



## The Constitutional Safeguards to an Accused

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**ABSTRACT**

*The purpose of this paper was to review the Constitutional Safeguards to an accused which are provided as fundamental rights under part III of the Constitution of India. 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 have also some basic rights which are provided as fundamental rights in the Indian constitution.*

**KEYWORDS : Fundamental rights. Article 14,20,21 and 22 of the Indian constitution, 1950**

**INTRODUCTION** The Constitution of India being written constitutes the fundamental law of the land. No legislature can make a law and no governmental agency can act, contrary to the constitution. All democratic constitution recognizes the fundamental Right to life and personal liberty. Part III of the Indian Constitution contains a list of fundamental rights. These 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. In the absence of these rights man's social and spiritual life would be rendered worthless and his potentialities would little chance of producing and worthwhile outcome. 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 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 conviction by a court. So purpose of this Act is not only to punish a person for a past offence, but also to prevent him from committing an offence in the near future. Indian constitution provides the following safeguards to the person accused of crimes:

1. Protection for the right to equality before law under Article 14.
2. Protection in respect of conviction for offences under Article 20.
3. Protection of Rights of Prisoners under Article 21.
4. Protection against arrest and detention in certain cases under Article 22.
5. Appeals to Supreme Court under Article 134,136

**Objective of the Study**

The objective is to study the Constitutional Safeguards of the accused which are provided under The Indian constitution, 1950.

**Research Methodology**

In the study the following research methodology is used:

**Research Design**

To investigate the Fundamental rights of an accused under articles 14,20,21,22 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, pamphlets, articles, newspapers and reports etc.

**DISCUSSION**

The Constitution of India being written constitutes the fundamental law of the land. This has several significant implications. It is under this fundamental law that all laws are made and executed, all governmental authorities act and the validity of their functioning adjudged. No legislature can make a law and no governmental agency can act, contrary to the constitution. No act, executive, legislative, judicial or quasi-judicial of any administrative agency can stand if contrary to the constitution. The constitution thus conditions the whole governmental process in the country.

Part III of the Indian Constitution contains a list of fundamental rights. These 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. In the absence of these rights man's social and spiritual life would be rendered worthless and his potentialities would little chance of producing and worthwhile outcome. The fundamental Rights fall in six broad categories in Indian constitution. These are right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to constitutional remedies.

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Article 14 guarantees to every person the right to equality before the 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 juris-

diction 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 14<sup>th</sup> 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 OFFENCES

Article 20 provides safeguards to persons accused of a crime. Article 20 is basically a facet of Article 21. 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)

#### Ex Post Facto Law

It lies 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.

Clause (1) safeguards the accused from such laws. In the United State'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.

In the case of *Sajjan Singh v. State of Rajasthan*, where 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 that 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.

Another Situation: When an Act is repealed, and then the repealing Act is repealed. The procedure under the first Act is rendered valid ab- initio, and a crime committed while that Act was in operation can lawfully be subjected to the procedures under the Act.

The second part of Clause (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 West Bengal*

#### 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 same rule is contained in the 5<sup>th</sup> amendment of the United States Constitution. But there is a difference both in United States 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. Thus in India, the scope of the protection is limited. *Maqbool Hussain v. State of Bombay*. 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) be-

cause 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.

#### Prohibitions 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. This provision embodies the principle of protection against compulsion of self-incrimination which is one of the fundamental canons of the British system of criminal jurisprudence and which has been adopted by the American system and incorporated in the Federal Constitution. The Fifth Amendment of the American Constitution provides that no person shall be compelled in any case to be a witness against himself. It has also, to a substantial extent, been recognized in the criminal administration of justice in this country by incorporation into various statutory provisions. The Constitution of India raises the rule against self-incrimination to the status of a constitutional prohibition.

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

- a) It is a right pertaining to a person accused of an offence
- b) It is a protection against compulsion to be a witness and

It is a protection against such compulsion resulting in his giving evidence against himself.

#### Safeguards against arbitrary arrest and detention

Article 21 provides the right to fair trial, speedy trial, right against handcuffing, right against inhuman treatment right against delayed execution and right against custodial harassment. All these rights works as a safeguard to the accused and these rights are available after giving wider interpretation to Article 21 by the Supreme Court in number of cases.

The Article provides those procedural requirements which are inevitable while depriving a person of his right to life and personal liberty, provided by Article 21.

#### Article 22 reads as follows:

“Protection against arrest and detention in certain cases:

- a) No person who is arrested shall be detained in custody without being informed, as soon as may not be, of the grounds for such arrest, nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
- b) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.
- c) Nothing in clauses (1) and (2) shall apply –
  - I. To any person who for the time being is an enemy alien; or
  - II. To any person who is arrested or detained under any law providing for preventive detention.
- d) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless
  - III. An Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of

three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (a) and (b) of clause (7) or

IV. Such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

e) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the ground on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

f) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers being against the public interest to disclose.

**g) Parliament, may be law prescribe**

I. The circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

II. The maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

III. The procedure to be followed by any Advisory Board in an inquiry under sub-clause (a) and clause (4)

It these procedural requirements are not coupled with, it would then be deprivation of personal liberty which is not in accordance with the procedure established by law.”

Thus Article 22 prescribes the minimum procedural requirements that must be included in any law enacted by the legislature in accordance with which a person may be deprived of his life and personal liberty.

In *Maneka Gandhi v. Union of India*, 1978, the court held, that, a law relating to preventive detention, must now satisfy not only the requirements of Article 22, but also the requirements of Article 21, of the Constitution, i.e. the procedure prescribed under the preventive detention law must be reasonable, just and fair, under Article 14, 19 and 21 of the Constitution.

**Article 22 deals with two different matters:-**

Protection to persons arrested under the ordinary law of crimes and Persons detained under the law of “preventive detention”.

Clause (1) and (2) of Article 22 deals with detention under the ordinary law of crimes and lay down the procedures which have to be followed when a man is arrested.

Clause (3), (4), (5), (6) and (7), deal with persons detained under a preventive detention law and lays down the procedure and safeguard to be adopted when a person is detained under that law.

Besides the above specified Articles there are number of other Articles which grants different types of safeguards to the accused like under Article 72, Power to Grant the pardon, reducing the sentence etc to the accused in the hands of president and governor. There are appeal provisions also under Articles 134, 136 because of which convicted person plead for reduce the imprisonment and also request to reconsider the case. All this ensures the fair trial and full justice. So in this way, it provides safeguard to the accused to reduce his punishment<sup>22</sup>.