

Human Rights of an Accused Person

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1. Introduction:

Man is a social by nature and being a member of the society, he enjoys some rights. These rights are called human rights. Every person is entitled to human rights by virtue of member of the society. These rights are necessary so that people may live with dignity. In general, human rights are such moral rights which are accepted universally. These rights cannot be taken away from any person except by law. These rights are granted by the law and human being i.e. people enjoy these rights as a matter of right and not as a gift by the state. State is bound to provide and protect the rights. In the Constitution of India human rights are granted under part III ² of the Constitution. These rights include Right to life and personal liberty³, Right to equality⁴, Right against Discrimination⁵, Freedoms⁶, Right against exploitation⁷ etc.

The definition given in Oxford English Dictionary seems to be suitable which defines rights “a claim by anyone to do or to have and obtain something which will be justified on either legal or moral grounds”. According to the above definition, there are some essential conditions of Human rights. The essential conditions of human rights are as follows:

1. It can be possessed by human beings only:

The term human rights shows itself that the human rights are those rights which can be possessed and enjoyed by the human beings only. These rights are not available to animals and juristic persons. These rights are available to all human beings universally irrespective of the state to which they belong.

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² Part III, Fundamental Rights

³ Article 21 of the Constitution

⁴ Article 14 of the Constitution

⁵ Article 15 of the Constitution

⁶ Article 19 of the Constitution

⁷ Article 23 & 24 of the Constitution

2. Equally available:

Human rights are available to all human beings equally. It is the duty of every state to provide these rights to all its citizens. Moreover all the states shall provide equal number of rights to its citizens. The state has no option to grant one particular rights and deny another one. State is bound to grant all the rights.

3. Protected by the State:

As it is the duty of the state to provide the human rights to the citizens, state is simultaneously duty bound to protect the rights also. The state acts like a guardian of the human rights. Without the state sanction behind the rights, the rights would have no value. In India, the human rights provided in the form of fundamental rights are protected by the establishment of Supreme Court and High Court. Hon'ble Supreme Court and High Court has the special power under article 32⁸ and 226⁹ of the Constitution.

4. More rights may be included:

Although human rights are basic rights and most of these rights are already identified and granted by the states but there may some other rights which may be included in the category of essential or basic rights. It is the duty of the state to include such rights if the state finds the rights essential for the life of the people.

2. Origin of Human Rights:

Human rights are those rights which are possessed by human beings and which are necessary for their life with dignity. Originally people had rights only because they were the member of a particular group. They enjoyed the rights as a member of family or community or partnership etc. They did not have rights which can be enjoyed by them essentially or due to the reason that they are human beings. But after the first and second world war, there was huge loss of man and

⁸ Writ Jurisdiction of Supreme Court

⁹ Writ Jurisdiction of High Court

property. The two world wars were the bloody battles which caused huge loss of man power. After that, the states which were most powerful at that time came together to save the life of the people by granting and insuring the security of the human rights. The nations in the united form declared that all the human beings are entitled to some basic and essential rights and that declaration is called universal declaration of human rights.¹⁰ It was also ensured that all the nations who will become the member of United Nation Organization will provide and secure the human rights to its citizens. Presently there are 193 member countries of UNO.

3. Types of Human Rights:

The types of human rights may be as follows:

A. Classic and Social Rights:

According to the charter of United Nations relating to human rights, the first type of human rights is Classic and Social rights. Classic rights are some kind of duty of the state to serve the society. Classic rights are positive rights. Classic rights demand much more efforts by the state. Such as civil and political rights requires considerable efforts by the state. State has to invest much power to grant and secure these rights. It is not enough that the state respects these rights of the people unless state insures the sanction behind these rights to secure them. It is necessary that state should provide the rights in such a way that the people can effectively enjoy them. The rights of fair trial is an example of classic rights.

On the other hand, almost all the 'social' rights contain elements that require the state to abstain from interfering with the individual's exercise of the right. For example the right to food includes the right for everyone to procure their own food supply without interference; the right to housing and shelter implies the right not to become a victim of forced eviction. The right to do work and profession of his choice guarantees that everyone will have right to choose his profession and the state shall not obstruct his right except in securing the safety and security of the nation and people. The right to education insures the freedom to establish and run any

¹⁰ 10th December, 1948

educational establishments; and the right to the highest attainable standard of health implies the obligation not to interfere with the provision of health care.

B. Civil, Political, Economic, Social and Cultural Rights

All these rights are kinds of social rights. These rights include rights relating to privacy, marry, partnership, religion, right to take part in the formation of the government etc.

a. Civil Rights

In general, civil rights are the rights belonging to the body of persons and they enjoy these rights by reason of being citizen of a nation. These rights include the right to be a citizen of country itself, right to name, right to reside, right to equality as well as right to equal protection before the law, right to marry, right to privacy, right to free movement etc. First fifteen articles of universal declaration of human rights describe the civil rights. These rights are also adopted in ICCPR (international covenant on civil and political rights). Amongst these rights, some rights are possessed by people as their physical rights and some others as mental or intellectual rights¹¹

Moreover, although not strictly, the right to equal treatment and equal protection of law fall in the category of civil rights. This right plays an important role in the enjoyment of economic, social and cultural rights because absence of right to equality, other rights are null and have no importance. Another group of civil rights is collected under one term i.e. 'due process rights'. This pertains to the rights of audi alteram partem. According to article 11 of Universal Declaration of Human Rights, everybody is presumed as innocence unless his guilt has been established beyond all reasonable doubt. Therefore everybody has right to fair hearing and legal assistance.¹²

b. Political Rights

Political rights are related to the participation of the people in the formation of government. Every person has been guaranteed right to vote, freedom of expression, right to free and periodic elections, etc. It is the duty of every state to grant these rights to all its citizens. These political rights are those set out in Articles 19 to 21 of Universal Declaration of Human Rights. This right

¹¹ Article 7, Declaration on the rights of Indigenous Peoples

¹² See Article 9, 10, 14 and 15 of ICCPR

has also been granted by the Constitution of India. Every citizen has right to fight the election and also right to vote after fulfilling certain eligibility criteria for the same.

c. Economic and Social Rights

Economic rights are related to the fiscal matters of the people. A list of economic rights is also provided in UDHR. Economic rights refer to the right to property, the right to work, and choose his profession freely, the rights relating to minimum wages¹³, equal pay for equal work etc. Social rights reflect the living standard of the people in society like his shelter, clothing, food, education, marriage, family, health etc. These economic and social rights are provided in Universal Declaration of Human Rights as well as International Covenant on Economic, Social and Cultural Rights.¹⁴ It is the duty of every state to provide and secure these rights to all its citizens.

d. Cultural Rights

Cultural rights are those rights which are enjoyed by the people by virtue of a member of a particular community or religion. There are four major religions in the world which are professed by the people either directly or indirectly. These are Hindu, Muslim, Shikh and Christianity. People of all these different groups may have their own culture. They all have the right to enjoy their rights in manner they like subject to the condition of unity and integrity of the nation and public order and peace. Cultural rights are also provided by Universal Declaration of Human Rights. Different nations are bound to ensure these rights for its citizens as it is necessary to establish a scientific environment resulting in the growth of the nation as well as the world.¹⁵

4. Rights available to accused in Constitution

Following rights are available to an accused or arrested person:

1. Protection against *ex post facto* law

Provisions regarding *ex post facto* law have been inserted in the Indian Constitution as fundamental right. Article 20 specifically provides for this protection to an accused. *Ex post facto*

¹³ Minimum wages act, 1948

¹⁴ See Articles 6 to 14 ICESCR

¹⁵ S Article 25 to 28 of the Indian Constitution.

law simply means law not applicable in present. It means a person accused of any offence can neither be tried nor can be convicted for any act which is not an offence according to the present applicable criminal law. If any act was a crime according to the law applicable in past and now the law has been amended, the person cannot be held liable for the act. Moreover, the same act which is not an offence in present but has been declared a crime in future, the person can also be not held liable. He will be protected by law. Article 20 (1)¹⁶ specifically provides that “a person shall not be convicted of any act which is not an offence according to the law in force at the time of commission of the wrongful act.

2. No greater penalty

The second part of Article 20 of the Constitution provides for this fundamental right that greater penalty cannot be imposed on the accused. This fundamental right of the accused or arrested person has been discussed and decided by Supreme Court in *Kedar Nath vs. State of West Bengal*¹⁷. In this case the accused committed an offence in 1947, which under the Act then in force was punishable by imprisonment or fine or both. The Act was amended in 1949 which enhanced the punishment for the same offence by an additional fine equivalent to the amount of money procured by the accused through the offence. The Supreme Court held that the enhanced punishment could not be applicable to the act committed by the accused in 1947 and hence, set aside the additional fine imposed by the amended Act.

3. Right against double jeopardy:

The right against double jeopardy is one of the most important right available to an accused person. This right is enshrined in a doctrine that a person who is tried and either convicted or acquitted of any offence; he cannot be tried again for the same offence. This right has also

¹⁶ Article 20 (1) of the Indian Constitution “no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the 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.

¹⁷ AIR 1953 SC 404.

enshrined in another doctrine known as *Doctrine of "autrefois acquit" and "autrefois convict"*. This doctrine has been substantially incorporated in the Article 20(2)¹⁸ of the Constitution.

4. Prohibition against self-incrimination

This fundamental right of an accused as well as arrested person has been enshrined under Article 20 (3)¹⁹ of the Constitution. This article embodies the general rule of law that a person is always presumed as innocent unless proved guilty. If he is charged with any offence, the burden of proof lies on the prosecution to prove him guilty. If he has been proved as guilty than he will be burdened to prove himself as innocent. If he fails to do so, he will be convicted and if he success, he will be acquitted. It is the duty of the prosecution to produce evidence against the accused and the accused cannot be compelled to give evidence against him. He cannot be compelled to be a witness against himself. In *Nandini Satpathy v. P.L. Dani*²⁰ Hon'ble Supreme Court has widened the scope of this section and held that this right is available to an accused not during trial in the court but from the stage of arrest and interrogation by the police. When any person is in police custody, he cannot be compelled to confess and if any confessional statement is produced before the court, that statement is not admissible in the court unless the confessional statement is given in the active presence of the Magistrate.

5. Rights available to accused and arrested in criminal justice system

Following are the rights available to an accused and arrested persons.

(i). Right to know the grounds of arrest:

This right is provided under section 50 of the Code of Criminal Procedure. This section provides that where any person is arrested for any non-bailable offence without warrant, he has right to know the full particulars of offence for which he has been arrested.

(ii). Right to be produced before Magistrate without delay:

¹⁸ Article 20 (2) of the Constitution "No person shall be prosecuted and punished for the same offence more than once."

¹⁹ "No person accused of any offence shall be compelled to be a witness against himself"

²⁰ AIR 1978 SC 1025

The person who has been arrested for any crime has the right to be produced before the Magistrate without delay. This right of an arrested person is secured under section 57 of Code of Criminal Procedure. The purpose of this provision is twofold. At one side, this section grants the right to the arrested person and also imposes the duty on the police to produce the arrested person before the Magistrate. This provision has been made to curtail the unrestricted use of power by police.

(iii). Right to speedy trial:

Justice delayed is justice denied. Therefore this is the right of accused persons to get the speedy trial so that he may suffer his punishment after completion of his trial if he has been proved as guilty and if he has not been so proved, he may be released.

(iv). Right to consult legal practitioner:

Every person who has been arrested and against whom proceedings have been initiated has the right to consult the lawyer of his own choice. Section 50 (3) of Code of Criminal Procedure ensures this right of an arrested person.

(v). Right to Free legal aid:

Although every accused has right to consult and to be presented in the court by the legal practitioner of his own choice but if the accused or arrested person is unable to get the help of lawyer of his choice, he has right to free legal help. This right to an arrested or accused or arrested person has been ensured under section 304 of Code of Criminal Procedure Code. It is clear from the provision of this section that if legal help is not provided to the indigent during criminal proceeding and he has been convicted, the failure would vitiate the trial resulting in setting aside the conviction of the accused.

(vi) Right not to be tried again for the same offence:

This right has been granted by the doctrine of “autrefois acquit” and “autrefois convict” has been embodied in Section 300 of Criminal Procedure Code. It means any person accused of any offence if tried in the criminal court will not be tried again irrespective of the thing that after the trial he was acquitted or convicted.

(vii) Right to appeal:

The person who has been charged with any offence if convicted after the trial has right to appeal subject to the condition that he has not pleaded guilty.

6. Judicial approach and protection of Human Rights:

Human rights are granted by the United Nation charter and declared as essential rights for the people. It is the duty of every nation to grant and ensure the protection of these rights. In India, human rights are provided to the people in the form of Fundamental rights and duty has been imposed on High Court and Supreme Court to protect these rights. High Court and Supreme Court act as guardian of the Fundamental Rights. Any person whose fundamental right has been violated can directly approach the high court and Supreme Court for the protection of his F. R. Judiciary has vast power in this connection. In various important cases, Hon'ble Supreme Court and High court has not only protected the right but also expanded the scope of these rights.

In *Maneka Gandhi vs. Union of India* Hon'ble Supreme court held that the Fundamental Rights are not only having widened scope but also they are inter-connected. Supreme Court further said that Article 14, 19 and 21 are inter-connected to each other and one right cannot be enjoyed in the absence of other.

The wide interpretation of article 21 was made and the ambit of Right to life and personal liberty was extended by Hon'ble Supreme Court in *Francis Coralie vs. Mullin v. Administrator, Union Territory of Delhi*²¹. In this case, the court held that "The right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human being....must include the right to the basic necessities of life and also the right to carry such functions and activities as constitute the bare minimum expressing of human-self. Every act which offends against or impairs human dignity would constitute deprivation of this right to live".

In *Charles Sobraj v. Superintendent, Central Jail, Tihar*²² the Supreme Court has pronounced, „Prisoners have all rights enjoyed by free citizens except those lost necessarily as an incident of confinement“. Therefore, prisoners are not stripped of all of their fundamental rights merely by virtue of their status as detainees.

²¹ AIR 1981 SC 746.

²² AIR 1978 SC 1514.

D.K. Basu v. State of West Bengal, Supreme Court held that torture with an accused in the custody of police is open violation of Human Rights as well as right to live dignity. The Apex Court held that any form of torture or cruel, inhuman or degrading treatment would fall within the ambit of violation of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. While underlining the importance of the right to interrogate the persons in custody in the public interest, it was held that the manner of interrogation by the State must be right, just and fair and must necessarily exclude the use of torture or third degree methods or elimination. It would be relevant to state that the prohibition extends, not only to physical, but also mental torture. Not allowing an individual to sleep, bright lights, continuous questioning for a long period of time, all constitute compulsion and fall within prohibited third degree methods.

Conclusion & Suggestions:

Human rights concept is now not old and specially in the democratic country. No doubt it was too late to recognize and adopt the human for the people. But now, human rights are not only adopted and implemented but people are enjoying these rights for 7 decades. Although some views are that the rights are available to law abiding citizens only and not for the criminals or law breakers. But this is the concept of Indian criminal jurisprudence that every person is presumed as innocent unless proved guilty and the burden to prove him guilty lies on prosecution. Moreover if any person is found guilty and convicted by the court, he cannot be denied to enjoy his human rights. He does not lose his all the rights. His some rights are suspended during his imprisonment and some rights are still available to him which he enjoys during his punishment. Like, if a person has been awarded imprisonment for any crime, he loses his right to free but does not lose his right to life and protection. He can also not be subjected to torture during criminal proceedings and during his punishment. Prisoners are equally entitled to enjoy all the human rights subject to limitation of law.
