

## Rights of Accused : A Socio Legal Study

**Prof. (Dr) R.K. Patni**  
\*\* Kaushiki Roy

### ABSTRACT

In our article having the title "RIGHTS OF ACCUSED ", we have analysed the rights of accused . The rights of accused have been discussed as given under the Indian criminal procedure code , 1973 and Indian constitution. We have also discussed about the rights of accused under U.S.A and U.K procedures. Where we find similarities in all three countries having the rights of accused. The case law of INDIA and U.S.A has also been mentioned in this article. The reason for choosing "the rights of accused "as title is to enlighten the minds of the accused who are not aware of their own rights. During our research we found that accused are actually more safe in India than the victim as victim have to prove the omission of offence and it is victim who have to fight for achieving justice. For achieving Justice they have to loose their respect for dignity and personal life. Accused get "the benefit of beyond reasonable doubt ".At last article have conclusive note also.

Keywords: accused, rights, sections, offence.

### Who is an accused?

According to oxford dictionary " a person or group of people who are charged with or on trial for a crime" is an accused.

The criminal justice system is centred about the accused the law is active from the moment of information that is F.I.R or other means .The accused person is presumed to be innocent unless proved guilty this principals runs like a mile stone out the criminal justice system on the hand equally important principal is that burden of proving beyond reason able doubt the guilt of accused lies on the prosecution .These two basic principle are inherited from British legal system and of the criminal justice system .

The offenders are human being and they also poses the "human rights" under the universal declaration of human rights in 1948 and this declaration strikes the mind of the farmers of the Indian constitution .

The" human rights " under this declaration placed in the 3rdpart (fundamental rights) of Indian constitution. A right is a declaration of an individual having recognition of society and the survival in the society is almost next to impossible .

### **RIGHTS OF THE ACCUSED SIGNIFIED , UNDER INDIAN CRIMINAL PROCEDURE CODE ,1973 are as follows-**

- (1). Protection against arbitrary or unlawful arrest S-41,55,151 .
- (2). Protection against arbitrary or unlawful searches S-93,94,97,100(4)to
- (3). Protection against arbitrary or illegal indention in custody S-57, 57, 76 .
- (4). Right to be informed of the grounds ,immediately after the asset S-50, 55,75.
- (5). Right to arrested person not to be subjected to unnecessary restraint(S-49).
- (6). Right to consult a lawyer of his own choice (303).
- (7). Right to produced before a magistrate within 24 hours of his arrest (57, 76).
- (8). Right to be released on bail ,if arrested (S -436,437, 439) ,50, 20, 167 .

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- (9). Right to get copies of the documents and the prosecution relies (sections 173(7), 207, 208, 238 of CR.P.C).
- (10). Right to insist that evidence be recorded in his presence except in some special circumstances.(S- 273, 327).
- (11). Right to have due notice of the charges.(S-218,228(2), 240(2).
- (12). Right to have an opportunity for explain the circumstances him at the trial(S -313).
- (13). Right to produce defence witness S-243.
- (14). Right to submit written argument at conclusion of the trail in addition to oral submission (S-314).
- (15). Right to be heard about the sentence upon conviction 235(2), 248(2) of CR.P.C.
- (16). Right to fair speedy investigation S-309.
- (17). Right to appeal in case of conviction in (S -351,374,379,380).
- (18). Right not to be imprisoned upon conviction in certain circumstances S-360.
- (19). Right to release of a convicted person on bail pending appeal s-380.
- (20). Right to get copy of the judgement when sentenced to imprisonment S -363.]

#### **RIGHTS OF THE ACCUSED SIGNIFIED UNDER CONSTITUTION OF INDIA,1950.**

1. Ex-post facto of law Article - 20(1): it means a person can only be convicted of an offence this means that a person if the act charge against him was an offence under the law enforce at the time of commission of the act. However it does not prohibit the imposition of civil liabilities retrospectively. So a tax can be impose with effect from a part state, example : Taxation matters.
2. Doctrine of double jeopardy Article - 20(2)- Doctrine of double jeopardy is based on common law maxim "nemo debet vis vexari" that means no person should be twice vexed for the same act or No person shall be prosecuted and punished for the same offence more than once. The principle has already recognized in the existing Indian law.
3. Self incrimination or Testimonial Compulsion Article - 20(3)- No person accused of an offence shall be compelled to be a witness against himself can be discussed as follows-
  - a. it is a right pertaining to a person accused of an offence.
  - b. it is a protection against compulsion to be witness.
  - c. the prohibition is only against the compulsion of accused to give evidence against himself.
4. Right to life or personal liberty .Article-21
5. Appeal for pardon .Article -72]

#### **RIGHTS OF ACCUSED UNDER U.S.A WITH CASE LAW.**

##### **MIRANDAVS. ARIZON**

Facts: Miranda was convicted of rape and kidnapping .His conviction was based in part upon incriminating statements he made to police while he was being interrogated. During the questioning the police did not tell him that he had the right to an attorney and to remain silent .

5<sup>th</sup> amendment: no person "shall be compelled in any criminal case to be a witness against himself ....."

6<sup>th</sup> amendment: in all criminal prosecution the accused shall enjoy the right to have the assistance of council for his defence ."

**#RIGHTS OF ACCUSED UNDER U.K.**

Article 6- Right to a fair trial .

The right to a fair trial is the basic to the law and for democracy itself .the right applies to both in the criminal and the civil cases.

Fair trial is the right that is absolute and it can't be limited. Hearing should be fair within a reasonable time by an impartial and independent tribunal established by law.

Article 6(2)- Right to be presumed innocent until proven guilty.

Article 6(3)- Guarantees minimum Rights in criminal trials.

Hon'ble Supreme Court has given guidelines for the police officers in leading case of DK BASU VS. STATE OF WEST BENGAL as under-

The police personal carrying out the arrest should bear accurate ,visible and clear identification.

Police officer shall prepare a memo of arrest at the time of arrest and that memo shall be attested by atleast one witness.

The relatives or the friend of t e detained or arrested person must be informed about such arrest .If the relative or friend was out of town then police have to inform that relative or friend through Legal aid organization in the district and notify notify the time , place of arrest and venue of custody of an arrestee.

In every 48hours during his detention arrestee should be subjected to medical examination by the trained doctor. copies of all the documents including memo of arrest, referred to above , should be sent to the magistrate for his record.

The arrestee may be permitted to meet his lawyer during interrogation ,though not throughout the interrogation.

A police control room should be provided at all district and state headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest ,within 12 hours of affecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

In Sunil Batra (NO. 11) VS. Delhi administration the apex court had given its verdict that "prisons are built with stones of law and so it is obligatory to the court to insist that ,in the eye of law , prisoners are persons ,not animals ,and punish the aberrant guardian of the prison system where they go demented. convicts are not by mere reason of conviction divest of all the fundamental rights which they otherwise possess. The constitution enshrines fundamental rights in part – 3<sup>rd</sup> endeavours that "human liberty may be preserved ,human personality developed and effective social and democratic life promoted. These fundamental rights are available against the state ,for they are limitations upon all the powers of the Government ,legislative as well as executive".

**CONCLUSION**

Here at conclusive note we urge that in our criminal justice system there is "benefit of reasonable doubt is always to the accused " ,but this had not to be done . The prosecution have to prove about the omission of offence . They are the victim and they to answer about all the questions why, as they are victim they need to be compensated and respect their dignity. The current procedure is itself a hurdle for the victim to achieve justice.

In 262<sup>nd</sup> report of the law commission of India there were many recommendations in which one was regarding abolition of death penalty in India. But if we can view it from punitive point than for every life there is alternative that is compensation , despite the fact that no amount or compensation can bring the life back. The court or the criminal justice system punishes the offender in proportion to the gravity of the offence so committed by him to protect the society. Generally it was said that awarding death penalty imply that" it is an eye for an eye" but actually it is not like that if it is like that then there is no need to holding any trial, taking evidences and proving the case beyond reasonable doubt.

The criminal justice system deals with the idea of awarding punishment proportionate to the gravity of crime for protecting the society and giving justice to the society by proportionately convicting the offender and hence, it is nor retributive nor deterrent theory to award death penalty. If death has occurred in the offence then compensation is not sufficient, from victim's point of view justice will only complete when death penalty is awarded it is the only substitute for any murder and brutally raped offence.

Irrespective of compensation awarded, the desire of the victim's kin will be unfulfilled as they have lost their relative then they also want the accused to get the death sentence . If the death penalty abolished than the victim's kin will know that there will be no death penalty and it generates self revenge in their minds. And instead of coming to court they will think to kill the accused themselves and it it will generate more criminals to society which will be disaster to society.

**\*Dean Faculty of Law and Governance , Jayoti Vidyapeeth Womens University.**

**\*\*LLM student.**

#### References

- 1 Code of Criminal Procedure , 1973
- 2 Maqbool Hussain vs. State of Bombay 1953 SC 325.
- 3 Section 26 of the general clauses act,1897.
- 4 Nandni Satpati vs. P .I. Dani 19978 SC 1025.
- 5 Section 118,119 (Indian Evidence Act, 1872).
- 6 R.K Dalmia vs. Delhi administration SC 1821.
- 7 M.P. Sharma vs.Satish Chandra 1954 SC300.
- 8 Kharak Singh vs. state of u.p1963 A.I.R1295,1964SCR(1)332.
- 9 Dhananjay Chatterjee alias Dhana vs. state of west Bengal on 1994
- 10 384 u.s. 436 (1966).
- 11 Declaration of human rights 1948
- 12 ibid
- 13 ibid
- 14 (1997)1SCC416
- 15 <http://shodhganga.inflibnet.ac.in>
- 16 AIR 1980 SC 1579.
- 17 Ibid.p.1583.
- 18 D B Mohan Patnik vs. state of AP.1975 2 scc 24:1975cr.LJ556.
- 19 Jain ,457 quoted by Kumar Narender, Constitutional Law of India, Delhi(1997),p.50.
- 20 Kumar,Narender,op.cit.p.53.