

Right of Accused under Indian Constitution With specific reference to the Human Rights: A Critical analysis

Pranav Ranga

Research Scholar, Department of Law, Kurukshetra university, Kurukshetra

Abstract: The proposition of human rights is not a new one; it is ingrained in the old history of human civilization itself. Though, the term “Human Right” itself is new in its origin. However the journey of humans has been steadily associated with the struggle of individual’s against unjust treatment of injustice, exploitation and disdain. Justice V.R. Krishan Iyer in his book, *Human Rights and in human Wrongs* remark that, “ultimately humanity has a commitment to history to make human right a visible reality”.¹

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I. INTRODUCTION

The International Convention on CPR, American Convention on HR, The African Charter on Human Rights and the Arab Charter on human rights has expressly provided under their articles i.e. Articles 26, 24, 3 & 11 that the equality before law means the equal treatment of every person in the application and enforcement of the law and it applies to all public authorities including judges, prosecutors and policing officers and it further required that they treat all person equally. Equality of treatment however does not mean identical treatment to all person rather it means that person in a like designation should be treated or entertained in a like manner as of its counterparts. Equality before the law also prohibits discrimination, Article 55. However, another aspect of this human right is the equal protection of the law and the same is duly incorporated in the above noted conventions. For the purpose of human rights, protection of law includes the protection against self – incrimination and to remain silence and presumption of innocence¹. India has pledged to adhere the declaration of human rights even before having its written framework and thus later on incorporated the same under its national framework “Constitution”. It will not be wrong say that the gist of Indian constitution i.e. its “Preamble” is the gist of human rights provided to every individual covered by the

supreme law. Also the Supreme Court itself has pointed that there is no binding force attached to the adherence of UDHR and they may not be legally binding but their incorporation shows that how India has understood the nature and significance of them.² It has further observed that these rights have been provided and has incorporated as against illegal invasion or to restrict the abuse of power by authorities in command.³ Under Indian criminal law jurisprudence protection against self incrimination is the cannon of Constitutional rights.⁴ It provides that an accused is to be presumed innocent till the guilt is proved beyond the reasonable doubt, the onus of proving the guilt lies in the prosecution, the accused will not be forced to give evidence against him, and the right also speaks out for the human privacy and adherence of civilized standard of criminal justice.

II. RIGHTS OF THE ACCUSED PERSON

The Constitution Provides that except by the procedure establish by law, no person shall be deprived from his life and personal liberty. The words “no person” stands universally but at the same time the term “except the procedure establish by law” specify the category of individuals under its command. The rule of law categories an individual in to two categories i.e:-

1. Innocent individual and
2. an accused person

¹ Article 11, Universal Declaration of Human Rights, 1948

² Keshavananda Bharti v. State of Kerala, AIR 1973 SC 1461

³ ADM Jabalpur v. Shukla, AIR 1967 SC 1207

⁴ Article 20(3), The Constitution of India, 1950

The principle object of law is to establish a peaceful society and to protect the rights of each and every individual therefore to achieve this object it act through various authorities, agencies , Acts and Codes thus the ultimate object of criminal law is to ascertain the truth and to punish the guilty. But the law speaks for presumption of innocence till the guilt is proved through the procedure established by law. The Constitution of India does not provide the definition of an innocent person for the purpose of presumption of innocence. But it provides for presumption of innocence in favour of an accused. Thus in general an accused person is one who is charged with the commission of an offence. Under the constitution following safeguard is available against the

Arbitrary enforcement:-

1. Protection against conviction under ex post facto
2. Protection against being prosecuted and punished twice for same offence
3. Protection from being a witness against himself⁵
4. Protection against unlawful arrest and detention⁶
5. Right to know the reason of arrest
6. Right to seek advice and right to be got represented by the lawyer of his choice
7. To be produced before the magistrate within 24 hrs of being arrested⁷

Here, it is important to note that the above rights are only available to a person accused on an offence and thus a person who has been convicted as per law cannot claim above protection and cannot be put to similar footing as that of accused. It has been seen that unlawful arrest has become a chief component and source of corruption in police system and as estimated more than 50% of the arrest are unjustified.⁸ The only difference lies between an accused person and Individual is that an accused person has every right to enjoy like other individual but to the extent of curtailment of person liberty. The Hon'ble Supreme Court of India also expressly shared its view that a police officer cannot arrest some one simple because it is lawful for him to do so. As per the guidelines provided by the Supreme Court:-⁹

1. It is necessary for the police officer who is making the arrest to justify the arrest
2. An arrest cannot be made in routine
3. Person arrested should be allowed to inform any of his friend or relative about his arrest
4. He shall be informed by the police officer when he brought to the Police Station

5. It is necessary for police officer to make an entry as to whom the information of arrest has been given by the accused
6. It is necessary for the magistrate before whom such accused is produce to verify that whether the above guidelines has been followed by the police officer or not.

It has also been held that using of handcuffs and fetters on accused violate the individual dignity of innocent and such practice also violates Article 14, 19 & 21. It was directed by Supreme Court that handcuffs are to be use only when:-¹⁰

- I. The accused is involved in a cognizable and non - bailable offence and has previously convicted
- II. If the accused likely to escape or attempts suicide
- III. It is the duty of police office to state the reason for handcuff of accused in his daily dairy report / entry and shall be put before the court.
- IV. Officer escorting or handcuffing the accused must take permission of court before handcuffing him
- V. It is the duty of magistrate before whom the accused have been produced to ask him whether he has been handcuffed by police or not if he replied in yes. Then the magistrate must ask for an explanation to the police.

The constitution also prohibits providing self – incriminating evidence by compulsion, but it's a naked reality that various harass methods are adopted by the police to record confessions or statement of accused or witnesses even 3rd degree has been reported to be inflicted in some cases. Without having any counter argument it is too accepted that police has a legitimate right to conduct arrest and is empowered to conduct other legitimate proceeding and even has to interrogate to bring the truth outside. But use of 3rd degree is not permitted as is against the law. But however it is mandatory for as police officer to wear proper uniform. Rank and name batches during or in course of carrying out investigation, interrogation and arrest. It is also mandatory for the police office to get the arrested person medically examined during the arrest and to record all medical condition including bodily injuries in the inspection memo. And this process shall be followed in every 48 hours.¹¹ Moreover, the Hon'ble Supreme Court through its wide interpretation has stated

⁵ Article 20, The Constitution of India, 1950

⁶ Article 21, The Constitution of India, 1950

⁷ Article 22, The Constitution of India, 1950

⁸ National police Commission 3rd report, (Govt of India, 1980)

⁹ Joginder Kumar v. State of UP & Ors, 1994 SCC 260

¹⁰ Prem Sanker Sukla v. Delhi Administration, 1980 SCC 526

¹¹ D.K Basu v State of West Bengal, AIR 1997 SC 610

that Article 20 not only provides the Right to the accused to consult and have a lawyer of his choice but at the same time the court has also provide protection to the lawyer so consulted for against any threat of criminal prosecution.¹² Furthermore, Protection against Self-incrimination and right to have a lawyer of choice are stand on similar note for each other as Article 22(1) and 20 (3) together protects the dignity of an individual against unnecessary mental and physical harassment. Therefore if an accused express his will or make a request the police officer to have a legal practitioner of his choice by his side during his entire examination and interrogation goes on and it is fundament to have this facility should not be denied to him.¹³

Again it is termed as unconstitutional if an accused is barred to be represented by a legal practitioner of his choice. Another connotation attached to this protection is that it is not only restricted to an individual but also available to an incorporated body, if such a corporation is an accused and it is also necessary to refer the nature and scope of proceedings to ascertain whether a person is an accused or not for the time being or at a particular instance or time.¹⁴ At the same time Article 21 takes the stand for fair and a speedy trial for the innocent. However nothing expressly has been provided under the constitution with respect to speedy trial nor does the Criminal law speak about the same but the right to life under Article 21 itself recognized it. It is well settled that the right to speedy trial is an inalienable right, because life does not mean mere existence in the universe but a life with a human dignity. And to live with human dignity means a life free from all sort of exploitation.

III. HUMAN RIGHT PERSPECTIVE OF RIGHT OF THE ACCUSED

The Right to remain silent is recognized as absolute in many states. The international conventions on human rights also advocated for the same without putting any limitation to it, but however in some jurisdictions if an individual does not provide any information when asked to do so then adverse inferences may have been drawn against such person. Even they are of the opining that such inferences would not violate the European Convention as they are nor decisive to the finding of criminal responsibility. The European Courts of human rights has stated that self incrimination is absolute right and even applied where such compulsion to testify resulted in giving of exculpatory evidence.¹⁵ With respect

to protection of presumption of innocence it relates to how the suspect accused is presented. Under the international human right law it is stated that accused person should not be made to look like a guilty person in the courtroom. He should be allowed to be in civil clothes rather than putting him in cage or handcuffed or to make him to wear prison clothes with his or her head shaved. They are even of the view that disclosure of previous conviction of the accused might unduly influence the decision of the judge and consequently violates the presumption of innocence. The Inter American Convention to prevent and punish Torture elaborates that the “torture” shall be also be understood to be the use of such methods upon a person that would intended to obliterate the personality of victim or to diminish his mental and physical cavity, even if they do not cause physical pain or mental anguish.¹⁶

IV. CONCLUSION

The Indian Constitution is the soul. Democracy and federal structure are its nerves and veins and the judicial system of the country is the physical structure of it. The Indian constitution is a living document and this has been held and declared number of times, where legislature is the brain , executive is the heart then it will not be wrong to say that it breaths through the judicial system through its interpretations. The Judicial system and Courts in India have proven to be a game changer for the entire development of the country specially in protecting the human race and their Rights, the examination, observation, declarations and remarks of the Supreme Court and the High Court’s along with the Lower Courts has shown the true picture of a welfare State. There are number of instances and cases where the unbiased and independent judiciary has always proven itself to be a true guardian of justice. One of such case was of Ajmal Keshab when on the human right perspective the Supreme Court has directed the magistrate to inquire in to the mental, physical and medical condition of the accused and to provide him a legal practitioner to defend his case. In theory all is good, but in reality things go haywire. As the complexity and nature of crime is changing There is need to develop and sharpen Investigative skills of the officers and training facilities in emerging disciplines such as forensic accounting and information technology etc need to be developed and imparted to the I.Os.

¹² Sri Jayendra Saraswathy Swamigal (II) v. State of T.N (2005) SCC 771

¹³ Nandini Satpathy v P.L Dani, AIR 1978 SC 1025

¹⁴ M.P Sharma v Satish, AIR 1954 SC 300

¹⁵ Saunders v United Kingdom, Application No 19187, judgment dated , Dec 17, 1996, Para 71

¹⁶ Article 2 , The Inter American Convention to Prevent and Punish Torture

ⁱ V.R Krishna Iyer, *Human Rights and Inhuman Wrongs*, 36 (New Delhi: B.R Publishing Co., 1990).

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