Accused persons under Indian Constitution – A Critical study:

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ABSTRACT:

The constitution of India, ensures Fundamental Rights under Articles 12 to 35 of which rights which deserve better focus are the rights of accused persons. The reason being, the accused who are under cloud of suspicion at the threshold itself is treated as the convict and left in lurch even by their own brethren for the very reason, he is an accused. On the premise he is not getting the due attention which he is entitled under the Articles 20 to 22 of the Constitution of India. Thus, my efforts in this study would be to follow the guiding principles laid down under Constitution of India in the area of Human Rights especially towards the accused person's right that are bestowed on them and the potential lacunae in that area.

Key words: Accused rights under Constitution, Art 20 to 22., double jeopardy, self-incrimination.

INTRODUCTION:

One of the most basic human right as envisaged by our Indian Constitution, is to live a peaceful life with human dignity. The disparity shown on the accused needs much needed concern to be addressed to. In the words of Late Justice V.R.Krishna Iyer, who gave momentum to the Human Rights principles and speedy trial, that if the prisoners are made to languish in prison without speedy trial and if he is acquitted subsequently who would give him back his days that he has spent in prison. He was the first to raise his voice for the disability as a Rights issue and has also rightly expressed that the "Society is guilty if anyone suffers unjustly" [1]. This article discusses the various rights available to the accused and the potential defects in the existing provisions.

Related Provisions under Indian Constitution:

The Constitution of India, ensures certain rights which are enjoyed by the accused. The provisions under Article 20 to 22 of the Constitution of India, provides for the rights of the accused. Of which, Article 21 could be very well equated to a huge giant vessel with unlimited capacity, which could address all new issues of violation of the fundamental rights available not only to the citizens but also to the non-citizens to safeguard his rights.

ANALYSIS OF ARTICLE 20:

Article 20 of the Constitution of India, grants few safeguards for the Protection of accused persons, in respect of conviction for offences.

1. "Law, Justice and the Disabled" – V.R.Krishna Iyer

PROTECTION AGAINST EX POST FACTO PENAL LAWS:

The term 'ex post facto' penal laws are one such laws which imposes punishments retrospectively, i.e. for the wrongs already committed which even enhances the punishments for the same act. This could be better understood by an illustration.

'A', has committed a wrongful act in the year 1990 which was not unlawful at that period of time. Given this fact, a legislation was passed subsequently in the year 1998, and made the said act a punishable one. Now A cannot be punished for the said act he had done earlier.

Art 20(1) lays that there shall not lie any conviction of the accused, for wrong committed by him, but for the breach of law which was in force when he had actually committed such an offence and he cannot be subject to greater punishment than one which he would have suffered under the law in force at the time of the said commission of offence.

Art 20(2), prohibits infliction of penal action or punishments twice on the accused for the same offence for which he is involved.

Art 20(3), states that no person who is accused of an offence shall be compelled to be a witness against himself.[2]

This is the pivotal provision which was laid down, to ensure the accused person of their constitutional rights. It can be read, understood and interpreted in two parts.

FIRST PART OF ART. 20(1):

No person is to be convicted of an offence except for violating 'a law in force' at the time of the commission of said act charged as an offence. A person is to be convicted for violating a law in force when the act charged was committed. A law enacted later, making an act done earlier as an offence, will not hold the person liable for conviction under the said law.[3] In yet another landmark judgment, the Hon'ble apex court has held that an immunity is provided to a person from being tried for any act, under a law created subsequently, which makes that act unlawful.[4]

Further, the term '*offence*', has not been defined in our Indian Constitution. Whereas, Sec.3(38) of the General Clauses Act defines 'offence' as any act or omission which has been made punishable by any law for the time being in force.

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2. M.P. Jain on Indian Constitutional Law.

3. Kannaiyalal v Indumathi, AIR 1958 SC 444: 1958 SCR 1394

4. State of Maharashtra v K.K.Subramaniam Ramasamy, AIR 1977 SC 209

Areas of application and nature of the rights:

Article 20 of the Constitution is applicable only to the those who are charged with a crime before a criminal court. The word 'penalty' in Art. 20(1), is used in the narrow sense which connotes any payments which ought to be made or the punishments suffered as a result of the conviction handed over to him for the wrong committed by him.

The above-mentioned immunity can be made applicable for the punishment by criminal courts under the ex post facto penal laws and those cannot be extended against the preventive detention laws, it cannot be made applicable even under the press law for demanding security from it, for the acts done previously under that relevant law.[5]

This provision does not bar a civil liability which are imposed retrospectively. A leading case could be cited to explain this in detail. An Act was passed in the year June 1957, it had fixed the liability on the employers closing their undertakings, to pay the compensation to the employees since 28th of November,1956. The nature of liability would even be the imprisonment, for any breach. In the instant case, the Hon'ble S.C. had categorically held that the nature of liability is purely civil in nature and protection under Art 20(1) cannot be invoked here. Likewise, the taxes can also be imposed retrospectively. [6]

The protection under Art20(1) can only be extended to the conviction or sentence of the ex post facto penal laws and not for one under ex post facto trial. The immunity available under the provision is also not applicable to the change of procedure or of the court of the ex post facto laws. Thus, a trial under a different procedure other than the one which had undergone during the period of commission of the said offence, or by the different court from that which had earlier been tried cannot be considered as a constitutional violation. A person accused of an offence has no fundamental rights with respect to the mode of trial or the court conducting a trial, but for the blatant violation of constitutional provisions or any such discriminations. Hence, Art 20(1) does not make a right to any course of procedure a vested right.

5. State of Bihar Vs Shailabala, AIR 1952 SC 329

6. Sundararamaiyar & Co. Vs. State of Andhra Pradesh , AIR. 1958 SC 468

SECOND PART OF ART. 20(1):

This provision grants the immunity to a person who suffers punishments higher than what he would have incurred during the time of committing the offence. A leading case law has reiterated holding that he should not be made to toil more by an ex post facto penal law than for the one, which he would have been subjected to during the period of commission of offence.

The provision could be best understood by the following ruling of the Supreme court in a case, where the accused had an offence committed in 1947 under the Prevention of Corruption Act, later by way of an amendment in 1949 it had increased the punishment for the offence. The S.C. held that the increased punishment could not be made applicable to the act committed in the year 1947, as its hit by Art 20(1).[7]

The ex post facto laws, which usually mollifies the rigidity of a criminal laws are not within the prohibition of Art 20(1). Hence, if a specific law rules to that effect, though its retrospective in scope and ambit, it would be valid.

In certain cases, the rule of beneficent construction was applied and even the ex post facto laws ought to be operated to reduce the punishment of the juvenile delinquents too. Furthermore, the law says that the accused must have a benefit of the retroactive legislation which is criminal in nature, reducing punishments for a particular offence.

JUDICIAL INTERPRETATION:

The next important area to be analysed is the Judicial interpretation of the said provision. Interpreting the provisions of Sec.494 I.P.C., the Hon'ble S.C. ruled in the path breaking Sarla Mudgal Vs. Union of India.[8] that the second marriage of the Hindu husband after he converted himself to Islam without getting his first marriage dissolved according to law was held invalid and the husband was guilty under Sec. 494 I.P.C.

Later in *Lily Thomas Vs. Union of India,* they argued that the law declared by the S.C. in Sarala Mudgal case would not be given retrospective effect as its hit by Art 20(1), it ought to be given only prospective operations so that the ruling could not be applied to a person who had solemnised the second marriage prior to Sarala Mudgal judgement. The S.C. finally rejected the argument holding that the interpretation of a provision of law relates back to the date of law itself and cannot be prospective from the date of the judgement

because here the courts does not legislate anything but only interprets an existing law. Hence it cannot be made applicable here.

7. Kedarnath Bajoria Vs. State of West Bengal AIR 1953 SC 404.

8. A.I.R. 1995 SC1531

GUARANTEE AGAINST DOUBLE JEO PARDY :

The theory of double jeopardy has its base from and could be better understood from the legal maxim '***nemo debit bis vexari'***, which means no man shall be punished or penalised for the very same offence twice. When an accused has been convicted for an offence by a court of competent jurisdiction, that conviction functions as a bar to the further proceedings which are criminal in nature for the very same offence. If this provision is being violated, the accused could very well take shelter under plea of *autrefois acquit or autrefois convict.*

This principle was there in practice in India even before the introduction of the Constitution, but it has been given a constitutional status than a mere guarantee granted statutorily.

SCOPE OF THE PROVISION:

The scope of Art 20 (2) is much narrower than English or the American usage. Indian provision enumerates only the autrefois convict principle, but not the autrefois acquit. In the case of Britain and U.S.A., both the rules are applicable and trial which takes place second is barred even in cases where the accused had been acquitted at the first trial for the same offence. The position in India, on the other hand, rule of autrefois acquit is not provided in Art 20(2). It may be invoked when there had been a prosecution and punishment at the first instance. Hence both the prosecution and punishment must go hand in hand for Art 20(2) to be applicable.

The distinct language of the Art 20(2), appears to have been overlooked by the S.C. in Mukhtiar Ahemd Ansari Vs. State (NCT of Delhi)[9] where, it had applied the principle of *autrefois acquit*, acquitting the accused who was involved in the previous trial of the same offence.

The limitation imposed in Art 20(2) is with respect to the previous 'prosecution', which mainly pertains to that of criminal nature. It should be one before a court of law or a judicial tribunal which decide matters in controversy judicially and not one which involves the administrative or departmental proceedings.

9. 2005, 5SCC 258

***PRIVILIGE AGAINST SELF – INCRIMINATION*:**

The shield provided by the law, against self-incrimination is one of the primary cannons of common law jurisprudence which are criminal in nature. The vital features are as follows.

i) Accused is presumed to be innocent,
ii) The liability is on the prosecution is to establish the guilt of the accused.
iii) The accused is not bound to make any sort of statements which is against his will.

These propositions arise from an apprehension that when the accused is subject to some sort of compulsory examination, then there might be all possibilities of use of force and some third-degree treatments on them.

INCRIMINATING EVIDENCES:

This privilege applies to the testimonial compulsion, it even covers the oral testimony of the accused. The person can be a witness not merely by giving oral evidences, but also by producing documents or making gestures in case of dumb witnesses. The phrase 'to be a witness' meant nothing more than 'to furnish evidence' and could even be done through words or by production of a document or thing, as was decided in *Sharma Vs. Sathish* [10]

In order to bring the evidence within the scope of Art 20(3), it must be shown that the statement given by the accused must directly relate to the criminality of the accused making statement and that he must have been compelled against his own wishes and volition made to testify. Then the provision of the constitution gets attracted.

The privilege under Art 20(3), is available not only to an individual, but even to an incorporated body, if it is accused of an offence[11]

Thus its evident from the wordings of the provisions that the phrase "persons accused of an offence, does not apply to civil proceedings or administrative proceedings but only to criminal proceedings in the concerned court or tribunal, before which a person may be accused of an offence, as defined under Sec. 3(38) of the General Clauses Act, i.e. an act punishable under the penal code or any local or special laws.

More than these provisions, Art 21 and 22 of the Constitution also provides for the right to the freedom of person, which would be discussed as under.

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10. AIR 1954 SC 300

11. M.P.Sharma Vs. Sathish AIR 1954 SC 300

Art 21 is a provision which confers a bundle of rights to all human beings regardless of the fact, they are citizens or not. Art 21 and 22 is applicable to all, whether they are citizens or not. The S.C. has also reiterated the stand in many cases[12]

The wordings in Art 21 is very much wider in its areas of operation and it says that the life and personal liberty of any person could not be taken away except according to the *procedures established by law*. Other features of this provision are that it does not mean merely enacted law but also incorporates principles of natural justice in it.

ADMINISTRATION OF CRIMINAL JUSTICE POST MANEKA GANDHI CASE:

Maneka Gandhi case[13] has a profound but the beneficial impact on the administration of the criminal justice in India. The plight of the prisoners in India, has become deplorably poor and even sub human. Newspapers very often carry the headlines of custodial deaths, brutal inhuman attacks by the police, trials becoming delayed inordinately. India is one among few countries of the world, which has such a poor standard of treatments.[14]

As it's a well-known principle and fact that the administration of criminal justice is a state matter, the revisit to Art 21 by extending the scope more widely was done in Maneka Gandhi case and by the impact of the rulings in A.K.Gopalan case, The apex court has imbibed a potent tool to remove the lacunas that arose in the areas of criminal justice delivery. Thus, the courts are now liberalising and humanising the concept. The S.C. in Sunil Batra II [15], has again appreciated the inbuilt deepest human rights values and narrated that the magna carta of the Indian Constitution, would travel beyond all limits and ensure justice to all individuals.

12. Loius CDe Raedt Vs. Union of India (1991) 3 SCC 554 .

13. AIR 1979 SC 468.

14. Illustrated by KUMKUM CHADHA's *THE INDIAN JAIL*.

15. Sunil Batra Vs. Delhi Administration (II), AIR 1980 SC 1579

Thus Art 21 provides also for the fair procedure of arrests, a fair investigation, trial and speedy trials. It also addressed the issues pertaining to long pre-trial confinement, provisions for bail, as bail is the right and the arrest is an exception. It also ensured for more criminal courts to ensure fair and speedy trials, directed for the release of the undertrials who have spent periods longer than the maximum term of imprisonment for which they could be sentenced if convicted of the offence charged. [16] The right of appeal in case of the conviction of the accused is also emphasized by the Hon'ble S.C., if the conviction has resulted in the long loss of liberty. Other provisions like the handcuffing of the under-trial prisoners was discussed and held in a case that the handcuffing is prima facie inhuman, unreasonable, over rash and arbitrary[17]

***OTHER PROVISIONS OF CRIMINAL LAWS*:**

Sec.110 of Cr.p.c, is nestled in very flexible and plain language and also gives very wide powers to the police officials, to harass or torture the poor and innocent accused persons. Therefore, the S.C. has expressly directed the magistrates and the judicial officers concerned to discharge their duties when trying cases under Sec. 110 Cr.p.c, with greatest level of care and caution. It also ensured that the accused has the right to be defended by the counsels at the state expenses.[18]

The yet another pivotal provision which safeguards the rights of the accused or a detenue is the Art 22. It consists of four different heads. The first one is about Protection against arrest, which consists of several rights like information regarding grounds of arrest, legal aid, period of detention in custody.

The second part consists of provisions relating to Preventive Detention. The third part is relating to the laws authorising preventive detention and the fourth part which deals about the Judicial review of orders of preventive detention. Thus, the rights guaranteed under the Indian Constitution vide Art 20 to 22, deals exclusively with the rights of the accused or detenue, the safeguards to be procedurally followed.

THE PLIGHT OF INDIAN PRISONERS – THE REAL SCENARIO:

The realities in Indian criminal trial system and the conditions of the accused in Indian jails are really an alarming issue. It may not be a surprising fact as almost all days, we come across in our daily walk of life incidents regarding the atrocities of police officials, custodial deaths, encounter killings, inordinately delayed trial, under trial prisoners getting accommodated with the hard-core convicts which were rampant in the Indian criminal justice delivery system.

16. Hussainara Khatoon Vs. State of Bihar , AIR 1979 SC 1369, 1377

17. Prem Shankar Vs. Delhi Administration. AIR 1980 SC 1535

18. Gopalanchari Vs. State of Kerala , AIR 1981 SC 674.

The recent news column in the newspaper has raised an issue of concern where, most of the jails in India, remain crowded as very few states have implemented reforms of decongestion. The average occupancy rate was 115% of the capacity, the Indian jails and the prisoners there perish and languish in inhuman conditions as reported by the National Crime Records Bureau's Prison Statistics India 2017. Out of the 28 states, 16 states were covered in the report and the occupancy rate was higher than 100 % hitting to more than 160%, their average occupancy rate. The report also says that more than 68 % of those incarcerated were the under trials, which clearly depict that most of them being poverty stricken, unable to execute bail bonds or provide sureties.

RECOMMENDATIONS OF LAW COMMISSIONS:

There were also key recommendations made by the Law Commission in its 268th report in May 2017 that pointed out the inconsistencies in bail systems is one of the vital reasons for the overcrowding of the jails. The commission also recommended for the ways to revamp the entire criminal laws and one of the measure as recommended by the commission is that the accused charged with offences up to seven years of imprisonment should be released on completing one – third of their sentence and those for a longer term, after they complete half of that period. The undertrial prisoners who have spent the entire term, the period should be considered for a remission. Apart from that it suggested that the police personnel should refrain from unwanted arrests and similarly, magistrates should also refrain from some sort of mechanical remand orders[19].

***RECIDIVISM INSTEAD OF REHABILITATION*:**

The current situation experienced by the Indian prisons are really unwelcome one and if it persists, then the concept of fair speedy trial would finally remain a billion-dollar question which has no answer. The mixing up of the under trials with the hard-core convicts would only result in recidivism, rather than reforming and transforming them into a responsible citizen to the nation. The ultimate aim of lodging the culprits into prison would be miserably defeated if such a sort of inhuman irrational system would continue to prevail.

TIME TO REVAMP THE SYSTEM:

Though many voices are being raised and path breaking judgements being delivered, the environment and nature of treatment which the Indian prisoners experience are really a sorry state of affairs. The necessary amendments to the Code of Criminal Procedure as discussed above, relating to the bail procedures and formalities, the arrest and remand procedures, compulsory safe guard measures for the seclusion of under trial prisoners from hard core convicts has to be made. The relaxing of the procedures for grant of bail and following the rehabilitative theories of punishments like making the convicts undergo training for skilled or unskilled works depending upon their abilities, meditation and providing some scopes to shape them as a better individual or the citizen of the country.

19. Indian Express article on the title "Cramped prison"

Apart from that, the prisoner's grievances has to be addressed with, regarding their manner of treatments in jails, whether they have been deprived of any basic needs , any incidents of tortures, man handling by the police etc has to be closely monitored by the concerned authorities. Those found violating the human rights of the accused has to be penalised severely. Furthermore, the inordinate delay in the disposal of the clemency petition of the death sentence and delay in execution of the sentences to the convicts is much more dehumanizing issue[20].

CONCLUSION:

Thus, the accused persons must also enjoy their due rights and privileges which are guaranteed by our constitution. Any deviation or unfair treatments meted out to the accused or even the convicts by way of prolonged trial , custodial tortures, retaining them without the remedy of bail or any sort of violation of the constitutional provision proves that the nation deviates from the standard of the welfare state and the failure to follow its spirits of the Constitution. Thus, we should amend the existing criminal laws which should provide for the better implementation and enforcement of the constitutional provisions, so that the accused are also guaranteed pleasant environment and ways to emerge as a better human being. Thus, it should be borne in mind that "Justice delayed is justice denied" and laws along with the implementing mechanisms should be one which guarantees complete untainted justice to the poor and needy thereby upholding the fullest spirit of our Constitution.

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20. Vatheeswaran Vs. State of Tamilnadu, AIR 1983 SC 361(2)

LIST OF ABBREVATIONS :

1. Art - Article
2. S.C. - Supreme Court
3. A.I.R. - All India Reporter
4. Vs. - Versus
5. Cr.p.c. - Criminal procedure code.