

ARTICLE 20: PROTECTING THE FUNDAMENTAL RIGHT OF ACCUSE

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ABSTRACT

Indian constitution gives utmost importance to the Human rights irrespective of the circumstances therefore Human Rights are considered as the soul of the constitution. The existence of human life is impossible without basic right. The constitution provides the protection to the accuse under Article 20 Question can be tossed that why to provide protection to Accuse? For this it is important to note that the accuse in a person who is assumed to be the criminal of an offence and not actual criminal. But there are certain basic right provided each human whether criminal or not. The another reason behind providing the protection to accuse is that he/she is in the custody of someone in higher authority or the power. Also, it is an fundamental right to have a fair trial under Article 21 of Indian Constitution. The provisions of other statutes such as Criminal Procedure Code and Indian Evidence Act has connection with Article 20. Therefore the said article holds an essential place under the constitution of India.

INTRODUCTION

BRILLOPEDIA

When anyone is born as human he automatically gets some basic human rights and fundamental right are nothing more than basic human rights meant to protect the citizen. In Indian legal frame work the Fundamental rights are enshrined under Part- III of Indian Constitution. Article 13-35 of Indian constitution deals with Fundamental Rights. Article 20 comes into action when the individual is accused for an offence. Therefore, it provides protection to the basic rights of an accuse. This right cannot be taken away even during the emergency. This right is given to both citizen as well as non citizen.

Article 20 of Indian constitution is divided into many parts. However the crux of the article read as:

- Firstly, the person can only be arrested for the violation of such law, which was in force at the time commission of the offence. The penalty of the offence much not be higher than as stated under the law
- Secondly, a person shouldn't punished more than once for same offence.
- Lastly, the person cannot be the witness of his own case.

There are three clauses under Article 20 i.e. (a)Ex- Post Facto Law (b) Doctrine of Double Jeopardy (c) Prohibition Against Self Incrimination.

EX POST FACTO LAW: ARTICLE 20(1)

The first clause of article states that an individual cannot be prosecuted for under the which was not in force while the commission of the act said to be the offence. Additional, the punishment shouldn't be greater than stated under the law time being in forced. Pertaining to criminal offence the article do not favor retrospective implementation of law.

Illustration: A was caught for practicing black magic in the year 2012. But the state of Maharashtra passed the act the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013. A year later than the A was caught. Here, A cannot be tried or prosecuted under the 2013 act as the act came after A commissioned the offence.

When any law is enacted the date of its enforcement is mentioned. When the enforcement date is a future date than the law will be called to have prospective effect and if the enforcement date is a past date i.e. a date which already past like for example; 2nd January, 2001. Then law will be called to have retrospective effect. Generally, most of the law has prospective effect because it is considered that the retrospective effect of law affects the right of accuse. The Tamil Nadu Land Acquisition (Revival of Operation, Amendment and Validation) Act, 2019 had retrospective effect and was considered to be effective from the year 2013. The Article 20 is inter linked to this concept of effect of law as it oppose the retrospective effect of law in the criminal laws by ensuring that no person is charged under the law which was not time in force during the commission of the act.

In the landmark judgment **Kedar Nath v. State of West Bengal** passed by the Hon'ble Supreme Court stated that to uphold the article 20(1) of the constitution the law should have retrospective effect if the matter pertaining to criminal law.

Article 20 prohibits only the sentencing and conviction under the clause and not the trial. Therefore, no person can be questioned under this clause. This was observed by the Apex court for the matter of Narcotics, Drugs and Psychotropic Substances Act in the case **Mohan Lal V. The State Of Rajasthan (AIR 2015 SC 2098)**. The trial under different procedure won't come under the ambit of the article and the same cannot be considered as unconstitutional.

The other condition of the article, which is not granting higher penalty than stated under the law time being in force at the time of commission of an offence was considered by the Supreme Court in the case of **Maru Ram Etc. V. Union Of India & Anr (1980 AIR 2147)**. In this case for the reduction of punishment the Supreme Court permitted the retrospective effect of criminal law.

DOUBLE JEOPARDY: ARTICLE 20(2)

“**Nemo debet bis vexari pro una et eadem causa**” is the maxim used for the Doctrine of Double Jeopardy meaning, in an subsequent proceeding, no person can be punished or prosecuted more than once for the same offence. The doctrine can be traced in American Jurisprudence.

The Supreme Court of India, in the case of **Venkataraman v. Union of India** held, the clause 2 of article 20 deals exclusively with the judicial punishment and the judicial authorities while stating that the judicial authorities cannot prosecute the person for more than once.

Maqbool Hussain v. State of Bombay, is a landmark judgment passed by the Apex Court wherein the court stated that the departmental proceeding is different from the judicial proceeding of the criminal court therefore, if the person was tried under departmental and proceeding and then in the criminal court than this won't amount to double jeopardy. In this case the custom authority caught the person having the possession of gold and the same was

confiscated by the authority because it was against *lex loci*. Later, in the criminal court the same person was prosecuted.

In the case of **A A Mulla V. The State of Maharashtra**, the Supreme Court observed that in a subsequent offence and punishment, of the facts are distinct then the clause 2 of Article 20 will not be attracted.

The protection against the Doctrine of Double Jeopardy is also provided under Section 300(1) of Criminal Procedure Code which prohibit the conviction for more than once on the basis of similar set of facts. However, it is silent about the trial for more than once. The section read as, "A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof."¹ The section has below stated conditions attached to it:

The inquiry will not be count under this as it concerns the judicial prosecution therefore, a person must be previously tried by the court and the proceeding must have been ended. The case will not fall under the ambit of Section 300(1) if it was just inquired and not prosecuted. The court (under trying the matter) must act *Intra Vires* and have competent jurisdiction. Either conviction or acquittal done previously must be in force otherwise the remains no bar of second prosecution and there is a possibility of second trial. The last condition of the article states that the offence and the fact must remain unchanged. Therefore, the facts and the offence must be the same in past and subsequent proceeding.

PROHIBITION AGAINST SELF-INCRIMINATION: ARTICLE 20(3)

It is the legal maxims for *Nemo Tenetur Prodere Accusare Seipsum*, meaning “no man is bound to accuse himself”.

¹ The Code Of Criminal Procedure, 1973, Section 300(1), No. 2, Acts Of Parliament, 1949 (India)

By the virtue of 5th Amendment in American Constitution the similar provision was added. The term self-incrimination means 'exposing oneself to prosecution'. The accuse needs to be protected against the self-incrimination as it goes against to oneself. The clause states that no person can be forced to be the witness of one's case. However, as per the one's knowledge the if he/she chooses to provide certain information then there is no bar on that. Having a fair trial, is the right of every accused. Clause 3 of act as an immunity to the accuse. The term Witness in this clause means: oral and documentary evidence. In the case of **M.P. Sharma v. Satish Chandra** the court held that both the authorities and the accused is allowed for: search/seizure of the document voluntarily producing the evidence/information respectively.

Illustration: While being the police custody P admitted that he has committed the Murder of Q and the evidence have been traced out as per P saying then it is admissible in the court under section 27 of Indian Evidence Act which states that "How much of information received from accused may be proved--Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."²

However, it is on the prosecution to prove that whether the statement/evidence provided by the accused was voluntary or under compulsion as section 27 does not violate the clause three of Article 20. Medical examination is permissible during the course of trial. This clause provides immunity only in the cases pertaining to criminal laws. Hence, it cannot be invoked in other than criminal law. Compelling the accuse for the production of the evidence is not permissible to the authorities under this clause but there are two exception provided under Criminal Procedure Code:

- a) **Section 91(1):** "Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to

² The Indian Evidence Act, 1872, Section 27, No. 1, Act Of Parliament, 1872 (India)

be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order."³

- b) **Section 161(2):** "Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture."⁴

The general or investigation will not fall under the ambit of clause 3, a formal accusation is must. This was held by Supreme Court in the case of **Narayanlal V. Maneck**.

In the case of **Nandini Satpathy v P L Dani** the court held that protection to the accuse is provided to every stage from enquiry to trial stage ant the protection is provided to the accuse and not to the witness.

CONCLUSION

It can be concluded that, Article 20 of Indian Constitution reflects the true nature of democracy by providing protection to the accused. The features of the said article makes it unique such as: it cannot be taken away even during emergency under Article 352 of Indian Constitution and it is provided to foreigners too

³ The Code Of Criminal Procedure, 1973, Section 91, No. 2, Acts Of Parliament, 1949 (India)

⁴ The Code Of Criminal Procedure, 1973, Section 161(2), No. 2, Acts Of Parliament, 1949 (India)