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Rights of Accused Person in India: A Critical Analysis

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Abstract

The basic object of criminal law is to protect society from offenders by imposing appropriate punishment under statutory provisions. The state's foremost duty is to safeguard people from wrongful acts and uphold the rule of law, ensuring justice for those harmed. The criminal justice system rests on four pillars: conduct of trial, proof of charges, protection of the victim, and punishment of the guilty. Alongside victim protection, safeguarding the rights of the accused is equally essential, ensuring compliance with international and national legal standards such as the UDHR, the Constitution of India, and criminal law statutes including the BNS, BNSS and BSA (formerly IPC, Cr.P.C. and the Evidence Act). An accused remains a human being and is presumed innocent until proven guilty, a principle vital for effective criminal justice. This paper examines the rights of the accused as reflected in international human rights instruments and Indian constitutional, statutory, substantive and procedural laws, supported by judicial decisions. Its aim is to outline these rights across all stages of the criminal process—pre-trial, trial and post-trial.

Keywords

Accused, Administration of Criminal Justice, Criminal, Constitution of India, UDHR, Cr. P.C., IPC, Indian Evidence Act, BNSS, BNS, BSA, Trial, Prison, Punishment.

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1. Introduction

Every person is to be treated as human being, irrespective of the status, including the fact that such person is a criminal. As per the legal principle, one is considered innocent until proved guilty. The legal maxim reads out—“*Ei incumbit probatio qui dicit, non qui negat*” meaning—the burden of proof is on the one who declared, not on the one who denies. This is what appropriately defines why it is necessary for having the rights of accused person. Under fundamental principles of law, each and every person has basic human rights.

The basic object of criminal law is to protect society from unruly people who are generally known as law - breakers and criminals and for this purpose the state provides for the administration of criminal justice, ultimately ending in the punishment to the law-breakers and thus making efforts for the establishment of Rule of Law and to have a better peaceful society. The ultimate object of the criminal justice system is to ensure public justice, to chasten the criminal and to ensure that the trial is concluded promptly before the memory of the witness fades out. A fair procedure in criminal trial is the foundation stone of the criminal justice system. Therefore, on the basic principle that human rights are for all human beings, the accused person is also provided with certain rights under the Constitution of India and the basic criminal law.

2. Who is an Accused

As per the Oxford Dictionary accused is the past tense of the verb accuse, “*to say that somebody has done something wrong or broken the law.*”

According to New Webster’s Dictionary of the English Language, accused is “*A person or persons charged with a crime; a defendant in a court of law.*”¹

Thus, “the accused” refers to a person or people who have been formally charged with a crime in a legal process. They are the individual(s) facing criminal proceedings and are being judged for a

potential offence, distinguishing them from mere suspects who are still under investigation.

In India's code of criminal procedure (Cr. P.C.), an accused is a person against whom criminal proceedings have been formally initiated in a criminal court, or against whom proceedings are instituted under the code (Cr. P.C.).

3. Objectives

Following are the objectives of the present study:

1. To analyze the constitutional rights of the accused.
2. To identify and analyze various rights of the accused in substantive law.
3. To identify and analyze various provisions/ safe guards available to the accused in procedural laws.
4. To understand right of accused to legal consultation and aid.
5. To analyze the judicial interpretation of various provisions to secure the rights of the accused.

4. Methodology

This study adopts a doctrinal research methodology, relying primarily on secondary sources to critically analyze the rights of accused persons in India. The research is based on an in-depth examination of constitutional provisions, statutory frameworks, and judicial interpretations that shape the legal position of the accused. Key sources include the Constitution of India, the Bharatiya Nagarik Suraksha Sanhita (BNSS), the Bharatiya Nyaya Sanhita (BNS), and earlier statutes such as the Cr.P.C., IPC and the Indian Evidence Act.

A major component of the methodology involves case-law analysis, wherein judgments of the Supreme Court of India and various High Courts are reviewed to understand the evolution, scope, and practical enforcement of accused persons' rights. Landmark and recent decisions have been purposively selected to highlight judicial trends, constitutional interpretations, and gaps between legal protections and their implementation.

Data collected from these secondary sources is analyzed qualitatively. Content analysis techniques are used to identify themes, patterns, and inconsistencies in legal provisions and judicial reasoning. This approach allows for a critical assessment of whether the current legal mechanisms adequately protect the rights of the accused and where reforms may be necessary.

Thus, the methodology integrates doctrinal analysis, case-law study, and qualitative evaluation of secondary literature to provide a comprehensive and critical understanding of the rights of accused persons in India.

5. Rights of Accused

With the rise of awareness and concerns for human rights, various International Conventions and Declarations have included the provisions for the protection and also enforcement of basic rights of all individuals, including that of an accused person and have made it mandatory for signatory countries to follow them stringently. Any law interfering with the basic rights and privileges would go against the notions of liberty and humanity. Some of these aspects have been included in the Universal Declaration of Human Rights, 1948 (UDHR), Article 3 of UDHR declares that “Everyone has the right to life, liberty, and security of person. The same principle has been reiterated emphatically in Article 21 of the Constitution of India. It is a matter of common knowledge and experience that the principle of liberty is being violated everywhere, and that too by the people who are supposed to protect it. In order to fill the gap between theory and practice, the state provides for legal provisions to secure the adequate implementation of the rights of accused. This research paper will discuss and analyse the Constitutional provisions regarding liberty and protection of human rights of the accused. These Constitutional provisions have been given concrete shape by the Code of Criminal Procedure (Cr. P.C.)/Bhartiya Nagarik Suraksha Sanhita (BNSS) which confer a number of rights and liberties upon an accused, implying corresponding duties on the arresting authorities. Besides Cr. P.C./BNSS, this paper will also cover the various rights given to the accused person under the Indian Penal Code (IPC)/ Bhartiya Nyaya Sinhita (BNS) and Indian Evidence Act/Bhartiya Sakshya Adhinyam along with the case law, to analyze their impact on the various statutory laws on the subject and their contribution to the development of the rights of the accused and their protection.

5.1 Constitutional Rights of the Accused

5.1.1 Presumption of Innocence

Article 21 of the Indian Constitution along with Article 14(2) of the International Covenant on Civil and Political Right, 1966 provide for the protection of the basic principle of criminal jurisprudence that

an individual is presumed to be innocent till the contrary is proved against him. Article 11(1) of the Universal Declaration of Human Rights 1948 (UDHR) says that, everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantee necessary for his defence. Section 101 of the Indian Evidence Act (Section 104 of the *Bhartiya Suraksha Adhiniyam*) casts a reasonable burden upon the prosecution to prove the case against the accused, as every accused has the right to have the benefit of presumption of innocence till his guilt is proved beyond reasonable doubt.

5.1.2 Right to Fair Trial

The most important principle that “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*”² The scope of Article 21 has been extensively extended by judicial interpretation by the Supreme Court, inserting the doctrine of “Due Process” as true interpretation of the words “procedure established by law”, providing protection not only against executive action but also against legislation. This principle is also contained in Article 9 of the International Covenant on Civil and Political Rights, 1966.

Article 21 implies some inalienable rights for, not only the citizens, but all persons or people including the accused and the condemned. To reinforce the effect of Article 21, Article 20 and 22 specifically provide for certain rights which are expressly in respect of arrest, detention and conviction for offences. European Convention for the Protection of Human Rights and Fundamental Freedoms have incorporated this right as a basic human right and states in Article 6(1) that “*Every person charged has a right to fair trial*”, and in Article 6(2) that “*Everyone charged with a criminal offence will be presumed to be innocent until proven guilty according to law.*”

The Indian judiciary has moreover, through its decisions laid down several principles guaranteeing many more rights to the accused as well as to the convicts, thereby, securing their right to live with dignity. These rights include prohibition of inhuman prison practices such as solitary confinement,³ handcuffing⁴ and torture.⁵ Prisoners have other rights also, like right to medical attention,⁶ free legal aid,⁷ speedy trial,⁸ fair trial,⁹ to get paid for their work in prison,¹⁰ and to be produced before the magistrate within a period of twenty-four hours of arrest and no such person shall be detained in custody beyond the said period without the authority of a magistrate.¹¹

A number of landmark judgements such as Sunil Batra v. Delhi Administration¹² Charles Sobharaj v. Superintendent, Central Jail, Tihar, New Delhi,¹³ D.K. Basu v. State of W.B.¹⁴ have further widened the ambit of the rights of the accused. The accused has also been given right to appeal, in cases of conviction, to the Supreme Court under Article 132(1), 134(1) and 136(1) of the Constitution of India.¹⁵ Right to produce defence witness.¹⁶ Besides, an accused shall be tried by an independent and impartial judge¹⁷ and the accused has the right to get copy of the judgement when sentenced to imprisonment.¹⁸

5.1.3 Right Against Ex-Post Facto Operation of Criminal Law

Article 20(1) of the Constitution of India says, *“No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subject 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. This is a guarantee against ex-post facto operation of criminal law.”* Article 20(1) is in corroboration of Article 11(2) of the Universal Declaration of Human Rights which says that *“No one shall be held guilty of any penal offence on account of any act or commission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time penal offence was committed.”*

5.1.4 Protection Against Double Jeopardy

Article 20(2) of the Constitution of India says, *“No person shall be prosecuted and punished for the same offence more than once.”* This is known as the rule against double jeopardy. Section 300 of the Cr. P.c/ Sec. 337 of BNSS also provides that if a person has been either acquitted or convicted by a court of competent jurisdiction, he cannot be tried for the same offence again, nor for another offence on the same facts.

5.1.5 Rule Against Self-Incrimination

Right against self-incrimination is enshrined under Article 20(3) of the Constitution of India which says, *“No person accused of any offence shall be compelled to be a witness against himself.”* It is the fundamental right of an accused to remain silent to questions relating to the offence alleged against him. An accused cannot be administered oath¹⁹ because it may go against his interest. This special right of an accused is based on the Doctrine of Presumption of Innocence, which is being considered as a cardinal principle in the administration of criminal justice throughout the world. This

provision emanates from the basic principle of criminal law that the burden of proof in all criminal cases is on the prosecution. Hence an accused cannot be compelled to be a witness against himself.

Thus, the Constitution of India guarantees some fundamental rights to all people in India against the State, which represent the basic value of a civilized politico-legal society and so are given paramount importance. The rights under Article 20 and 21 have acquired the status of non-derogable human rights. They cannot be suspended at any time, not even during an emergency by virtue of Article 359. International Covenant on Civil and Political Rights, 1966, to which India is a signatory, also states in Article 14 (3)(g) that an accused has the right “*not to be compelled to testify against himself or to confess guilt.*”

5·2 Rights of the Accused under Substantive Law

In addition to the Constitutional right, the accused is provided with the rights under substantive law of India, specially, the code of criminal procedure (Cr. P.C.), 1973 which is substituted by the Bhartiya Nagarik Suraksha Sanhita (BNSS) in the year 2023. It contains specific legal provisions which further reinforce the safeguards to the accused. The “presumption of innocence” is the core premise of criminal justice in India. This fundamental concept ensures that an accused is assumed innocent until proven guilty beyond a reasonable doubt, and the prosecution bears this burden of proof. This principle emphasizes the importance of a fair and impartial trial in which the defendant is allowed to present evidence and challenge any accusation levelled against him.

The rights of the accused in Indian criminal justice system are provided at different stages. These include the following:

5·2·1 Rights in the Pre-Trial Stage

Any person who is guilty of committing a crime has been given some of the rights so that his freedom and liberty are not hampered.

The primary or first stage of a trial is the pre-trial stage where FIR is filed based on which the police arrest a person and searches his property. The stage prior to the commencement of a trial by the court is extremely crucial and any person accused of a crime must be granted the following rights:

- 1. Right to know about the accusation and charges.**²⁰

2. **Right against wrongful arrest**²¹: Article 22 (2) of the Constitution of India provides that a person arrested must be produced before a judicial magistrate within 24 hours of arrest.
3. **Right to privacy and protection against unlawful searches**: Article 21 of the Constitution of India provides a shield against unlawful intrusion to uphold the right to life and liberty, which includes the right to privacy. This right exists even after an arrest. The property of an accused cannot be searched/seized by the police without a search warrant.
4. **Right against self-incrimination**²²: The accused is bound to answer questions asked concerning the case, but he can refrain from answering questions that may lead to self - guilt and thus he cannot be compelled to be a witness against himself. The Supreme Court in *M.P. Sharma v. Satish Chandra*²³ explained this provision and right in the following manner:
 - It is a right available to an individual accused of a crime.
 - It protects him from being forced to be a witness in such a case.
 - It protects him from testifying against himself under coercion.

This right has been further upheld in *Nandini Sath Pathy v. P L Dani & others*.²⁴

5. **Rights against the ex-post facto law**²⁵: This right provides that a person cannot be tried and convicted under laws that were not in force at the time of occurrence of the alleged crime. This states that retrospective effect of a law is not applicable. In *Mara Ram v. Union of India*²⁶ the Supreme Court held that amendments modifying the punishment for certain offences cannot be applied retrospectively to the disadvantage of the accused.
6. **Right against Double Jeopardy**²⁷: A person cannot be prosecuted and punished for the same offence more than once. In *Natarajan v. state*²⁸ the Supreme Court clarified that an individual tried and acquitted or convicted for an offence shall not be retried for the same or different offences arising from the same act.
7. **Right to Bail**: An accused arrested for a crime is entitled to bail unless the offence is a non - bailable one. There are three kinds of bail under the Indian law - anticipatory bail, interim bail and bail by bond. A bail application for normal bail can be

filed in cases of bailable offences. Even in case of non-bailable offence, bail can be granted under certain conditions. A person also has the right to file an anticipatory bail through his lawyer, before his arrest.

8. **Right to Legal Aid**²⁹ : Every accused has a right to free legal aid and advice to be provided by the State.³⁰ In cases like *Sheela Barse v. State of Maharashtra* the immediate implication of legal aid at the time of arrest is highlighted. Legal aid must be provided to the poor and needy at different stages of the legal process to uphold their fundamental rights. In *Suk Das v. Union territory of Arunachal Pradesh*³¹ the Supreme Court highlighted the need for legal literacy and awareness among the public about the right to legal aid.
9. **Right to be Examined by a Doctor**.³² When any person is arrested, he shall be examined by a medical officer in the service of Central or State Government and in case the medical officer is not available by a registered medical practitioner soon after the arrest is made.

5·2·2 Rights During the Trial Stage

There are certain rights of the accused during the trial or when the case is in process in the court. It is to be ensured that due process of law must be followed, the accused gets quick and impartial trial and he is not subjected to torture or forced to implicate himself. Following may be the rights of an accused during the trial state.

1. **Right To a Free, Fair and Expeditious Trial**: The right of the accused includes to have an expeditious trial, which is free of any bias or prejudice. This right includes the right to a speedy trial under Article 21, as held in *A.R. Atulya v. R.S. Naik and Another*.³³ This was further elaborated upon in *Hussainara Khaton v. Home Secretary, State of Bihar*,³⁴ where the Supreme Court held that the State cannot avoid its constitutional obligation to provide a speedy trial by taking the defence of financial or administrative inability.
2. **Right To be Present During Trial**³⁵: The accused has a right to be present during the trial to witness the presentation and recording of all evidence and documents in the court.
3. **Right to Obtain copies of documents**³⁶: The accused has a right to receive copies of all the documents presented in the court, including evidence from both the prosecution and

defence, court orders, and any other document related to the proceedings of the case. This ensures that he remains fully informed about the proceedings and has a fair chance to defend himself against the allegations.

4. **Right to be Presumed Innocent Until Proven Guilty:** The fundamental principle of presumption of innocence is recognized in Article 11 of the Universal Declaration of Human Rights as well, which considers it a fundamental right of every accused. In India, this principle is constitutionally granted and places the burden of proving the guilt on the prosecution.
5. **Right to Cross-Examination³⁷:** During the trial, the accused has a right to cross-examine the witnesses presented by the prosecution. This stage, involving Chief Examination and Cross-Examination, allows the accused to challenge and highlight the loopholes in the evidence and present his version of events, which contribute to proving the accused's innocence.

5.2.3 Rights in the Post-Trial Stage

An accused person has certain rights once the trial is over. These rights of the accused depend upon the outcome or result of his trial, *i.e.* whether he has been acquitted by the court, or he has been held guilty and arrested by the police.

(A) Rights of the accused, if found innocence:

- Right to receive a copy of the judgement of acquittal.
- Right to get protection from police if there are reasons to believe that there is a threat to his life post-acquittal.

(B) Rights of the convicted person:

- Right to file an appeal against his conviction in a higher court.
- Right to Humane Treatment in Prison: This right includes both physical and mental well - being. It includes adequate food, living conditions, medical care and freedom from torture or cruel inhumane, or degrading treatment. This is a fundamental right under Article 21 and the same has been upheld in the case of *D.K. Basu v. State of West Bengal*.³⁸

Guidelines are also provided in the Prison Act, 1894.

- Right to have family visits in jail.
- Right against solitary confinement.

- **Right to Rehabilitation and Social Integration:** The goal of the criminal justice system is not mere punishment/imprisonment, but also the reformation of the criminal. The right includes access to education, vocational and psychological programmes to help inmates develop skill and better reintegrate them into society post their sentence.
- **Right to Compensation for wrongful conviction:** The criminal jurisprudence recognizes the right of an individual to seek compensation for wrongful conviction. In the case of *Rudal Sah v. State of Bihar*³⁹ such compensation was for the first time awarded.

6. Conclusion

In the sphere of criminal law, understanding the rights of accused person is imperative for safeguarding individual freedoms and ensuring a fair legal process. These rights include the presumption of innocence, right against self - incrimination. Besides, the right to legal representation is also important along with the right to a fair trial. This right, together with the rights during arrest and conditions for bail, forms a protective framework for the accused. These rights are not only a reflection of the procedural fairness mandated by law but also crucial for maintaining public trust in judicial system.

It is immaterial where the accused has been arrested or after arrest has been kept in police custody or judicial custody, or has been released on bail, So long as the trial continues and a judgement is not pronounced, he continues to be an accused and, therefore, required to be entrusted with all the rights. The accused does not cease to be a human being just because some criminal case is going on. Rights of the accused, suspects and under trial prisoners are so fundamental that no one can violate them. These rights are not just theoretical protections but are practical tools as well.

The rights of the accused are firmly protected under the Indian Legal System, ensuring impartiality and upholding the fundamental principle of innocence until proven guilty. The criminal justice system shows sensitivity to the complexities of system by providing safeguards such as humane treatment and rehabilitation post - trial along with pre-trial protections against arbitrary arrest and self - incrimination. It creates a balance between individual liberty and

the need for accountability. The rights support a society in which justice reigns supreme, establishing the Rule of Law and thereby, protecting innocent people from punishment and providing possibilities and probability for rehabilitation and reintegration.

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