

A CASE STUDY

Article 20 : Protection in respect of conviction for offences

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ABSTRACT

This paper aims at protecting the rights of the criminals from retrospective laws, double jeopardy and self incrimination. The three clause of article 20 have been briefly enumerated. The historical background speaks about the need of fundamental rights at various stages in the history of the country. There is also a brief mention of the classification of fundamental rights. Various case laws have been discussed to explain the changing needs of the society and expanding the periphery of the meaning of fundamental rights by the Indian judiciary.

Key Words : Conviction, Offences, Fundamental rights

View point paper : Singh, Shriya and Anbhule, Rajendra (2016). Article 20 : Protection in respect of conviction for offences. *Asian Sci.*, 11 (1): 87-89, DOI : 10.15740/HAS/AS/11.1/87-89

Part III of the constitution of India, titled as fundamental rights secure to the people of India certain rights which are basic, natural and inalienable. These rights have been declared essential rights in order that human liberty may be preserved, human personality may be developed and an effective social and democratic life promoted.

The framers of the Indian constitution followed the American model in adopting and incorporating the fundamental rights for the people of India. The constitution not only secures the fundamental rights but also provides a speedy and effective remedy for their enforcement.

Historical background of fundamental right :

The fundamental rights and directive principles had their origin in the Indian Independence movements, which strove to achieve the values of liberty and social welfare

as the goal of an Independent Indian state. The development and constitutional rights in India was inspired by historical documents such as England's Bill of the Right, the United States Bill of Rights and Frances Declaration of the Right of Man. The demand and civil liberties formed and important part of the Indian Independence movement with one of the main objectives of the Indian National Congress being to end discrimination between the British rules and their Indian subject.

The experience of the first world war, the unsatisfactory Montague- Chemsford reforms of 1919 and the rise in the prominence of M.K. Gaudhi in the Indian Independence Movement marked a change in the attitude of its leaders towards articulating demands of civil rights. The focus shifted from demanding equality of status between Indian and the British assuring the liberty for all Indians.

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In 1931, the Indian National Congress, at its Karachi session adopted a resolution committing itself to the defence of civil rights and economic freedom with the stated objective of putting an end to the exploitation providing social security and implementing land reforms universal Adult Franchise, as a right was also proposed.

During the final stage of British Raj, the 1946 Cabinet Mission of India proposed a constituent Assembly to draft a constitution for India as a part of the process of transfer of power. The drafting of fundamental rights was influenced by the adoption of the universal declaration of human rights by the U.N. General Assembly and the activities of the United Nations Human Rights Commission as well as decisions of the U.S. Supreme Court in interpreting the Bill of Rights in the American Constitution.

Classification of fundamental rights :

There are several ways of classifying the fundamental rights. The constitution classified the right under 6 heads :

- Right to equality (Act 14-18)
- Right to freedom (Act 19-22)
- Right against exploitation (Act 23-24)
- Right to freedom of religion (Act 25-28)
- Cultural and Educational Rights (Act 29-30)
- Right to constitutional Remedies (Act 32)

Article 20 : Protection in respect of conviction for offences :

- No. person shall be convicted of any offence except for violation of a law in force at the time of 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 commission of offence.
- No. person shall be prosecuted and punished for the same offence more than once.
- No. person accused of any offence shall be compelled to be witness against himself.

Ex-post facto laws (Clause 1) :

- A law which declares some act or commission as an offence for the first time after the completion of that act omissions.
- A law which enhances the punishment or penalty for an offence subsequent to the commission of that offence.

- A law which prescribes a new and different procedure for the prosecution subsequent to the commission of that offence.

The first part of clause (1) relates to the first category of ex-post facto law. It explains that a person can only be convicted of an offence of the charge against him is an offence under the law in force at the time of commission of that act. It gives constitutional recognition to the principle that one can be committed except for the violation of a law in force.

Act 20 (1) relates to the general principles of evidence which provides that ignorance of law is no excuse ; It means that no person can plead as a defence his ignorance about the law to which he is subject. No one knows what laws would be enacted in future. No one knows what omission would be declared punishable in future.

Subsequent Penalty to the commission of offence :

Act 20 (1), the second part prohibits the enhancement of punishment or penalty subsequently. It provides that no person shall 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.

In *Satwant Singh v. State of Punjab*, Sec. 420 of the IPC, 1860 prescribed on unlimited fine for an offence under this provision. The Supreme Court observed that Article 20 (1) was not infringed by the ordinance, because the minimum fine prescribed by it could not be said to be greater than what could be imposed under Sec. 420 of IPC at the time at which he committed the offence. The court explained that under Act 20 (1), law imposed a penalty greater than that which might be inflicted under the law in force at the time of commission of the offence.

Beneficial Ex-post facto laws :

Act 20 (1) prohibits the imposition of enhanced penalty or punishment. But it does not bar any reduction in the punishment. Thus, an ex post facto laws, which only modified the rigour of a criminal law, does not fall within the prohibition of Act 20 (1).

In *Rattan Lal v. State of Punjab* (AIR 196 SC 444), the court laid down that the rule of beneficial construction required that an ex-post facto law could be applied to reduce the punishment.

Procedural ex-post facto law :

Clause (1) of Article 20 does not prohibit the trial of offences under the ex-post facto laws. A law enacted subsequent to the commission of the offences prescribing a new procedure, different from the ordinary procedure of the prosecution or trial, is not hit by Act 20 (1).

Double Jeopardy (Clause 2) :

Clause (2) provides protection against Double Jeopardy. The clause lays down "No person should be put in Jeopardy twice for the same offence." It is based on the common law maxim "Nemo debet bis vexari," which means that a man should not be put twice in peril for the same offence. Where a person has been convicted for an offence by a competent court, the conviction operates as a bar to any further criminal proceeding against the same offence.

In *Venkatraman v. Union of India* (AIR 1954 SC 375) the appellant, a Government servant was charged with committing corruption. As a result of the report of the enquiry commissioner, he was dismissed from services. The same result would follow if the departmental enquiry is held after the prosecution of the accused in a criminal proceeding before a court Act 20 (2) is available only when the accused has been not only prosecuted but also punished after such prosecution. If no punishment clause 2 of Article 20 would have no application. Prosecution of punishment must co-exist for the operation of Article 20 (2).

Self incrimination (Clause 3) :

This clause is based on the maxim *Nemo tenetur prodere accusator seipsum*, which means that no man should be bound to accuse himself. The protection is available only if the following ingredients are present :

- It is a protection available to a person accused of an offence.

- Compulsion to be a witness.
- It is a protection against such compulsion resulting in this giving evidence against himself.

In *Nandani Satpathy v. P.L. Dami* (AIR 1978 SC 1025), the supreme court held that Sec. 160 (1) of CRPC which based the calling of a woman to police station was violated in the case. The court ruled that Act 2013 extended back to the stage of police investigation not commencing in court only, since such inquiry was of an accusatory nature and could end in prosecution. The ban on self accusation and the right to silence while an investigation or trial was underway, the court viewed, extended beyond that case and protected the accused in regard to other offences, pending or imminent, which might deter him from voluntary disclosure and criminatory matter.

Conclusion :

Article 20 has been safeguarding the rights of the convicted person. It cannot be suspended even during the emergency. It is available to citizen, non-citizen and also on corporate.

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Received : 18.04.2016; Accepted : 30.05.2016