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Rights Of The Accused

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Rights Of The Accused

- Article. 20 of the Indian Constitution subsumes within itself three important doctrines known as Doctrine of Ex post facto Law, Double jeopardy and prohibition of self incrimination, this is one of the Articles which cannot be done away even during Emergency.
- The Art 20 of the Indian Constitution was initially draft Article. 14 of the Indian Constitution.
- The term Ex post Facto Law is a part of natural justice principle and the same is based on the principle that no body should be punished for commission of an Act which was not a crime at the time of commission of the Act, or should not be inflicted with a punishment which was not present at the time of commission of the Act.
- This can be found in Section 10 to the Article. 1 of the US Constitution- It was called as the hallmark of republic governance by Alexander Hamilton.
- The nomenclature of Section 10 states that the congress shall not pass any legislation which is no state can pass any ex post facto Law, this was pointed out by George Mason of Virginia as a big blunder.

Ex Post Facto Law

- The wording is open and it can be interpreted to mean both civil as well as criminal statute?
- Ten years after passing of the Act due to unscrupulous legislation such as the Money Act which was passed in the Rhodes Island led to series of questions regarding Ex Post Facto Law in general.
- The Court finally in 1798 in Calder V. Bull answered the question to state that Ex post Facto Law should be restricted only to Criminal statute and not to civil statute.
- Sir. BN Rau the drafter and other August members did not commit the same mistake which was done in US.
- The Nehru Committee Report which drafted the Fundamental Rights Chapter had included a provisions stating " Protection from punishment under Ex Post Facto Law"
- The Draft Article. 14(1) as it originally stood did not have the word " Law in Force", it contained simply of the word " Law".
- It was reasoned by the founding fathers' that one should have a look at the language of Art. 372 of the Indian Constitution.
- Correspondingly an amendment was mooted in the Assembly and the word "Law in force" was incorporated in the place of " Law".
- In the Indian position, any law which was passed at a later date, cannot be given effect to for a case which happened before.
- Interestingly, the new legislation can be used in trial stage and not in conviction stage.
- This point can be clearly illustrated through Keshavan Madhavan Case.

- The case primarily relied on the interpretation of Art. 13 and when did the fundamental rights come into picture?
- Can fundamental rights be brought in with retrospective force?
- The obiter dicta of the judgment drawing parallel with the accused who are living in prison for the same
- Justice Fazal Ali and Justice. BK Mukherjee's dissenting opinion on repealed Act
- The Indian position of Ex post facto Laws draws inspiration from the American system but is not a true reflection of the American model.
- It differs in the aspect that, in America you can also challenge the validity of an enactment on the basis of Ex post Facto Laws. On the other hand, in India, the validity of the an enactment cannot be challenged only the punishment cannot be granted.
- In that sense the Ex post Facto protection in India is limited in India.

Double Jeopardy

- It is based on the principle of Roman Law " Non bis in idem"- " Now twice for the same one"
- This principle can be broadly found both in Common law countries as well as civil law countries.
- It is opined that it originated in the Civil law tradition and later travelled to the Common law countries.
- There is an interesting instance in 1163 AD in England between Henry the II and the Archbishop of Canterbury, over the jurisdiction of the religious matters.
- Double jeopardy can be found in the American Constitution by virtue of the Fifth Amendment to the US Constitution.
- In India when the Constitution was being drafted, this right was already available to the subjects under CrPC, the same was raised to a fundamental rights stature subsequent to the enactment of this provision.
- It was a situation of a David v. Goliath and the state with its financial might should not be allowed to make repeated attempts to continue a concluded matter, which will only make the individual to live in a prolonged state of anxiety.
- The word prosecution as used in Art. 20 (2) embodies the following three

Essentials:

- There must be a person accused of an offence. The word 'offence' has to be taken in the sense in which it is used in the General Clauses Act, 1897 as meaning "an act or omission made punishable by any law for the time being in force"
- The proceeding or the prosecution should have taken place before a 'court' or 'judicial tribunal'. The revenue authorities like the sea custom authorities, are not judicial tribunals.
- Likewise, proceedings before a tribunal which entertains departmental or administrative enquiries cannot be considered as proceedings in connection with prosecution and punishment.
- If a person has been prosecuted for an offence but acquitted, then he can be prosecuted for the same offence again and punished.
- In **Kalawati v. State of Himachal Pradesh** 20 a person accused of committing murder was tried and acquitted. The state preferred an appeal against the acquittal. The accused could not plead Article 20(2) against the appeal.
- **Bihar v. Murad Ali Khan** the Supreme Court held that in order for the prohibition to apply under Article 20(2), the same act must constitute an offence under more than one Act. If there are two distinct separate offences with ingredients under two different enactments, a double punishment is not barred.
- In the case of **Maqbool Hussain v. State of Bombay**, a person arrived at an Indian airport from abroad. He was found in possession of gold which was against the law at the time. Action was

taken against him by the customs authorities and the gold was confiscated. Later he was prosecuted before a criminal court under the Foreign Exchange Regulation Act. The question was whether the plea of *autrefois acquit* could be raised under Art. 20(2). The Supreme Court came to the conclusion that the proceedings before the customs authorities did not constitute 'prosecution' of the appellant, and the penalty imposed on him did not constitute 'punishment' by a judicial tribunal.

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Protection Against Self Incrimination

- Article. 20(3) is based on the idea that no man should be forced to be an accused.
- The right gradually evolved in common law through protests against the inquisitorial and manifestly unjust methods of interrogation of accused persons, back in the middle ages in England.
- This right is one of the fundamental canons of British System of criminal jurisprudence which the United States of America adopted from the British legal system and incorporated it in their Constitution as "no person shall be compelled in any case to be a witness against himself"- Fifth amendment to the US Constitution, The Miranda Rights.
- The right against self-incrimination was afforded by the courts in consonance with the principles of an adversarial system of jurisprudence.
- The rationale is quite similar to the one which we discussed under Article. 20(2) of the Constitution.
- This case explained that the right lies for the protection of the accused by the improper compulsion of the authorities, thereby contributing to the avoidance of the miscarriages of justice.
- The exclusion of compelled testimony is important or investigators will be more inclined to extract information through such compulsion routinely rather than through the more difficult path of collecting independent evidence.
- It was the opinion of the founding fathers of our Constitution, that the easy path of procuring evidence, oral or documentary, by compulsion from an accused would do more harm than good to the administration of justice.
- it was felt that existence of this path would tend to discourage investigators or prosecution to indulge in a diligent search for reliable independent evidence and also dissuade them to exercise care while sifting through available evidence for the ascertainment of truth.

- When a person suspected or accused of a crime is compelled to testify on his/ her own behalf through methods involving coercion, threats or inducements during the investigative stage, there is a higher likelihood of such testimony being false or distorted out of sheer despair, anxiety and fear.
- "No person accused of any offence shall be compelled to be a witness against himself." The characteristics features of this provision are that the accused need not to make any statement against his will as it is for the prosecution to establish his guilt beyond all reasonable doubt and the accused is presumed to be innocent till proved guilty.

This provision contains the following ingredients:

- i. It is a right available to a person "accused of an offence".
 - ii. It is a protection against-compulsion to be a witness.
 - iii. It is a protection against such —compulsion resulting in his giving evidence - against himself.
- FIR is one of the first stage in the Criminal trial, if there is a FIR filled against someone, ca they claim the right to self incrimination under this Article
 - This right is applicable to both the accused as well as witness subsequent to the landmark judgment of the Supreme Court in Nandhini satpathy case.
 - Nandhini satpathy case also granted the right to remain silent.
 - Kathi Kalu Oghad case and the statutory infirmity with Sec 73 of the Evidence Act.

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