

RIGHT OF ACCUSED UNDER CRIMINAL LAW

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ABSTRACT

This article relates to the right of accused people under trial, prisoners under the Indian law system. As a person is innocent until he is found guilty by the court in legal proceedings thus to protect the right of every human it is necessary to grant some right for the protection of basic human rights. This paper further explains various rights granted to prisoners and persons under trial and also explains the limitations on the right to life and personal liberty. Accused have various rights under Part III of Indian constitution and also have various statutory rights granted under Indian law. Report and convention of UDHR also is in favour of human rights which also include prisoners and people who break the law. This blog explains various basic rights of accused under criminal law. Criminal law is itself procedural and substantive law which also provides various legal rights to prisoners.

Keywords:- *wrong doer, accused, prisoner, self-incrimination, Torture, defence, compensation, enjoyment of life.*

MEANING

An accused means one who is not recognized by law as guilty for breaching any law but there is a case filed against him or he found guilty and put for legal trial in front of court and Prisoners means wrong doer who is punished for his/her act against law or human society. Criminal law is to protect society from such lawless situations and to punish the accused who did an unlawful act. Criminal law protects the right of individuals and secures the provisions laid down in law. It's main work to protect law abiding against lawless, the victim against exploiters, the society against insane, peace believer against violent, weak against strong, and to ensure protection of law by punishing the accused after the accusation against him has been investigated and proved guilty in a legal proceeding in accordance with the provision of law. Criminal law is created to ensure free and fair trials so that innocent people are never punished. The prisoner Act, 1894 explains about prisoner accommodation and Rights. Section 3 of Prisoner Act states that prisoner means any person who committed to

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custody under the writ, warrant or order of any Court or authority of India exercising criminal jurisdiction and criminal law. Criminal law also states that no person shall be punished without infringement of a legal wrong and maxim of *nulla poena sine lege* ideate four principles of criminal justice that is: scope of criminal law is predetermined, person should not be punished unless his act breach of these rules, Penal statute should be strictly constructed, and Penal law should not have retrospective operation. This is for the protection of innocent people to protect them from being punished for nothing.

An accused and prisoner is also a Human and violating his right is also because violation of human right thus International conventions such as UDHR also states precautions for the protection of human rights. Prisoner also have access to fundamental rights but not those right which may cause threat to law and security for example they don't have access to Right to freedom and on the other hand they have access to right to education, right to life (until court not ordered for the execution of the person), Right to speech and expression (only with in prison, Right to equality, Right to perform religious activities as prisoners is along human they also have access to this limited rights. There is also various rights granted to accused under Constitution of India.

- *Right contrast to Ex-post facto*
- Right for the protection of double jeopardy
- Right for the protection of self-incrimination and torture
- Right to appeal to higher court for justice

Well, a prisoner is one who is found accused for the violation of law and punished by court but they also have Right to legal defence, Right to have speedy trial and Right to ask for compensation against false imprisonment.

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Right contrast to Ex-post facto :-

Article 20 clause (1) of the Indian constitution says that a person cannot be punished for a crime more than the punishment prescribed in law at that time as *nulla poena sine lege* explain that criminal law is pre-determined in nature thus punishment is only given at the rules of that time only. However in civil liability retrospectively can be imposed with effect from the past date. For example :- A, was charge for corruption in 1987 at that time punishment was upto 3 year but he was convicted in 1990 and punishment raised from 3 year to 5 year thus in this case A was punished for 3 year when his case was put in trial. This also have some limitations for example if the case is put under apex court for justice and the nature of case is so serious in that case, court have full authority to make and regulate law relating to that subject.

Right for protection against double jeopardy :-

Article 20 clause (2) says that no person should be punished twice or more for the same offence "*nemo debet bis vexari*". If man is charged or prosecuted more than once for the same offence which he is already punished in that case he can take complete defence under Article 20(2) of India constitution. The object of this provision is to avoid harassment to a person who is already punished, convicted, prosecuted or charged for the same offence and also to save the time of court. for example :- A commit robbery and he is punished for the offence then after some time he is prosecuted for the same offence in that case he is able to take complete defence in second proceeding. If the nature of offence is both crime and tort, for example defamation then he is entitled to pay for damage of reputation and punished for defamation but not more than once. As Article 20(2) puts ban on prosecution twice for the same offence.

Protection against torture and self - incrimination:-

Self-incrimination:- Article 20 clauses (3) of Indian constitution say that No person is accused of any offence shall be compelled to be witness against himself. As police torture accused to confess about crime but there is no validity of that confession. This Article prohibits all kinds of compulsions on person accused to make him a witness against himself; this Article removes any compulsion to be witness against himself for accused.¹ Article 1 of UN General assembly define torture as any act by which individual face pain and suffering that may be physical or mental which is put on person intentionally to gather information about 3rd person or to get

¹ *Charoria v. state of Maharashtra*, (1981) AIR SC 938.

confession. In India this physical and mental torture including use of 3rd degree methods during investigation is restricted and cannot be used without proper order from higher authority. Article 20 (3) protect accused from torture and self-incrimination.²

Right against unwanted arrest:-

Article 21 of Indian constitution says about right to life and liberty which is also the considered as basic human rights in UDHR. It says that accused have right against arrest if police officer is not able to arrest anyone without warrant in case of cognizable offences as in section 2 clause c of CrPC³. Police officers cannot practitioner and there is no provision for detention beyond 24 hours without the order of the magistrate.⁴

Compensation for Illegal detention:-

If anyone is detained then it is consider as violation of Right to life and personal liberty and remedy for this is available under Article 32 and 226 of India constitution is to remove a person from detention or remove from such illegal detention. In India compensation to prisoners in Article 21 is in a fluid sate.⁵ If anyone found illegally detained then he is subject to get compensation for all the damage he face that count physically, mental, or any loss to livelihood and professional life.⁶

Right to Legal Defence:-

- This also count free legal aid to the prisoners and person under trial. This the basic right of an arrested person and if anyone is unable to pay for legal fees then state provide them free legal aid and no one can deny for having a legal practitioner for defending themselves. As Article 22 (1) says that a person cannot be denied to defend themselves and to have consulted with legal practitioner of his choice. If a prisoners sentenced to imprisonment it is virtually not able to practice his right of appeal in this his has right to consult with legal practitioner of his own choice and have right to protect his fundamental and statutory rights. It is also duty of court to provide free legal aid to one who is unable to pay legal fee, when a prisoner want to file an appeal or revision then he has right to consult legal practitioner which is to be available at him in the prison, if prisoner is not able from engaging a lawyer on reasonable ground it's the duty of court to assign counsel for the prisoner's defense. For this parliament in 1987

² M.P sharma v. satish chandra, (1954)AIR SC 300.

³ D. K. Basu v. State of West Bengal, (1997)1 SCC 416.

⁴ Joginder kumar v. State of Uttar Pradesh, (1994) AIR SC 1349.

⁵ Nilabati behera v. State of Orissa,(1993) 2 SCC 746.

⁶ Rudul sah v. State of Bihar, (1983)AIR SC 1086.

enacted the legal services authorities' act, 1987 to provide free legal services to the weaker section of the society.

Right against Illegal detention:-

It is well-known fact that no one is considered guilty for the offence until he found guilty by a court of law till that period he/she is considered to be innocent. No one can be arrested without warrant for cognizable offence and if he is arrested for non cognizable offence then he is only detained for 24 hours only and within this period he need to be put in front of magistrate, if not then he/she is able to file case under *habeas corpus*. In India, prison conditions are disgusting and person detained in prison for under trials face various problem and various forms of torture⁷. In case of under trial prisoners the period of detention is included in the sentenced of the court but if they are found innocent in that case they got compensation for Illegal detection. If they got convicted by the court in that case there period of time as they spend in under trial got detected from there period of punishment.

Right of speedy justice and public trail:-

Every accused have right for an open court proceedings under Section 327 of CrPC, 1973 to which the general public have access to the proceedings.⁸ Speedy justice is everyone right and essence of criminal justice and delay in trial lead to delay in justice itself thus everyone have right to speedy trial under Article 21 says that if a person is deprived of his liberty under a proceeding which is nit reasonable, fair or just in that case there is violation of fundamental rights and he is able to file case for the compensation of violation of rights done during legal proceedings.⁹

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CONCLUSION

Accused, people under trail or prisoners everyone is human and they also have access to fundamental rights and some special rights is also given to accused for the protection and safety of human rights. It is also said that accused is not guilty until it is proven by court thus violation of their rights is also a subject to violation of law. Right to life and personal liberty is open to all but court have full authority to punish wrong doer thus this can suspended but only for some limit and if court order for execution of an accused in that case it is not violation of any rights because to maintain law it is mandatory to punish those who break the law.

SUGGESSTIONS

⁷ State of Gujarat v. Hon'ble High Court of Gujarat, (1998)AIR SC 3164.

⁸ Hussainara khatoon v. Home secretary, State of Bihar, (1979) AIR SC 1369.

⁹ K. D. Gaur, *Legal Aid and legal service in India - Madrid conference on the law of the world*, 1979.

Here are some suggestions related to the provisions and Right of Accused.

- It is well-known fact that in Indian jails there are more innocent captives than adjudged criminals, thus it is the duty of court to separate under trail prisoner from convicted prisoner`s.
- To protect the purity and security of law it is the duty of Parliament and court to make provision for better compensation for Illegal detection.
- There is need for modification and improvement in Indian jail as their living standards is way down for normal human and as prison is place for punishment there is also need to take effective measures to use man power in the work of creation. In case of person accused because of severe crime they need to be punished immediately.
- Indian prison is overburdening thus government need to decrease the Doctrine of rare out of rare case to rare cases only.



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