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Human Rights of an Accused Person: A Critical Analysis under Indian Laws

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ABSTRACT

The main aim of this Research Paper is to aware people about the Rights in case of Arrest or Detention. This Research Paper also helps Researcher to come forward to research on topics related to this Right. There are multiple views on this Topic, but I still realized to embody it in People Life's. Article 20, 21 and 22 of Indian Constitution provides a Right to Freedom a Fundamental Right which also provides Rights of Accused Person. The researcher has research by various secondary sources and also discusses many related case laws. This case law has helped the researcher to analyse the topic. The researcher also research on Sections of Code of Criminal Procedure for accused person in human perspective.

Keywords: Criminal, Arrest, Constitution, Procedure

I. INTRODUCTION

Article 20² provides the Fundamental Rights as well as safeguards to the person accused of crimes. The Constitution also provides that “No person shall be deprived of his Life or Personal Liberty except according to procedure established by law.”³ This means that person can be deprived of life or personal liberty provided his deprivation was brought about in accordance with the procedure prescribed by law. Our constitution is based on fundamental that

*“Let Hundreds Go Unpunished, but Never Punish an Innocent Person”*⁴

Right to get a fair representation in a criminal procedure is a facet of Right to Equality (Article 14). Thus, accused is given fair equality as par with another citizen. The accused persons are also granted certain rights, the most basic of which are found in the Indian Constitution. An accused has certain rights during the course of any investigation; enquiry or

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²The Constitution of India, 1950

³*Id.* Art 21

⁴Sim Kaur, “Rights of Accused Persons”, *Legal Service India* (March 30, 2021), <http://www.legalserviceindia.com/legal/article-219-rights-of-accused-persons.html>

trial of offence with which he is charged, and he should be protected against arbitrary or illegal arrest. The Judiciary Authority of India also frames out a wider concept on Rights of Accused Person, Article 22⁵, talks about, no person shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and to be defended by, legal practitioner of his choice. Thus, to deal, with these issues/problems Part III of Indian Constitution deals with it.

The Rights and Fundamental Rights are sections of the Constitution of India that provides people with their rights. These Fundamental Rights are considered as basic human rights of all citizens, irrespective of their gender, caste, religion or creed. etc. These sections are the vital elements of the constitution, which was developed between 1947 and 1949 by the Constitution of India.

Human rights are the basic rights available to any human being by virtue of his birth in human race. It is inherent in all human beings irrespective of their nationality, religion, language, sex, colour or any other consideration. The Protection of Human Rights Act, 1993 defines Human Rights as: “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”.

Protection of human rights is essential for the development of the people of the country, which ultimately leads to development of the national as a whole. The Constitution of India guarantees basic human rights to each and every citizen of the country. The framers of the Constitution have put their best efforts in putting down the necessary provisions. However, with continues developments taking place, the horizon of human rights has also expanded. The parliamentarians are now playing a great role in recognizing the rights of people and passing statues, amending provisions etc. as and when required.

II. PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES

(In this chapter we will cover Article 20. What is Article 20? What are the safeguards provided to an Accused person? How will Article 20 protect the Accused person?)

Every day in our daily life we have come across, numerous news reports of offences, crimes, for which someone is being arrested or in custody for such an offence. Therefore, Constitution of India also frames out Rules & Regulations for arresting an accused person and also frames out Protection /Rights/Safeguards for an Accused person.

The Article 20 is the main pillars of the Fundamental Rights, and it mainly deals with the

⁵Supra Note 2.

protection or safeguards of certain rights of conviction for offences, an individual arrested for an offence, the provision of Article 20 safeguards their rights. The best striking feature of this Article is that it will not be suspended in any situation whether in an Emergency Period.

Article 20 of Indian Constitution provides the following safeguards to the person accused of crimes:

- Ex-Post Facto Law Clause (1) of Article 20
- Double Jeopardy Clause (2) of Article 20
- Self-Incrimination Clause (3) of Article 20

(A) Protection against Ex-Post Facto Law

Clause (1) of Article 20 of the Indian Constitution says that “no person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.” Ex Post Facto is a Latin word which means ‘after the fact’ or ‘out of the aftermath’ and also known as retroactive laws. An Ex-Post Facto Law is a law which imposes penalty retrospectively, i.e. on acts already done and increases the penalty for such an act. This means that, Ex Post Facto laws are those laws which are enacted after an action is committed making such an act illegal although it was legal when committed. In the literal sense, it’s a law which criminalizes such conduct which was once legal. Protection under this law is vested only for the criminal offences not for civil offences.

Provisions in Other Constitutions

- **U.S Constitution:** In the United States, the Ex-Post Facto Law is frame in the Article I, section 9 of the U.S. Constitution. Over the years, when deciding ex post facto cases, the United States Supreme Court has referred repeatedly to its ruling in the *Calder v. Bull*⁶ case of 1798, in which Justice Chase established four categories of unconstitutional ex post facto laws.
- **Irish Constitution:** In Ireland, the Ex-Post Facto Law is frame in the Article 15.5.1°.
- **Japanese Constitution:** Article 39 of the constitution of Japan prohibits the retroactive application of laws. Article 6 of Criminal Code of Japan further state that if a new law comes into force after the deed was committed, the lighter punishment must be given.

⁶3 U.S. 386 (3 Dall). 386; 1 L. Ed. 648; 1798 U.S. LEXIS 148

- **U.K Constitution:** In the United Kingdom, ex post facto laws are strictly frowned upon, but are permitted by virtue of the doctrine of parliamentary sovereignty. Historically, all acts of Parliament before 1793 were ex post facto legislation, inasmuch as their date of effect was the first day of the session in which they were passed. This situation was rectified by the Acts of Parliament (Commencement) Act 1793.⁷

In the case of *Kedarnath v State of West Bengal*⁸, the Hon'ble Supreme Court of India observed that whenever an act is criminal offence and penalty decide by legislature, is always be in prospective in nature and can be implemented in retrospective way. This means that offence has committed in 1947, so according to 1947 laws, the accused person should be governed. In another case of *Ratan Lal v State of Punjab*⁹, the court has observed that, if any retrospective implementation law has reducing the punishment or any penalty for the said offence, then it will be valid, and court will govern according to it. Therefore, the main aim is to maintain law and order and to protect illegal detention. The first part of Article 20(1), deals that if any act is committed, for that offence, the accused person is liable when the law is existed for it. The second part of Article 20(1), deals that if punishment was in forced, the offence was committed will be applicable and there will be no retrospective operation.

(B) Immunity from Double Jeopardy

Clause (2) of Article 20 of our Constitution says that “**Nemo debet bis vexari pro una et eadem causa**, this means that no person shall be prosecuted and punished for the same offence more than once”.¹⁰The Double Jeopardy is the law, from which the accused person gets protection that, if he/she is prosecuted for the offence and has the certainty within himself that he would not be prosecuted again for the same offence and no other prosecution should be conducted for charged/ punishes himself/herself. This law protects an accused person, trying getting a charge or punishment again for the same offence. If the person is charged again for the same offence, then court will place the decision according to it.

Several Reasons for Protection from Double Jeopardy are:

1. Preventing the Government to use its Superior Power on innocent people.

⁷Nikita Vaidya, “Protection Against Ex-Post Facto Laws, *Legal Services India* (March 30, 2021) available at <http://www.legalservicesindia.com/article/267/Protection-against-Ex-Post-Facto-Laws.html#>

⁸AIR 1954 SC 660.

⁹1965 AIR 444, 1964 SCR (7) 676.

¹⁰Supra Note 6.

2. Protection of Accused Person from Financial, Economical, and social consequences of successful prosecutions.
3. Elimination of cumulative punishment which might be imposed by judicial system.

Hence, it safeguards the individual interest from facing multiple punishment or successive criminal proceeding for the same offence.

Four Essentialities of Double Jeopardy are:

1. The person must be accused for an offence.
2. The person should be Prosecuted and Punished.
3. It should be for the same offence.
4. The offence should commit more than once.

Provisions in Other Constitutions

1. **U.S. Constitution:** The similar provision of this law is framed in The Double Jeopardy of Clause Fifth Amendment to the United States Constitution: “[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or Limb.”
2. **U.K. Constitution:** The above provision of the American Constitution is indeed founded on the English Common Law rule ‘*nemo debet bis vexari*’. It enabled an accused to raise a plea not only for *autrefois convict* but also of *autrefois acquit* before the implementation of the Criminal Justice Act, 2003.
3. **Germany:** In Germany, also principle of double jeopardy is stated in Article 103(3) of the Germany’s Constitution: “No one may be punished for the same act more than once in pursuance of general legislation.”
4. **Japan:** The Constitution of Japan states in Article 39 that “No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.”¹¹

In the Landmark case of **Maqbool Husain v State of Bombay**,¹² the appellant was arrested on Airport for illegal possession of gold taking from another country, under the provisions of Sea Customs Act, 1878. The gold was confiscated and the action was also taken under Section 167 (8) for appellant. After the prosecution of Sea Custom Authority, the appellant

¹¹Sonakshi Verma, “Guarantee Against Double Jeopardy”, *Lawctopus* (March 30, 2021) available at <https://www.lawctopus.com/academike/double-jeopardy/>

¹² AIR 1953 SC 325

was again charged and get prosecuted for the same offence under Foreign Exchange Regulation Act, 1947. The appellant has plea the petition to the court for taking constitutional support, the court has rejected the pleas and observed that the provisions of Double Jeopardy Law is always be considered for only Judicial proceedings. In another case of **Venkataraman v. Union of India**,¹³ the appellant was dismissed for the service as a result of an inquiry under the Public Security Act, 1960; later on the appellant was again charged and prosecuted under Indian Penal Code and Prevention of Corruption Act. The court held that the proceedings against the appellant for the same offence are to be void. Hence, the second prosecution of the appellant not fulfil the essentialities of Double Jeopardy and it should not be protected guarantee under Article 20 (2). Therefore, the main aim is to maintain the dignity of country, providing all the people Justice, for committing any offence the court will take a court for it, but committing same offence again the court will declare void, this means that, no person should get punishment twice for the same offence. The Doctrine of double jeopardy provides a right to the accused person to save from being punished twice for the same offence and he/she can take plea of it.

(C) Immunity From Self-Incrimination

Clause (3) of Article 20 of Indian Constitution provides that “no person accused of any offence shall be compelled to be a witness against himself.” The Legal Maxim of Article 20 (3) is “**nemo tenetur prodere accusare seipsum**” which means “no man should be bound himself.”¹⁴ This law states that, no person can be forced to give evidence against him, the Supreme Court has widened this term, that accused can’t be a witness against himself nor anyone can forcibly take his oral as well as written evidence, the accused also have a **Right to Silence**¹⁵ as a Fundamental Right. This article prohibits the obtaining of Thumb- Impression or Specimen- Signature from him. Three Ingredients of Self-Incrimination:

1. The person must be accused of an offence.
2. The protection is compulsion forcibly to be a witness.
3. The witness evidence should be given against himself.

Provisions in other Constitutions

1. **U.S. Constitution:** The Fifth Amendment of the American Constitution declares that “no person shall be compelled in any criminal case to be witness against himself.”

¹³ AIR 1954 SC 375

¹⁴ Supra Note 6

¹⁵ The Constitution of India, Article 19 (1) (a)

2. U.K. Constitution: Under Common Law, this law states that “a person accused of any offence shall not be compelled to discover documents or objects which incriminate himself.”

In the case of *Nandini Satpathy vs Dani (P.L.)*¹⁶, the Nandini Satpathy was a appellant where as Dhani PL was respondent, the respondent has plea against Nandini Satpathy, the Police has charged the appellant Nandini Satpathy for corruption, the police wants to prosecute and investigate the further case, for the investigation process the police has called Nandini Satpathy to answers the list of questions (related to that case). With the same the Police investigation officers has charged Section 179 The appellant has neglect it and also file the protection of Self-Incrimination from Supreme Court, the court observed that the accused person is protected from Self-Incrimination and this Section 179 should not be applied on him.

In another case of *State of Bombay v. Kathi Kalu Oghad*¹⁷, the court has observed that The Thumb-Impression, Writing Specimen, Signatures cannot be counted in a “witness category”. The accused cannot refuse for the same and also Article 20 (3) does not applies on these types of situations.

III. PROTECTION OF LIFE AND PERSONAL LIBERTY

Article 21 of the Constitution says that: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”¹⁸ The Article 21 is also called a Heart of the Constitution, the most organic and progressive provisions, all framed in Article 21. This Article states that, everyone has Right to Life, Liberty, and the security of person within the country. This means that the Golden Law of the country is Article 21 which signifies our major Fundamental Rights i.e. Right to Life. It has a wider meaning which includes Right to Livelihood, Right to Health, Right to live with Human Dignity, Right to Pollution Free Air, Right to Travel abroad, Right to Privacy, Right to Sleep, Right to Education, Right to Free Air Legal Aid and many other Rights related to our Life and Personal Liberty, along all these Rights the Constitution has also framed out the Rights for Accused Person, i.e. Arrest and Detention of a Judgement Debtor. The purpose of this law, is that the court give-relief to a Decree-Holder and also committed that Judgement-Debtor will pay the sum of money i.e. damages, which remains unsatisfied, if he is not paid before. It also protects Honest Debtors, where his inability to pay is supported by a reasonable cause. The

¹⁶1978 AIR 1025, 1978 SCR (3) 608

¹⁷1961 AIR 1808, 1962 SCR (3) 10

¹⁸Supra Note 6

court has to afford the right to be heard to the debtors in order to ensure proper justice.

IV. SAFEGUARDS AGAINST ARBITRARY ARREST AND DETENTIONS

Article 22 is one of the major rights for accused person lies in the category of Right to Freedom a one of the Golden Fundamental Right. The Article 22 is mainly divided in 2 categories: **Arbitrary Arrest and Arbitrary Detention.**

- **Arbitrary Arrest:** Arrest is a legal and technical word in which Police Investigation Officer restrain a person who did crime or offence, in which a person's maximum liability should be confine by Officers, and then the person has to live in Law Custody and in a control investigation officers.
- **Arbitrary Detention:** It is the violation of the Fundamental Right, i.e. Right to Liberty, in this person arrested and his/her liability confines by nationally laws or recognized International standards, it is also a illegal prosecutions, and it makes victim to violates more Human Rights since the victims deprived to defend themselves from Torture, Extra-Judicial Execution, Other Cruelty, Degrading Treatment etc.
- **Punitive Detention:** It means, the detention for a criminal offence, it occurs when the offence is committed or an attempt has been made towards the crime. This detention protects or provides Right against victim to imprison him known as punitive detention. It may be called "**Detention as a Punishment for the Criminal Offence.**"
- **Preventive Detention:** It states that, imprisonment of a person with the aim of preventing a country from occurrence of any offence or crime. It is an action taken by any Administrative Authority that may be any wrongful action will commit which might be concern to detent a person, on whom authority have a doubt which might be a prejudicial to a state.

The objective of Preventive Detention;

1. Security of the State.
2. Maintaining Pubic Order.
3. Maintaining Foreign Affairs.
4. Securing Services Essential to the Community
 - The Clauses of Article 22 are divided into Ordinary Laws and Preventive Detention Laws.

- The First Part of Article 22 deals with a Right of a Person under Ordinary Laws; clauses (1) – (4) guaranteed 4 rights on a person who is arrested for any offence under Ordinary Law.
- The Second Part of Article 22 deals with a Preventive Detention Laws; clauses (5) - (7) guaranteed 3 rights to a person who is arrested under a preventive detention law.
- **Right to be Informed "As soon as May be" Ground of Arrest:** Any person who is arrested by Police Custody, have a right to take Information of ground of Arrest and the Police Investigation Officer should also informed him/her ground of arrest as soon as possible.
- **Right to be Consult and to be Represented by a Lawyer of his own choice:**

Any person who is arrested, have a Right to Consult at all times and also be defended by a Lawyer of his own choice.¹⁹In the case of, **Joginder Kumar vs State of U.P.**²⁰ the Hon'ble Supreme Court held that No person can be arrested without being informed Ground of Arrest, it is lawful Police Officer also to do so. The recommendations of the Hon'ble Supreme Court to the Police Commission and further to Police Officers reflecting the Constitution's Heart i.e. Right to Life and Personal Liberty a Golden Fundamental Right of Human. There must be some reasonably justification in the opinion of the officer against a person for such arrest, which is also justifiable according to Constitution of India.

- **Right to be Produce before a Magistrate within 24 hours:** When a person is arrested by a Police, the Police have to bring him as soon as possible to Magistrate without any further actions.²¹
- **Freedom from Detention beyond the said period except by order of Magistrate:** Article 22 (2) also states that no person would be arrested or detention before Magistrate or Judicial Order, after any Judicial Proceedings, the Police Investigation or Arresting Officer can take any action for further prosecution.

In the case of **State of Punjab v Ajaib Singh**²², the Police have arrested a person without any warrant or Judicial Proceedings, the Court has provided Compensation as a Constitutional remedy to a non-accused person.

¹⁹ Hussainara Khatoon & Ors vs. Home Secretary, State Of Bihar;1979 AIR 1369, 1979 SCR (3) 532

²⁰1994 AIR 1349, 1994 SCC (4) 260

²¹State of Madhya Pradesh vs. Shobharam and Ors, 1966 Mh. L.J (S.C) 913 : AIR 1966 SC 1910

²²1953 AIR 10, 1953 SCR 254

- **The Detention of a Person cannot Exceed 3 Months unless an Advisory Board Reports Sufficient for Extended Detention:** Clause (3) of Article 22 talks about exceptions for Clause (1) and (2), which is deemed to be applicable on enemy alien who is arrested under Preventive Detention.
- **Grounds of Detention should be Communicated to the Detenue:** A person who is arrested or detention by a Police Officer for any offence, it is the duty of a Police Officer to communicate all Grounds of Detention to a accused person.

V. OTHER RIGHTS FROM CODE OF CRIMINAL PROCEDURE

- Section 54 of CrPC states that when the arrested person alleges that examination of his body will lead to a fact which will disapprove the fact of commission of an offence by him, or which will lead to commission of an offence by any other person against his body, the court may order for medical examination of such accused person at the request of him (accused) unless the court is satisfied that such a request is made for the purpose of defeating the justice.
- Section 55A of CrPC states that it shall be the duty of the person, under whose custody the arrested person is to take reasonable care of the health and safety of the accused.
- The arrested person is to be protected from cruel and inhuman treatment.
- Section 358 of CrPC gives rights to the compensation to the arrested person who was groundlessly arrested.
- Section 41A of CrPC states that the police officer may give the notice to a person suspected of committing a cognizable offence to appear before him at such date and place.
- Section 46 of CrPC prescribes the mode of the arrest. i.e. submission to custody, touching the body physically, or to a body. The police officer should not cause death to the person while making an arrest unless the arrestee is charged with an offence punishable with death or life imprisonment.
- Section 49 of CrPC states that the police officer should not make more restrained than in necessary for the escape. Restrain or detention without an arrest is illegal.²³

VI. CONCLUSION

The various safeguards provided in Constitution as well as Code of Criminal Procedure, the

²³Richa Goel, “ Rights of an Arrested Person”, *IPleaders* (March 30, 2021) <https://blog.ipleaders.in/rights-of-an-arrested-person/>

power of arrest has been misused by Police and Government sector, the Police officer also threaten as well forcibly with an Accused person which is illegal as Fundamental Rights point of view. There has also an unnecessary arrest of a person, they made an innumerable report and also confine his maximum liabilities. It is the duty of the Police to inform all the grounds of Arrest and Detention, and Police has to secure the Rights of Arrested Person, and the Handcuffs are also not use unnecessarily which means not to harass any accused and it is the duty of Police Men to present him before Magistrate within 24 hrs.

The Article 20²⁴ is the main pillar of Fundamental Rights, which deals with the protection or safeguards and provides certain rights to accused person for conviction of offences. The Doctrine of Ex-Post Facto Law, deals all about an act which was not prohibited by law at the time of commission of that particular act, through the understanding of Article 20 (1), it would not be made punishable act or an offense by some legislation with retrospective effect and nor a punishment greater than what has been stated under the law which is enacted, could be made applicable to the act committed at a particular time by making a law later on with retrospective effect.

The provision of Doctrine of Double Jeopardy, enshrines the concept of same offence conviction punishment, that no one convicted of an offence can be tried or punished a second time. Hence, it can be concluded that no man should get a punishment or penalty for the same offence twice.

Article 20 (3)²⁵ deals with the protection against Self Incrimination, it provides a accused person to remain silence at a time of prosecution, no officer have right to make confession forcibly or tortured.

The Article 22²⁶ enshrines the Right to a accuse a person and also provides a duty to a Police Officer, it's a duty of Police Officer to present him before magistrate within 24 hrs of arrest or detention, it's a Right of Accused Person, to inform him all grounds of arrest, no any action take place before Judicial order.

Right of Accused Person a Fundamental Rights also enshrines the Human Rights, which states that there should be a proper Rights for a person who convict offence, the Fundamental Rights are the basic rights which is provided to all citizen of India, and the Human Rights are lie in it like Protection of Life and Personal Liberty, Dignity etc. Every person in a country should be treated equally in the form of Caste, Race as well accused or non -accused. The

²⁴The Constitution of India, 1950.

²⁵ Ibid.

²⁶ Ibid.

person has Right to remain Silence in any case which can't be suspended in any emergency provisions, likewise, Person have Right to privacy for, Right to Sleep. The person can consult to any Lawyer of his own choice, if he is not able to appoint any lawyer, the State have duty to provide him a Lawyer for dealing his case.
