

Concept of a Fair Trial

Introduction

The right to a fair trial is a norm of international human rights law and also adopted by many countries in their procedural law. Countries like U.S.A., Canada, U.K., and India have adopted this norm and it is enshrined in their Constitution. The right to a fair trial has been defined in numerous international instruments. The major features of fair criminal trial are preserved in the **Universal Declaration of Human Rights, 1948**.

Article 10– Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11– (1) Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. (2) No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed.

Article 14 of the **International Covenant on Civil and Political Rights** reaffirmed the objects of UDHR and provides that “*Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*” **Article 14(2)** provides for the presumption of innocence, and **article 14(3)** sets out a list of minimum fair trial rights in criminal proceedings. **Article 14(5)** establishes the rights of a convicted person to have a higher court review the conviction or sentence, and **article 14(7)** prohibits double jeopardy

Section 11 of the **Canadian Charter of Rights and Freedoms**, protects a person’s basic legal rights in criminal prosecution.

Article 6 of the **European Convention on Human Rights** provides the minimum rights, adequate time and facilities to prepare their defense, access to legal representation, right to examine witnesses against them or have them examined,

right to the free assistance of an interpreter to everyone charged with a criminal offense.

The Sixth Amendment to the United States Constitution provides in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

As far as Indian legal system is concerned, the international promise of fair trial is very much reflected in its constitutional scheme as well as its procedural law. Indian judiciary has also highlighted the pivotal role of fair trial in a number of cases. It is designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of their basic rights and freedoms, the most prominent of which are the right to life and liberty of the person. The concept of fair trial is based on the basic principles of natural justice.

Fair Trial

The concept of fair trial is based on the basic ideology that State and its agencies have the duty to bring the offenders before the law. In their battle against crime and delinquency, State and its officers cannot on any account forsake the decency of State behavior and have recourse to extra-legal methods for the sake of detection of crime and even criminals. For how can they insist on good behavior from others when their own behavior 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 persons.[iii] Human life should be valued and a person accused of any offense should not be punished unless he has been given a fair trial and his guilt has been proved in such trial.

In *Zahira Habibullah Sheikh and ors v. State of Gujarat and ors* The Supreme Court of India observed “each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and to society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witness or the cause which is being tried, is eliminated.”

The right to a 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 and security of person.

Principles of Fair Trial

1. Adversary trial system:

The system adopted by the **Criminal Procedure Code, 1973** is the adversary system based on the accusatorial method. In adversarial system responsibility for the production of evidence is placed on the prosecution with the judge acting as a neutral referee. This system of criminal trial assumes that the state, on one hand, by using its investigative agencies and government counsels will prosecute the wrongdoer who, on the other hand, will also take recourse of best counsels to challenge and counter the evidences of the prosecution.

Supreme Court has observed “if a Criminal Court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest.”

In *Himanshu Singh Sabharwa v. State of M.P. and Ors.*, the apex court observed that if fair trial envisaged under the Code is not imparted to the parties and court has reasons to believe that prosecuting agency or prosecutor is not acting in the requisite manner the court can exercise its power under **section 311** of the Code or under **section 165** of the **Indian Evidence Act, 1872** to call in for the material witness and procure the relevant documents so as to sub serve the cause of justice.

2. Presumption of 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 courts cannot record a finding of the guilt of the accused. This presumption is seen to flow from the 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.

In *State of U.P. v. Naresh and Ors.* 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 *Kali Ram v. State of H.P.* 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 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 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 prosecuting party and the police is also an agency of the state, it is important that the judiciary is unchained of all suspicion of executive influence and control, direct or indirect. The whole burden of fair and impartial trial thus rests on the shoulders of the judiciary in India.

The primary principle is that no man shall be judge in his own cause. **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*^[ix], the court observed that the question is not whether a bias has actually affected the judgement. The real test is whether there exists a circumstance according to which a litigant could reasonably apprehend that a bias attributable to a judicial officer must have operated against him in the final decision of the case.

In this regard **section 6** of the Code is relevant which separates courts of Executive Magistrates 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.

4. Autrefois Acquit and Autrefois Convict:

According to this doctrine, 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 for any other offence. This doctrine has been substantially incorporated in the **article 20(2)** of the Constitution and is also embodied in **section 300** of the Cr. P.C.

In *Kolla Veera Raghav Rao vs Gorantla Venkateswara Rao*[x] the Supreme Court observed that **Section 300(1)** of Cr.P.C. is wider than **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 Cr.P.C. states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts. In the present case, although the offences are different but the facts are the same. Hence, **Section 300(1)** of Cr.P.C. applies. Consequently, the prosecution under **Section 420**, IPC was barred by **Section 300(1)** of Cr.P.C. The impugned judgment of the High Court was set aside.

Pre-Trial Rights

The Cr. P.C. entitles an accused of certain rights during the course of any investigation, enquiry or trial of an offense with 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 person is not informed of the accusation against him. The Code therefore provides in **section 228, 240, 246, 251** in plain words that when an accused person is brought before the court for trial, the particulars of the offense of which he is accused shall be stated to him.

In case of serious offenses, the court is required to frame in writing a formal charge and then read and explain the charge to the accused person. A charge is not an accusation in abstract, but a concrete accusation of an offense alleged to have been committed by a person. The right to have precise and specific accusation is contained in **section 211**, Cr. P.C.

2. Right to open trial:

Fair trial also requires public hearing in an open court. The right to a public hearing means that the hearing should as a rule be 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 orally pronounced in court or when it was published, or when it was made public by a combination of those methods.

Section 327 of the Code makes provision for open courts for public hearing but it also gives discretion to the presiding judge or magistrate that if he thinks fit, he can

deny the access of the public generally or any 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 *Naresh Sridhar Mirajkar v. State of Maharashtra* 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 *State of Punjab v. Gurmit*, the court held that the undue publicity is evidently harmful to the unfortunate women victims of rape and such other sexual offenses. Such publicity would mar their future in many ways and may make their life miserable in society. **Section 327(2)** provides that the inquiry into and trial of rape or an offense 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 two things: a) an opportunity to the accused to secure a counsel of his own choice, and b) 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 to persons of limited means is a 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, 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* the court held that the accused is entitled to free legal services not only at the stage of trial but also when first produced before the Magistrate and also when remanded.

Further, **article 39-A** was also inserted in the Constitution as per the 42nd Amendment, 1976, which requires that the state should pass suitable legislation for promoting and providing free legal aid. To fulfill this Parliament enacted **Legal Services Authorities Act, 1987**. **Section 12** of the Act provides legal services to the persons specified in it.

In *Suk Das and Ors. v. Union Territory of Arunachal Pradesh*, the court strengthened the need for legal aid and held that “free legal assistance at state cost

is a fundamental right of a person accused of an offense 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 a lawyer on account of poverty is entitled to obtain free legal services at the cost of the State.

In *Mohd. Hussain @ Julfikar Ali Vs. The State (Govt. of NCT) Delhi* the appellant an illiterate foreign national was tried, convicted and sentenced to death by the trial court without assignment of counsel for his defense. Such a result is confirmed by the High Court. The convict is charged, convicted and sentenced under **Sections 302/307** of Indian Penal Code and also under **Section 3 of The Explosive Substances Act, 1908**. Fifty-six witnesses and investigating officer were examined without appellant having a counsel and none were cross-examined by appellant. Only one witness cross-examined to complete the formality.

Therefore it was held that every person has a right to have a fair trial. A person accused of serious charges must not be denied of this valuable right. Appellant was provided with legal aid/counsel at the last stage which amounted to a denial of effective and substantial aid. Hence the appellant's conviction and sentence was set aside. **Section 304** does not confer any right upon the accused to have a pleader of his own choice for his defense at State expenses. If, however. He objects to the lawyer assigned to him, he must be left to defend himself at his own expense.

4. Expeditious trial:

Speedy 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 stage of investigation, inquiry, trial, appeal and revision.

Section 309(1) provides *“in every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been 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 (IV) v. State of Bihar* the Supreme Court declared that speedy trial is an essential ingredient of 'reasonable just and fair' procedure guaranteed by article 21 and it is the constitutional obligation of the state to set up such a procedure as would ensure speedy trial to the accused. The state cannot avoid its constitutional obligation by pleading financial or administrative inadequacy.

The **Supreme Court in *A.R. Antulay v. R.S. Nayak***, issued guidelines for the time period during which different classes of cases are to be concluded. It was held "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, the workload of the court concerned, prevailing local conditions etc.- what is called systematic delay." The aforesaid decision came up for consideration in the case of *P. Ramachandra Rao* and was upheld and reaffirmed.

In *Ranjan Dwivedi vs C.B.I Tr. Director General* 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. In view of delay in completion of trial for more than 37 years from date of the 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:

Section 50 provides that any person arrested without warrant shall immediately be informed of the grounds of his arrest. The duty of the police when they arrest without warrant is to be quick to see the possibility of crime, but they ought to be anxious to avoid mistaking the innocent for the guilty. The burden is on the police officer to satisfy the court before which the arrest is challenged that he had reasonable grounds of suspicion.

In *Pranab Chatterjee v. State of Bihar* the court held that **Section 50** is mandatory. If particulars of 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 Constitution provides that a person arrested must be produced before a Judicial Magistrate within 24 hours of 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 the arrest.

The decisions of the Supreme Court in *Joginder Kumar v. State of Uttar Pradesh* and *D.K. Basu v. State of West Bengal*, were enacted in **Section 50-A** making it obligatory on the part of the police officer to inform the friend or relative of the arrested person about his arrest and also to make an entry in the register maintained by the police. This was done to ensure transparency and accountability in arrest. **Sec.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 exist, 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 a fair trial, it is necessary that all proceedings related to the case should take place in the presence of the 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 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** 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 interests of justice or that the accused persistently disturbs the proceedings in court. The courts should insist upon the appearance of the accused only when it is in his interest to appear or when the court feels that his presence is necessary for effective disposal of the case. 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 the trial shall be taken in the presence of the accused or if the personal attendance of the accused is dispensed with then the evidence shall 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

the witnesses called by the police during investigation. **Section 238** 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 the introduction of evidences 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 defendant may have sufficient time to prepare his/her defense. In fairness to the accused, he or his counsel must be given full opportunity to cross-examine the prosecution witness.

In *Mohd. Hussain @ Julfikar Ali Vs. The State (Govt. of NCT) Delhi*, it was held that every person has a right to have a fair trial. A person accused of serious charges must not be denied of this valuable right. Appellant was not provided an opportunity to cross-examine the fifty-six witnesses. Only one witness was cross-examined to complete the formality. Hence appellant's conviction and sentence was set aside.

In *Badri v. State of Rajasthan*, the court held that where a prosecution witness was not allowed to be cross-examined by the defense on a material point with reference to his earlier statement made before the police, his evidence stands untested by cross-examination and cannot be accepted as corroborating his previous statement.

7. Right to bail:

By virtue of **Section 436** the accused can claim bail as a matter of right in cases which have been shown as bailable offenses in the First Schedule to the Code. Bail is basically release from restraint, more particularly, release from custody of the police. An order of bail gives back to the accused freedom of his movement on condition that he will appear to take his trial. If the offense is bailable, bail will be granted without more ado. But bail under **Section 389(1)** after conviction is not a matter of right whether the offense is bailable or non-bailable.[xxvii] If no charge sheet is filed before the expiry of 60/90 days as the case may be; the accused in custody has a right to be released on bail. In non-bailable offenses, 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 age persons is given priority subject to the nature of the offense.

8. Prohibition on double jeopardy:

The concept of 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 offense he cannot be tried again for the same offense or on the same facts for any other offense. This clause embodies the common law rule of *nemo debet vis vexari* which means that no man should be put twice in peril for the same offense.

Section 300 of the Code provides that persons once convicted or acquitted not to be tried for the same offense or on the same facts for any other offense. Plea of double jeopardy is not applicable in case the proceedings for which the accused is being tried are distinct and separate from the offense for which the accused has already been tried and convicted.

In *Kolla Veera Raghav Rao vs Gorantla Venkateswara Rao*[xxviii] the Supreme Court differentiated between **Section 300(1)** of Cr. P.C. 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 offense more than once', **Section 300(1)** of Cr.P.C. states that no one can be tried and convicted for the same offense or even for a different offense but on the same facts. Therefore the second prosecution would be barred by **Section 300(1)** of Cr.P.C.

In *S.A. Venkataraman v. Union of India* 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 offenses under the Indian Penal Code, and the Prevention of Corruption Act. The Supreme Court held that the proceeding taken before the Enquiry Commissioner did not amount to a prosecution for an offense. It was in the nature of a fact-finding to advise the Government for disciplinary action against the appellant. It cannot be said that the person has been prosecuted.

In *Leo Roy Frey v. Superintendent, District Jail*, 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 offense. Committing an offense and conspiracy to commit that offense has been held to be two distinct offences.

9. Right against self-incrimination:

Clause (3) of **Article 20** provides: “*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 accusare seipsum*, which means that “no man is bound to accuse himself.

In *State of Bombay vs. Kathi Kalu*[xxxii], the Supreme Court held that “to be a witness” is not equivalent to “furnishing 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 documents in Court which may throw a light on any of the points in the controversy, but 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.

The Apex Court in *Selvi v. State of Karnataka*[xxxiii] drew following conclusions:

- The taking and retention of DNA samples which are in the nature of physical evidence, does not face constitutional hurdles in the Indian context.
- Subjecting person to narco- analysis, Polygraphy and Brain fingerprinting tests involuntarily, amounts to forcible interference with person’s mental processes, and hence violates the right of privacy as well as **Article 20(3)**.
- A person administered the narco-analysis technique is encouraged to speak in a drug-induced State and there is no reason why such an act should be treated any differently from verbal answers during an ordinary interrogation.

In *Dinesh Dalmia v. State of Madras*[xxxiiii], the court held that the scientific tests resorted to by the investigating does not amount to testimonial compulsion. Hence, the petition was dismissed.

Post-Trial Rights

1. Lawful punishment:

Article 20(1) explains that a person can be convicted of an offense 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 a law in force. In *Om Prakash v. State of Uttar Pradesh*[xxxv], offering bribe was not an offense in 1948. **Section 3** of the Criminal Law (Amendment) Act, 1952 inserted **Section 165A** in the **Indian Penal Code, 1860**, declaring offering bribe as punishable. It

was held that the accused could not be punished under **Section 165A** for offering bribe in 1948. **Article 20(1)** provides that no person shall 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 offense. It prohibits the enhancement of punishment for an offense retrospectively. But article 20(1) has no application to cases of preventive detention.[xxxv]

2. Right to human treatment:

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 to psychic healing, release of stress, restoration of self-respect apart from training to adapt oneself to the life outside.[xxxvi] Every prisoner has the right to a clean and sanitized environment in the 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 recommended the award Rs. 1 Lakh to be paid as compensation by the Govt. of Maharashtra to the dependents of an under trial prisoner who died in the Nasik Road Prison due to lack of medical treatment.[xxxvii]

3. Right to file appeal:

Section 389(1) empowers the appellate court to suspend execution of sentence, or when the convicted person is in confinement, to grant bail pending any appeal to it. Court 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 judgement and hearing the accused it is considered justified.[xxxviii]

4. Proper execution of sentence:

The hanging of Afzal Guru was criticised by human rights activists, legal experts all over the country. In carrying out Afzal Guru's death sentence, the government deliberately ignored the view of the Supreme Court and courts across the world that hanging a person after holding him in custody for years is inhuman. 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 was scheduled to be carried out on 20 October 2006, but Guru was given a stay of execution after protests in Jammu and Kashmir and remained on death row. On 3 February 2013,

his mercy petition was rejected by the President of India, Pranab Mukherjee. He was secretly hanged at Delhi's Tihar Jail around on 9 February 2013.

Conclusion

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

THANK YOU