which State activities substantially affect the institution of the person concerned. This could obviously coincide with the moment of arrest, depending on the circumstances of the case. Fair trial guarantees must be observed from the moment the investigation against the accused commences until the criminal proceedings, including any appeal, have been completed. The distinction between Pre-trial procedure, the actual trial and post-trial procedure is sometimes blurred in fact, and the violation of rights during one stage may well have an evict on another stage.

(1) *Adversary trial system:*

The system adopted by the Criminal Procedure Code, 1973 is an adversary system based on the accusatorial method. In adversarial system responsibility for the production of evidence is placed on the prosecution with the Judge action as a neutral referee. This system of criminal trial assumes that the State on the one hand, by using its investigative agencies and Government Counsel will prosecute the wrongdoer on the other hand, the accused will also take recourse of best Counsel to challenge and counter the evidence of the prosecution. The Supreme Court has observed it is to be an effective instrument in dispensing justice, the presiding Judge must cease to be a spectator and a mere recomand machine. He must become a participant in the trial by evincing intelligent active interests. In the case of *Himanshu Singh Sabharwa v. State of M.P. and others,* dated 12.03.2008, the Apex Court has observed that if fair trial envisages under the Code is not imparted to the parties and Court has reason to believe that prosecuting agency or prosecutor is not acting in the requisite manner then the Court can exercise its power under Section 311 of Code of Criminal Procedure or under Section 165 of the Indian Evidence Act, 1872 to call for the material witness and procure the relevant documents so as to sub-serve the cause of justice.

(2) *Presumptive innocence:*

Every criminal trial begins with the presumption of innocence in favour of the accused. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the Court cannot record a finding of the guilt of the accused. This presumption is seen to flow from the Latin legal principle "EI INCUMBIT PROBATIO WUI DICIT, NON QUI NEGAT," that is, the burden of proof rests on who asserts, not on who denies. In the case of *State of U.P. v. Naresh and another* reported in (2001) 4 SCC 324, the Supreme Court observed "every

accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right subject to the statutory exceptions. The said principle forms the basis of criminal jurisprudence in India". In the case of *Kali Ram v. State of H.P.* reported in (1973) 2 SCC 808, the Supreme Court observed "it is no doubt that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however in the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot be felt in a civilized society." It is the duty of the prosecutor and defence Counsel as well as all public authorities involved in a case to maintain the presumption of innocence by refraining from pre-judging the outcome of the trial.

(3) *Independent, impartial and competent Judges:*

The basic principle of the right to a fair trial is that proceedings in any criminal case are to be conducted by a competent, independent and impartial Court. In a criminal trial, as the State is the prosecution party and the police is also an agency of the State, it is important that the judiciary is unchanged of all suspicion of executive influence and control, either direct or indirect. The whole burden of fair and impartial trial thus rests on the shoulders of the judiciary in India.

Pre-trial right.

(1) Prohibition on arbitrary arrest and detention.

The word "arrest" is derived from the French word "arreter" meaning "to stop or stay" and signifies a restraint of the person. Lexicologically, the meaning of the word "arrest" is given in various dictionaries depending upon the circumstances in which the said expression is used. In every arrest, there is custody but not *vice versa* and that both the words "custody" and "arrest" are not synonymous terms. Though "custody" may amount to an arrest in certain circumstances but not under all circumstances. If these two terms are interpreted as synonymous, it is nothing but an ultra-legalist interpretation which if under all circumstances accepted and adopted, would lead to a startling anomaly resulting in serious consequences, *Directorate of Enforcement v. Deepak Mahajan*, (1994) 3 SCC 440 = 1994 SCC (Cri.) 785.

Article 19 of the Constitution of India provides that everyone has the right to freedom of speech is the right to express one's opinion freely without any fear through oral/written/electronic/press, to mean freedom of bodily movement, which is interfered with when an individual is confined to a specific space such as prison or detention facility. Security has been taken to mean the right to be free from interference with personal integrity by private persons. No one shall be subjected to arbitrary arrest or detention and no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law.

(2) Right to know the reasons for arrest.

The Code of Criminal Procedure, Section 50 provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest, and shall be promptly informed of any charges against him. These provisions have been interpreted to mean that anyone who is arrested must be informed of the general reasons for the arrest at the time of arrest while subsequent information, to be furnished promptly must contain accusations in the legal sense. However there must be sufficient information to permit the accused to challenge the legality of his or her detention. A written arrest warrant is not unconditionally required, but the lack of a warrant may, in some cases, give rise to a claim of arbitrary arrest. The reasons for arrest, and the explanations of any rights must be given in the language that the person arrested understands. Accordingly, the accused has right to competence to interpreter in the event that he or she does not understand the local language. This right extends to all pre-trial proceedings.

(3) The Right to consult legal Counsel.

The right to engage legal Counsel and communicated with his legal Counsel to defend his case, is a integral part of fair trial. It has been demonstrated to be one of the most often violated. The basic principles of law states that a person is entitled to call upon the assistance of a Lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings. This right is particularly relevant in case of pre-trial detention and is discussed in that context. However the right to consult a Counsel is also an important element of the right to adequate facilities of the preparation of a defense and the right to a defense which will be discussed later.

The basic principles of law provides that when a person is arrested, charged or detained he or she must be promptly informed of the right to legal assistance of his or her choice. If a person is detained or arrested should have given access to a lawyer within 48 hours from the arrest or detention. Furthermore, if the accused cannot offered his or her own Counsel, the relevant authorities must provide a lawyer free of charge if the interest of justice so requires.

Section 57 of Cr.P.C. provides that if any person is arrested or detained on a criminal charge, it shall be brought promptly before a Judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or of release. If trial does not occur within a reasonable period of time then the accused must be released from pre-trial detention pending trial. The period of time that is considered to be reasonable depends upon the circumstances of the case, the nature of the offence and the diligence of the investigating and prosecutorial authorities in pursuing the case.

The primary principle is that no man shall be a Judge in his own case. Section 479 of the Code, prohibits trial of a case by a Judge or Magistrate in which he is a party or otherwise personally interested. This disqualification can be removed by obtaining the permission of the Appellate Court. In *Shyam Singh v. State of Rajasthan*, reported in 1973 Cri. LJ 441-443 (Raj.), the Court observed that the question is not whether a bias has actually affected in the judgment. The real test is whether there exists a circumstance according to which a litigant could reasonably apprehend that a bias attributable to a judicial official must operate against him in the final decision of the case. In this regard Section 6 of the Code is relevant which separates Courts of Executive Magistrate from the Courts of Judicial Magistrates. Article 50 of the Indian Constitution also imposes similar duty on the State to take steps to separate the judiciary from the executive.

Pre-trial Rights:

The Cr.P.C. entitles an accused person of certain rights during the course of any investigation, enquiry or trial of an offence in which he is charged.

(1) Knowledge of the accusation;

Fair trial requires that the accused person is given adequate opportunity to defend himself. But this opportunity will have no meaning if the accused is not informed of the accusation against him. The Code therefore provides in Sections 228, 240, 246 and 251 in plain words that when an accused is brought before the Court for trial, the particulars of the offence of which he is accused shall be stated to him. In case of serious offences, the Court is required to frame in writing a formal charge and then read and explain the charge to the accused. A charge is not an accusation in abstract, but a concrete accusation of an offence alleged to have been committed by a person. The right to have precise and specific accusation is contained in Section 211 of Cr.P.C.

(2) Right to open trial;

Fair trial is also requires public hearing in open Court. The right to a public

hearing means the hearing should as a rule, is conducted orally and publicly, without a specific request by the parties to that effect. A judgment is considered to have been made public either when it was pronounced in Court or when it published, or when it made public by a combination of those methods. Section 327 of the Code makes provision for open Court for public hearing but it also gives discretion to the Presiding Judge or Magistrate if thinks fit, and can deny the access of public generally or a particular person to the Court during disclosure of indecent matter or when there is likelihood of a disturbance or for any other reasonable cause. In the case of *Narsh Sridhar Mirajkar v. State of Maharashtra* reported in AIR 1967 SC 1, the Apex Court observed that the right to open trial must not be denied except in exceptional circumstances. High Court has inherent jurisdiction to hold trials or part of a trial in camera or to prohibit publication of a part of its proceedings. In the case of *State of Punjab v. Gurmit* reported in 1996 SCC (Cri.) 316. The Court held that the undue publicity is evidently harmful to the unfortunate women victims of rape and such other sexual offences. Such publicity would mark their future in many ways and may make their life miserable in the society. Section 327(2) provides that the inquiry into and trial of rape or an offence under Section 376, 376-A, 376-B, 376-C or 376-D of the Indian Penal Code shall be conducted in camera.

(3) Aid of Counsel:

The requirement of fair trial involves in two things; (1). An opportunity to accused to secure a Counsel of his own choice, and (2). The duty of the State to provide a Counsel to the accused in certain cases. The Law Commission of India in its 14th report has mentioned that free legal aid provide to persons of limited means of service which a welfare State owes to its citizens. In India, right to Counsel is recognized as fundamental right of an arrested person under Article 22(1) which provides, *inter alia* that no person shall be denied the right to consult, and to be defended by, a legal practitioner of his choice. Sections 303 and 304 of the Code are manifestation of this constitutional mandate.

In *Khatri v. State of Bihar* reported in 1981 SCC 703, the Court held that the accused is entitled to free legal services not only at the stage of trial but also when first produce before the Magistrate and also when remanded. Further, Article 39-A which provides that the State should pass suitable legislations for promoting and providing free legal aid. To fulfil this Parliament enacted Legal Services Act, 1987, Section 12 of the Act provides legal services to the persons specified in it.

In *Suk Das and others v. Union Territory of Arunachal Pradesh* reported in (1986) 2 SCC 401, the Court strengthens the need of legal aid and held that "free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty. The exercise of this fundamental right is not conditional upon the accused applying for free legal assistance so that if he does not make an application for free legal assistance. The trial may lawfully proceed without adequate legal representation being afforded to him. On the other hand the Magistrate or the Sessions Judge before whom the accused appears is under an obligation to inform the accused that if he is unable to engage the services of Lawyer on account of poverty is entitled to obtain free legal services at the cost of the State.

In *Mohd. Hussain @ Julfikar Ali v. The State (Government of NCT) Delhi* reported in Criminal Appeal No.1091 of 2006, the appellant an illiterate foreign national was tried, convicted and sentenced to death by the Trial Court without assignment of Counsel for his defence, such a result is confirmed by the High Court. The convict was charged, convicted and sentenced for the offence under Sections 302 and 307 of Indian Penal Code and under Section 3 of the Explosive Substances Act, 1908. Fifty six witnesses and investigating officer were

examined without the appellant having a Counsel and none were cross-examined by appellant. Only one witness was cross-examined to complete the formality. Therefore it was held that every person has right to have a fair trial. A person accused of serious charges must not be denied of this valuable right. Here the appellant was provided with legal aid/Counsel at the last stage which Amounts to denial of effective and substantial aid. Hence the appellants conviction and sentence ware set aside. Section 304 does not confer any right upon the accused to have a pleader of his own choice for his defence at State expenses. If, however the objects to the lawyer if assigned, he must be left to defend himself at his own expenses.

(4) Expeditious trial:

Speed trial is necessary to gain the confidence of the public in judiciary. Delayed Justice leads to unnecessary harassment. The concept of speedy trial is an integral part of Article 21 of the Constitution. The right to speedy trial begins with actual restraint imposed by arrest and consequent incarceration, and continues at all stages namely, the investigation, inquiry, trial, appeal and revision. Section 309(1) provides that "in every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses is once begun the same shall be continued from day to day until all the witnesses in attendance examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. In *Hussainara Khatoon v. State of Bihar* reported in (1980) 1 SCC 98 the Supreme Court declared that speedy trial is an essential ingredient of "reasonable just and fair" procedure guaranteed by Article 21 of the Constitution. The State cannot avoid its constitutional obligation by pleading financial or administrative inadequacy. The Hon'ble Supreme Court in *A.R. Antulay v. Nayak* reported in AIR 1992 SC 1701, had issued guidelines for the time period during which different class of cases are to be concluded. It was held that "it is neither advisable nor feasible to draw or prescribe an outer time limit for conclusion of all criminal proceedings. While determining the alleged delay, the Court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, and the workload of the Court concerned. In *Ranjan Dwivedi v. C.B.I. Director General* reported in (2012) 8 SCC 495, the accused was tried for the assassination of Shri. *L.N. Mishra*, the then Union Railway Minister. The trial was pending for the past 37 years from the date of trial. The petitioners presented writ petitions praying for quashing of the charges and trial. But it was held that the trial cannot be terminated merely on the ground of delay without considering the reasons thereof. Hence the petition was dismissed.

(5) Protection against illegal arrest:

Article 22 of the Indian Constitution broadly deals with the right of person who has been arrested or detained. The first two clauses deals with the rights of person who has been arrested for a crime he has already committed. Other clauses are related to the rights and procedure for the arrest and detention of a person under preventive detention. Clause 1 of Article 22 of the Indian Constitution states that a person who has been arrested under normal circumstance (not under prosecution detention) has right to know the charges for which he has been arrested. The concerned authority or police or any other Government authority is compelled to tell him the information as soon as possible. In *Pranab Chartterjee v. State of Bihar* reported in (1970) 3 SCC 926... The Hon'ble Supreme Court held that Section 50 CrPC, is mandatory. If particulars of an offence are not communicated to an arrested person, his arrest and detention are illegal. The grounds can be communicated orally or even impliedly by conduct. Section 57 of Cr.P.C. and Article 22(2) of the Constitution provide that a person arrested must be produced before a Judicial Magistrate within

24 hours of his/her arrest. In *State of Punjab v. Ajaib Singh* the Court held that arrest without warrant call for greater protection and production within 24 hours ensures the immediate application of judicial mind to the legality of arrest.

The decision of the Supreme Court in *Joginder Kumar v. State of Uttar Pradesh* and *D.K. Basu v. State of West Bengal* reported in (1994) 4 SCC 260 and (1997) 1 SCC 416 ... respectively held that in Section 50-A making it obligatory on the part of police officer to inform the friends or relatives of the arrested person about his arrest and to make an entry in the register maintained by the police. This be done to ensure transparency and accountability in arrest. Section 160 of Cr.P.C., provides that investigation by any police officer of any male below 15 years or any woman can be made only at the place of their residence. Section 46(4) provides that no woman shall be arrested after sunset and before sunrise, save in exceptional circumstances and where such exceptional circumstances exit, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

(6) Proceedings in the presence of the accused:

For the conduct of the fair trial, it is necessary that all proceedings related to the case should take place in the presence of accused or his Counsel. The underlying principle behind this is that in a criminal trial the Court should not proceed *ex parte* against the accused person. It is also necessary for the reason that it facilitates to the accused to understand properly the prosecution case and to know the witnesses against him so that he can prepare his defence.

The Code does not explicitly provide for mandatory presence of the accused in the trial as Section 317 CrPC, provides that a Magistrate may dispense with the attendance and proceed with the trial if personal presence of the accused is not necessary in the interest of justice or the accused persistently disturbs the proceedings of the Court. The Courts should insist upon the appearance of the accused only when it is his interest to appear or when the Court feels that his presence is necessary for the effective disposal of the case. The Court should see that undue harassment is not caused to the accused appearing before them. Section 273 of the Code provides that all evidence taken in the course of trial shall be taken in the presence of accused or if the personal attendance of the accused is dispensed with then the evidence be taken in the presence of his pleader.

For fair trial the accused person has to be given full opportunity to defend himself. This is possible only when he should be supplied with the copies of the charge-sheet, all necessary documents pertaining to the investigation and the statements of witnesses effected by the police during investigation. Section 207 makes it obligatory on the Magistrate to supply copies of these documents to the accused free of cost. Article 14 of the Constitution ensures that the parties be equally treated with respect to introduction of evidence by means of interrogation of witnesses. The prosecution must inform the defence of the witnesses. It intends to call at trial within a reasonable time prior to the trial so that the accused may have sufficient time to prepare his/her defence. In fairness to the accused, she or his Counsel must be given full opportunity to cross-examine the prosecution witness.

In *Badri v. State of Rajasthan*, reported in AIR 1976 SC 560, the Hon'ble Supreme Court held that where a prosecution witness was not allowed to be cross-examined by the defence on a material point with reference to his earlier statement made before the police, his evidence stands untested by cross-examination and could not be accepted as corroborating to his previous statement.

(7) Right of Bail:

The dictionary meaning of the expression "bail" denotes a security for appearance of

a prisoner for his release. Etymologically, the word is derived from an old French verb "bailer" which means to "give" or "to deliver", although another view is that its derivation is from the Latin term "baiulare", meaning "to bear a burden". Bail is a conditional liberty. *Stroud's Judicial Dictionary* (4th Edn., 1971) spells out certain other details. It states: "… when a man is taken or arrested for felony, suspicion of felony, indicted of felony or any such case, so that he is restrained of his liberty. And, being by law bailable, offereth surety to those which have authority to bail him, which sureties are bound for him to the King's use in a certain sums of money or body for body, that he shall appear before the justices of goal delivery at the next sessions, *etc.* Then upon the bonds of these sureties, as is aforesaid, he is bailed that is to say, set at liberty until the day appointed for his appearance." Bail may thus be regarded as a mechanism whereby the State devolutes upon the community the function of securing the presence of the prisoners and at the same time involves participation of the community in administration of justice. Personal liberty is fundamental and can be circumscribed only by some process sanctioned by law. Liberty of a citizen is undoubtedly important but this is to balance with the security of the community. A balance is required to be maintained between the personal liberty of the accused and the investigational right of the police. It must result in minimum interference with the personal liberty of the accused and the right of the police to investigate the case. It has to dovetail two conflicting demands, namely, on the one hand the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime and on the other, the fundamental canon of criminal jurisprudence *viz.*, the presumption of innocence of an accused till he is found guilty. Liberty exists in proportion to wholesome restraint, the more restraint on others to keep off from us, the more liberty we have, *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27. The law of bail, like any other branch of law, has its own philosophy and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime and presumption of innocence in favour of the alleged criminal. An accused is not detained in custody with the object of punishing him on the assumption of his guilt, *Vaman Narain Ghiya v. State of Rajasthan*, (2009) 2 SCC 281 = (2009) 1 SCC (Cri.) 745. The Hon'ble Supreme Court while granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for *prima facie* concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The Court while granting bail has to consider, among other circumstances, the factors such as (a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (c) *prima facie* satisfaction of the Court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted, *Dipak Shubhashchandra Mehta v. CBI*, (2012) 4 SCC 134. To set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required, in order that he may be safely protected from prison, to which they have, if they fear his escape, *etc.*, the legal power to deliver him. Bail is either in civil or criminal cases.

By virtue of Section 436 of Criminal Procedure Code, the accused can claim bail as a matter of right in cases which have been shown as bailable offences in the First Schedule of the Code. Bail basically release from restrainment, more particularly, releases from custody of the police. An order of bail gives back to the accused freedom of his movement on condition that he must appear to take his trial. But bail under Section 389(1) Cr.P.C. against conviction is not a matter of right whether the offence is bailable or non-bailable. If no charge-sheet is filed before expiration of 60/90 days as the case may be the accused in custody has a right to be released on bail. In bailable offences, the Magistrate has the power to release on bail without notice to the other side if charge-sheet is not filed within a period of sixty days. The provision of bail to women, sick and old aged persons is given priority subject to the nature of offence.

(8) Prohibition on double jeopardy:

Second penalty based on the same cause of action, would amount to double jeopardy, *Lt. Governor, Delhi v. H.C. Narinder Singh*, (2004) 13 SCC 342.

The concept of the double jeopardy is based on the doctrine of autrefois acquit and autrefois convict which mean that if a person is tried and acquitted or convicted of an offence he cannot be tried again for the same offence or on the same facts of any other offence. This cause embodies the common law rule of *memo debet vis vexari* which means that no man should be put twice in peril for the same offence. Section 300 of the Code provides that person once convicted or acquitted on the same facts for any other offence, plea of double jeopardy is not applicable in case the proceedings for which the accused is being tried are distinct and separate from the offence, for which the accused has already been tried and convicted. In *Kolla Veera Raghav Rao v. Gorantla Venkateswa Rao* reported in 2011 SCC 703, the Supreme Court differentiated between Section 300(1) of CrPC and Article 20(2) of the Constitution. While, Article 20(2) of the Constitution only states that no one can be prosecuted and punished for the same offence more than once, Section 300(1) of CrPC states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts. Therefore, the second prosecution would be barred by Section 300(1) of CrPC.

In *S.A. Venkataraman v. Union of India* reported in AIR 1954 SC 375, the appellant was dismissed from service as a result of an inquiry under the Public Servants (Inquiries) Act, 1960, after the proceedings were before the Enquiry Commissioner. Thereafter, he was prosecuted before the Court for having committed offences under the Indian Penal Code, under the Prevention of Corruption Act. The Supreme Court held that the proceedings taken before the Enquiry Commissioner did not amount to a prosecution for an offence. It was in the nature of a fact finding to advise the Government for disciplinary action against the appellant and it cannot be said that the person has been prosecuted.

In *Leo Roy Frey v. Superintendent, District Jail* reported in AIR 1958 SC 119, the accused was prosecuted and punished under the Sea Customs Act, 1878. Later on, he was prosecuted under Section 120 of the Indian Penal Code, 1860 for conspiracy to commit the act for which he was already convicted under the Sea Customs Act, 1878. It was held that the second prosecution was not barred by Article 20(2), since it was not for the same offence. Committing an offence and conspiracy to commit that offence has been held to be two distinct offences.

(9) Right against self-incrimination:

Clause (3) of Article 20 provides that No person accused of any offence shall be compelled to be a witness against himself. This clause is based on the maxim *nemo tenetur prodere accussare sipsum*, which means that no man is bound to accuse himself. In *State of Bombay v. Kathi Kalu* reported in AIR 1961 SC 1808, the Supreme Court held that "to be a witness" is not equal lent to

"furnish evidence" Self-incrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing the documents in Court which may throw a light on any of the points in the controversy, which do not contain any statement of the accused based on his personal knowledge. Compulsion means duress which includes threatening, beating or imprisoning the wife, parent or child of a person. Thus where the accused makes a confession without any inducement, threat or promise Article 20(3) does not apply. In *Dinsh Dalmia v. State of Madras* reported in AIR 2010 SC 1974, the Court held that the scientific tests resorted to by the investigation do not amount to testimonial compulsion. Hence the petition was dismissed.

Post-Trial Rights

(1) Lawful punishment:

The ordinary dictionary meaning of the word "punish" is "to cause the offender to suffer for the offence" or "to inflict penalty on the offender" or "to inflict penalty for the offence" (*Concise Oxford Dictionary*, 4th Edn.). Punishment can be otherwise defined held the Supreme Court relying on *Law Lexicon* by *P.R. Aiyer*, as penalty for the transgression of law and the word "punish" denotes or signifies some offence committed by the person who is punished, *Lakshmi Devi Sugar Mills Ltd. v. Ram Sarup*, AIR 1957 SC 82 = 1956 SCR 916.

The penalty for transgressing the law. Punishment is the penalty for the transgression of law. The terms "punishment" and "penalty" are frequently used as synonyms of each other, *Thomas Dana v. State of Punjab*, AIR 1959 SC 375: The punishments to which offenders are liable under the provisions of this Code are, — *First*. — Death; *Secondly*. — Imprisonment for life; *Thirdly*. — Imprisonment, which is of two descriptions, namely: — (1) Rigorous, that is, with hard labour; (2) Simple; *Fourthly*. — Forfeiture of property; *Fifthly*. — Fine, [*Section 53, Penal Code, 1860 (India)*].

Article 20(1) explains that a person can be convicted of an offence only if that act is made punishable by a law in force. It gives constitutional recognition to the rule that no one can be convicted except for the violation of law in force. In *Om Prakash v. State of Uttar Pradesh* reported in AIR 1957 All. 388, it was held that, offering bribe was not an offence. Section 3 of the Criminal Law (Amendment) Act, 1952 inserted Section 165-A in Indian Penal Code, 1860. Article 20(1) provides that no person shall be subjected to a penalty greater than which might have been inflicted under law in force at the time of commission of offence. It prohibits the enhancement of punishment for an offence retrospectively, but Article 20(1) has no application to cases of under preventive of detention.

(2) Right to Human treatment:

The expression "life" in Article 21 of the Indian Constitution does not connote merely physical or animal existence. The right to life includes right to live with human dignity. It is the duty of the State not only to protect human dignity but to facilitate it by taking positive steps in that direction. No exact definition of human dignity exists. It refers to the intrinsic value of every human being, which is to be respected. It cannot be taken away. It cannot be given. It simply is. Every human being has dignity by virtue of his existence, *M. Nagaraj v. Union of India*, (2006) 8 SCC 212.

Means a method, technique or process, designed to modify the physical, chemical or biological characteristics or composition of any hazardous waste so as to reduce its potential to cause harm, [*Rule 3(1)(zd), Hazardous Wastes (Management, Handling and Trans boundary Movement) Rules, 2008 (India)*].

A prisoner does not become a non-person. Prison deprives liberty. Even while doing this, prison system must aim at reformation. In prison treatment must be geared upto psychic healing, release of stress, restoration of self-respect apart from training to adopt oneself to the life outside.

Every prisoner has the right to a clean and sanitized environment in jail, right to be medically examined by the medical officer, right to visit and access by family members, *etc*. Recognizing the right to medical facilities, the National Human Rights Commission has recommended award Rs.1 lakh to be paid as compensation by the Government of Maharashtra to the dependents of an under-trial prisoner who died in Nasik Road Prison due to lack of medical treatment.

(3) Right to file appeal:

Broadly speaking, an appeal is a proceeding taken to rectify an erroneous decision of a Court by submitting the question to a Higher Court, *State of Gujarat v. Salimbhai Abdulgaffar Shaikh*, (2003) 8 SCC 50. An appeal is a proceeding where an higher forum reconsiders the decision of a lower forum, on questions of fact and questions of law, with jurisdiction to confirm, reverse, modify the decision or remand the matter to the lower forum for fresh decision in terms of its directions. In its natural and ordinary meaning an appeal is a remedy by which a cause determined by an inferior forum is subjected before a superior forum for the purpose of testing the correctness of the decision given by the inferior forum. The right of appeal is a substantive and valuable right of any appellant who is normally a person aggrieved by the impugned decision, *Bolin Chetia v. Jogadish Bhuyan*, (2005) 6 SCC 81. It is a continuation and rehearing of the suit. Appeal Court is therefore entitled to take into account even facts and events which came into existence after passing of decree appealed against. Hence, if a new enactment comes into force during pendency of the appeal, Appellate Court can mould the relief by applying the new enactment, *Dilip v. Mohd. Azizul Haq*, (2000) 3 SCC 607. An appeal is the right of entering a Superior Court invoking its aid and interposition to redress an error of the Court below. The central idea behind filing of an appeal revolves round the right as contradistinguished from the procedure laid down there for.

Section 389(1) empowers the Appellate Court to suspend execution of sentence, or when the convicted person was in confinement, to grant bail pending any appeal to it. Courts need not give notice to the Public Prosecutor before suspending sentence or releasing on bail. Existence of an appeal is a condition precedent for granting bail. Bail to a convicted person is not a matter of right irrespective of whether the offence is bailable or non-bailable and should be allowed only when after reading the judgment and hearing the accused. It is considered justified.

(4) Proper Execution of sentence:

In the case of hanging of *Afzal Guru's* by death sentence, the Government deliberately ignored the view of the Supreme Court and Courts across the world pointed that hanging a person after holding him in custody for years is in-human. *Mohammad Afzal Guru* was convicted by Indian Court for the December, 2001 attack on the Indian Parliament, and sentenced to death in 2003 and his appeal was rejected by the Supreme Court of India in 2005. The sentence scheduled to be carried out on 20th October, 2006, but *Guru* was given a stay of execution after protests in Jammu and Kashmir and remained on death row. On 3rd February, 2013, his mercy petition was rejected by the President of India, Sri. *Pranab Mukherjee* ultimately the said *Guru* was secretly hanged in Delhi's Tihar Jail around on 9th February, 2013.

Conclusion

The Judge is not to draw any inference against the accused from the fact that he has been charged with a crime and is present in Court and been represented by a Counsel. He must decide the case solely on the evidence presented during the trial. *State of U.P. v. Naresh and others*. In this case it was held that the law in this regard is well settled that while dealing with a judgment of an acquittal, the Appellate Court must consider entire evidence so as to arrive at a finding as to whether the views of the Trial Court were perverse or otherwise unsustainable.