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PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES UNDER ARTICLE 20 OF THE CONSTITUTION OF INDIA

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I. **ABSTRACT:**

Article 20 of the Constitution provides for the protection in respect of conviction for offences. No one can be convicted for an act that was not an offence at the time of its commission, and no one can be given punishment greater than what was provided in the law prevalent at the time of its commission. Also, no one can be prosecuted and punished for the same offence more than once and can be forced to give witness against his or her own self. Art. 20 of Indian Constitution provides for protection in respect of conviction of offences. In other words, it lays down certain safeguards to the person accused of crimes. Every day in our daily lives, we come across various news reports where someone is being accused of some offence(s). The basic question which every legal enthusiast faces on coming across these is whether there is some sort of fundamental rights or protection for the accused ones or ones to be presented before courts for trial. Our great Constitution makers must have also faced the same question and dilemma at the time of framing of the constitution. Thus, to deal with the same, Article 20 was included in Part III of the Indian Constitution. Article 20 is among those Articles of the Indian Constitution, which can't be put aside even during an emergency. Thus, forms a cornerstone of the Indian Constitution. Now, let's do a survey of three legal doctrines of the Indian Criminal jurisprudence, which reflects the three clauses of the Article 20, i.e. Ex-post facto law, Doctrine of Double Jeopardy and Prohibition against self-incrimination. The provision in question, i.e. Article 20 (1) says that one must not be prosecuted and convicted in accordance with those laws which didn't exist at the time of the commission of the offence by the accused and also must not be inflicted with punishments greater than those existing at the time of commission.

II. **INTRODUCTION:**

Protection against Ex post facto law. Clause (1) of Article 20 of the Indian Constitution says that "no person shall be convicted of any offence except for violation of 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. Article 20 (1) imposes a limitation on the law-making power of the Legislature. Ordinarily, a Legislature can make prospective as well as retrospective laws, but clause (1)

Of Article 20 prohibits the Legislature to make retrospective criminal laws. However, It does not prohibit imposition of civil liability retrospectively, that is with effect from a Past date. So, a tax can be imposed retrospectively. An ex post facto law is a law which imposes penalties retrospectively. It acts on acts already done and increases the penalty for such acts. The American Constitution also contains a similar provision prohibiting ex post facto laws both by the Central and the State Legislatures. No conviction for an offence except for violation law in force at the time of the commission of the act charged-The first part of clause (1) provides that "no person shall be convicted of any

offence except for violation of 'law in force at the time of the commission of the act charged as an offence.' This means that if an act is not an offence at the date of its commission it cannot be an offence at the date subsequent to its commission.

Parred Lubha v. Nilambaram.⁸³⁵

In this case, it was held that if the non-payment of the Panchayat Tax was not an offence on the day it fell due, the defaulter could not be convicted for the omission to pay under a law passed subsequently even if it covered older dues.

III. AMERICAN CONSTITUTION:

The protection afforded by clause (1) is available only against conviction or sentence for a criminal offence under ex post facto law and not against the trial. Under the American law the prohibition applies even in respect of trial. The guarantee in American Constitution is thus wider than that under the Indian Constitution. The protection of clause (1) of Article 20 cannot be claimed in case of preventive detention, or demanding security from a person. The prohibition is just for conviction and sentence only and not for prosecution and trial under a retrospective law. So, a trial under a procedure different from what it was at the time of the commission of the offence or by a special court constituted after the commission of the offence cannot ipso facto be held unconstitutional.⁸³⁶

IV. PENALTY GREATER THAN THAT AT THE TIME OF THE COMMISSION OF THE OFFENCE:

The second part of clause (1) protects a person from 'a penalty greater than that which he might have been subjected to at the time of the commission of the offence.

Kedar Nath State of West Bengal.⁸³⁷

In this case, the accused committed an offence in 1947, which under the Act then in

force was punishable by imprisonment or fine or both. The Act was amended in 1949 which enhanced the punishment for the same offence by an additional fine equivalent to the amount of money procured by the accused through the offence. The Supreme Court held that the enhanced punishment could not be applicable to the act committed by the accused in 1947 and hence set aside the additional fine imposed by the amended Act.

Budh Singh v. State of Haryana.⁸³⁸

In this case, the petitioner was convicted under Section 15 of the NDPS Act, 1985 and sentenced to undergo imprisonment for a period of 10 years and also a fine of Rs. 1,00,000/- and in default to suffer further RI for a period of three years. After undergoing custody for a period of more than seven years, the petitioner contended that taking into account the remission which had been due to him under different Government notifications/orders issued from time to time, he would have been entitled to be released from prison but by virtue of Section 32-A of NDPS Act the benefit was denied to him. He challenged constitutional validity of Section 32-A of the NDPS Act for violation of Fundamental Rights under Articles 14, 20 (1) and 21 of the Constitution.

V. BENEFICIAL PROVISIONS:

But the accused can take advantage of the beneficial provisions of the ex post facto law. The rule of beneficial construction requires that ex post facto law should be applied to mitigate the rigorous (reducing the sentence) of the previous law on the same subject. Such a law is not affected by Article 20(1). The principle is based both on sound reason and common sense.

T. Baral v. Henry An Hoe.⁸³⁹

In this case, a complaint was lodged against the respondent under Section 16(1)(a) on August 16, 1975 for having committed an offence punishable under Section 16(1)(a) read with

⁸³⁵ AIR 1967 Ker 155.

⁸³⁶ Dr. J.N . Pandey, Constitutional Law of India, 54th edition, 2017, Central law Agency

⁸³⁷ AIR 1953 SC 404.

⁸³⁸ AIR 2013 SC 2386.

⁸³⁹ (1983) 1 SCC 444.

Section 7 of the Prevention of Food Adulteration Act as amended by the Amending Act of 1973. On the date of the commission of the alleged offence, i.e. On August 16, 1975. The law in force in the State of West Bengal was the Amendment Act which provided that such an offence would be punishable with imprisonment for life. On April 1, 1976 enacted Prevention of Food Adulteration (Amendment) Act, 1976 which reduced the maximum punishment of life imprisonment as provided by the West Bengal Amendment Act to 3 years imprisonment. It was held that the accused could take advantage of the beneficial provision of the Central Amendment Act and thus he had the benefit of the reduced punishment.⁸⁴⁰

VI. PROTECTION AGAINST DOUBLE JEOPARDY:

Clause (2) of Article 20 of our Constitution says that “no person shall be prosecuted and punished for the same offence more than once. This clause embodies the common law rule of *nemo debet bis vexari* which means that no man should be put twice in peril for the same offence. If he is prosecuted again for the same offence for which he has already been prosecuted he can take complete defence of his former acquittal or conviction. The American Constitution incorporates the same rule in the Fifth Amendment that “no person shall be twice put in jeopardy of life or limb”. The protection under clause (2) of Article 20 is narrower than that given in American and British laws. Under the American and the British Constitution the protection against double jeopardy is given for the second prosecution for the same offence irrespective of whether an accused was acquitted or convicted in the first trial. But under Article 20(2) the protection against double punishment is given only when the accused has not only been prosecuted but also punished, and is sought to be prosecuted second time for the same offence. The use of the word ‘prosecution’ thus limits the scope of the protection under clause (1) of Article 20. If there

is no punishment for the offence as a result of the prosecution clause (2) of Article 20 has no application and an appeal against acquittal, if provided by the procedure is in substance a continuance of the prosecution. The word ‘prosecution’ as used with the word ‘punishment’ embodies the following essentials for the application of Double jeopardy rule. They are:

- A. The person must be accused of an offence. The word ‘offence’ as defined in General Clauses Act means any act or omission made punishable by law for the time being in force
- B. The proceeding or the prosecution must have taken place before a “court” or “judicial tribunal”.
- C. The person must have been prosecuted and punished’ in the previous Proceeding
- D. The offence must be the same for which he was prosecuted and punished in the previous proceedings.

Maqbool Husain v. State of Bombay.⁸⁴¹

In this case, the appellant brought some gold into India. He did not declare that he had brought gold with him to the customs authorities on the airport. The customs authorities confiscated the gold under the Sea Customs Act. He was later on charged for having committed an offence under the Foreign Exchange Regulations Act. The appellant contended that second prosecution was in violation of Article 20(2) as it was for the same offence, i.e. for importing gold in contravention of Government notification for which he had already been prosecuted and punished as his gold had been confiscated by the customs authorities. The Court held that the Sea Custom Authorities were not a court or judicial tribunal and the adjudging of confiscation under the Sea Customs Act did not constitute a judgment of judicial character necessary to take the plea of the double jeopardy. Hence, the prosecution

⁸⁴⁰ Rathanlal Dhirajlal, The code of criminal procedure, 23rd edition, Lexis nexis.

⁸⁴¹ AIR 1953 SC 325.

under the Foreign Exchange Regulation Act is not barred.⁸⁴²

A. ARTICLE 20(2) AND SECTION 300 (1) OF CRPC:

The language used in section 300(1) Of Cr.P.C is different from the language used in Article 20 (2) of the Constitution. The former is wider than the later. Article 20 (2) of the Constitution states that no one can be prosecuted and punished for the same offence more than once. Section 300 (1) of Cr.P.C. states that "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. So where the appellant had already been convicted under Section 138 of the Negotiable Instruments Act, 1881, he could not be tried and punished on the same facts under Section 420 or any other provision of IPC or any other statute."⁸⁴³

VII. PROHIBITION AGAINST SELF- INCRIMINATION:

Clause (3) of Article 20 provides that no person accused of any offence shall be compelled to be a witness against himself. This Article 20(3) embodies the general principles of English and American jurisprudence that no one shall be compelled to give testimony which may expose him to prosecution for crime. The cardinal principle of criminal law which is really the bed rock of English jurisprudence is that an accused must be presumed to be innocent till the contrary is proved. It is the duty of the prosecution to prove the offence. The accused need not make any admission or statement against his own free will. The Fifth Amendment

of the American Constitution declares that "no person shall be compelled in any criminal case to be a witness against himself". The fundamental rule of criminal jurisprudence against self-incrimination has been raised to a rule of constitutional law in Article 20(3). This guarantee extends to any person accused of an offence and prohibits all kinds of compulsions to make him a witness against himself."

M.P. Sharma v. Satish Chandra.⁸⁴⁴

In this case, the Supreme Court observed that this right embodies the following essentials

1. It is a right pertaining to a person who is "accused of an offence" (2) It is a protection against "compulsion to be a witness".

2. It is a protection against such compulsion relating to his giving evidence "against himself."⁸⁴⁵

VIII. CONCLUSION:

Irrelevance is impermissible, relevance is licit, but when relevant questions are loaded with guilty inference in the event of an answer being supplied, the tendency to incriminate springs into existence. The accused person cannot be forced to answer questions merely because the answers thereto are not implicative when viewed in isolation and confined to that particular case. He is entitled to keep his mouth shut if the answer has a reasonable prospect of exposing him to guilt in some other accusation. Actual or imminent, even if the investigation is not with reference to that. However, he is bound to answer where there is no clear tendency to incriminate. This means that the protection is available when police examines the accused during investigation under Section 161 of the Cr.P.C. Further, the right to silence is not limited to the case for which he is examined but extends to the accused in regard to other offences pending or imminent which may deter him from voluntary disclosure of criminatory matter.

⁸⁴² Dr. J.N. Pandey, Constitutional Law of India, 54th edition, 2017, Central law Agency

⁸⁴³ Dr. J.N. Pandey, Constitutional Law of India, 54th edition, 2017, Central law Agency

⁸⁴⁴ AIR 1954 SC 300.

⁸⁴⁵ Dr. S. R. Myneni, Constitutional Law I, 3rd edition, 2020, Asia law house.



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