

Emerging Trend of Human Rights:

A Study on Rights of an Accused

By- Meenakshi Jain

Introduction:

Human Rights are those basic rights which are not created by any Legislation but have its origin in Natural Law. Natural Right based on concept of natural justice, equality and non-arbitrariness. International Covenants such as UN Charter, UNDHR, 1948, International Covenant on Civil and Political Right, 1966 work for development of concept of human right. These rights are available to all persons whether innocent or accused. Protection and promotion of human right of individual has not only remained object of International community but now become the concern of National states.

Indian Legal System:

In India we follow adversary criminal justice system, where no decision in any judicial criminal proceedings is given without given reasonable opportunity to accused person to say his side.

Principle of Legality:

- Nullum sine crimen lege.
- Nullum poena sine lege.
- Audi alteram partem
- Ex-post facto laws. Etc.

On basis of these Principles and According to Art.14 of Indian Constitution i.e. “Right to Equality” accused person get some rights and privileges to defend their selves.

Who is Accused Person?

“Webster Law Dictionary”

Person or Persons against whom a charge or crime or misbehaviour is brought.

“Black Law Dictionary”

Person who has been blamed for wrongdoing specially a person who has been subjected to actual restraints on liberty through an arrest or a person against whom a formal indictment or information has been returned.

“Sec.24 Indian Evidence Act, 1872”

Against whom evidence sought to be led in a criminal proceeding.

What is Right?

“According to Salmond”: Right is an interest recognized and protected by moral or legal rules. It is an interest violation of which would be a legal wrong. Respect for such interest would be a legal duty.

Indian Legislation and Right of Accused

- Constitutional Law of India.
- Indian penal Code, 1860.
- Criminal Procedure Code, 1973.
- Indian Evidence Act, 1872.

Constitutional Law of India

The Constitution of India in its part-iii guarantees Fundamental Right to citizens. Some of these Fundamental Rights are also available to accused, under-trial and suspected persons. These persons are also entitled to benefits of Art. 32 & 226 of Constitution.

Right against Handcuffing

With emerging trends of human rights the general rule is handcuffing of accused is violation of Art. 14, 19, 21 of Constitution, But it is permitted under exceptional cases and special reason should be recorded when handcuffing is permitted. In Prem Shankar Shukla’s AIR 1980 SC 1535 case SC laid down that handcuffing is not permitted.

Right to Life

It is guaranteed under Art.21 of the Constitution. It is a Fundamental right as well as Natural right. “No one shall deprive of his life and personal liberty except according to procedure established by law.” Babu Singh v/s State of UP AIR 1978 SCR(2) 777 Supreme Court declares refusal to grant bail in murder case without reasonable case would amount to denial of personal liberty. Sunil Batra’s AIR 1980 SCR (2) 557 case is landmark case on “solitary confinement” SC held solitary confinement done by prison authority of an under-trial prisoner without reasonable reason violates the Art.21 of Constitution.

Right to Fair Trial

This right is enshrined by all democratic countries as basic human right. This right is basically deals with administration of justice, because without proper administration of law there is no benefit of just and fair laws. Scope of this right comes under Art. 21 of Constitution. In landmark case of Maneka Gandhi AIR 1978 SCR (2) 621 Supreme Court held that procedure establish by law means right, just and fair procedure that embodies the principles of natural justice. Rattiram v/s State of M.P (2012) 4 SCC 516 SC entrenched in the concept of due process of law which is bedrock of Art.21 of Constitution.

Right to Speedy Trial

Speedy trial is one of essential ingredient of the right to fair trial and Art 21 of Constitution. Delayed trials of under-trial prisoners’ means justice denied to them. Hussainara Khatoon v/s State of Bihar AIR 1979 SC 1379 case SC held that speedy trial is part of fundamental right to life and personal liberty. Kadra Pahadiya v/s State of Bihar AIR 1981 SCC 671 SC enunciated speedy trial is fundamental right and commented against the cases of several under-trial prisoners who were in jail without proper trial.

Right to Counsel

Accused have a right to defend himself by a counsel. It is an essential feature or integral part of Art. 21 of Constitution and Sec.303 of Cr.P.C Right to have Lawyer of his choice, that the person should be given a reasonable opportunity of hearing and proves him self innocent. The International Commission of Jurist met in Delhi in 1959 stressing the importance of legal representation on behalf of accused.

Right to Free Legal Aid

Art 39-A of Constitution provide legal aid to protect poor accused or under-trial prisoners against injustice and to secure to them their Constitutional and Statutory rights. Suk Das v/s UT of AP AIR 1986 SC 991 Apex Court held that failure to apply free legal aid to accused at State's cost would vitiate the trial. If accused not provided with legal aid within reasonable time this is violation of Art-21 of Constitution.

Right against Retrospective application of Penal Law

Nullius crimen sine lege and Nullum poena sine lege are two maxims deals with this right which means there is no crime without law and there is no punishment without law respectively. Art.20(1) of Constitution prohibit only conviction or sentence not trial.

Right against Double jeopardy

Nemo debet Proeadem Causa bis Vexari: A man can not be put twice for jeopardy for same offence.

Autrefois acquit or Autrefois convict: Previous acquittal or previous conviction.

Kolla veeta Raghav Rao v/s Gorantla VenketeshwarRao 2011 CrLJ 1094 (SC) SC declares "No one can be tried and convicted for the same or even for different offence but on same facts". Art. 20(2) of Constitution "No one can be prosecuted for same offence".

Right against self-incrimination

Nandini Satpathi vs. P.L.Dani AIR 1978 SC 1025 SC upheld the right against self-incrimination. Authority can not compel the accused for given any testimony. Art 20(3) of Constitution declares that no one can be compelled to be witness against himself.

Section 161(2) of Cr.P.C. 1973 also provides protection against self incrimination. Selvi vs. State of Karnataka AIR 2010 SC 1974 SC held that protection under 161(2) is wider than 20(3).

Under Sec. 132 of Indian Evidence Act, 1872 witness is not excused from answering on the ground that answer will incriminate him. The object of this sec is to secure the evidence from whatever sources it is available for doing complete justice.

Right against Third-degree methods

In India physical or mental torture including use of third degree methods during investigation or otherwise has been prohibited by law. Because it is violation of Right to Life Guaranteed

under Art. 21 of Constitution. Landmark judgements of Joginder kumar vs. State of UP (1994) 4 SCC 260 and D.K.Basu vs. State of WB 1997 CrLJ 743 (SC) where Supreme Court give guidelines relating to arrest and detention.

Right to Fair Treatment

Fair treatment is essential and integral feature of Art. 21 of Constitution. Administrative and judicial actions are taken against the police in cases of custodial death of accused if the police are found guilty of committing unlawful acts. In Sheela Barse vs. State of Maharashtra AIR 1983 SCR(2) 337 case Bhagawati J. held that Police have duty to give fair treatment to the accused in police custody.

Presumption of Innocence

Indian legal system is adversary criminal justice system where every accused of offence shall presumed innocent. Section 113-B and 114-A of the Indian Evidence Act, 1872 incorporate provisions regarding presumption of culpable mental state with respect to the offence of Dowry Death under Sec.304-B and custodial rape under Sec.376(2) of the IPC respectively. According to Mohmd. Hussain @ Julfikar Ali vs. State (Govt. of Nct) Delhi AIR 2012 SC 3860 case presumption of innocence is human right of accused.

Right under Criminal Procedure Code

Criminal Procedure Code, 1973 provides some rights and safeguards to accused person which are necessary for just and fair trial and treatment of accused person.

Right to Grounds of Accusation

Section 50(1) of Cr.P.C and Art. 22(1) of Constitution deals with this right, that no one can be detained in custody without being informed the grounds of such arrest. Section 41-B of Cr.P.C mandates the arresting police officer to prepare a memorandum of arrest which shall be attested by a family member or respectable member of locality. Dr. Rini Johar vs. State of MP AIR 2016 SC 2679 Is landmark case on violation of this right where the SC awarded rupees three lakhs as compensation for violation of directions of law for making arrest.

Right to Silence

Under Sec. 313 of Cr.P.C accused have right to remain silence. State of MP vs. Ramesh (2011) 4 SCC 786 SC declares that collective effect of reading of the provision of Art 20(B) of the

Constitution with the Sec. 161[20,313(3), 315(b)] remains that in India law provides for the rule against from the adverse inference of silence of the accused.

Right to have Copy of FIR

Section 207 of Cr.P.C provides for supply of FIR to accused comes into operation after submission of charge sheet by the police before the Magistrate. Art. 22(1) of Constitution read with Sec 41B, 50A of Cr.P.C SC in Youth Bar Association vs. Union of India AIR 2016 SC 4136 accused has right to get copy of FIR at earlier stage as possible.

Right to have Public Trial

Sec. 327 of the Cr.P.C provides for holding of trial in open court subject to certain exceptions given in sub-section (2) of said section. Kehar Singh vs. Delhi Administration AIR 1988 SC 1883 even if the trial is shift to private house or jail it remains open court.

Right to Bail

Sec. 436-439 of Cr.P.C deals with bail. Bail is available in bail able and non-bail able offences. Sec. 50(2) of the Cr.P.C mandates the Police officer making the arrest to inform the arrested person of his right to bail. Rasiklal vs. Kishore Khanchand (2009) 4 SCC 446 SC declares right to claim bail guaranteed by sec 436 of code is in bail able offences is an absolute and indefeasible right. Indigent person has right to release on personal bound instead of taking bail.

Sec. 167(2) of Cr.P.C guarantee right to accused to get bail if investigation is not completed within 90 days for an offence punishable with death or life imprisonment or imprisonment for a term not less than ten years.

Right to Evidence Recorded in Presence of Accused

Sec. 273 of the Cr.P.C mandate all evidence in the course of trial shall be taken in presence of accused to understand the case against him and prepare his defence. Mohd. Sukur vs. State of Assam Apex Court AIR 2011 SC 1222 SC held that if criminal case is decided against accused in the absence of his counsel then there will be violation of Art 21 of Constitution.

Right to be Heard on question of Sentence

Sec. 235(2) and 248(2) of Cr.P.C confer right on accused found guilty of offence by court to be heard on question of sentence. Santa Singh vs. State of Punjab (1976) 4 SCC 190 SC

enunciated when no opportunity has been provided to accused to produce material and make submission in regard to the sentence to be imposed on him, failure of justice is implicit and therefore the defect of non-compliance with Sec. 235(2) of Cr.P.C is not curable by Sec. 465 of Cr.P.C.

Right under Evidence Act

Right of Accused to Examine Witnesses

Sec 137-166 of IEA, 1872 deals with examination of witness among those Sec 137 of IEA, 1872 deals with Examination in Chief, Cross-examination and Re-examination. During Cross-examination leading question can be asked and when can not be asked mentioned in sec 143 of IEA, 1872.

Right of Accused related to confession of a crime

If accused confessed his guilt on his own record it can be treated as an effective evidence of his guilt. Vohra Ibrahim vs. State of Maharashtra AIR 1976 SCR (3) 672 SC expounded if confession of guilt is not on his own desire and has been given under some threat then such evidence is not acceptable. In relation to Sec 24 of IEA, 1872, Secs 153, 154, 281, 463 are made under Cr.P.C, it is the duty of the code to ensure that all these rights are available to accused.

Right of Accused for Information

Sec. 65 of IEA, 1872 makes it clear that certified copy permitted under IEA, 1872; Right to information under RTI Act, 2005 falls under this ambit. Law provides privacy to the communication between certain people keeping in view the relationship between the people keeping in view the relationship between the people. Those persons who are marrieds can not be forced to divulge the communication between them. These are two exceptions in this provisions.

Right of Accused under IPC

Sec. 96-106 of IPC, 1860 deals with private defence, which could be physical or for property. It is natural to help one self and protect self and own property which is self defence in criminal law.

Miscellaneous

Reasonable Doubt

The prosecution must prove its case by adducing credible evidence and not by raising suspicion as however grave the suspicion may be it can not take the place of proof. Raj Kumar vs. State of Rajasthan 2013 CrLJ 3276 (SC) Sc expounded that prejudice to accused or failure of justice has to be examined with the reference to these aspects.

Benefit of Doubt

Sec. 105 of IEA, 1872 burden of proof. Reasonable doubt does not mean any doubt but only that doubt for which reasons can be given. Prosecution must prove its case beyond reasonable doubt and the benefit is given to the accused. Rishikesh Singh vs. State AIR 1970 CrLJ 132 doubt of reasonable, astute and alert mind arrived at after due application of mind to every relevant circumstances of the case appearing from the evidence.

Right to Reasoned Judgement

Accused have right to be reasoned judgement which is based on logical conclusion and not on surmises and conjectures, it is the basic feature of fair trial. Mulkhtiar Singh vs. State of Punjab (1995) SCC 760 SC expounded the conclusion about guilt or innocence of the accused should be based on evidence.

Conclusion

Emerging trend of human right tends that accused get his basic human right at every stage of fair trial. Fair trial being heart of the criminal jurisprudence and Indian legal system adopt and coordinate with International Conventions which work for development of human rights. There are also provisions for indigent person such as free legal aid, bail on security bond etc. So the system is improving with emerging trends of modern and developed society.