



## The Impact of Article 20 on Criminal Justice in India

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### Abstract

The Constitution of India, guarantees Fundamental Rights under chapter III that is from Article 12 to Article 35 which ensures that the right of every citizen of India is being protected and the heightened awareness are the rights of accused person. The reason being, individuals who are merely suspected of a crime often face social ostracization and are treated as though they are already convicted. This premature judgement leads to their abandonment even by their own community, simply because they bear the label of accused. On this proposition he is not getting the attention which he is entitled under the Article 20 of the Constitution of India. Therefore, my attempts to examine the guiding principles established under the Constitution of India concerning human rights, with particular focus on the rights of convicted persons. This thesis aims to assess the constitutional protections afforded to convicted individuals and identify potential gaps or deficiencies in these provisions.

**Keywords:** Convicted person rights under Article 20, ex post facto laws, double jeopardy and self-incrimination

### Introduction

The Indian Constitution provides one of the most basic human rights, every person has the fundamental right to live a peaceful life with human dignity. Though the above fundamental right is being followed for the citizen of the country but the disparity shown on the convicted person needs much needed concern to be addressed. As reason being though they are convicted but they are the citizen of the country. In the words of Late Justice V.R.Krishna Iyer, if the prisoners are made to languish in prison without speedy trial and if he is acquitted subsequently who would give him back his days that he has spent in prison. He was the first to raise his voice for the disability as a Rights issue and has also rightly expressed that the "Society is guilty if anyone suffers unjustly"<sup>[1]</sup>. This thesis discusses the rights available to the convicted person and whether Article 20 is being entitled to the convicted person in today's scenario.

### Related Provisions under Indian Constitution

The Constitution of India, secures certain rights which are enjoyed by the accused. The provisions under Article 20 to Article 22 of the Constitution of India, are being provided for the accused. Wherein Article 20 is for the protection in respect of conviction for offence.

### Analysis of Article 20

Article 20 of the Constitution of India, provides three safeguards for the protection of convicted persons

1. Protection Against Ex Post Facto Penal law
2. Guarantee Against Double Jeo Pardy
3. Privilege Against Self-Incrimination

### Protection against Ex Post Facto Penal Law

An ex-post-facto penal laws are one such law which imposes penalties retroactively, that is, upon acts already done, or which increases the penalty for the past acts<sup>[2]</sup>. This could be better understood by an illustration.

'A' has committed a crime in 1962 which is not then unlawful. A law is passed in 1964 making that act a criminal offence and seeking to impose penalties upon the person for what he did in 1962. Or, suppose, punishment prescribed for

an offence in 1962 was 10 months of imprisonment, but the punishment for the same offence is increased in 1964 to imprisonment for 2 years. And made applicable to the offences committed before 1964. These are the both example of ex post facto penal laws.

Ex post facto penal laws are considered to be unjust and repugnant to the notions of justice. Thus the Constitution of India provides Constitutional safeguards against such laws.

Article 20(1) lays that a person cannot be convicted for an act unless it was illegal at the time of its commission. If an act was considered an offence when committed, the punishment applied must be in accordance with the law as it existed at that time. A person cannot be subjected to a harsher penalty due to later amendments in the law.

### First Part of Article 20(1)

Under the first part, no person is to be convicted of an offence expect for violating a 'law in force' at the of commission of the act charged is committed. A person can only be convicted when the violated law was in force. A law enacted later, making an act done earlier (not an offence when done) as an offence, will not make the person liable for being convicted under it.<sup>[3]</sup> An immunity is thus provided to a person from being tried for an act, under a law enacted subsequently, which makes the act unlawful<sup>[4]</sup>. In the landmark judgement of the Hon'ble Supreme Court has held that if an act is not an offence on the date of the commission, a law enacted later cannot make it so<sup>[5]</sup>.

In *Sakshi v UOI* 6, the court refused to give an enlarged meaning to the word "rape" in 375 IPC on the ground that such an interpretation may violate Article 20(1).

The word 'offence' used in Article 20 has not been defined in our Constitution. While section 3 (38) Of the General Clauses Act defines 'offence' as any act or omission which has been punishable by any law for the time being in force.

### Areas of application and nature of the rights

Article 20 relates to the constitutional protection given to the persons who are charged with crime before a criminal court. The word 'penalty' in Article 20(1) is used in narrow perspective as meaning a payment "which has to be made or a deprivation of liberty which has to be suffered as a

consequence of finding that the person accused of a crime is guilty of the charge<sup>[6]</sup>.

The immunity can be made applicable for the punishment by criminal courts under the ex post facto laws and those cannot be extended against the preventive detention laws<sup>[7]</sup>, it cannot be made applicable even under the press law for demanding security from it<sup>[8]</sup>, for the acts done previously under that relevant law.

This provision does not bar a civil liability being imposed retrospectively. To understand this a leading case is cited to explain the details. An Act passes in June 1957, imposed on the employers closing their undertakings a liability to pay compensation to their employees since 28

November 1956. The Hon'ble Supreme Court held that the liability imposed by the law was a civil liability which was not an offence and so Article 20(1) could not apply to the liability for the period 28 November 1956 to June 1957<sup>[9]</sup>.

A tax can be imposed retrospectively<sup>[10]</sup>. The Hon'ble Supreme Court stated that imposing retrospectively special rates for unauthorized use of canal water is not hit by Article 20(1)<sup>[11]</sup>. In this case, only the rate for water has been increased but the unauthorized use of water has not been made an offence retrospectively.

It was held that this Article prohibits conviction and sentence under Ex post facto law but not trial of an offence<sup>[12]</sup>. It means a person being accused of having committed an offence has no Fundamental Rights of being tried by a particular court or procedure, except in case where the persons other constitutional and fundamental rights have been violated. Article 20(1) does not make a right to any course of procedure a vested right. It reflects that while the substantive protection against ex post facto laws is guaranteed, procedural laws can still change and be applied to ongoing cases. Therefore, a law which retrospectively changes the locus of trial of an offence from a criminal court to an administrative tribunal is not hit by Article 20(1).

### **Second Part of Article 20(1)**

The second part of Article 20(1) immunizes a person from a penalty greater than what he might have incurred at the time of his committing the offence. Thus, a person cannot be made to suffer more by an ex post facto law than what he would be subjected to at the time he committed the offence.

The landmark judgement will explain Article 20 second part in detail. X committed an offence in 1947 under the Prevention of Corruption Act which then prescribed a punishment of imprisonment or fine or both. The punishment was increased due to the amendment of the law in 1949. The Hon'ble Supreme Court held that the increased punishment could be imposed to the offence committed in 1947 because of the prohibition contained in Article 20(1)<sup>[13]</sup>.

In Shiv Dutt Rai Fateh Chand v Union Of India<sup>[14]</sup> the Hon'ble Supreme Court held that Imposing or increasing a penalty with retrospective effect for violation of a taxing statute does not infringe Article 20(1).

In Rattan Lal v State of Punjab<sup>[15]</sup> the Hon'ble Supreme Court stated that an ex post facto law which only mollifies the rigours of a criminal law is not within the prohibition of Article 20(1). Therefore, an accused should have the benefit of a retrospective or retroactive criminal legislation reducing punishment for offence. This principle aligns with the idea of fairness in legal proceedings. Courts often hold that if a legislative change improves the legal position of an accused such as reducing sentencing guidelines, decriminalizing

certain acts, or offering procedural benefits it should be applied retrospectively.

### **Judicial Interpretation**

The Hon'ble Supreme Court, in the landmark case of Sarla Mudgal v. Union of India<sup>[16]</sup> addressed the issue of religious conversion and its impact on marriage under Hindu law.

The court ruled that a Hindu husband cannot evade his obligations under Hindu marriage law by converting to Islam and marrying another woman without legally dissolving his first marriage.

This act was held to be invalid, and the husband was found guilty under Section 494 of the Indian Penal Code (IPC), which prohibits bigamy. The ruling reinforced that religious conversion does not automatically nullify a prior Hindu marriage, thereby preventing misuse of conversion to bypass legal marital obligations.

Later, in Lily Thomas v. Union of India<sup>[17]</sup>, the argument was raised that the judgment in Sarla Mudgal should only apply prospectively and not affect individuals who had entered second marriages before the ruling. However, the Hon'ble Supreme Court rejected this contention, emphasizing that interpretation of an existing legal provision dates back to the original law and is not dependent on the date of judgment.

### **Guarantee against Double Jeopardy**

#### **a. Principle of Double Jeopardy**

The doctrine of double jeopardy could be better understood well from the legal maxim, Nemo debet bis vexari, meaning that a man must not be punished twice for the very same offence. The idea behind this doctrine is that no one should be punished twice for the same offence. If a person is accused again for the same offence in a court, he can take the plea of autrefois acquit or autrefois convict as his complete defence.

#### **b. Scope of Article 20(2)**

The ambit of Article 20(2) is narrower than the American rule against double jeopardy. The Indian provision articulates only the principle of autrefois convict but not that of autrefois acquit.

In Britain and the USA, both the defence operate and a second trial is forbidden even when the accused has been acquitted at the first trial of an offence. In India the rule of autrefois acquit is not incorporated in Article 20(2). Article 20(2) may be pleaded only when there has been prosecution and punishment in the first place.

The prosecution and punishment should co-occur for Article 20(2). Article 20(2) cannot be invoked when there is prosecution without punishment. A person prosecuted for an offence but acquitted, can be again prosecuted and punished for the same offence.

The basic interpretation of Article 20(2) appears to have been overlooked by the Hon'ble Supreme Court of India in Mukhtiar Ahmed Ansari v State (NCT of Delhi)<sup>[18]</sup>. Where, it had applied the principle of autrefois acquit, stating that once the accused was acquitted in kidnapping case the doctrine of autrefois acquit gets attracted.

#### **c. Prosecution**

The limitation read into Article 20(2) that the former prosecution (of criminal nature) must be before a court of law, or judicial tribunal required by law to decide matters in controversy judicially on evidence and not before a tribunal

which entertains departmental or administrative enquiry. Article 20(2) applies only to prior prosecutions that are criminal in nature, meaning that the safeguard is triggered only when an individual has been prosecuted and punished in a judicial setting.

The key distinction highlighted here is that administrative or departmental proceedings do not qualify as "prosecution" for the purposes of Article 20(2). This means that actions taken by regulatory bodies, disciplinary tribunals, or governmental departments do not invoke the protection against double jeopardy, since such proceedings are not criminal trials conducted before a court or judicial tribunal.

### **Privilege against Self-Incrimination**

The protection against self-incrimination is a fundamental canon of common jurisprudence. The characteristic features of this principle are-

1. That the accused is presumed to be innocent
2. That it is for the prosecution to establish his guilt, and
3. That the accused need not make any statement against his will.

These propositions arise from an apprehension that when an accused is forced to undergo interrogation or provide statements, there is a significant possibility of physical or psychological pressure, including torture or inhumane treatment, being used to extract confessions.

The principle against self-incrimination, enshrined in Article 20(3) of the Indian Constitution, aims to shield individuals from such forced testimonial compulsion. It ensures that an accused person cannot be compelled to be a witness against themselves, thereby offering a safeguard against torturous interrogation techniques.

Article 20(3) reads that no person accused of any offence shall be compelled to be witness against himself. This provision, on analysis found to contain the following ingredients:

1. It is a right available to a person 'accused of an offence'
2. It is protection against 'compulsion' 'to be a witness'
3. It is a protection against such 'compulsion' resulting in his giving evidence, 'against himself'.

All the three components must co-occur so that Article 20(3) can be claimed. If any of these ingredients is missing, Article 20(3) cannot be invoked.

This privilege applies to the testimonial compulsion, it even covers the oral testimony of the accused. In *MP Sharma v Satish Chandra*<sup>[19]</sup>, the Hon'ble Supreme Court stated that to limit Article 20(3) to oral evidence of a person would be to rob the guarantee of its substantial purpose and to miss the substance.

The person can be a witness not merely by giving oral evidences, but also by producing documents or making gestures in case of dumb witnesses. The phrase 'to be a witness' meant nothing more than 'to furnish evidence' and could even be done through words or by production of a document or thing.

In *State of Bombay v Kathi Kalu Oghad*<sup>[20]</sup>, an issue arose whether Article 20(3) is violated when the accused is directed to give his hand writing, or signature, or the impression of his palms and fingers. The court stated that self-incrimination must mean conveying information based upon the personal knowledge of the person giving information and covers only personal testimony which must

depend upon his volition. The court stated in *Oghad* to be a witness may be equivalent to furnishing evidence in the sense of making oral or written statement, but not in the larger sense of the expression so as to include giving thumb impression or impression of palm or foot or fingers or specimen writing or exposing a part of the body by an accused person for purpose of identification.

For the protection to be invoked, two key elements must be satisfied:

1. **Direct Relation to Criminality:** The statement given by the accused must have a clear connection to proving their guilt in a criminal offense. If the statement does not directly establish criminal liability, then Article 20(3) may not apply.
2. **Compulsion against Free Will:** The accused must have been forced to make the statement against their own volition. This means that if the statement was made voluntarily, without external pressure, coercion, or force, the constitutional safeguard does not come into effect.

The privilege under Art 20(3), is available not only to an individual, but even to an incorporated body, if it is accused of an offence<sup>[21]</sup>.

In *State of Bombay v Kathi Kalu Oghad*, the court considered whether the compulsory subsection of accused to Lie Detector or polygraphy tests, P-300 Test or brain mapping tests and narco analysis or truth Serum Tests violate the Article 20(3) that is testimonial compulsion. The court held that the above mentioned tests do not violate Article 20(3) reason being the tests of Brain Mapping and Lie Detector in which the map of the brain is the result, or polygraph, Cannot be said to be a statement made by the witness. At the most it can be called the information received or taken out from the witness. With regard to narco analysis while holding that the result of administration of serum is necessarily a statement nevertheless unless it is shown to be incriminating to a person making it, it does not give rise to the protection under Article 20(3).

In *Selvi v State of Karnataka*<sup>[22]</sup> the Hon'ble Supreme Court held that scientific techniques, narcoanalysis, polygraph examination and the Brain Electrical Activation Profile (BEAP) bear a 'testimonial' character and thereby triggers the protection of Article 20(3) of the Constitution.

### **What is Compulsion**

To invoke Article 20(3), it must be shown that the person at the time of making the statement was accused of an offence and the nature of the offence has to be criminal and also that he was compelled to make the statement. Compulsion is a duress and it has to be physical objective act and not the state of mind of the person making the statement unless the mind has been so natured by some extraneous process to produce statement that is involuntary and therefore extorted.

### **Other Provisions of Criminal Laws**

Section 110 of the Criminal Procedure Code (Cr.P.C.) deals with security for good behavior from habitual offenders. It empowers an Executive Magistrate to require individuals who habitually engage in criminal activities—such as robbery, theft, extortion, or other offenses—to provide security for their good behavior. The provision is intended

to prevent habitual offenders from continuing their criminal activities by imposing legal restrictions on them.

However, the broad and flexible language of Section 110 has raised concerns regarding its potential misuse by police officials, particularly against poor and innocent accused persons. The Supreme Court (S.C.) has recognized this issue and has explicitly directed magistrates and judicial officers to exercise great caution when handling cases under this section. The Court has also ensured that accused individuals have the right to legal defense at the state's expense, reinforcing constitutional protections for fair trials and preventing undue harassment.

### **The Predicament of Indian Prisoners**

Indian prisons are facing a severe human rights crisis, far beyond just overcrowding. The India Justice Report (IJR) 2025 highlights that jails are built to accommodate 4 lakh inmates are now holding 5.73 lakh prisoners, with projections indicating this number could rise to 6.8 lakh by 2030. The occupancy rate stands at 131%, meaning facilities are stretched far beyond their intended capacity.

This overcrowding has dire consequences for prisoners, particularly undertrials, who make up three out of four inmates. Many of these individuals have not been convicted but remain incarcerated due to delays in the judicial system and their inability to afford bail. The sub-human conditions in these prisons often lead to mental health deterioration, with some inmates resorting to suicide due to prolonged confinement.

Beyond space constraints, the crisis extends to staff shortages and inadequate healthcare. There is a 30% vacancy rate among prison staff, and a 43% shortage of medical officers, leaving inmates with little to no access to proper healthcare. The doctor-to-prisoner ratio is 1:775, far worse than the recommended 1:300, making medical care virtually inaccessible. Additionally, only 25 psychologists serve the entire prison population, meaning mental health support is almost nonexistent.

The overrepresentation of marginalized communities in prisons further underscores deep-rooted inequities in the justice system. Many inmates belong to Dalit, Adivasi, and Other Backward Classes (OBCs), reflecting systemic biases in law enforcement and judicial processes.

To address this crisis, experts recommend fast-track courts, alternative dispute resolution, and infrastructure investments to match the rising inmate population. There is also an urgent need to recruit more doctors, psychologists, and legal aid providers to ensure prisoners receive basic human rights protections<sup>[23]</sup>.

### **Recommendation of Law Commissions**

The 268th Report of the Law Commission of India (May 2017) proposed significant reforms to reduce overcrowding in prisons and improve judicial efficiency. The recommendations focused on bail reforms, alternative sentencing, and open prisons as a means to rehabilitate offenders.

### **Key Recommendations**

#### **Structured Release Mechanism:**

- Accused individuals charged with offences punishable up to seven years should be released after completing one-third of their sentence.
- Those serving longer sentences should be released after completing half of their term.
- Undertrial prisoners who have spent their entire term in custody should be considered for remission.

### **Preventing Unnecessary Arrests:**

- Police personnel should refrain from making unwarranted arrests, ensuring that detention is only used when absolutely necessary.
- Magistrates should avoid issuing mechanical remand orders, ensuring that each case is evaluated on its merits before extending custody.

### **Expansion of Open Prisons:**

- The All-India Committee on Jail Reform (1980) recommended the establishment and expansion of open prisons across all states and union territories.
- The Sanganer open camp in Rajasthan serves as a model for semi-open and open prisons, where inmates are given greater autonomy and rehabilitation opportunities.
- Open prisons operate on minimal security, relying on self-discipline rather than physical barriers to prevent escape.
- Lifers with positive behavioral assessments should be transferred to open prisons, fostering reintegration into society.

### **Challenges to Implementation:**

- Resource allocation remains a major hurdle in transforming prisons into rehabilitative spaces rather than punitive institutions.
- The deterrent effects of punishment and rehabilitation strategies need to be balanced to ensure effective criminal justice reform.
- Despite numerous recommendations, actual enforcement of these reforms remains India's biggest challenge.

These recommendations align with broader efforts to modernize India's prison system, ensuring fair treatment of accused individuals while promoting rehabilitation over punishment.

### **Problems with Article 20**

Problems with Article 20 of the Indian Constitution primarily arise from its limitation and scope of protections. The following problems are discussed below:

#### **Trial not protected under Article 20(1)**

Though the Article provides protection against conviction and punishment under retrospective criminal laws but does not prohibit the trial itself which means a person can be tried for an act even if the law was enacted after the act was committed.

#### **No protection in preventive detention**

Article 20 protection does not apply in cases of preventive detention, limiting the scope of protection.

#### **Limitations in application to juveniles or special cases**

Amendments such as changing juvenile age for criminal responsibility do not apply retrospectively due to Article 20, which can limit legislative reforms aimed at harsher punishment in sensitive cases.

#### **Double Jeopardy and self-incrimination clauses have practical challenges**

While Article 20(2) protects against being tried twice for the same offence and Article 20(3) protects against self-incrimination, enforcement and interpretation issues sometimes arise, especially in complex or overlapping legal proceedings.

## Conclusion

Thus, the convicted person must also enjoy his privileges and the rights guaranteed by the Indian Constitution. It is the state responsibility in ensuring that the convicted individuals are treated with fairness and dignity. There needs to be urgent reforms in the current criminal justice system due to prolonged trials, custodial torture and the denial of bail. The central premise is that the failure to uphold these rights reflects a deviation from the ideal of a welfare state. A welfare state, as envisioned by the Indian Constitution, operates on the principles of justice, equity, and the protection of human dignity. Amendment of criminal laws has to be done to enhance the enforcement of constitutional safeguards, ensuring that accused individuals are provided a conducive environment for reformation.

## References

1. "Law, Justice and the Disable" – V.R.Krishna Iyer
2. Corwin, *The Constitution and What it Means To-day*, 78, 1958.
3. *Kanaiyalal v Indumati*, AIR 1958 SC 444 : 1958 SCR 1394
4. *State of Maharashtra v KK Subramaniam*, AIR 1977 SC 2091 : (1977) 3 SCC 525
5. *Soni Devrajibhai Babubhai v State of Gujarat*, AIR 1991 SC 2173 : (1991) 4 SCC 298 <sup>6</sup> *Sakshi v UOI*, (2004) SCC 518, at page 537
6. *RS Joshi v Ajit Mills Limited*, AIR 1977 SC 2279 : (1977) 4 SCC 98
7. *Prahlad v State of Bombay*, AIR 1952 Bom 1
8. *State of Bihar v Shailabala*, AIR 1952 SC 329 : 1952 SCR 654
9. *Hatisingh Manufacturing Company v UOI*, AIR 1960 SC 923 : (1960) 3 SCR 528
10. *Sundaramier & Co v State of Andhra Pradesh*, AIR 1958 SC 468 : 1958 SCR 1422
11. *Jawala Ram v Pepsu*, AIR 1962 SC 1246 : (1962) 2 SCR 503
12. *Mohan Lal v State of Rajasthan*, (2015) 6 SCC 222 : AIR 2015 SC 2098
13. *Kedar Nath Bajoria v State of West Bengal*, AIR 1953 SC 404 : 1954 SCR 89
14. *Shiv Dutt Rai Fateh Chand v UOI*, AIR 1984 SC 1194: (1983) 3 SCC 529 Ed Observation to the contrary in *Virtual Soft System Limited v CIT*, (2007) 9 SCC 665, are incorrect.
15. *Rattan Lal v State of Punjab* AIR 1965 SC 444: (1964) 7 SCR 676.
16. *Sarla Mudgal v India*, AIR 1995 SC 1531 : (1995) 3 SCC 635
17. *Lily Thomas v UOI*, AIR 2000 SC 1650 : (2000) 6 SCC 224
18. *Mukhtiar Ahmed Ansari v State (NCT of Delhi)*, (2005) 5 SCC 258 : AIR 2005 SC 2804
19. *MP Sharma v Satish Chandra*, AIR 1954 SC 300 : 1954 SCR 1077
20. *State of Bombay v Kathi Kalu Oghad*, AIR 1961 SC 1808 : (1962) 3 SCR 10
21. *MP Sharma v Satish*, AIR 1954 SC 300 : 1954 SCR 1077
22. *Selvi v State of Karnataka*, AIR 2010 SC 1974 : (2010) 7 SCC 263
23. *Telangana Today*
24. *Indian Constitutional Law – MP Jain*
25. *Accused persons under Indian Constitution – A Critical study* <https://www.jetir.org/papers/JETIP1908006.pdf>  
*Prison Reforms in India : A critical analysis* <https://ijalr.in/volume-3-issue-2023/prison-reforms-in-india-a-critical-analysis>