

Fundamental Rights of Accused: Under Article 20 of Indian Constitution

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Abstract: No person shall be prosecuted and punished for the same offence more than once. Before the present Constitution in India there was no such provision in Government of India Act, 1935. The principle was however, incorporated in Section 26 of the General Clause Act, 1897 and Section 403 of the old criminal procedure code, provisions of which are incorporated in Section 300 of the code of Criminal Procedure, 1973. Section 26 of the General Clauses Act provides that where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished twice for the same offence.” Section 300 of the Code of Criminal Procedure provides that “a person who has once been tried by a court of Competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence.

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*Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess.*¹

Justice V.R. Krishna Iyer Introduction

I. RIGHTS OF ACCUSED UNDER ARTICLE 20

Article 20 provides that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of act charged as an offence, nor be subjected to a penalty grater than that which might have been inflicted under the law in force at the time of the commission of the offence.

In *Shiv Bahadur v. State of U.P.*² it was held that what is prohibited by Article 20 (1) is the conviction or sentence under an ex post facto law and not the trial thereof. Such trial under a procedure different from what obtained at the time of the commission of the offence or by a court different from that which had competence at the time cannot ipso facto be held to be unconstitutional. A person accused of an offence has no fundamental right to trial by a particular court or by a particular procedure except in so far as any constitutional objection by way of discrimination or violation of any other fundamental right may be involved.

II. PROHIBITION AGAINST DOUBLE JEOPARDY

In *Maqbool Hussain vs. State of Bombay*,³ the applicant, who was an Indian citizen, arrived at the Santa Cruz airport from a foreign country. On landing he did not declare that he had brought in gold with him, but on search it was

found that he had brought 107.2 total of gold in contravention of a notification of the Government of India. The customs authorities took action under Section 167(8) of however, given an option of paying within four months time Rs. 12,000.00 in lieu of confiscation but nobody came forward to redeem the gold. In the meantime a complaint was filed in the Court of the Chief Presidency Magistrate under Section 8 of the Foreign Exchange Regulation Act, 1947. The appellant contended that his prosecution in the Court of Chief Presidency Magistrate was in violation of Article 20 (2) of the Constitution because he has already been prosecuted and punished by Sea Customs Authorities inasmuch as his gold was confiscated. The Supreme Court held that “We are of the opinion that the Sea Customs Authorities are not a judicial tribunal and the adjudging of confiscation, increased rate of duty or penalty under the provisions of the Sea Customs Act do not constitute a judgment or order of a Court of judicial tribunal necessary for the purpose of supporting the plea of double jeopardy.

III. PROTECTION AGAINST SELF INCRIMINATION

Clause (3) of Article 20 contains prohibition against self incrimination which is a fundamental principle of criminal justice under Anglo-American jurisprudence. Fifth Amendment of the U.S. Constitution says that ‘no person shall be compelled in any criminal case to be a witness against himself.’ Clause (3) of Article 20 states that ‘no person accused of any offence shall be compelled to be a witness against Indian provision added the words ‘accused of any

¹ *Sunil Batra v. Delhi Administration*, AIR, 1978 SC 104.

² AIR 1953 SC 394, 398

³ AIR 1953 SC 325

offence' qualifying the words 'no person', but left out the words 'in any criminal case'. In substance both provisions have almost the same effect.

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