



ISSN NO. 2320-5407

Journal homepage: <http://www.journalijar.com>Journal DOI: [10.21474/IJAR01](https://doi.org/10.21474/IJAR01)INTERNATIONAL JOURNAL
OF ADVANCED RESEARCH

RESEARCH ARTICLE

HUMAN RIGHTS OF AN ACCUSED PERSON UNDER CRIMINAL JUSTICE SYSTEM IN INDIA.

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*Manuscript Info**Abstract**Manuscript History:*

Received: 18 April 2016
 Final Accepted: 22 May 2016
 Published Online: July 2016

*Key words:***Corresponding Author*

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Introduction:-

It has become a fashion to talk of rights, rights and only rights by every strata of human thinking. But there is a need to peruse deep into and beyond the labyrinth of rights. Therefore, in a welter of rights, the rights of an accused form a kernel of entire human rights discourse at the infancial beginning of 21st century. Rights of the accused and transgression thereof are pervading all the geo-political entity jurisdiction ever since the inception of human habitation on this beautiful planet. No doubt there have been certain jurisdictions wherein the rights of accused have been preserved, promoted and protected. All the revealed regimes and divine discourses have been utopian unanimous and united on the basic rights of accused. As early as in 1215, Magna Carta under Section 37 had provided a brolly of protection of an accused regarding his rights and against any arbitrary arrest, detention and confinement contrary to the procedure established by law. Dr. Martin Luther King (Jr) said that -

“Injustice anywhere is a threat to justice everywhere”

In India, the misuse of power and process in the hands of law-enforcing agencies is quite rampant. It has been observed since long time, that the people who were entrusted with powers had vehemently abused it. Protections of human rights are of cardinal importance in the process of criminal justice at all stages of investigation, trial and punishment. An accused person cannot be condemned merely because a charge is leveled against him, rather a large number of Constitutional and procedural rights have been given to him for his due protection. As a matter of fact the laws of India specially the Constitutional, evidentiary and procedural laws have made elaborate provisions for safeguarding the basic rights of the accused with a view to protecting his dignity as a human being and giving him the benefit of a just, fair and impartial trial.

Meaning of human rights:-

Human Rights are those minimal rights that every individual must have against the State or other public authority by virtue of being a member of the human family irrespective of any other consideration. These are the rights that are inherent in all the citizens, because of their being human ones. Article 10 of the International Covenant on Civil and Political Rights (ICCPR) mandates that- “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. Likewise the United Nations Standard Minimum Rules for Protection of Prisoners also provided basic guidelines for the treatment of prisoners and reaffirmed the tenet that prisoners do retain their fundamental rights even while in custody.

According to J. Donnelly "Human Rights are those held simply by virtue of being a person. To have a human right one need not do anything special, other than to be born as human being"¹R.J. Vincet argued human rights are founded in the human nature. He said, "they are the rights that everyone has, and everyone equally, by virtue of their very humanity. They are grounded in our appeal to human nature".² According to David Selby, "human rights pertain to all persons and are possessed by everybody in the world because they are human beings, they are not earned, bought or inherited, nor are they created by any contractual undertaking. "On the other hand, A.A. Said define human rights as those rights that are concerned with the dignity of individual, the level of self-esteem that secures personal identity and promote human community."³

In the words of Subash C. Kashyap, "the fundamental norms governing the concept of human rights is that of the respect for human personality and its absolute worth. Human rights may be said to be those fundamental rights to which every man or woman inhabiting any part of the world should be deemed to be entitled merely by virtue of having been born a human being."⁴

Who is an accused:-

Administration of criminal justice is concerned with a crime, which means an act deemed by law to be harmful to society in general even though its immediate victim happens to be an individual. Those who commit such acts (crime) are prosecuted by the State so that if found guilty and convicted by the court, they may be punished according to law of the State. As in every administration of criminal justice, a trial is conducted which revolves around the accused, an important question may be asked as to who can be called as an "accused".

As per **Black Law Dictionary** the term accused is defined as "the generic name of the defendant in a criminal case". In the **Law Lexicon's Dictionary** the word Accused has been defined as "A person against whom an allegation has been made that he has committed an offence, or who is charged with an offence". On the basis of these two definitions, it may be said that as soon as a person is alleged formally to commit a crime, he comes in the category of accused.

A person against whom a formal accusation of the commission of an offence has been made can be a person accused of an offence. The word offence has been defined in Section 3(38) of General Clauses Act, as "any act or omission made punishable by any law for time being in force" In *Maqbool Hussain v. State of Bombay*,⁵ The Supreme Court held that an accused is a person against whom an allegation is made, that he had committed an offence, and the court confined such allegations upto the FIR. In *M.P. Sharma v. Satish*,⁶ it was held that the expression "person accused of an offence" means a person against whom a FIR is lodged and who is included in the category of accused therein.

Rights of accused under indian laws:-

Universal Declaration of Human Rights, 1948, has recognised certain basic human rights of an individual, including an accused. The Indian Constitution, in tune with the international endeavours, provided four basic principles to govern the criminal justice system, viz, (1) presumption of innocence, (2) prevention of ex-post facto operation of criminal law (3) protection against double jeopardy and (4) due process concept. Besides the Constitution, The Code of Criminal Procedure, 1973 and Indian Evidence Act, 1872, also deal with the protection of human rights of the accused person. In our criminal justice system, the legal ethics is quite established "let the thousand of criminals be let out, but a single innocent should not be punished". Following this principle the judiciary requires all cases to be proved beyond reasonable doubt.

Constitutional Provisions relating to the rights of the Accused

- ❖ Right against conviction or enhanced punishment under an Ex-post facto Law-Article 20(1).
- ❖ Right of protection against double jeopardy-Article 20(2)
- ❖ Right against self-incrimination- Article 20(3).
- ❖ Right of Privacy-Article 20(3) and Article 21.
- ❖ Right to be informed of the grounds of arrest and right to bail-Article 22(1) and (2).
- ❖ Right against unlawful arrest-Article 22(1) and (2).
- ❖ Right to consult and be defended by a lawyer of his own choice-Article 22(1) and (2).
- ❖ Right to production before a Magistrate within 24 hours-Article 22(1) and (2).
- ❖ Right to a fair pre-trial detention-Article 21.
- ❖ Right to life and liberty-Article-21.

- ❖ Right to free legal aid-Article 39-A.
- ❖ Right to Constitutional Remedies under Articles 32 and 226.
- ❖ Right to Equality and protection against arbitrariness –Article 14.
- ❖ Right to Freedom-Article 19.

Procedural Provisions relating to the Rights of the Accused:-

- ❖ Protection against arbitrary or unlawful arrest-Sections 41, 55 and 151 of Cr.P.C.
- ❖ Protection against arbitrary or unlawful searches-Sections 93, 94, 97, 100 and 165 of the Code.
- ❖ Protection against arbitrary or illegal detention in custody-Sections 56, 57 and 76 of the Code.
- ❖ Right to be informed of the grounds, immediately after arrest-Sections 50, 55 and 75 of the Code.
- ❖ Right of the arrested persons not to be subjected to unnecessary restraint-Section 49 of the Code.
- ❖ Right to consultation of lawyer of his own choice as well as right to get legal aid at the expense of the State in certain cases-Sections 303, 304 of the Code.
- ❖ Right to be produced before Magistrate within 24 hours of his arrest-Sections 57 and 76 of the Code.
- ❖ Right to be released on bail if arrested –Sections 436, 437 and 439; also Sections 50 (2) and 176 of the Code.
- ❖ Right to get copies of the documents and statements of witnesses on which the prosecution relies-Sections 173 (7), 207, 208 and 238 of the Code.
- ❖ Right to have the benefit of the presumption of innocence till guilt is proved beyond reasonable doubt-Sections 101-104 of Indian Evidence Act, 1872.
- ❖ Right to insist that evidence be recorded in his presence except in some special circumstances-Section 273; also 317 of the Cr.P.C.
- ❖ Right to have a due notice of the charges- Sections 218, 228(2), 240(2), etc. of the Code.
- ❖ Right to test the evidence by cross-examination-Section 138 of Evidence Act.
- ❖ Right to have an opportunity for explaining the circumstances appearing in evidence against him at the trial-Section 313 of the Cr.P.C.
- ❖ Right to have himself medically examined for evidence to disprove the commission of offence by him or for establishing commission of offence against his body by any other person- Section 54 of the Code.
- ❖ Right to produce the defence witnesses –Section 243 of the Code.
- ❖ Right to be tried by an independent and impartial judge-Sections 479, 327 and 191 etc, of the Code. (The Scheme of Separation of Judiciary as envisaged in Cr.P.C.).
- ❖ Right to fair and speedy investigation and trial –Section 309 of the Code.
- ❖ Right to obtain a receipt when properties are seized- Sections 100 (6) and (7) of the Code.
- ❖ Right to be heard about the sentence upon conviction-Section 235 (2) and 248 (2) of the Code.
- ❖ Right of release of a convicted person on bail pending appeal-Section 380 of the Code.
- ❖ Right to appeal in case of conviction –Sections 351, 374, 379, 380 of the Code.
- ❖ Right to invoke the power of High Court under Section 482 of the Code.
- ❖ Right to get copy of the judgment when sentenced to imprisonment-Section 363 of the Code.

Judicial approach towards protection of rights of accused:-

Article 21 of the Constitution of India confers on every person the right to life and personal liberty and the Supreme Court has interpreted the Article very broadly to include an array of rights that have helped to strengthen the Indian Criminal Justice System. The expansive interpretation of Article 21 by the Judiciary has led to the inclusion of several rights within the right to life and personal liberty and their elevation to the status of a fundamental right. A wide range of rights, like the right to compensation in case of violation of Article 21, the right of undertrials against unreasonable and arbitrary handcuffing, rights of prisoners, right against custodial violence, the right to a fair and speedy trial, right to free legal aid, the right to consult with the legal advisor, the right against any form of torture or cruel, inhuman or degrading treatment, the right to privacy, the right against police atrocities and illegal arrest and detention, etc., have been held to be a part of Article 21 of the Constitution.

The right to fair trial is at the heart of the Indian criminal justice system. The Supreme Court has held that a fair trial is a part of the fundamental right to life and personal liberty under Article 21 of the Indian Constitution. In *Maneka Gandhi case*⁷ where the Supreme Court held that the "procedure prescribed by law has to be fair, just and reasonable, and not fanciful, oppressive or arbitrary," the ambit of Article 21 and the procedural rights necessary for its realisation have been expanded by the Supreme Court. The most important aspect of the *Maneka Gandhi case* is the interpretation afforded to "procedure established by law" under Article 21.

In *Charles Sobraj v. Superintendent, Central Jail, Tihar*⁸, the Supreme Court has pronounced, "Prisoners retain 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. 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.⁹

The Apex Court in *Pradeep Kumar Verma v. State of Bihar*,¹⁰ required the authorities to do needful in the matter urgently to ensure speedy disposal of cases, if the people's faith in the judiciary was to remain. Though no general guideline can be fixed regarding speedy trial by the Court and that each case has to be examined on its own facts and circumstances, but it is the bounded duty of the Court and the prosecution to prevent unreasonable delay.¹¹

In *Khatri v. State of Bihar*,¹² the right to free legal aid was held to be implicit in the guarantee under Article 21 as an essential ingredient of a reasonable, fair and just procedure. The State Government cannot avoid its Constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. Speaking for the majority in *Sunil Batra (II) v. Delhi Administration*,¹³ Krishna Iyer, J., in his inimitable style held that "prisons are built with stones of law and so it behoves the Court to insist that, in the eye of law, prisoners are persons, not animals, and punish the deviant guardians of the prison system where they go berserk and defile the dignity of the human inmate."

In *Smt. Selvi & Ors. v. State of Karnataka*,¹⁴ the Supreme Court has held that nobody can be compelled to undergo Narco analysis, brain mapping, or lie detector tests and that any statements made during these procedures are not admissible as evidence and made it clear that forcible use of these tests is unconstitutional.

"It is well-known that Rule of Law sustains democracy and it is equally true that to a bold and independent judiciary is assigned the task of maintaining the Rule of Law. Impartiality and independence of judiciary depends on high standards of conduct followed by judges. Only if the highest possible standards are adhered to, the faith of the common in the judiciary be maintained. It is, therefore, imperative that the actions of judges are transparent and constitutionally sound. The judiciary cannot afford to adopt an uncritical attitude towards itself. We judges, at all levels, must make ourselves accountable and ensure that our actions are transparent and are within the parameters set by the Constitution. The judiciary must follow the standards of morality and behavior which it sets for others, and as a matter of fact before laying down standards of behavior for others the judiciary must demonstrate that the same standards apply to it and are being followed by it. Constant evaluation of the functioning of the institution needs, therefore, to be encouraged if the high esteem conferred on the judiciary is to be justified".¹⁵

Role of ngo's in protection of human rights:-

Human rights NGO's play an important role in upholding human rights, as envisaged under the United Nations Declarations of Human Rights and other human rights instruments. They put pressure on Government and compel them to enforce human rights of persons and be vigilant in order to prevent infringement of these rights. Further, these organizations have helped in bringing instances of human rights violations to the notice of the State/government, so that they can take action in that regard.¹⁶

Non-Governmental Organizations (NGOs) are playing important role in responding the mass voice of weak, meek, poor, suppressed, downtrodden and exploited people and emerged as a powerful protective shield of assistance in the field of legal battle to the needy persons. In this context, activated, sensitized, dynamic and dedicated approach of some prominent NGOs is worthy to appreciate. For example, Peoples Union for Democratic Rights (PUDR), Legal Aid Services, People's Union for civil liberties (PUCL), Common Cause A Registered Society etc. have invoked the Judicial process by way of Public Interest Litigation (PIL) and by letter writing to Apex Court of India and other highest authorities and in this way, these NGOs have played a tremendous role in imparting justice to thousands of arrested persons as well as under trials prisoners.

The Free Legal Aid Committee, Hazaribagh brought to the notice of the Court through a letter about the illegal detention of certain prisoners in the Hazaribagh jail for two or three decades without any justification. At the time of their detention prisoners were declared insane but afterwards they became sane but due to the inaction of authorities to take steps to release them, they remained in jails for 20 to 37 years. It was held that the prisoners remained in jail for no fault of theirs but because of callous and lethargic attitude of the authorities and therefore entitled to be

released forthwith. The Court has emphasized that there should be an adequate number of institutions for looking after the mentally sick persons and the practice of sending lunatic, or persons of unsound mind into jail for safe custody is not desirable, because jail is hardly a place for treating such persons.¹⁷

Another judgment of far reaching importance is Rudul Shah Case¹⁸ when he was kept in jail for 14 years, even after his acquittal by a criminal Court, where his right of personal liberty guaranteed by Article 21 was breach by jail administration. He was acquitted by the Court of Sessions, Muzaffarpur, Bihar, on June 30, 1968, but was released from jail only on October 16, 1982. This was done only when a habeas corpus petition was moved on his behalf in the Supreme Court. The fact situation revealed „a sordid and disturbing State of affairs for which the responsibility lay squarely on the Administration. The Court also asked the Patna High Court to find out if there were any other detenue suffering a fate similar to Rudul Shah’. The State authorities failed to place before the Court any satisfactory material for his continued detention for such a long period. The Court felt that not awarding damages in instant case would be doing merely lip services to fundamental Right to liberty which the State Government has so grossly violated, and directed to Bihar Government to pay Rs 35,000/- as compensation to Rudul Shah who had to remain in jail for 14 years.

The NHRC, like national human rights institutions in other countries, is an outcome of the process of universalization of human rights institutions. The United Nations, ECOSOC and UN Commission of Human Rights have been trying since 1946, to persuade nation-States including India to established National Human Rights Institutions, as it is widely believed that the translation of international human rights standards into reality is possible only with the establishment of such institutions. The guidelines suggested in the “Paris Principles”, therefore became the basis of the formation of India’s National Human Rights Commission. NHRC as a monitoring body over deaths and other violence in Policecustody, has been emphasizing on scientific, professional and human approach to be adopted by police personnel towards persons detained for investigations with a view to reduce custodial crime, the Commission has taken many steps to provide human rights training to the police personnel. It has made extensiverecommendations, aimed at reforming certain aspects of the administration of thecriminal justice system so as to make it more sensitive to human rightsconsiderations.

Conclusion:-

The Constitution of India as well as the International Commissions,Treaties and Covenants on Human Rights attaches great importance to theprotection of life and personal liberty of an individual and emphasis on therespect for human dignity. The basic laws i.e. substantive and procedural, stressthe need to strictly observe the human rights in the administration of criminaljustice in its true letter and spirit.Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution.

The present system of administration of justice is very complicated and it has become very difficult for a common man to reap out of it. In Indian perspective, Non-Governmental Organizations (NGOs) are playing commendable roles in responding to the mass voices of weak, meek, poor, suppressed, downtrodden and exploited people and has emerged as a powerful protective shield of assistance in the field of legal battle to the needy persons. It is remarkable to note that the positive role which the Non-governmental organization (NGOs) in India can play in furthering the cause of human rights has been duly recognized both by the protection of Human Rights Act, 1993 and the National Human Rights Commission (NHRC). The Commission also encourages and utilizes the NGOs for organizing Seminars, training programmes and in spreading human rightsawareness.

References:-

1. Radhanath Tripathy, "Understanding Human Rights", in Noorjahau Bava (ed), Human Rights and Criminal Justice Administration in India, N. Delhi : Uppal Publishing House (2000) p. 92
 2. Id at 93
 3. Id
 4. Supra note 2
 5. AIR 1953 SC 325
 6. AIR 1954 SC 300
 7. AIR 1978 SC 597
 8. AIR 1978 SC 1514
 9. Nandini Satpathy v/s P.L. Dhari, AIR 1978 SC 1025
 10. AIR 2007 SC 3057
 11. Moti Lal Saraf v/s State of J & K, AIR 2007 SC 56
 12. AIR 1981 SC 928
 13. AIR 1980 SC 1579
 14. AIR 2010 SC 1974
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1. A.S. Anand, Former CJI, Indian Judiciary and Challenge of 21st country
 2. KaushLendra Mishra, NGO's in the Human Right Movement, 20 (2008)
 3. Veena Sethi v/s State of Bihar, AIR 1983 SC 339
 4. AIR 1983 SC 1086