



Rights of an accused in human right perspective

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Abstract

The rights of an accused are basically part of human rights. “every human being, in every society, is entitled to have basic autonomy and freedoms respected basic needs satisfied”. Literary they are rights of humans.

The concept of conferring right upon and accused person is in intrinsically linked with the genesis and evolution of human right movement.

In ancient times, the absence of formal criminal justice apparatus, the accused was deemed as a sinner. Crime was equated with “sin” –transgression against god’s will consequently, a crime looked upon as a sinner could not claim any right of himself.

Though the medieval era witnessed striking reforms in the rules in terms of the accused’s right to self defense, a new meaning was accorded to the human rights perspective in the administration of criminal justice with the establishment of the universal declaration of human rights in 1948. The defence of the right of the accused and convicted prisoner came to be recognized as the legitimate objective of international and national communities.

Keywords: accused, human rights, convict

Introduction

Administration of criminal justice is concerned with a crime, which means an act deemed by law to be harmful to society in general even though its immediate victim happens to be an individual. Those who commit such acts (crime) are prosecuted by the State so that if found guilty and convicted by the court, they may be punished according to law of the State. As in every administration of criminal justice, a trial is conducted which revolves around the accused, an important question may be asked as to who can be called as an “accused”.

The term “accused is nowhere defined in the Code (Criminal Procedure Codenor in the Constitution of India. The word accused” connotes a person charged with offence, when used in terms of noun it connotes as defendant(s) in a trial ^[1]. “Accused” used in the Code of Criminal Procedure means an “accused person” or person accused of any offence ^[2]. In every administration of criminal justice, a trial revolves around the accused. The term “accused of any offence” indicate an accusation made in a criminal prosecution before the court or a judicial tribunal where a person is charged with having committed an act which is punishable under the Indian Penal Code, 1860 or any special or local law ^[3]. In ancient times crime was considered as a sin and people used to condemn and punish the accused with all sorts of brutalities. During trial inquisitorial methods were used to discover the truth by applying all sorts of torture and other inhuman methods against the dignity of human being ^[4].

As per Black Law Dictionary the term accused is defined as “the generic name of the defendant in a criminal case”. In the Law Lexicon’s Dictionary the word Accused has been defined as “A person against whom an allegation has been made that

he has committed an offence, or who is charged with an offence”. On the basis of these two definitions, it may be said that as soon as a person is alleged formally to commit a crime, he comes in the category of accused ^[5].

Meaning of Human Rights

Human Rights are those minimal rights that every individual must have against the State or other public authority by virtue of being a member of the human family irrespective of any other consideration. These are the rights that are inherent in all the citizens, because of their being human ones. Article 10 of the International Covenant on Civil and Political Rights (ICCPR) mandates that- “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. Likewise the United Nations Standard Minimum Rules for Protection of Prisoners also provided basic guidelines for the treatment of prisoners and reaffirmed the tenet that prisoners do retain their fundamental rights even while in custody ^[6].

Legal Framework of the Rights

- Universal Declaration of Human Rights, 1948, has recognised certain basic human rights of an individual, including an accused. The Indian Constitution, in tune with the international endeavours, provided four basic principles to govern the criminal justice system, viz,
- Presumption of innocence,
- Prevention of ex-post facto operation of criminal law
- Protection against double jeopardy and
- Due process concept. Besides the Constitution, The Code of Criminal Procedure, 1973 and Indian Evidence Act, 1872, also deal with the protection of human rights of the

accused person. In our criminal justice system, the legal ethics is quite established “let the thousand of criminals be let out, but a single innocent should not be punished”. Following this principle the judiciary requires all cases to be proved beyond reasonable doubt.

Constitutional Provisions Relating To the Rights of Accused

The Constitution of India ^[7] confers on every person the right to life and personal liberty and the Supreme Court has interpreted it very broadly to include an array of rights that have helped to strengthen the Indian Criminal Justice System. The expansive interpretation of Article 21 by the Judiciary has led to the inclusion of several rights within the right to life and personal liberty and their elevation to the status of a fundamental right. A wide range of rights, like the right to compensation in case of violation of Article 21, the right of under trials against unreasonable and arbitrary handcuffing ^[8], rights of prisoners, right against custodial violence, the right to a fair and speedy trial, right to free legal aid, the right to consult with the legal advisor, the right against any form of torture or cruel, inhuman or degrading treatment, the right to privacy, the right against police atrocities and illegal arrest and detention, etc., have been held to be a part of Article 21 of the Constitution

Rights against conviction or enhanced punishment under an ex-post facto law-Article 20 (1).

Right of protection against double jeopardy article 20(2).

Right against self -incrimination- Article 20(3). Right of Privacy-Article 20(3) and Article 21.

Right to be informed of the grounds of arrest and right to bail-Article 22(1) and (2).

Right against unlawful arrest-Article 22(1) and (2).

Right to consult and be defended by a lawyer of his own choice-Article 22(1) and (2).

Right to production before a Magistrate within 24 hours-Article 22(1) and (2).

Procedural Provisions relating to the Rights of the Accused

- Protection against arbitrary or unlawful arrest ^[9]-Sections 41, 55 and 151 of Cr.P.C.
- Protection against arbitrary or unlawful searches-Sections 93, 94, 97, 100 and 165 of the Cr.P.C.
- Protection against arbitrary or illegal detention in custody-Sections-56, 57 and 76 of the Cr.P.C.
- Right to be informed of the grounds, immediately after arrest-Sections 50, 55 and 75 of the Cr.P.C.
- Right of the arrested persons not to be subjected to unnecessary restraint-Section 49 of the Cr.P.C.
- Right to consultation of lawyer of his own choice as well as right to get legal aid at the expense of the State in certain cases-Sections 303, 304 of the Cr.P.C.
- Right to be produced before Magistrate within 24 hours of his arrest-Sections 57 and 76 of the Cr.P.C.
- Right to be released on bail if arrested –Sections 436, 437 and 439 also Sections 50 (2) and 176 of the Cr.P.C.

Judicial approach towards protection of rights of accused Use of physical threat and third degree is a violation of law

The Supreme Court held that the use of “third degree” ^[10] 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 further said that, after all, the great proposition that inspires the calling of justice- by the Bench and the Bar alike- is best expressed by Dr. Martin Luther King (Jr) in his letter from Alabama Prison: “injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. What ever affects one directly affects all indirectly.” Where human bondage and personal torture are involved, to wait is to defeat. Where justice is in jeopardy or freedom is in fetters the court is not non-aligned and acts with sensitive speed. Time is of the essence where otherwise torture is the consequence. Human dignity is a dear value of our Constitution not to be bartered away for mere apprehensions entertained by jail officials. The decision of this Court in Sunil Batra (II) clothes with flesh and blood the principles laid down in Sunil Batra (I).

The Supreme Court held that not merely physical threats or violence but psychic torture, atmospheric pressure, environmental coercion, firing interrogatives, proximity, overbearing and intimidatory methods done in the course of interrogation by the police are violative of the right against self-incrimination guaranteed under Article 20(3) of the Constitution and further upheld the right of an accused to secure the services of a lawyer of his choice at the time of police interrogation ^[11].

Justification of Arrest

The Supreme Court opined that the doctrine of personal liberty guaranteed by the Constitution would in effect expect that no arrest should be made merely because it is lawful for the police to do so. The apex Court observed: “No arrest can be made because it is lawful for the police officer to do so” ^[12].

The existence of the power of arrest is one thing. The justification for the exercise of it is quite another... No arrest should be made without a reasonable satisfaction reached after some investigation about the genuineness and bonafides of a complaint and reasonable belief as to the person’s complicity and even so as to the need to effect his arrest... A person is not liable to be arrested merely on the suspicion of complicity in an offence... Except in heinous offences, an arrest must be avoided...”

Custodial death is seriously viewed-

Case, two policemen were sentenced by the Supreme Court for severely beating up a suspect for extracting a confessional statement, and his deliberate torture on non-payment of bribe resulting in custodial death. The Court observed:

“Brutal assaults by a person who is supposed to protect the citizens must be seriously viewed, otherwise we will help to take a stride in the direction of police raj. The punishment should be such as would deter other from indulging in such behaviour. There can be no room for leniency” ^[13].”

Speedy Trail

The Supreme Court pointed out that speedy trial is implicit in the broad sweep and content of Article 21 of the Constitution. The logic behind recognising speedy trial as fundamental right was that the inordinate delay in trial of criminal cases was responsible for gross denial of justice to the under trial prisoners and as such the procedure which denied speedy trial to the accused could not be just, fair and reasonable. The Court has made provision for legal aid at State cost compulsory incases of poor and indigent accused under trial in criminal cases, for seeking bail and also for defence at the time of trial ^[14].

Condition of jail-

The Court had an opportunity to deal with certain aspects regarding the conditions of jails. As regards overcrowding, the Court held that though overcrowding was not per unconstitutional, it affected the health of the prisoners and was an obstacle to segregation amongst convicts and hence was required to be taken care of. The court emphasised the need for health and hygiene conditions. Life with human dignity implies basic health and hygiene conditions and thus, the maintenance of such conditions is a necessary component of any just, fair and reasonable procedure that arrests the liberty of an individual ^[15].

Conclusion

The courts of law and the purpose of law is justice. It has been universally accepted as a human value that a person accused ay offence should not be punished unless he has been given a fair trial and his guilt has been proved in such trial. Our courts has recognised that the primary object of criminal procedure is to ensure a fair trial of accused persons if someone is not properly defended by himself or by others and punished then that is not justice.

It is familiar finding of sociological inquiries that the actual behavior of working within a system is determined less by the formal rules and ideals of the system than by the operational demands of their roles and their relationship with other people. In the light of practice of arresting the accused before the first court appearance, the physical condition of the police lock-up are of interest. The time spent in the custody before the first court appearance is amost critical period. The accused often does not know of legal aid and become susceptible to improper police practice, is more likely to confess to his guilt and less likely to develop any legitimate defence may have. He is often very confused or too mentally restricted to look after his own interests.

References

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