



GLOBAL JOURNAL OF ADVANCED RESEARCH
(Scholarly Peer Review Publishing System)

RIGHT OF ARRESTED PERSON UNDER THE INDIAN CONSTITUTION

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ABSTRACT

The significance and importance of human rights especially Right to life, liberty, equality and dignity, this article is devoted to enforcement of human rights and judicial trends and to study new tools forged by the judiciary in recent years which have given a new meaning to fundamental rights jurisprudence in India. Since the beginning of civilised society human race has always been conscious of justice and has frowned at efforts to interfere with individual Liberty and dignity. Indian has been fighting for basic human Right and civil liberties with Britishers during the struggle for freedom. Basic human rights were expressed in the Constitution of India Bill.1985 and Nehru report, 1928. Britishers used process of law and justice to suppress the Indian during freedom struggle.

Keyword: Constitution. Accused. Right. Indian. Protection, guarantee, Provision, Jeopardy, Law, Remedies

1. 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 two cardinal principles of criminal jurisprudence are that the prosecution must prove its charge against the accused beyond shadow of reasonable doubt and the onus to prove the guilt of the accused to the hilt is stationary on the prosecution and it never shifts. The prosecution has to stand on its own legs so as to bring home the guilt of the accused conclusively and affirmatively and it cannot take advantage of any weakness in the defence version. The intention of the legislature in laying down these principles has been that hundreds of guilty persons may get scot free but even one innocent should not be punished. 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.

2. PRTECTION IN RESPECT OF CONVICTIONFOR OFFENCES

Following are some important provisions creating rights in favour of the accused/ arrested persons:-

Regarding protection in respect of conviction for offence, Article 20 of the constitution, following are some important provision creating right a favour of the accused / arrested person.



- 1.No person shall be convicted of any offence excepts for violation of a law in force at the time of commission of the act charged as an offence, nor be subjected to a penalty greater the that which might have been inflicted under the law in force at the time of the commission of the offence.
2. No person shall be prosecuted and punished for the same offence more than once.
3. No person accused of any offence shall be compelled to be a witness against himself".

The article 20 of the constitution of India provides three types of safeguard to the person accused of crimes m namely -I protection against ex-post facto Law: II guarantee against double Jeopardy, and III Privilege against self incrimination.

2.1 Protection against *ex postfact law* article21 [1]

Article 20[1] of the constitution contains two parts: 1 No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence;

2 No person shall be subject to penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence..

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 laws¹.

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. 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,² 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.

2.2 Doctrine of “guaranteeagainst double jeopardy” article 20[2]

The expression 'Double Jeopardy' used in the American law, but not in our constitution, the term double jeopardy ' means exposé to loss or injury for double tine.

The English common law rule is that "*nemo debet bi's punibi prouno delicto*"which means that no one should be punished twice for one fault.

¹ Article 15 of International Covenant on Civil and Political Rights, 1966

² Kedar Nath v. State of West Bengal AIR 1953 SC 404



The Fifth Amendment to the American to the American constitution in corporate, "No person shall any person be subjected for the same offence to be put twice in jeopardy of life or limb."

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, 1973.³ 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.⁴

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".

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

2.3 Prohibition against self incrimination or testimonial compulsion article 20[3]

Article 20[3] 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. The 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**,⁵ 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".

³ Natrajan v. State, 1991 Cri LJ 2329 (Mad).

⁴ S.R Myneni Constitutional Law- I

⁵ M.P. Sharma v. Satish Chandra,



(c) It is a protection against such compulsion relating to his giving evidence “against himself.”

In Nandini Satpathy v. P.L. Dani⁶, 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.

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 accused⁹. In case of Smt. Selvi & Ors. v. State of Karnataka & Ors.⁷, 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 self-incrimination’ 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.
- (ii) Section 53, 53-A and 54 of Criminal Procedure Code permits the examination include examination of blood, blood-stains, semen swabs in case of sexual offences, sputum and sweat, hair samples and finger nail dipping by the use of modern and scientific techniques including DNA profiling. But the scientific tests such as Polygraph test, Narcoanalysis and BEAF do not come within the purview of said provisions.
- (iii) It would be unjustified intrusion into mental privacy of individual and also amount to cruel, inhuman or degrading treatment.
- (iv) Voluntary administration of impugned techniques is, however, permissible subject following safeguards, but test results by themselves cannot be admitted in evidence.
 - (a) No Lie Detector Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.
 - (b) If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.
 - (c) The consent should be recorded before a Judicial Magistrate.
 - (d) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.
 - (e) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a ‘confessional’ statement to the Magistrate but will have the status of a statement made to the police.
 - (f) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.
 - (g) The actual recording of the Lie Detector Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.
 - (h) A full medical and factual narration of the manner of the information received must be taken on record. The underlying rationale of right against self incrimination is as under,

⁶ Nandini Satpathy v. P.L. Dani, AIR 1954 SC 300

⁷ 2010 (2) R.C.R. (Criminal) 896.



(i) The purpose of the ‘rule against involuntary confessions’ is to ensure that the testimony considered during trial is reliable. The premise is that involuntary statements are more likely to mislead the judge and the prosecutor, thereby resulting in a miscarriage of justice.

(ii) The right against self-incrimination’ is a vital safeguard against torture and other ‘third-degree methods’ that could be used to elicit information.

(iii) The exclusion of compelled testimony is important, otherwise the investigators will be more inclined to extract information through such compulsion as a matter of course. The frequent reliance on such ‘short cuts’ will compromise the diligence required for conducting meaningful investigations.

(iv) During trial stage the onus is on the prosecution to prove the charges leveled against the defendant and the ‘right against self-incrimination’ is a vital protection to ensure that the prosecution discharges the said onus.

3. PROTECTION OR SAFEGUARD OR REMEDIES: ARTICLE-22

Article 22[1] and 22[2] of the Indian constitution provide the following rights to the person arrested and detained in custody under the ordinary law of crimes

3.1 Right to be informed of grounds of arrest: article 22[1]

Article 22 (1) of the Constitution provides that a person arrested for an offence under ordinary law be informed as soon as may be the grounds of arrest.

In addition to the constitutional provision, Section 50 of Criminal Procedure Code also provides for the same.

The grounds of arrest should be communicated to the arrested person in the language understood by him; otherwise it would not amount to sufficient compliance with constitutional requirements.

3.2 Right to be defended by lawyer article 22[1]

It is one of the fundamental rights enshrined in our Constitution. Article 22 (1) of the Constitution provides, *inter alia*, that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. The right of the accused to have a counsel of his choice is fundamental and essential to fair trial. The right is recognized because of the obvious fact that ordinarily an accused person does not have the knowledge of law and the professional skill to defend him before a court of law wherein the prosecution is conducted by a competent and experienced prosecutor. This has been eloquently expressed by the Supreme Court of America in *Powell v. Alabama*.⁸ The Court observed that “The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and the knowledge adequately to prepare his defence, even though he has a perfect one. He requires the guiding hand of counsel at every step of the proceeding against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect?”

In *Huassainara Khatoon (IV) v. Home Secretary, State of Bihar*⁹, the Supreme Court after adverting to Article 39-A of the Constitution and after approvingly referring to the creative interpretation of Article 21 of the constitution as propounded in its earlier epoch-making decision in *Maneka Gandhi v. Union of India*¹⁰, has explicitly observed as follows:

⁸ 287 US 45 (1932).

⁹ 1980. 1 SCC 98; 1980 SCC (Cri) 40, 47; 1979 Cri LJ 1045

¹⁰ 1978 1 SCC 248; AIR 1978 SC 597.



The right to free legal services is, therefore, clearly an essential ingredient of ‘reasonable, fair and just’ procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the provision of such lawyer.¹¹

It has been categorically laid down by the Supreme Court that the constitutional right of legal aid cannot be denied even if the accused failed to apply for it. It is now therefore clear that unless refused, failure to provide legal aid to an indigent accused would vitiate the trial, entailing setting aside of conviction and sentence.

These questions are now of academic importance only. Because the Supreme Court has now recognized that every indigent accused person has a fundamental constitutional right to get free legal services for his defense. The Constitution as well as Section 303 of Code of Criminal Procedure recognized the right of every arrested person to consult a legal practitioner of his choice.

Article 22 (1) provides, “ No person who is arrested shall be detained in custody without being inform, 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, a legal practitioner of his choice”. The right begins from the moment of arrest i.e. pre-trial stage.¹²

. The arrestee could also have consultation with his friends or relatives. The consultation with the lawyer may be in the presence of police officer but not within his hearing.¹³

3.3 Right to be produced before magistrate: article 22[2]

As per Article 22 (2) of the Constitution provides that an arrested person must be taken to the Magistrate within 24 hours of arrest. Similar provision has been incorporated under Section 56 of Criminal Procedure Code. A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

In Hariharnand v. Jailor, the court been held that the arrested person will be entitled to be released, If twenty four hours passed and the person arrested has not been produced before Magistrate. The magistrate before whom the arrested person is presented is required to apply his judicial mind to determine be whether the arrest is regular and in accordance with law.

3.4 Arrested person no detention beyond 24 hours except by order of the magistrate

Article 22(2) of the Constitution provides: “Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.”

The right to be brought before a Magistrate within a period of not more than 24 hours of arrest has been created with aims:

- (i) to prevent arrest and detention for the purpose of extracting confessions, or as a means of compelling people to give information;
- (ii) to prevent police stations being used as though they were prisons – a purpose for which they are unsuitable.

¹¹ Hussainara Khaton (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98, 105: 1980 SCC (Cri) 40, 45: 1979 Cri LJ 1045;

¹² AIR 1954 Raj 241.

¹³ Sundar Singh v. Emperor 32 Cri LJ 339.



[iii] to afford an early recourse to a judicial officer independent of the police on all questions of bail or discharge. If a police officer fails to produce an arrested person before a magistrate Within 24 hours of the arrest, he shall be held guilty of wrongful detention

3.5 Right to free legal aid article 39-a

The 'right to counsel' would remain empty if the accused due to his poverty or indigent conditions has no means to engage a counsel for his defence. The state is under a constitutional mandate (implicit in Article 21 of the constitution, explicit in Article 39-A of the constitution-a directive principle) to provide free legal aid to an indigent accused person Sukhdas V. Union Territory of Arunachal Pradesh.¹⁴ In Khatri (II) V. State of Bihar¹⁵, the Supreme Court has held that the State is under a constitutional mandate to provide free legal aid to an indigent accused person, and that their constitutional obligation to provide legal aid does not arise only when the trial commences but also when the accused is for the first time produced before the Magistrate as also when he is remanded from time to time. However this constitutional right of an indigent accused to get free legal aid may prove to be illusory unless he is produced before promptly and duly informed about it by the court when he is produced before it. The Supreme Court has therefore cast a duty on all Magistrate and courts to inform the indigent accused about his right to get free legal aid.

3.6 Right to be tried in presence of accused

The personal presence of the accused throughout his trial would enable him to understand properly the prosecution case as it is unfolded in the court. This would facilitate in the making of the preparations for his defence. A criminal trial in the absence of the accused is unthinkable. A trial and a decision behind the neck of the accused person are not contemplated by the Code, though no specific provision to that effect is found therein. The requirement of the presence of the accused during his trial can be implied from the provisions which allow the court to dispense with the personal attendance of the accused person under certain circumstances.

3.7 Right to speedy trial

Justice delayed is justice denied. This is all the more true in a criminal trial where the accused is not released on bail during the pendency of the trial and trial is inordinately delayed. However, the code does not in so many words confer any such right on the accused to have his case decided expeditiously.

In Hussainara Khatoon (IV) V. State of Bihar¹⁶, the Supreme Court considered the problem in all its seriousness and declared that speedy trial is an essential ingredient of 'reasonable, fair and just' procedure guaranteed by Article 21 and that it is the constitutional obligation of the state of devise such a procedure as would ensure speedy trial to accused. The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this court, as the guardians of the fundamental rights of the people, as a sentinel on the qui vie, to enforce the fundamental right of the accused to speedy trial by issuing necessary directions to the State.¹⁷ The spirits underlying these observations have been consistently rekindled by the Supreme Court in several cases.¹⁸ This has again been expressed in Raj Deo Sharma v. State of Bihar¹⁹ wherein the court ordered to close the prosecution cases, if the trial had been delayed beyond a certain period in specified cases involving serious offences.

¹⁴ 1986 SCC (Cri) 166; (1986) 2 SCC 401; 1986 Cri LJ 1084.

¹⁵ (1981) 1 SCC 627; 1981 SCC (Cri) 228.

¹⁶ AIR 1995 SC 366

¹⁷ Madheshwardhari Singh v. State of Bihar, 1986 Cri LJ 1771 (Pat)

¹⁸ A.R. Antulay v. R.S Nayak, (1992) 1 SCC 225; 1992 SCC (Cri) 93.

¹⁹ 1998 SCC(Cri) 1692



The right to speedy trial came to receive examination in the Supreme Court in Motilal Saraf v. State of J&K.²⁰ Dismissing a fresh complaint made after 26 years of an earlier complaint the Supreme Court explained the meaning and relevance of speedy trial right thus:

The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with actual restraint imposed by arrest and consequent incarceration, and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from incompressible and avoidable delay from the time of the commission of the offence will if consummated into a finality, can be averted.

3.8 Right of appeal

The Supreme Court has observed: “One component of fair procedure is natural justice. Generally speaking and subject to just exceptions, at least a single right of appeal on facts, where criminal conviction is fraught with loss of liberty, is basic to civilized jurisprudence. It is integral to fair procedure; natural justice and normative universality save in special cases like the original tribunal being a high bench sitting on a collegiate basis.

Appeal is one of the two important review procedures. An appeal is a inferior one, whose judgment or decision the court above is called upon to correct or reverse.⁶⁵ An appeal is a creature of statute and there can be no inherent right of appeal from any judgment or determination unless an appeal is expressly provided for by the law itself. Complaint to a superior court of an injustice done or error committed by an.

4. SOME OTHER PROVISIONS OF ACCSUED

The above said rights are not the exhaustive rights of accused/arrested persons; other rules have also been made in the consideration of interest of them. Some of them have been created by the judiciary and later on incorporated in the concerned laws. The idea underlying is to protect the basic human rights of accused in all circumstances. Some of these are as following,

4.1 Rules For Bail

‘Bail not Jail’ is the celebrated dictum of Justice Krishna Iyer. The law of bails “has to dovetail two conflicting demands, namely, on one hand, the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence, viz., the presumption of innocence of an accused till he is found guilty. The quality of a nation's civilisation can be largely measured by the methods it uses in the enforcement of criminal law.

4.2 Right Against Solitary Confinement

Although, one of the mode of punishment is solitary confinement, but certain restrictions have imposed on the type of punishment to protect the right of convict to mingle with other convicts. In Sunil Batra (1) v. Delhi Administration²¹, it was held 'if by imposing solitary confinement there is total deprivation of camaraderie (friendship) among co prisoners commingling and talking and being talked to, it would offend Article 21 of the Constitution. The liberty to move, mix mingle, talk, share company with co-prisoners if substantially curtailed would be violative of Article 21 unless curtailment has the backing the law. The Court held that continuously keeping a prisoner in fetters day and night reduces the prisoners from a human being to an animal and that this treatment was cruel and unusual that the use of bar fetters was against the spirit of the Constitution.

4.3 Right Against Inhuman Treatment

²⁰ 2007) 1 SCC (Cri) 180

²¹ AIR 1978 SC 1575.



The accused and convict in criminal system of the country have the rights to live with dignity. Therefore, they should not be subjected to the inhuman treatment. In Kishore Singh v. State of Rajasthan²² the Supreme Court held that the use of third degree method by police is violative of Article 21 and directed the Government to take necessary steps to educate the police so as to inculcate a respect for the human person. The Court also held that punishment of solitary confinement for a long period from 8 to 11 months and putting bar fetters on the prisoners in jail for several days on flimsy ground like loitering in the prison, behaving insolently and in an uncivilized manner, tearing of his history ticket must be regarded as barbarous and against human dignity and hence violative of Article 21, 19 and 14 of the Constitution Krishna Iyer, J. declared, "Human dignity is a clear value of our Constitution not to be bartered away for mere apprehension entertained by jail officials.

Similarly, torture and ill treatment of women suspects in police lockups has been held to be violative of Article 21 of the Constitution. The Court gave detailed instructions to concern authorities for providing security and safety in police lockup and particularly to women suspects. The female suspects should be kept in separate police lockups and not in the same in which male accused are detained and should be guarded by female constables. The Court directed the I.G. prisons and State Board of Legal Aid Advice committee to provide legal assistance to the poor and indigent accused male and female whether they are under trials or convicted prisoners²³.

4.4 Fair Trial

The fair trial is the foremost requirement of criminal proceedings and it is utmost right of an accused. In the recent case titled as Dr. Rajesh Talwar and another v. C.B., and another²⁴ the Supreme Court observed that Article 12 of the universal declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of Criminal jurisprudence and, in a way, an important facet of democratic polity and is governed by rule of law. Denial of fair trial is crucifixion of human right.

Denial of fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a fair trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for truth and not about over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seen to have been done. Therefore, free and fair trial is a sine quo none of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of Constitution, in so many judgments the Supreme Court has expressed the importance of fair trial to accused.²⁵

4.5 Curative Petitions

The Supreme Court has ruled in Rupa Ashok Hurra v. Ashok Hurra²⁶ that while certainly of law is important in India, it cannot be at the cost of justice. The court has observed in this connection that in the area of personal liberty for some time now, this is the manifestation of the "dynamic constitutional jurisprudence" which the Supreme Court is evolving in this area. A curative petition can be filed by accused himself or on his behalf by any other person in the Supreme Court to review the earlier order of the Supreme Court itself. (vii) Right to Information under Right to Information Act, 2005 even when a person is convicted and deprived of his liberty in accordance with the procedure established by law, a prisoner still retains the residue of constitutional rights. Article 14, 19 and 21 "are available to prisoners as well as freemen. Prison walls do not keep out Fundamental Rights." The arrestee has a right to submit an application through Superintendent Jail for receipt of documents/information as permissible under the Right to Information Act, 2005.

²² AIR 1981 SC 625

²³ Sheela Barse v. State of Maharashtra, (1983) 2 SCC 96

²⁴ 2013 (4) R.C.R.(Criminal) 687.

²⁵ Natasha Singh v. C.B.I., 2013 (3) R.C.R.(Criminal) 368

²⁶ (2002) 4 SCC388



5. CONCLUSION

"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. The dictionary meaning of the word right is a "privilege". But when it is used in the context of "human rights" it is about something more basic. Human rights are fundamental to the stability and development of countries all around the world. Great emphasis has been placed on international conventions and their implementation in order to ensure adherence to a universal standard of acceptability.

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