RESEARCHER
INTERNATIONAL JOURNAL OF
ADVANCED INNOVATION AND RESEARCH
journal homepage: www.ijair.in

Safeguards to an Accused Person

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Keywords

Suspected,
Culprit,
Accused

ABSTRACT

Prosecution has to prove the case against accused beyond reasonable doubt. Acording to the rule of evidece burden of proof is on the person who desires any court to give judgment as to any right or liability. Thus unless a person held guilty beyond doubt he should be treated as innocent, and he should not be confind behind the bars. But on the other hand there is a crime committed against the society, as crime is considered to be committed not only against victim rather agaist the society at large, and to find out the real culprit alleged or suspected has to be arrested. So we have now a situation individual rights versus social rights. So as a via-media legislation gives power to arrest the accused, but also provides some safeguards to the accused.

Constititional Safeguards

D.K. Basu v. State of West Bengal AIR 1997 SC 416is the leading case in regards to the safeguards provided to the accused person.

The Constitution of India provides some safeguards to the accused under various Articles. Like Article 14 provides the equal protection of law.

Article 14 of the Indian Constitution says that the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India.

This protection of law is available to all the citizen of India. The prisoners have rights to equal protection of laws. The State has under duty to protect the citizen of India weather they are normal citizen or prisoners. So this article provides the protection to prisoners. The prisoners can demand for equal protection of laws.

Article 20 of The Consttution of India talks about three principles i.e. ex post facto law; double jeopardy; self incrimination.

Art. 20(1) provides that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of 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.

'nemo debut bis punibi prouno delicto' means No one should be punished twice for one fault.

Article 20(2) provides that no person shall be prosecuted and punished for the same offence more than once. Before the present Constitution in India there was no such provision in Government of India Act, 1935. The principle was however, incorporated in Section 26 of the General Clause Act, 1897 and Section 403 of the old criminal procedure code, provisions of which are incorporated in Section 300 of the code of Criminal Procedure, 1973. Section 26 of the General Clauses Act provides that where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished twice for the same offence." Section 300 of the Code of Criminal Procedure provides that "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 **(autrofois covict autrofois acquit)**. Basic difference between Article 20(2) and section 300 Cr.P.C. is that Art. 20(2) provides the safeguard in ceses where accused was prosecuted and punished by the competent court. On the other hand Section 300 of the Act provides the safeguard not only in cases of conviction rather also in cases of acquittal. Thus we can say that the scope of Section 300 is broader than Article 20(2) of The Constitution of India. **Maqbool Hussain vs. State of Bombay**, is the leading case on this safeguard. The Hon'ble Supreme Court held that "We are of the opinion that the Sea Customs Authorities are not a judicial tribunal and the adjudging of confiscation, increased rate of duty or penalty under the provisions of the Sea Customs Act do not constitute a judgment or order of a Court of judicial tribunal necessary for the purpose of supporting the plea of double jeopardy.

Article 20(3) contains prohibition against self incrimination which is a fundamental principle of criminal justice under Anglo-American jurisprudence. Fifth Amendment of the U.S. Constitution says that 'no person shall be compelled in any criminal case to be a witness against himself'. Clause (3) of Article 20 states that 'no person accused of any offence shall be compelled to be a witness against Indian provision added the words 'accused of any offence' qualifying the words 'no person', but left outthe words 'in any criminal case'. In substance both provisions have almost the same effect.

Article 22 is the parent provision on constitutional safeguards.Safeguards provided are-

- Right of consult Legal practitioner of choice- No person who is arrested shall be detained in custody without being informed, as soon as may 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
- No unnecessary restrait beyond 24 hours- 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.
- No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless (a) 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.

Other Constitutional Safeguards-

1. Right to Legal aid (Article 39A)

This right is available to the poor and indigent accused. If an accused has no lawyer it is the duty of court to provide a lawyer to the accused. The Magistrate is duty bound to offer the facility to the accused the moment he is produced before him or her for the first time even if the accused has not asked for it out of ignorance. The Magistrate is under a duty to supply copies of all document such as the First Information Report, statements witnesses, charge sheet, etc. free of cost to the accused to enable him to know the details of the of the case Hussainara Khatoon v. state of Bihar. It was held by the supreme court that right to free legal genres is an essential ingredient of reasonable fair and just procedure of a perjure accused of an offence.

2. Right against Arbitrary use of Handcuffs and Fetters

The Supreme Court has ruled that no prisoner shall be handcuffed or fettered routinely or merely for the convenience of the escort. Even in extreme circumstances, where handcuffs have to be put on prisoners, the escorting party shall in record the reason for doing so in writing and take the court permission either beforehand or if that is not possible then soon after periods, unless permitted by the trial court.

In **Sunil Batra v. Delhi Administration**, the Supreme Court held that under trial prisoners, who are presumed to be innocent, shall be deemed to be in custody but not undergoing punitive imprisonment, Fetters, especially bar fetters, shall be shunned as violation of human dignity both within and without prison. The indiscriminate resort to hand-cuffs is illegal and shall be stopped forthwith save in small category of cases where an under trial has a credible tendency for violence and escape. A humanly graduated degree of iron restraint is permissible if other disciplinary alternatives are unworkable.

The court directed that the grounds for fellers shall be given to victim and when the decision to feller is made, the reasons shall be recorded in the journal and in the history ticket of the prisoner.

Other Legal Safeguards-

D.K. Basu V. State Of West Bengal (1997 SC) laid down the guidlines regarding atterest of person. Arrest shall not be made as a matter of rutine.

There should be transperancy in arrest, if arrest is made by the police officer.

- Police officer arresting the person should bear an accurate, visible and clear identification of his name which will facilitate easy identification; Sec. 41B(a)
- Family of the person arrested should be informed about the arrest.
- Arrest and seizure memo should be prepared, Sec.41B(2)- Police officer shall prepare a memorandum of arrest which shall be-
- Attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made, and countersigned by the person arrested;
- Ground of arrest should be told to the arrested person. Sec. 50,50A
- At every 48 hours he should be medically examined. Sec. 53,54
- Arrested person can meet an Advocate of his choice, during interrogation but not thoroghout interrogation. Sec. 41D

- No physical force should be used unless required. Sec.46
- Even a prisoner has Fundamental Right to live with dignity, thus food has been properly given to the arrested person. Thus health and safty should be taken care of arrested person. Sec.55A
- Person arrested should not be detained more than 24 hours.

Safeguards Regarding Bail-

1. Default Bail- Default bail right of arrested person is provided under Sec. 167(2) of Code of Criminal Procedure 1973, i.e. if the inverstigating officer unble to furnish charge sheet to the court within 90 days (where the offence is punishable with Death or Life imprisonment or with a term exceeding 10 year) or within 60 days (where the offence is punishable with imprisonment 10 years or less), then after the said period, as the case may be, the accused will acquire the right of default bail i.e. he will get the right to be released on bail.

2. Regular Bail- Under Sec.436 of the Code of Criminal Procedure 1973, if an arrested person has committed the bailable offence then such person shall be released on Bail, Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance. where a person is unable to give bail within a week of the date of arrest, it shall be sufficient ground for the officer or court to presume that he is an indigent person.

CONCLUSION

It is concuded that the jurisprudential essence of the law in criminal matters is to do balance between individual interest and social interest. Such safeguards creating that balance and protect justice and equity. In addition to these safeguards as discussed above some safeguards are also provided in other provisions also e.g. safeguards to an accused in confessional statements, as provided under Section 164 of The Code of Criminal Procedure 1973 and under Sections 24,25,26 and 30 of Indian Evidence Act 1872.

We can say that the safeguards provided by legistation is the perfect balance between these two quotaion as given under-

“To deny people their human rights is to challenge their very humanity.” – **Nelson Mandela**

“The rights of every man are diminished when the rights of one man are threatened.” – **John F. Kennedy.**

.References

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