

Protection for the rights to equality before law and conviction for offences

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Abstract

The paper described the Constitutional Safeguards to an accused person. On the behalf of this study, it's concluded the accused person is also a part of the society and so that he has also some basic rights which are provided as fundamental rights in the Indian constitution. Article 14 guarantees to every person the right to equality before the law or the equal protection of the laws. It means that no man is above the law, all are equal in eye of law. The purpose of this research is to identify the general principle of "right to equality" the word "Right to equality" need no explanation because it tell its meaning itself and it is one the our fundamental right. Clause (3) of Article 20 declares that no person accused of an offence shall be compelled to be a witness against himself.e.

Keywords: Constitution, law, equality, offences, Article 14, Article 20

Introduction

Article 14 guarantees to every person the right to equality before the law or the equal protection of the laws. It is said that equal protection of laws is a pledge of protection or guarantee of equal laws ^[1]. Despite of the entire above, special courts and procedure for criminal trial is made for the accused. This is called the "speedier trial of offences" which is challenged in number of case ^[2]. Article 20 has taken care to safeguard the rights of persons accused of crimes. Persons here means the citizens, non-citizens as well as corporations. Please note that this article cannot be suspended even during an emergency in operation under article 359. Article 20 also constitutes the limitation on the legislative powers of the Union and State legislatures. Article 20(1), No person shall be convicted of any offence except for violation of 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. All democratic constitution recognizes the fundamental Right to personal liberty and life. Part III of the Indian Constitution contains rights may well be called the soul of our constitution. These are the very basis rights that are universally recognized as fundamental to human existence and indispensable for human development. Constitution of India also protects against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation, under different Articles. Indian constitution provides the safeguards to the person accused of crimes under different Articles. Detention is punishing given to the person for an offence which is committed by him after completion of trial which is called conviction. Preventive detention on the other hand, means detention of a person without trial and sentenced by a court. So purpose of this Act is not only to punish a person for a past offence, but also to prevent him to committee an offence in the near future. Indian constitution provides the following safeguards to the person accused of crimes and the objective is to study the Constitutional safeguards of the accused which are provided under The Indian Constitution, 1950.

1. Protection for the right to equality before law under Article 14.
2. Protection in respect of conviction for offences under Article 20.

Research Methodology

To investigate the Fundamental rights of an accused under Article 14 and Article 20 of the Indian constitution, 1950, is a case study which was described as constitutional safeguards to an accused.

Data Collection

The required secondary data will be collected through published material i.e. books, newspapers, articles and reports etc.

Discussion

Indian constitution provides the following safeguards to the person accused of crimes:

Article 14 guarantees to every person the right to equality in front of law or the equal protection of the laws. The first expression "equality before the law" which is taken from the English common law, is a declaration of equality of all the persons within the territory of India. Every person whatever is his rank or position, is subject to the jurisdiction of ordinary courts. The second expression, "the equal protection of the law.", which is rather a corollary of the first expression, and is based on the last clause of the first Section of 14th amendment to American constitution, directs the equal protection shall be secured to all the person within the territorial jurisdiction of the union in the enjoyment of their rights & privileges without favoritism or discrimination. It is said that equal protection of laws is a pledge of protection or guarantee of equal laws.

Protection in respect of conviction for offence

Article 20, No person accused of any offence shall be compelled to be a witness against himself." ^[1] Provides safeguards to persons accused of a crime ^[2]. Article 20

provides the following safeguards to the persons accused of crimes.

1. Ex-past facto Law [Article 20(1)]
2. Double jeopardy [Article 20(2)]
3. Prohibition against self-incrimination [Article 20(3)]

Article 20 (1), Ex-past facto Law

Cl. (1) lays down that no person shall be convicted of any offence except for the violation of a law in force at the time of the commission of the Act charged as an offence. Thus if the act was not an offence, at the date it was committed, no future law can make the accused liable for that act^[3].

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.

Cl. (1) safeguards the accused from such laws. In the U.S. also similar provisions are there both for the central and state legislatures. However, it is to be noted that only retrospective criminal legislation is prohibited and not civil legislation^[4].

In *Sajjan Singh v. State of Punjab*^[5] (1964 SC), a Section of the Prevention of Corruption Act provided that if the pecuniary resources or property of the accused was disproportionate to his known sources of income, the charge of corruption and criminal misconduct against him was proved. Challenged on the ground that it had retrospective effect as it took into account the property acquired before the passing of the Act.

The Court held: A statute not be said to be retrospective in effect if a part of the requisites for the action was drawn from a time antecedent to its passage by the legislature and hence the Act is valid^[6].

The second part of Cl. (1) guarantees that no person shall be subjected to a penalty greater than what might have been inflicted under the law in force at the time of commission of the offence. The case in point is *Kedar Nath Bajoria v. State of W. Bengal*^[7].

Article. 20(2), Protection against Double Jeopardy

It is common law rule that “*nemo debet vis rexari*” i.e. no man should be put twice in peril for the same offence. Article 20(2) of the Indian Constitution embodies this rule: “No person shall be prosecuted and punished for the same offence more than once”. The 5th amendment of the US Constitution contained the same rule. But there is a major difference both in US and England. There the protection is given irrespective of whether the accused was prosecuted or acquitted; in India it is necessary in order to attract Article 20(2), that the accused was not only prosecuted but also punished. The principle existed in India even before the constitution by way of General Clauses Act 1987, Section 26 and Section 300^[8] of the Cr. P.C., 1973^[9].

It follows that two essentials to attract Article 20(2) are:

- i) The accused must have been prosecuted and punished
- ii) The prosecution and punishment must have been for the same offence

There is no punishment within the meaning of Article 20(2) unless it is preceded by a prosecution in the sense explained above is well illustrated in *Maqbool Hussain v. State of Bombay*^[10]. In that case, the appellant, a citizen of India, on arrival at the airport, did not declare that he had brought in gold with him. But on search it was found that he was carrying 107 tolas of gold in contravention of the government

notification. The customs authorities thereupon took action against him under Section 167(8) of the Sea Customs Act, 1878, and confiscated the gold. Sometime afterwards a complaint was filed in the Court of the Chief Presidency Magistrate against the appellant charging him with the offence under Section 8 of the Foreign Exchange Regulation Act, 1947. The appellant pleaded that his prosecution before the Magistrate was in violation of the fundamental right guaranteed under Article 20(2) because he had already been prosecuted and punished in as much as his gold had been confiscated by the customs authorities. The Court held that the sea customs authorities is not a court or judicial tribunal and the adjudging of confiscation or the increased rate of duty or penalty under the provisions of the Sea Customs Act did not constitute a judgment or order of a court or judicial tribunal necessary for the purpose of supporting a plea of double jeopardy. The proceedings taken before the sea customs authorities were, therefore, not ‘prosecution’ of the appellant nor did the order of confiscation constitute a punishment inflicted by a court or judicial tribunal on the appellant. The appellant could not, therefore, be said to have been prosecuted and punished for the same offence with which he was charged before the Chief Presidency Magistrate^[11].

Article 20 (3), Prohibition against self- incrimination

Clause (3) of Article 20 declares that no person accused of an offence shall be compelled to be a witness against himself. The Constitution of India raises the rule against self-incrimination to the status of a constitutional prohibition^[12].

Analyzing the terms in which the guarantee is contained in our Constitution, it may be stated to consist of the following three components^[13].

1. It is a right pertaining to a person accused of an offence
2. It is a protection against compulsion to be a witness; and
3. It is a protection against such compulsion resulting in his giving evidence against himself.

Person must be accused of an offence – The privilege under clause (3) is confined only to an accused i.e., a person against whom a formal accusation relating to the commission of an offence has been leveled which in the normal course may result in the prosecution. Thus a person against whom the first information report has been recorded by the police and investigation ordered by the Magistrate can claim the benefit of the protection. Even if his name was not mentioned as an accused in the first information report, it will not take him out of that category of evidence, whether oral or circumstantial, points to the guilt of a person and he is taken in custody and interrogated on that basis. He becomes a person accused of an offence. The protection under clause (3) of Article 20 is confined to the accused only and is accord with the existing rule of the Indian Evidence Act, 1872. A person served with summons under the Foreign Exchange (Regulations) Act, 1947 against whom FIR has already been lodged, is an accused within the meaning of Article 20(3). A person called for questioning during investigation by authorities under the provisions of the Customs Act or the Foreign Exchange Regulation Act is not an accused^[14].

K. Joseph Augusthi v. M.V. Narayanan^[15] involved the legality of Section 45-G of the Banking Companies Act, 1949. Under this Section, where an order has been made for the winding up of a company, the High Court may, on a

report of the official liquidator, direct the holding of a public sitting of the court for the public examination of promoters, directors, auditors, etc. of the company, regarding their conduct and dealing in relation to the affairs of the bank. Gajendra gadhkar, C.J. observed that Article 20(3) was inapplicable to the instant case, because the persons called the public examination under Section 45-G were not accused of any offence. The fact that an accusation might follow the enquiry would not attract Article 20(3). A person charged of contempt of court is not an accused of any offence within the meaning of Article 20(3) ^[16]. In *Nandini Sathpathy v. P.L. Dani* ^[17] the Supreme Court had to consider the legal basis of the police practice of interrogating suspects in view of the constitutional and legal safeguards available to a person against oppressive and unjust police interrogations. In this case, Mrs Sathpathy, the accused, who was a suspect and yet not an accused, was examined at the police station in connection with investigation into the charges of corruption against her.

In *Mohd. Dastagir v. State of Madras* ^[18], the appellant had gone to the bungalow of the Dy. Superintendent of Police to offer him a bribe contained in a closed envelope. The police officer threw the envelope at the appellant who took it up. Soon thereafter, he was asked by the police to produce the envelope and he took out from his pocket some currency notes which were seized by the police. The appellant pleaded that the currency notes seized by the police should not be allowed to be produced as that would amount to the admission of compelled evidence. The Court held that clause (3) did not apply firstly because no compulsion or duress was exercised against the accused and secondly because at the time the currency notes were seized he was not an accused. So also the tape-recorded evidence, which is unknown to the accused, is not rendered inadmissible as the accused's conversation was not extracted under duress or compulsion

References

1. Shukla VN. Constitution of India, 10th edn. (Reprinted), 2004, 37.
2. *Ibid.* p. 37.
3. Shukla VN. Constitution of India, 10th edn. (Reprinted), 2004, 47.
4. Bakshi PM. Constitution of India, 39 edn. (Reprint). 2008, 44.
5. This Article deals with Protection of life and personal liberty. (Later on explain in detail).
6. Shukla VN. Constitution of India, 10th edn. (Reprinted Oct., 2004), 10th edn. (Reprinted). 2004, 152.
7. Panday JN, Constitution of India, 39 edn. (Reprinted). 2003, 198.
8. AIR 1964 SC.
9. Shukla VN, Constitution of India, 10th edn. (Reprinted). 2004, 153.
10. AIR 1953 SC 404.
11. This Section deals with Person once convicted or acquitted not to be tried for the same offence. (Explained in chapter 3).
12. Shukla VN, Constitution of India, 10th edn. (Reprinted). 2004, 156.
13. Shukla VN, Constitution of India, 10th edn. (Reprinted). 2004, 157.
14. AIR 1953 SC 325.
15. Shukla VN, Constitution of India, 10th edn. (Reprinted). 2004, 157.
16. AIR 1954 SC 375.
17. This Article deals with Dismissal, removal or reduction in rank of persons. Employed in civil capacity under the union or state.
18. Shukla, V.N., Constitution of India, 10th edn. (Reprinted Oct., 2004), p. 158.
19. It deals with offence of criminal breach of trust by public servant, or by banker, merchant, agent.
20. AIR 1958 SC 119.