

Assignment topic

Constitutional Safeguards to Accused - A Sketch with Analysis

Introduction

A person in custody of the police, an under-trial or a convicted individual does not lose his human and fundamental rights by virtue of incarceration. The rights of the accused, include the right to a fair trial; due process; the right to seek redress or a legal remedy; and rights of participation in civil society and politics such as freedom of association, the right to assemble, the right to petition, the right of self-defence, and the right to vote.

Indian Constitution itself provides some basic rights/safeguards to the accused persons which are too followed by the authorities during the process of criminal administration of justice. There are some provisions which expressly and directly create important rights in favour of the accused/arrested person.

Constitutional Safeguards to Accused

Our constitution is based on fundamental that Let Hundreds Go Unpunished, But Never Punish An Innocent Person. Article 20 says that "no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. Thus, accused is given fair equality as par with other citizen.

Article 21, A wider ambit has been given to right to life and liberty and thus accused are given a human treatment in jails fulfilling reformatory approach.

Article 22 talks that 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. Thereby, these rights under constitution are inherent rights and cannot be altered or changed.

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 trial of offence with which he is charged, and he should be protected against arbitrary or illegal arrest.

The rights of the accused under the Indian Constitution

Under Criminal Law

As Indian constitution is wedded to Democracy and Rule of Law, the concept of free and fair trial is a constitutional commitment for which the cardinal principle of Criminal Law revolves around the Natural Justice wherein, even the accused or guilty person is treated with a human treatment.

A. Presumption of Innocence:

The essence of criminal trial lies in that the accused is to be presume innocent until a charge is proved against him without any reasonable doubt.

B. Right To Know The Grounds of Arrest:

As per Section 50(1) of Cr.P.C., where a person arrested without warrant is entitled to know the full particulars of offence for which he is being arrested and where a person is arrested with warrant, he must be notified the particulars of such warrant, or even show such warrant if needed. Sec. 75 of Cr.P.C.

C. Right to have Bail:

Any person who is arrested without a warrant and is accused of a bailable offence has to be informed by the police officer that he is entitled to be released on bail on payment of the surety amount.

D. Right to Be Taken before a Magistrate without Delay:

Irrespective of the fact, that whether the arrest was made with or without a warrant, the person who is making such arrest has to bring the arrested person before a judicial officer without any unnecessary delay. By Sec 56 and 76 of the code, an accused has to be produced before a magistrate within the 24 hrs.

E. Right to free, fair and speedy trial:

As justice delayed is justice denied, the concept of speedy and expeditious trial was introduced by which the accused person is given fair and impartial justice quickly.

F. Right to Consult a Legal Practitioner:

This has been enshrined as a fundamental right in Article 22(1) of the Constitution of India, which cannot be denied in any case. Section 50(3) of the Code also lays down that the person against whom proceedings are initiated has a right to be defended by a pleader of his choice.

G. Right of Free Legal Aid:

A duty is imposed on all magistrates and courts to inform the indigent accused of his right to get free legal aid. It is clear that unless refused, failure to provide free legal aid to an indigent accused would vitiate the trial entailing setting aside of the conviction and sentence.

H. Right to Be Examined by a Medical Practitioner:

Section 54 of Cr.P.C. enumerates this right. If requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice.

I. Right to privacy and protection against unlawful searches:

The police officials cannot violate the privacy of the accused on a mere presumption of an offence. The property of an accused cannot be searched by the police without a search warrant.

J. Right to be present during trial:

Section 273 of the Code provides that all evidence and statements must be recorded in presence of the accused or his criminal lawyer.

K. Right to get Copies of Documents:

The accused has the right to receive copies of all the documents filed by the prosecutor in relation to the case.

L. Right to be present at the trial:

The accused person has the right to be present during his trial and have testimony presented in front of him.

M. Right to cross-examination:

The accused has the right to be cross-examined by the prosecutor to prove his innocence.

N. Right to Appeal:

The rights of arrested persons include the right to file an appeal against his conviction in a higher court.

O. Right to Humane Treatment in Prison:

The accused has a right to have all his human rights when in prison and be subjected to humane treatment by the prison authorities.

We can divide accused's rights in three parts; Pre Trial, during Trial and Post Trial.

1. Pre-Trial Rights of Accused

These are the rights of a person accused of a crime such that their freedom and liberty are not hampered. The first stage of a trial is the pre-trial stage. Here an **FIR is filed** on the basis of which the police arrests a person, searches his property. The stage prior to the commencement of a court trial is extremely crucial. So, any person accused of a crime must be granted the following accused rights:

1. **Right to know about the accusations and charges** : Under the Criminal Procedure Code (CrPC), 1973, the rights of an arrested person under CrPC

include to know the details of the offence and the charges filed against him/her.

2. **Right against wrongful arrest** :The rights of accused in India are provided only in cases where a warrant is issued. Section 57 of Cr.P.C. and Article 22(2) of Constitution provides rights of accused in CrPC, that he/she must be produced before a Judicial Magistrate within 24 hours of arrest.
3. **Right to accused of privacy and protection against unlawful searches**: The police officials cannot violate the [privacy](#) of the accused on a mere presumption of an offence. As per right of accused in India, his/her property cannot be searched by the police without a search warrant.
4. **Right against self-incrimination**: A person cannot be compelled to be a witness against himself as per Article 20(3) of the Indian Constitution.
5. **Right against double jeopardy** : A person cannot be prosecuted and punished for the same offence more than once as per Article 20(2) of the Constitution.
6. **The Right against the ex-post facto law** : The rights of accused in India also gives a person the authority where he/she cannot be tried for an offence that was the earlier crime and now is not. This means that the retrospective effect law is not applicable. An act that was not a crime on the day when it was done, cannot be considered as an offence.
7. **Bail as the rights of accused in India** :The right of an accused person allows them to file a bail application to be released from jail custody. There are three kinds of bail under Indian law- [anticipatory bail](#), interim bail and bail by a bond. A bail application for normal bail can be filed only in case of bailable offences. However, a person can also file an anticipatory bail through his criminal lawyer, before his arrest.

8. **Right to legal aid** : In this, the rights of an accused person allow him/her to hire a lawyer to defend them and in case, he is not able to afford a lawyer, the State has to provide free [legal aid](#) to him for his representation in court.
9. **Right to a free and expeditious trial** : The rights of accused in India has the right to fair trial in India and an expeditious trial, which is free of any bias or prejudice.

2. Rights of the Accused during Trial

There are many rights of accused persons in India provided when their trial is on going in the court. It has been observed that the State has to ensure that due process of law is followed. The accused gets a quick and impartial trial, the accused is not subjected to torture or forced to implicate himself. The rights of the accused during the trial include the following:

1. **The Right to be present during a trial** : Section 273 of the Code provides that all [evidence](#) and statements must be recorded in the presence of the accused or his criminal lawyer.
2. **Right to get Copies of Documents** : It comes under the rights of accused persons in [criminal](#) cases to receive copies of all the documents filed by the prosecutor in relation to the case.
3. **Right to be considered Innocent till proven guilty** : The accused has the right to be considered innocent until his guilt is proven in court on the basis of evidence and statements by witnesses.
4. **The Right to be present at the trial** :The accused person has the right to be present during his trial and have testimony presented in front of him.
5. **Right to cross-examination** : It's the right of the accused in criminal cases to be cross-examined by the prosecutor to prove their innocence.

3. Post-Trial Rights of the Accused Person

An accused person also has certain rights once his trial is over. These rights of the accused depend upon the outcome of his trial. This means, whether (s)he has been acquitted by the court or has been held guilty and arrested by police.

Rights of the Accused, if declared innocent

When a person is declared innocent and acquitted by the court, the following rights are given to him:

1. Accused persons have a right to get a copy of the judgment
2. Right to receive protection from police if the reasons to believe there is a threat to his life post-acquittal.

Malimath Committee on the rights of the accused

Malimath committee was established to propose reform in the criminal Justice System and constitutional provisions related to it. The committee was of the opinion that “the rights of the accused include the obligation on the part of the State to follow the due processes of law, a quick and impartial trial, restraint from torture and forced testimony, access to legal aid etc”. Before suggesting and recommending certain changes the Committee posed three major questions:

- (i) Should the basic premise of criminal law, namely, proof of guilt beyond reasonable doubt be dispensed with?

According to the Committee such a presumption is not found in the Evidence Act. And thus the standard of 'proof beyond reasonable doubt' present followed in criminal cases shall be done away with. The standard of proof in criminal cases should be higher than the 'preponderance of probabilities'.

“The extraordinary burden of “proof beyond reasonable doubt” should be removed subject to the safeguards available to the accused under the Evidence Act and the Code.”

“There are three standards of proof: “a preponderance”, “clear and convincing” and “beyond a reasonable doubt”.

- (ii) Should we not as a consequence do away the right of the accused to silence?
- (iii) Should we not as a consequence abolish the right of the accused against self-incrimination?

Article 14(3) (g) guarantees an accused not to be compelled to testify against himself or to confess guilt.

If any incriminatory statement is voluntarily made by the accused in answer to the question put by a police officer, it cannot be regarded as one made under compulsion, vide AIR 1962 SC 1831, R.K. Dalmia Vs. Delhi Administration. In AIR 1965 SC 1251, State of Gujarat Vs. Shyamlal Mohanlal Choksi the Supreme Court has upheld the validity of Section 27 of the Evidence Act which renders the portion of the statement of the accused that leads to the discovery of any fact admissible in evidence.

It cannot be denied that there is no better source of information than the accused himself. The Committee was thus of the opinion that providing the Right to Silence and Right against self-incrimination block this source of information and that there should be a way to receive information from the accused without subjecting him to any duress.

The committee after discussing these points in detail suggested that the rights of the accused recognized by the Supreme Court should be subject to the clarification in Chapter 4 and the manner of their protection be made statutory, incorporating the same in a schedule to the Criminal Procedure Code.

Cases

- (A) In, Nandini Sathpathy v. P.L.Dani 1978 SCR (3) 608, wherein it was held that no one can forcibly extract statements from the accused and that the accused has the right to keep silent during the course of interrogation (investigation).

(B) In, D.K. Basu v. State of W.B (1997) 1 SCC 416, the Supreme Court, in this case, issued some guidelines which were required to be mandatorily followed in all cases of arrest or detention which include, the arresting authority should bear accurate, visible, and clear identification along with their name tags with their designation, the memo be signed by the arrestee and family member, the family or the friend must be told about the arrest of the accused, The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation and many other.

Conclusion

We have discussed the various rights provided to the accused under constitution. "Human rights" as the expression goes, means certain rights which are considered to be very basic for an individual's full physical, mental and spiritual development. Human rights encompasses the fundamental principles of humanity and these are the rights which every human being is entitled to enjoy on the basis of the fact of being born human. Indeed, the conception of rights, which every human being is entitled to enjoy by virtue of being a member of human society, has evolved through the history of struggles for the recognition of these rights. In plain simple words, human rights are the rights which every human being possesses by virtue of being a human, which are equally applicable to accused person.

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04/12/2020