

### Rights of the Accused

“The guarantee of human dignity forms part of an Constitutional culture and the positive provisions of Articles 14, 19 and 21 spring into action to disshackle any man since to manacle man is more than to mortify him; it is to dehumanize him and, therefore, to violate his very personhood, too often using the mask of 'dangerousness' and security. Even a prisoner is a person not an animal, and an under-trial prisoner is a fortiori so. Our nations founding document admits of no exception. Therefore, all measures authorised by the law must be taken by the Court to keep the stream of prison justice unsullied. “**(Justice V Krishna Iyer, Prem Shankr Shukhla V Delhi Administration, 1980 AIR 1535)**

The Indian Constitution provides some basic rights/ safeguards to accused persons, which must be followed by the authorities during the process of administration of justice.

1.) Protection against ex post facto law:

Article 20 (1) of the Indian Constitution States: “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.”

(\*An ex post facto law is a law, which imposes penalties retrospectively.)

2. Protection against Double Jeopardy (*autrefois convict*):

Article 20(2) of the Constitution states that: “No person shall be prosecuted and punished for the same offence more than once. “This provision enshrines the concept of *autrefois convict*, that no one convicted of an offence can be tried or punished a second time.

Section 300 (1) in The Code of Criminal Procedure states: “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.

Section 221 of the CrPC

Where it is doubtful what offence has been committed.

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may

be charged in the alternative with having committed some one of the said offences.

### 3. Protection against Self Incrimination

Article 20(3) of the Indian Constitution states that: “ No person accused of any offence shall be compelled to be a witness against himself.” In *Nandini Satpathy V P.L Dani (AIR 1978 SC 1025)* the Supreme Court held that the prohibitive scope of Article 20(3) goes back to the stage of police interrogation not commencing in court only. It defines the phrase ‘compelled testimony’ as evidence procured not merely by physical threats or violence but by psychic (mental) torture, atmospheric pressure, environmental coercion, tiring interrogatives, proximity, overbearing and intimidatory methods and the like.

### 4. Person arrested must be informed on the grounds of Arrest and Right to be defended by a Lawyer

Article 22 (1) of the Indian Constitution states that. “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.” The right of the accused to have a counsel of his choice is fundamental and essential to fair trial.

In addition to the constitutional provision, Section 50 and section 303 of the Criminal Procedure Code provides for the same.

### 5. Person arrested to be taken before the Magistrate within 24 hours.

Article 22(2) of the Constitution provides that “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 court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.”

Article 22 (3) states that : Nothing in clauses (1) and (2) shall apply –

- a. To any person who for the time being is an enemy alien; or
- b. To any person who is arrested or detained under any law providing for preventive detention.

### 6. Right to Free Legal Aid

The state is under a constitutional mandate (implicit in Article 21 of the constitution, explicit in Article 39-A of the constitution-a directive principle) to provide free legal aid to an indigent accused person. Section 304 of the Code of Criminal Procedure also provides such a right to the accused.