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ACCUSED RIGHTS: A COMPARATIVE STUDY OF ACCUSED AND VICTIM RIGHTS IN INDIA

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ABSTRACT

As Democracy and Rule of Law are fundamentals of the Indian constitution, the concept of fair trial is a constitutional mandate and the basic principle of criminal law revolves around the Natural Justice which gives the accused equal opportunity to present their side of the story along with the victim. The accused is also granted certain rights, provisions. In this paper, the author has gone through various journals, internet sources and research documents to present the various rights given to the accused and victim under the Indian legal system. Discussing all the rights given to accused and victims in India, the author has further comparatively analysed the rights enjoyed by the accused and the victim. Concluding with a conclusion, few suggestions are given to fill the gap between the provision and the practical application of the rights.

I. INTRODUCTION

*"Injustice anywhere is a
threat to Justice Everywhere"*

Martin Luther King

Every human being including accused or proved criminals have basic human rights. Presuming a person to be innocent until proven otherwise is a legal principle which forms the

pillar of the criminal law justice system in India and in majority of the legal system of several nations. According to the principle, *every person, alleged to have committed any crime, is considered innocent until proven at fault.* Only with the fact that a person is held responsible for the commission of an offence does not deprive him of all the rights and liberties a human is provided from the law. From the duration of the trial of the accused and until his conviction or acquittal, he is provided with certain rights which are to be protected by the Indian legal system. Human rights are the basic rights and freedoms every person in the world is entitled to, from birth until death²²⁰². Values like dignity, equality and respect are the driving factors for the existence of the rights.

Just like how every accused is entitled to certain rights protected by the State, victims also are entitled to various rights. The rights of the victim are basically categorized under four essential elements. A victim should be provided with the right to get justice and fair treatment, restitution, compensation and assistance. It is necessary to give a central role of the victims of crime, as otherwise, the victim will remain discontented and may develop a tendency to take law into his own hands in order to seek revenge and pose a threat to the maintenance of Rule of Law, essential for sustaining a democracy.²²⁰³ The Supreme Court expressed its concern for victims without a remedy might "develop a tendency among the victim to take revenge by illegal ways thus further increasing crimes"²²⁰⁴. Hence, the accused and the victims both should be provided with equal rights and opportunities to present their side of the story and the Rule of Law should be well preserved.

BACKGROUND

²²⁰² "What are Human Rights? (Equality and Human rights Commission)", available at: <https://www.equalityhumanrights.com/en/human-rights/what-are-human-rights> (Visited on 4 December 2022)

²²⁰³ "Victimology and Victims' Rights", available at: https://www.lkouniv.ac.in/site/writereaddata/siteContent/202004120812184884omendra_yadav_SW_Victimology_and_Victims_Rights.pdf (Visited on 4 December 2022)

²²⁰⁴ P. Ramchandra Rao v. State of Karnataka, AIR 2002 SC 1856

The need for giving rights to the accused and importance of these rights has risen from the Human Rights movement²²⁰⁵. "Human Rights" as the word denotes, are those fundamental principles of humanity which every human, on the basis of being born as human, is entitled to enjoy.²²⁰⁶ These rights are naturally born rights which every human being is entitled to, irrespective of race, sex, nationality, ethnicity, language, religion, or any other status.²²⁰⁷ The United Nations learnt the importance of these rights and the necessity of basic human rights to be provided to accused as well.

The Universal Declaration of Human Rights (UDHR), 1948 sets out fundamental rights which are to be provided to accused. Article 9 of the act struck down arbitrary arrest and detention. Article 10 gives the right of fair and public hearing to everyone in ascertainment of his rights and obligations in any criminal charge against him and Article 11 encompasses the principle of Presumption of Innocence that every person alleged to have committed an offence is innocent until proven guilty. Thus, every human irrespective of charges penned against him should be given basic human rights which are fundamental in nature.

In India, the principle of "Natural Justice" plays an important role in determining the rights of the accused. The rule of *Audi alteram partem*, points out that every party to the suit should be given equal opportunity to speak and no one should be condemned unheard. The Supreme Court made it absolutely explicit that even when the authority has statutory power to take action without hearing, it would be arbitrary to take action without hearing and, thus, violative of Article 14 of the Constitution.²²⁰⁸

²²⁰⁵ "The changing contours of accused and victims and legal challenges", available at:

<https://blog.ipleaders.in/changing-contours-accused-victims-legal-challenges/> (Visited on 4 December 2022)

²²⁰⁶ "Human Rights of the Accused and the Police investigation Process", available at: <http://www.legalservicesindia.com/article/1620/Human-Rights-of-The-Accused-And-The-Police-Investigation-Process.html> (Visited on 4 December 2022)

²²⁰⁷ The Universal Declaration of Human Rights, 1948, art. 2

²²⁰⁸ *H.L. Trehan v. Union of India*, (1989), 1 SCC 764

STATEMENT OF THE PROBLEM

"Basic rights given to an accused should provide equal opportunity for the presentation of their case and it should not be given any less importance than the rights of the victim."

The paper deals with the topic concerned with the study of rights granted to the accused in India in a comparative study with the rights of the victim. It explains all the fundamental rights given to an accused and victim of an offence under the relevant laws in India. The cardinal principle of the Indian Judicial system goes by the saying that "Never punish an innocent, even if hundreds go unpunished". On the basis of this principle every person accused of a crime is considered innocent until proven guilty. Hence, keeping in mind the basic fundamentals of the Human Rights, every accused is given certain rights and obligations to prove his innocence. On the other hand, equal rights should be given to the victim for meeting the ends of justice and, not to drive the victim to the tendency of taking revenge for the crimes committed against him, the judicial system should take necessary steps. The law should give sufficient rights to both the accused and victims for presenting their case. The paper elaborates a comparative study of the rights granted to the accused and the victim. Binding up, the paper explains how the rights provided to an accused is sometimes being neglected by the society and leads to further chaos in the societal norms. Concluding with a conclusion and recommendations.

LITERATURE REVIEW

Number of researches has been conducted elaborating the rights provided to an accused under the Indian legal system. In a research paper written by Samriddha²²⁰⁹, the rights of an accused person are thoroughly analysed by the author. Detail study of the rights of an accused while in an ongoing trial is covered in the work.

²²⁰⁹ Samriddha, "The Rights of an Accused Person in India", available at: <https://www.legalserviceindia.com/legal/article-5178-the-rights-of-an-accused-person-in-india.html> (Visited on 4 December 2022)

The specific problem addressed in the paper is whether accused should be entitled to all the rights given to him or whether the rights should be restrained in some specific cases. The article all the situations in which every accused should be given certain basic human rights. Taking the help of various cases books and interviews, the article explains why at specific situation and circumstances, not every accused should be given basic rights. Taking example of the infamous case of Kasab²²¹⁰ the author questions the law whether there was any need to undergo trial if the crime is committed openly and criminal caught of spot. The paper questions the judiciary that why cases take over decades to get decided when the investigation and all necessary formalities are completed early. With the aid of an interview the author gives a proof that majority of the society agrees with the opinion that in some cases rights given to an accused should be confined.

In an article written by Omendra Yadav²²¹¹, the author comprehensively explains the rights given to the victims under the Indian legal system. The writer in the paper explains the evolution of rights of victim in India. Along with the implementation of the basic principles of the United Nations and the recent development, the paper explains it all. Contradiction of the rights of victim in India and with other countries, the author elaborates all the loopholes in the Indian law and the ways it can enhance rights of the victim. Concluding with the statement that the Indian Judicial system is talking more about the accused than the victims, the paper gave recommendations for the same as well.

RESEARCH PROBLEM

India, being the largest democracy, in the world makes it mandatory to have the concept of free and fair trail is an obligation. In order to check the impartiality of verdicts given by the courts

and to adhere to the principle of Natural Justice, everyone including the accused and victims is given some basic rights and obligations. The paper compares the rights given to an accused and victims and throw light to the issue that whether all the rights given to the accused are properly enacted in practical world and without any hardships faced by them. The paper focuses on the question that are the rights of accused given less importance than that of the victims.

AIMS AND OBJECTIVES

The overall objective of this research is to conduct a comparative study of the rights of accused and victims in India and bring out the loopholes concerned with the rights of the accused in the Indian Judicial system. In this respect, the research objectives are:

1. Interpretation of the rights of accused and victims under the Indian legal system.
2. Comparative analysis between the rights provided to accused and victims in India.
3. Examine the complications faced by the accused in the implementation of their rights.
4. How the rights of the accused are being violated by the administration.

RESEARCH QUESTIONS AND HYPOTHESIS

It is hypothesized that the current legal system is disregarding the rights given to an accused over the rights of the victim. In spite of having rights for accused, the Judicial system is turning a blind eye to their obligations and violating the basic human rights of the accused. Therefore, the paper intends to discover the answers to the following questions:

1. What are the rights provided to the accused and victims provided under the relevant Indian law?

²²¹⁰ *Mohammad Ajmal Amir Kasab v. The State of Maharashtra*, (2012), 9 SCC 1

²²¹¹ Omendra Yadav, "Victimology and Victims' rights", available at : https://www.lkouniv.ac.in/site/writereaddata/siteContent/202004120812184884omendra_yadav_SW_Victimology_and_Victims_Rights.pdf (Visited on 4 December 2022)

2. How much of the rights given to the accused implemented in practical world?
3. Are the rights entitled by the accused understated over the rights provided to the victim?

RESEARCH METHODOLOGY

The research will be conducted by the phenomenologist approach. The procedure used for this research is non-doctrinal or empirical. The data collected will be mainly from articles, journals, case laws, books and documentaries.

CHAPTERIZATION

The entire research work will run into five chapters. The first one is the introductory one. It will give an overview of the topic. It includes the background, objectives of the research, the problem the paper will address, questions to seek answers to, hypothesis and research methodology. Chapter II and III will be descriptive in nature. It will include all the information collected without any manipulation. Chapter IV will include the analytical part of the research. Discussions and analysis are to be done in this chapter. Conclusions, recommendations and suggestions will be presented in Chapter V followed by Bibliography.

II. RIGHTS GIVEN TO THE ACCUSED UNDER THE INDIAN

LEGAL SYSTEM.

“Accused” is not defined in the law, but generally, it can be defined as an individual who is alleged to have committed the violation of law enshrined under the criminal law. As the legal maxim reads out – “ei incumbit probatio qui dicit, non qui negat” which means *the burden to prove the commission of an offence is not on the person who denies, but on the individual who alleges*. One is considered

innocent until proven guilty. These two principles appropriately define why it's necessary that every accused person should be given some basic rights. An accused is given some rights which are given under the Indian Constitution, Code of criminal procedure and other relevant laws. These rights are as follows:

Rights Granted to Accused under the Indian Constitution

Every citizen is entitled to certain fundamental rights protected by the Constitution without discrimination.

- **Right to equality (Article 14)**: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.²²¹² This article protects the accused from getting treated unequally for the fact of being an accused. Everyone is equal before law thus; an accused should also be treated equally.

- **Protection against Self-Incrimination and to remain silent [Art.20(3)]**: No person accused of any offence shall be compelled to be a witness against himself.²²¹³ It is based on the legal maxim “*nemo tenetur seipsum accusare*” which means *No man has to accuse himself*. The Supreme Court, keeping in mind the provisions of the section, declared narco-test as a violation of the fundamental rights of the person.²²¹⁴ The Court widened the scope of the section by applying it to investigation process as well. Every person who has been accused or a suspect in a case cannot be forced to act as witness against himself or produce documents against himself. Right against self-incrimination under the article does not exclude any voluntary statements made in exercise of free will and volition.²²¹⁵

- **Immunity against Ex post facto laws [Art. 20(1)]**: The article protects a person from ex post facto laws. No person should be punished for law which is not in force during the

²²¹² The Constitution of India, art. 14.

²²¹³ The Constitution of India, art. 20(3).

²²¹⁴ *Selvi & Ors v. State of Karnataka*, 2010, 7 SCC 263.

²²¹⁵ *Mobammad Ajmal Amir Kasab v. The State of Maharashtra*, (2012), 9 SCC 1.

time of commission of the offence and the punishment given should not be greater than what have been inflicted under the law in force.²²¹⁶ The article restricts the state to punish offenders for the violation of only those laws which were in force during the commission of the offence. No one shall be given greater penalty than mentioned in the provision. An act declared as an offence will always have prospective nature, and cannot be implemented retrospectively.²²¹⁷

▪ **Protection against double jeopardy [Art.20(2)]:** No person shall be prosecuted and punished for the same offence more than once.²²¹⁸ The whole principle around this concept is that no person shall face threat for punishment of the same offence again and prosecutor's power to charge individuals should be limited.²²¹⁹

▪ **Right to learn the reason of arrest and provided with a legal practitioner [Art. 22(1)]:** Every person arrested must be informed about the grounds of such arrest and shall be given the right to choose a legal practitioner to defend him.²²²⁰ The Supreme Court of India held that the State cannot refuse the right of speedy trial and equal access to justice, given under the constitution, to an accused.²²²¹

▪ **Right to get Bail:** Right to bail was not incorporated as a right in the constitution, but it is implicitly devolved as a right in Article 21²²²² of the Constitution. This article guarantees the protection of life and liberty to all persons. Living with dignity and to have free personal liberty is a fundamental right hence, it implicitly involves the right to bail. The Supreme Court has held that right to apply for bail is an "individual right" implicit in the constitution.

▪ **Right to get presented before the Magistrate [22(2)]:** Every person arrested and detained in custody shall be produced before

the magistrate within a period of twenty-four hours, excluding the travel time.²²²³ No one should be detained in custody beyond the given time of twenty-four hours, without the order of magistrate.²²²⁴

▪ **Right to free legal aid [Art. 39-A]:** The Supreme Court observed that if a person is unable to engage a lawyer on reasonable grounds, such as communication situation, and if the court thinks it mandatory on the circumstances of the case and for the ends of justice assign a competent legal practitioner for defending the accused, on his approval.²²²⁵

▪ **Right to Appeal:** If a person is not satisfied with the verdict of the court, then he can appeal in higher courts. The right to appeal is a constitutional right given under articles 132, 134 and 136²²²⁶.

Rights Granted to the accused under the Code of Criminal Procedure

An Accused is provided various rights under the code of criminal procedure. They are as follows:

▪ **Open court proceedings and under the presence of accused:** Under section 273²²²⁷ of the code, all evidences and proceedings shall be taken in the presence of the accused, or otherwise his pleader. Further read with sec 279²²²⁸ of the code, if the evidence is in a language not understood by the accused or his pleader (in the absence of the accused) then, the language should be interpreted in the language understood by the accused or pleader, as the case may be, in the open court. All the proceedings of the case shall be done in open court as mentioned under sec 327²²²⁹ of the code.

▪ **Protection against double jeopardy [Section 300]:** As already mentioned before, no individual shall be convicted for the same offence twice or more number of time. It is also a fundamental right given to the accused.

²²¹⁶ The Constitution of India, art. 20(1).

²²¹⁷ The Constitution of India, art. 20(1).

²²¹⁸ The Constitution of India, art. 20(2).

²²¹⁹ "What is double jeopardy, and why is it important", available at: <https://www.rendelmanlaw.com/2020/10/08/what-is-double-jeopardy-and-why-is-it-important/> (Visited on 5 December 2022).

²²²⁰ The Constitution of India, art. 22(1).

²²²¹ *Hussainara Khatun v. Home Secretary, State of Bihar*, 1979 AIR 1369.

²²²² The Constitution of India, art 21

²²²³ The Constitution of India, art. 22(2).

²²²⁴ *D.K Basu v. State of West Bengal*, (1997) 1 SCC 416.

²²²⁵ *M.H Hoskot v. State of Maharashtra*, AIR 1978 SCC 1548.

²²²⁶ *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.*, (2007) 6 SCC 528; (2007) 3 SCC 9 (Cri) 209.

²²²⁷ The Code of Criminal Procedure, 1973, sec 273

²²²⁸ The Code of Criminal Procedure, 1973, sec 327

²²²⁹ *Ibid*

▪ **Right to inform the grounds of arrest to the accused and a nominated person [Section 50, 50-A]:**

Every arrested person shall be informed the reason and details of his arrest and in case other than a non-bailable offence, the officer shall teach the person his right to be released on bail as mentioned under section 50²²³⁰ of the code. Furthermore, every police officer making such arrest shall inform the grounds and place of arrest to his friend, relative or any person nominated by the accused as given under section 50-A.

▪ **Right to know the matter of warrant of arrest [Section 75]:**

The police officer or the person executing the warrant shall notify the substance to the accused and, if required, show him the warrant.²²³¹ An arrest should not be made merely on grounds of suspicion of involvement in the crime, it has to be justified.²²³²

▪ **Right to be examined by doctor [section 54]:**

An arrested person shall be examined by a registered medical practitioner under the State and Central government as soon as the arrest is made. The examining practitioner should make a report of all the marks of violence and other such details. A copy of the examination shall be presented to the person arrested or to a nominated person.

▪ **Right to remain silent [section 161]:** No one is bound to speak anything without his free will. No officer can compel an accused to give information even during investigation²²³³.

▪ **Right to defend oneself and be his own witness [section 243, 247 and 315]:** As per the sections mentioned, an accused can be asked to produce his evidence and defend himself. An accused can be a competent witness in his own case, of his own free will and consent²²³⁴.

III. RIGHTS GIVEN TO THE VICTIM UNDER THE INDIAN LEGAL SYSTEM

A "Victim" is a person who has suffered harm, which can be physical, mental or emotional.

Violation of fundamental rights enjoyed by the victim, through acts which are violative of law can cause economic loss or injury.²²³⁵ The term victim is defined under Section 2(wa) of the Crpc, 1973 as a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir.²²³⁶

The UN Declaration sets out four major components of the rights of victims: (1) access to justice and fair treatment, (2) restitution, (3) compensation, (4) rehabilitation. Keeping these four components in consideration, the rights provided to victim under the Indian judicial system are as follows:

RIGHTS GRANTED TO THE VICTIM UNDER THE INDIAN CONSTITUTION

The Constitution has implicitly provided basic rights to the victims. Article 14²²³⁷, as interprets that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India²²³⁸. A victim is to be treated equally before the law just like any other normal citizen of the country. Article 14 read along with Article 21²²³⁹ gives the victim right to equality and right to life and liberty. A victim cannot be deprived of his personal liberty merely on the ground of commission of offence against him.

These two articles read with the Directive Principles of State Policy, Article 39A, 41 and 46 provide certain rights to the victim. According to Article 39A, the State with suitable schemes shall provide free legal aid for equal justice and make sure the legal system fails no one.

²²³⁰ The Code of Criminal Procedure, 1973, sec 50

²²³¹ The Code of Criminal Procedure, 1973, sec 75

²²³² *Jogendra Kumar v. State of U.P.*, 1994 AIR 1349 SCC (4) 260.

²²³³ *Nandini Satpathy v. P.L. Dani*, 1978 AIR 1025, 1978 SCR (3) 608

²²³⁴ *Ibid.*

²²³⁵ Yukta K, "Rights of victims in Indian Criminal justice system", available at:

<https://www.legalserviceindia.com/legal/article-5591-rights-of-victims-in-indian-criminal-justice-system.html> (Visited on 6 December 2022).

²²³⁶ The Code of Criminal Procedure, 1973, sec 2(wa)

²²³⁷ The Constitution of India, art.14

²²³⁸ *Ibid.*

²²³⁹ The Constitution of India, art. 21

Article 41 is concerned with the concept of victimology and commands so that the state shall make provision to ensure support from the public in cases of unjustifiable want or incapacitation.

RIGHTS GRANTED TO THE VICTIM UNDER THE CODE OF CRIMINAL PROCEDURE

▪ **Compensation to the Victim [Section 357]:** While passing the judgement, the court has the power to grant compensation to the victim for every loss and injury suffered by them and even in cases in which fine is not levied upon the accused. The action is not mandatory in nature, hence the courts in India rarely make use of this section. The Supreme court of India observed that the courts does not implement this section properly and usually.²²⁴⁰

▪ **Appellate rights of the victim [section 372]:** The Legislature according to the law commission inserted 372 in the code. According to this section, the victim can file appeal against any order passed by the court acquitting the accused for a lesser offence or imposing inadequate compensation.²²⁴¹

▪ **Right to get informed [section 439]:** The section says that before granting bail to the accused the victim should be informed about it and by virtue of sec 439(2), the victim can further appeal against the bail granted.

▪ **Right of victim, if woman:** According to section 154 of the code, if the victim is a victim and an offence under sec 326A, 326B, 354, 354A-354D, 376-376E is committed then the information shall be recorded by the police officer at her residence or other convenient place and the same should be video graphed.

IV. COMPARATIVE STUDY OF RIGHTS GIVEN TO ACCUSED AND VICTIM IN INDIA

The various rights provided to the accused and victims under the Indian legal system is thoroughly discussed in this paper. There are

various rights provided to accused as well as the victims in India. In India, even though, accused is provided with various basic human rights, still the implementation of these rights is still a big problem which needs to be addressed. The society still fails to understand the fact that even though a person has committed crime still he is a human so he needs to have certain basic human rights. Just because a person has committed an offence, we cannot completely eliminate that person from the society. The person should be punished by following all the rules and procedures established by law and not just with the tendency of revenge by the society. People often get driven by their emotions and fail to recognize the importance of legal system in the nation. Just like in the case of *Ajmal Amir Kasab v. State of Maharashtra*²²⁴², the society blames the court and the advocates who represented Kasab in the case. In order to punish him case and to establish his identity as a Pakistani citizen, it was must to represent him by an advocate. If he was not provided with an advocate, it would have only caused delay in the trial and thus playing into the hands of Pakistan which kept on demanding evidence of his nationality. Moreover, the rules and laws of a civilized country is only tested when the most barbaric of criminal acts and the meeting out of suitable punishment is faced by the nation²²⁴³.

Taking into consideration another case of violation of human rights of accused is the Hyderabad gang rape case. All the four accused were brought to the site of the offence to recreate the commission of the offence. The police alleged that the accused were trying to escape from the custody and in order to prevent them from doing so, they shot all the four accused on the spot. None of the information about what part of the body were the accused shot was revealed. If the intention of the police was to stop them from escaping, they could have shot them on their legs or other

²²⁴⁰ *Harikishan and State of Haryana v. Sukhbir Singh*, 1988, AIR 2127

²²⁴¹ The Code of Criminal Procedure, 1973 sec 372

²²⁴² 2019 9 SCC 1

²²⁴³ Editorial, "Why should lawyers defend Kasab" *The Economic Times*, December 24, 2008.

body parts, but they shot them to death. The death of the accused was completely against the "Natural Justice" principle which denotes that no one should be punished without hearing their side of the story. The accused were given no opportunity to present their case and this act by the police was completely in the violation of the basic human rights. Moreover, it was custodial killing as well. The police completely acted out of their authority and took the law as a joke. None of the public raised voice against this violation of law but was rather celebrating the death of the accused by throwing flowers on the police. These acts by the police are completely against the law and the principle of natural justice. What is right and what is wrong is to be completely decided by the courts.

Even though the accused is provided with certain rights, still very few are implementing in practical world. Custodial killing, compelling to reveal information, inhumane treatment in the police investigation are some of the circumstances which are totally against the law. Rather than been driven by their emotions, society should act morally and lawfully during the trial of the accused.

V. CONCLUSION

The accused and the victim are a part of the society. When going through the trial of the case both should be treated equally and humane. The Indian Judiciary is based on the principle that a person alleged to have committed a crime is presumed innocent until proven at fault. Accused and victim both should be provided with equal opportunity to present their case before the court. Being an accused does not deprive him of all the basic human rights and thus he should be treated as a human. A check should be kept on all the custodial killings and the inhumane treatments of the accused. Even during their time in the prison, they should be entitled to have free access to legal aid and other necessities.

Treating both the parties to a criminal case equally is what a civilized country does.

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