Yashwant Kamboj al. International Journal of Recent Research Aspects ISSN: 2349-7688, Vol. 5, Issue 3, Sept 2018, pp. 41-43

Rights of the Accused in India

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Abstract: **Provisions of Indian Constitution and Criminal Procedure Code Following are some important provisions creating rights in favour of the accused/arrested persons:-(i) 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 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. Article 11, para 2 of the Universal Declaration of Human Rights, 1948 provides freedom from ex-post facto laws. An ex post facto law is a law which imposes penalties retrospectively, i.e., on acts already done and increases the penalty for such acts. The American Constitution also contains a similar provision prohibiting ex post facto laws both by the Central and the State Legislatures. If an act is not an offence at the date of its commission it cannot be an offence at the date subsequent to its commission. The protection afforded by clause(1) of Article 20 of the Indian Constitution is available only against conviction or sentence for a criminal offence under ex post facto law and not against the trial. The protection of clause (1) of Article 20 cannot be claimed in case of preventive detention, or demanding security from a person. The prohibition is just for conviction and sentence only and not for prosecution and trial under a,retrospective law. So, a trial under a procedure different from what it was at the time of the commission of the offence or by a special court constituted after the commission of the offence cannot ipso facto be held unconstitutional.**

Abstract: **RTIs, Human Rights, Indian Society**

I. INTRODUCTION

The term accused has not been specifically defined in the code but what we generally understand is that the accused means the person charged with an infringement of the law for which he is liable and if convicted then to be punished. In other words, a person who is charged with the commission of offence. An offence is defined as an act or omissio punishable by any law for the time being in force. An accused cannot have similar footing with the convicted person. In the Bill of Rights Ordinance, 1991 affirms that every accused has a right to be presumed innocent until his guilt is proved. Thus, the accused person has every right like other citizen of the country except his curtailment of person liberty in conformity with laws. The basic difference is that an accusation has been made against the accused person for violation of law or offence prevail not in the country. The rights of the accused person are of much concern today.

II. LAWS RELATED TO RIGHTS OF ACCUSED

The second part of clause (1) protects a person from 'a penalty greater than that which he might have been subjected to at the time of the commission of the offence.'In *Kedar Nath v. State of West Bengal* [1], the accused committed an offence in 1947, which under the Act then in force was punishable by imprisonment or fine or both. The Act was amended in 1949 which enhanced the punishment for the same offence by an additional fine equivalent to the amount of money procured by the accused through the offence. The Supreme Court held that the enhanced punishment could not be applicable to the act committed by the accused in 1947 and hence, set aside the additional fine imposed by the amended Act. In the criminal trial, the accused can take advantage of the beneficial provisions of the ex-post facto law. The rule of beneficial construction requires that ex post facto law should be applied to mitigate the rigorous (reducing the sentence) of the previous law on the same subject. Such a law is not affected by Article 20(1) of the Constitution. (ii) Doctrine of "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 Criminal Procedure Code, 1973. When once a person has been convicted or acquitted of any offence by a competent court, any subsequent trial for the same offence would certainly put him in jeopardy and in any case would cause him unjust harassment. Such a trial can be considered anything but fair, and therefore has been prohibited by the Code of Criminal Procedural as well as by the Constitution. The doctrine of "autrefois acquit" and "autrefois convict" has been embodied in Section 300 of Criminal Procedure Code as follows: Person once convicted or acquitted not to be tried for same offence - (1) a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted for such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof. The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section. Constitutional provision to the same effect is incorporated in Article 20 (2) which provides that no person shall be prosecuted and punished for the same offence more than once. These pleas are taken as a bar to criminal trial on the ground that the accused person had been once already charged and tried for the same alleged

offence and was either acquitted or convicted. These rules or pleas are based on the principle that "a man may not be put twice in jeopardy for the same offence". 67 Article 20(2) of the Constitution recognizes the principle as a fundamental right. It says," no person shall be prosecuted and punished for the same offence more than once".

While, Article 20(2) does not in terms maintain a previous acquittal, Section 300 of the Code fully incorporates the principle and explains in detail the implications of the expression "same offence". In order to get benefit of the basic rule contained in Sec 300(1) of Criminal Procedure Code is necessary for an accused person to establish that he had been tried by a "court of competent jurisdiction" for an offence. An order of acquittal passed by a court which believes that it has no jurisdiction to take cognizance of the offence or to try the case, is a nullity and the subsequent trial for the same offence is not barred by the principle of autrefois acquit. To operate as a bar the second prosecution and consequential punishment there under, must be for the "same offence". The crucial requirement for attracting the basic rule is that the offences are the same, i.e. they should be identical. It is therefore necessary to analyze and compare not the allegations in the two complaints but the ingredients of the two offences and see whether their identify is made out. Section 300 of Criminal Procedure Code bars the trial for the same offence and not for different offences which may result from the commission or omission of the same set of the act. Moreover, the principle of issue- estoppel, as enunciated and approved in several decisions of the Supreme Court, is simply is, that where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or res judicata against the prosecution not as a bar to the trial and conviction of the accused for a different or distinct offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by law. 4 (iii) Prohibition 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. Thus Article 20(3) embodies the general principles of English and American jurisprudence that no one shall be compelled to give testimony which may expose him to prosecution for crime. In *Masud Khan v. State of U.P.*[2] cardinal principle of criminal law which is really the bed rock of English jurisprudence is that an accused must be presumed to be innocent till the contrary is proved5 . It is the duty of the prosecution to prove the offence. The accused need not make any admission or statement against his own free will. The fundamental rule of criminal jurisprudence against self- incrimination has been raised to a rule of constitutional law in Article 20(3).The guarantee extends to any person accused of an offence and prohibits all kinds of compulsions to make him a witness against himself. Explaining the scope of this clause in *M.P. Sharma v. Satish Chandra*, the Supreme Court observed that this right embodies the following essentials: (a) It is a right pertaining to a person who is " accused of an offence." (b) It is a protection against " compulsion to be a witness". (c) It is a protection against such compulsion relating to his giving evidence "against himself."

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[2](1974) 3 SCC 469: 1973 SCC (Cri) 1084, 1086.

In *Nandini Satpathy v. P.L. Dani* [3] , the Supreme Court has considerably widened the scope of clause (3) of Article 20. The Court has held that the prohibitive scope of Article 20(3) goes back to the stage of police interrogation not commencing in court only. It extends to, and protects the accused in regard to other offences- pending or imminent, which may deter him from voluntary disclosure. The phrase compelled testimony' 'must be read as evidence procured not merely by physical threats or violence but by psychic (mental) torture, atmospheric pressure, environmental coercion, tiring interrogatives, proximity, overbearing and intimidatory methods and the like. Thus, compelled testimony is not limited to physical torture or coercion, but extend also to techniques of psychological interrogation which cause mental torture in a person subject to such interrogation. Article 11, Clause 1 of Universal Declaration of Human Rights, 1948 which lays down: "Everyone charged with a penal offence 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 defence."

Article 5 of Universal Declaration of Human Rights, 1948. Right to silence is also available to accused of a criminal offence. Right to silence is a principle of common law and it means that normally courts tribunal of fact should not be invited or encouraged to conclude, by parties or prosecutors, that a suspect or an accused is guilty merely because he has refused to respond to question put to him by the police or by the Courts. The prohibition of medical or scientific experimentation without free consent is one of the human rights of the accused. In case of *Smt. Selvi & Ors. v. State of Karnataka & Ors.*[4] , wherein the question was- Whether involuntary administration of scientific techniques namely Narcoanalysis, Polygraph (lie Detector) test and Brain Electrical Activation Profile (BEAP) test violates the 'right against selfincrimination' enumerated in Article 20(3) of the Constitution. In answer, it was held that it is also a reasonable restriction on 'personal liberty' as understood in the context of Article 21 of the Constitution. Following observations were made in this landmark case: (i) No individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty.

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[3]1978 AIR 1025, 1978 SCR (3) 608

[4]AIR (2010) 7 SCC 263

III. CONCLUSION

The very idea of human being in custody or during trial saves for protection and nurturing is an anathema to human existence. The word custody implies guardianship and protective care. Even when applied to indicate arrest or incarceration, it does not carry any sinister symptoms of violence during custody. No civilized law postulates custodial cruelty- an inhuman trial that springs out of a perverse desire to cause suffering when there is no

possibility of any retaliation a senseless exhibition of superiority and physical power over the one who is empowered or collective wrath of hypocritical thinking. The attack on human dignity can assume any form and manifest itself at any level. It is not merely the negative privilege of a crude merciless display of physical power by those who are cast in a role play of police functioning, but also a more mentally lethal abuse of position when springing from high pedestals of power in the form of uncalled for insinuation, unjustified accusations, unjust remarks, menacingly displayed potential harm, that can strike terror, humiliation and a sense of helplessness that may last much longer than a mere physical harm and which brook no opposition. The idea of human dignity is in one's sacred self and that field is quite a part and distinct from the field of considerations of rights and duties, power and privileges, liberties and freedoms or rewards and punishments wherein the law operate. If a person commits any wrong, undoubtedly he should be penalized or punished, but it is never necessary to humiliate him and maul his dignity as a human being.

Further, I believe that it is high time we have a law for the protection of witnesses and their relatives. In this respect the suggestion of the Law Commission in its 178th report should be incorporated.

