

CONSTITUTIONAL LAW

UNIT-III

ARTICLE 20

MIR MUBASHIR ALTAL, SOL, UNIVERSITY OF KASHMIR

ARTICLE 20

- (1) 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 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.
- (2) No person shall be prosecuted and punished for the same offence more than once.
- (3) No person accused of any offence shall be compelled to be a witness against himself.

PROTECTION AGAINST EX-POST FACTO LAWS

- Literally ex post facto laws- any law passed 'after the fact,'
- JUSTICE CHASE IN CALDER V BULL 3 US 86 (1798)
 - What are ex-post facto laws?
- I. Every law that makes an action , done before the passing of the law, and which was innocent when done, criminal; and punishes such action.
- II. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed.
- I do not consider any law ex post facto, within the prohibition, that mollifies the rigor of the criminal law; but only those that create, or aggravate, the crime

❖ Mollify- reduce the severity

❖ Rigor- Strictness

US CONSTITUTION

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- Article I, Section 9, clause 3 provides that Congress shall not pass any "ex post facto Law." Another provision,
- Article I, Section 10, is directed to the States: "No State shall ... pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts:'

SOME IMPORTANT POINTS

(RAO SHIV BAHADUR SINGH AND ANOTHER VS THE STATE OF VINDHYA PRADESH AIR 1955 SC 446)

- Article 20(1) applies to both pre and post constitutional ex-post facto laws,
- Article 20, however, prohibits only conviction or sentence under an ex post facto law, and not the trial thereof. Such trial under a procedure different from what obtained at the time of the offence or by a court different from that which had competence at that time cannot ipso facto be held to be unconstitutional.
- The expression " law in force " in Art. 20 means a law which was in fact in existence and in operation at the time of the commission of the offence

SOME IMPORTANT POINTS

- **RETROSPECTIVE CRIMINAL LEGISLATION ONLY-** Ordinarily, failure to discharge a civil liability is not an offence. As such Article 20 does not apply to laws imposing punishment for discharge of civil liability. (Hathisingh Mfg Co. Ltd v Union of India AIR 1960 SC 923)
- **RETROSPECTIVE CRIMINAL LEGISLATION ENHANCING PUNISHMENT** (Kedarnath Bajoria v State of West Bengal AIR 1953 SC 404.)
- **EX-POST FACTO LAW MITIGATING THE RIGORS OF THE PUNISHMENT-** Not within the prohibition of Article 20. (Rattan Lal v State of Punjab AIR 1965 SC 444.)
- Justice Suba Rao- “an ex post facto law which only mollifies the rigour of a criminal law does not fall within the said prohibition. If a particular law makes a provision to that effect, though

retrospective in operation, it will be valid.”

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DOCTRINE OF DOUBLE JEOPARDY

- (2) No person shall be prosecuted and punished for the same offence more than once.
- US CONSTITUTION- Fifth amendment - "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb .
- ROMANS- JUSTINIAN DIGEST- SIXTH CENTURY- '*nemo bis debet puniri pro uno delicto*' which means that no one ought to be put in peril twice for the same offence
- Latin Maxim- *nemo debet bis vexari*- No man shall not be twice vexed for one and the same cause
- Sir Edward Coke- fountainhead of Double Jeopardy Law. (Institutes).
- MIR MUBASHIR ALTAL, SOL, UNIVERSITY OF KASHMIR
William Blackstone- gave exposition to these principles in his Commentaries on Laws of England.

DOCTRINE OF DOUBLE JEOPARDY

DIFFERENCE IN US, UK & INDIA

- US & UK- PROTECTION AGAINST BEING PROSECUTED FOR THE SAME OFFENCE TWICE.
- *autrefois acquit*- *A plea made by a defendant, indicted for a crime or misdemeanor, that he has formerly been tried and acquitted of the same offence.*
- *autrefois convict*- *A plea in which the defendant claims to have been previously convicted of the same offence and that he or she therefore cannot be tried for it again.*
- INDIA- PROTECTION AGAINST BEING PROSECUTED & CONVICTED FOR THE SAME OFFENCE TWICE.

KALAWATI V STATE OF HIMACHAL PRADESH AIR 1953 SC 133

- FACTS:

- The accused was charged under ss. 114 and 302, Penal Code, with abetment of murder. The Sessions Judge acquitted her of this charge and convicted her under s. 201, Penal Code, for suppressing evidence of murder and giving false information. On appeal by the accused as well as the State, the Judicial Commissioner set aside the conviction under s. 201 and convicted the accused under ss. 114 and 302. In appeal SC convicted her under S.201 only.
- Charges: 114, 302 IPC
- Sessions Court- Convict- S.201- (BOTH APPEAL)
- Judicial Commissioner's Court- Convict- 114, 302 IPC (ACCUSED APPEALS ONLY)
- SC-CONVICT- S.201.
- SC-that it was open to the Supreme Court, in an appeal preferred by the accused, to restore the conviction under s.201 on setting aside the conviction under ss. 114 and 302, even though the State had not appealed, as the acquittal under a. 201 was intimately connected with the conviction under ss. 114 and 302, and took place only because the accused was convicted of the main charge under ss. 114 and 302. Article 20(2) would not apply as there was no punishment for the offence at the earlier prosecution: and an appeal against an acquittal was in substance a continuation of the prosecution

MAQBOOL HUSSAIN V STATE OF BOMBAY

- a person against whom proceedings had been taken by the Sea Customs Authorities under s. 167 of the Sea Customs Act and an order for confiscation of goods had been passed was subsequently prosecuted before the Presidency Magistrate for an offence under s. 23 of the Foreign Exchange Regulation Act in respect of the same act
- SC- the proceedings of the Sea Customs Authorities cannot be considered as a judicial proceedings because it is not a court or judicial tribunal.
- The court also held that the proceedings conducted before the sea customs authorities were, **therefore, not 'prosecution' and the confiscation of gold is not punishment inflicted by a 'court' or 'judicial tribunal'**. As such the court stated that clause 2 of Article 20 is not involved in this case.

MONICA BEDI V STATE OF AP (2011) 1 SCC 284

- SC- a person can be prosecuted and punished more than once even on substantially same facts, provided ingredients of both offences are totally different and they did not form same offence. What is prohibited under Article 20 (2) is, the second prosecution and conviction must be for the same offence. If the offences are distinct, there is no question of the rule as to double jeopardy being applicable.

YOU HAVE THE RIGHT TO REMAIN SILENT

A photograph showing a protest scene. In the foreground, several individuals are lying on their stomachs on a paved surface. A line of police officers in dark uniforms stands in the middle ground, facing the protesters. In the background, a large crowd of people is gathered on a grassy area. The scene is outdoors with trees and a building visible in the distance.

**ANYTHING YOU SAY OR DO
WILL BE USED AGAINST
YOU IN A COURT OF LAW.**

MIR MUBASHIR ALTAL, SOL, UNIVERSITY OF KASHMIR

RIGHT AGAINST SELF INCRMINATION

- (3) No person accused of any offence shall be compelled to be a witness against himself
- INFLUENCE -US Constitution- Fifth Amendment- Nor shall (any person) shall be compelled in any criminal case to be a witness against himself.
- Origin in English Law- Star Chamber (inquisitorial methods and barbaric sentences).
- 1641 Parliament abolished it – John Lilburne Trial.
- Principle- “ that the accused should not be put on oath and that no evidence should be taken from him”

3 COMPONENTS OF RIGHT AGAINST SELF INCRIMINATION

- It is a right pertaining to a person accused of an offence
 - Formal Accusation
 - Even a Suspect (Nandinin Satpathy v PL.Dani AIR 1978 SC 1025)
 - “The ban on self-accusation and the right to silence, while an investigation or trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent, which may deter him from voluntary disclosure of criminatory matter.”
 - Protection within and outside the Court
 - US & UK- it is also available to a witness.
- It is a protection against **compulsion** to be a witness and
- It is a protection against **such compulsion resulting in his giving his evidence against himself.** (Mohamed Dastagir vs The State Of Madras AIR 1960 SC 756)
- MIR MUBASHIR ALTAL, SOL, UNIVERSITY OF KASHMIR
No Compulsion/ NOT an accused.

**M.P.SHARMA V SATISH CHANDRA, DM, DELHI AIR 1954 SC 300
EIGHT MEMBER CONSTITUTION BENCH.**

- **COMPELLED PRODUCTION-** A compelled production of incriminating documents by a person against whom a First Information Report has been made is testimonial compulsion within the meaning of Art. 20(3) of the Constitution.
- **SEARCH & SEIZURE-** But a search and seizure of a document under the provisions of Ss. 94 and 96 of the Code of Criminal Procedure is not a compelled production thereof within the meaning of Art. 20 (3) and hence does not offend the said Article.

STATE OF BOMBAY V KATHI KALU OGHAD AIR 1961 SC 1808
ELEVEN MEMBER CONST. BENCH
TAKING OF FINGER PRINTS/ SPECIMENS OF SIGNATURE, HANDWRITING

- SC- there was no infringement of Art. 20(3) of the Constitution in compelling an accused person to give his specimen handwriting or signature, or impressions of his thumb, fingers, palm or foot to the investigating officer or under orders of a court for the purposes of comparison.

SELVI V STATE OF KARNATAKA AIR 2010 SC 1974 NARCO-ANALYSIS/POLYGRAPH TEST

KG BALAKRISHNAN, CJI.,

- In our considered opinion, the compulsory administration of the impugned techniques violates the 'right against self- incrimination'. This is because the underlying rationale of the said right is to ensure the reliability as well as voluntariness of statements that are admitted as evidence.
- Article 20(3) protects an individual's choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to be inculpatory or exculpatory.
- Article 20(3) aims to prevent the forcible 'conveyance of personal knowledge that is relevant to the facts in issue'. The results obtained from each of the impugned tests bear a 'testimonial' character and they cannot be categorised as material evidence.
- We are also of the view that forcing an individual to undergo any of the impugned techniques violates the standard of 'substantive due process' which is required for restraining personal liberty.