

## ADEQUACY OF LEGAL SAFEGUARDS TO THE ACCUSED UNDER THE INDIAN CRIMINAL LAW

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### *Introduction*

“Law” is an essential requirement of the society, because it is the “Law” which regulates the conduct of the individuals and the general behaviour of the society. Criminal Law, being a specialized Branch of the Law, deals with the Crimes (Offences) and the criminals. Crime is one of the necessary evils of the society and it is the responsibility of the same society to eradicate, or atleast to control the criminal activities/conduct of its members. In the present modern days, it is the “State”, or “Welfare State” more appropriately called, which is required to undertake this solemn commitment. However, it does not absolve the responsibility of the society and each one of its members.

It is, no doubt, the interest and the safety of the society which is to be accorded top priority. However, the criminal/offender/wrongdoer, so called ‘accused’ person, ought not to be dealt with in an arbitrary and vindictive manner because he is also part of the same society. The manner of handling the accused by the State has got serious repercussions on the society. It is far from truth to state that the society will appreciate and positively respond if the accused is dealt with in a cruel or unduly harsh manner. If it, unfortunately, happens that an innocent person is indicted as an accused and falls victim of an indiscriminate and ruthless Criminal Law System, it causes substantial miscarriage of justice which will alarm each prudent member of the society. Therefore, it is of paramount importance to ensure that a meticulous balance is maintained between the requirement of punishing the accused thereby administering justice to the victim

and the society, as well as dealing with the accused in accordance with the established Law and Principles of Natural Justice. This is no simple task and the modern Welfare State like India should strive to achieve this Herculean task in the interest of the society.

Before deciding as to whether the Indian Criminal Law System is relatively in favour of the accused or the victim, it would be appropriate to briefly discuss various Legal Safeguards available to the accused under the existing Legal System. Once the prosecution is instituted/ initiated against the accused by the State either “*suo motu*” (in cognizable cases) or at the instance of the victim (in non-cognizable cases), the onus of pursuing the case rests on the State and the victim/complainant will merely be a prosecution witness. He may take personal interest in pursuing the case, but he is not bound to do so. On the contrary, the accused will have to face the State represented by the Public Prosecutor as his opponent in the Criminal Court and not merely the victim/complainant. Therefore, it is of vital importance to afford adequate Legal Safeguards to the accused so as to ensure a fair trial. Such Legal Safeguards contained in the Constitution of India, various statutes and Principles of Natural Justice are discussed below:

### (a) *Safeguards Under the Constitution of India*

Constitution of India is the very basic source of all the Laws of our Country. All the enactments including Criminal Law statutes passed by the Parliament or the State Legislatures have to be in consonance with

and in furtherance of the provisions and objectives of the Constitution. The subordinate legislation and the Executive/Administrative/Orders/Instructions shall not be in derogation of the provisions of the Constitution. Articles 20, 21 and 22 of the Constitution guarantee certain Fundamental Rights, which are more relevant and important for an accused or potential accused person. Article 20 guarantees protection in respect of conviction for offences wherein provisions relating to restriction on retrospective operation of criminal laws, Doctrine of Double Jeopardy, right against self-incrimination, *etc.*, are contained. Article 21 guarantees protection of life and personal liberty which stipulates that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22 guarantees protection against arrest and detention in certain cases. In addition, there are certain Safeguards in the form of Directive Principles of State Policy. Article 38 seeks to secure social order based on justice. Article 39-A obligates the State to provide free legal aid.

(b) Safeguards under Criminal statutes

Criminal Statutes in India broadly comprise Code of Criminal Procedure, Indian Evidence Act, Indian Penal Code and Criminal Minor Acts which are in large number. Some of the Safeguards available to the accused or potential accused are provided by Cr PC in Sections 49 to 51, 53, 54, 56 to 58, 75, 76, 155, 162, 167, 169, 191, 207, 208, 227, 232 to 235, 239, 243, 245, 250, 273, 281, 300, 303, 313, 315, 316, 363, 416, 428, 436, 461, 468, *etc.* Indian Evidence Act also lays down certain Safeguards for the protection of the accused.

(c) Principles of Natural Justice with specific reference to Criminal Law/Trial and the Accused

The expression “Natural Justice” means the innate quality of being fair. Principles of

Natural Justice are not embodied rules. They constitute the minimum requirement of Justice which cannot be dispensed with. Their purpose is to prevent miscarriage of justice. The Principles of Natural Justice as such are not recognised as Fundamental Rights or Statutory/Legal Rights. However, some of them are incorporated into various statutes at the appropriate places in the proper manner. Natural Justice when authoritatively formulated by the Legal System becomes Legal Justice. It is slightly out of context to make an exhaustive list of Principles of Natural Justice. However, the two important Principles are - firstly, Right to Fair Hearing which includes “Audit Alteram Partem” (no one shall be condemned unheard), due service of Notice, Reasoned Decision, *etc.*, - secondly, Rule against Bias which is derived from the Maxim “Justice should not only be done but must appear to be done”.

The above mentioned Principles of Natural Justice are commonly applicable to all judicial and more prominently quasi-judicial/administrative proceedings, including, of course, criminal proceedings, without any particular reference. However, there are certain Cardinal Principles of Criminal Law, which are in the nature of Principles of Natural Justice, which are (to be) followed in a criminal trial for ensuring proper administration of justice. The fundamental rule of criminal jurisprudence is that the ‘Burden of Proof’ always lies on the prosecution. This rule is based on the principle that ‘every man is presumed to be innocent until and unless proved to be guilty’. The degree of proof required on the part of the Prosecutor in criminal proceedings is much higher than that required on the part of the Plaintiff in civil proceedings. Unlike in civil proceedings where ‘balance of convenience’ or “factum probandum” will suffice, in criminal proceedings the prosecution case has to be proved ‘Beyond Reasonable Doubt’ to convict the accused. Moreover, the accused is entitled to ‘Benefit of Doubt’

as a matter of right. However, the doubt as to the guilt of the accused must be genuine and reasonable but not fanciful or capricious. Even if the prosecution case is accurate as to the sections and rules, the conviction shall not be sustainable if any of the above principles is violated.

*Adequacy of the Legal Safeguards to the Accused v. Interest of the Victim and Society*

The crucial aspect to be decided is whether the entire Legal Safeguards available to the accused are adequate or inadequate or more than adequate to the extent of being detrimental to the interests of the victim and the society as a whole. At this stage, it is appropriate to briefly touch upon the findings, observations and recommendations of the Malimath Committee.

The Committee of Reforms of Criminal Justice System, headed by former Karnataka and Kerala High Court Chief Justice Dr. V.S. Malimath, after thorough study of the existing plight of the Indian Criminal Justice System, made minute observations. The existing Criminal Justice System in India, in spite of its certain merits, has been found to be wanting in meeting the needs of the society. There is a need to undo the systemic flaws that permit Judges to exalt a criminal's rights over that of the victim; a legal system that is unable to punish the guilty; and a police administration not accountable for its failures. For heinous crimes, the conviction rate in India is an amazingly low 6.5 %. Justice Malimath expressed his precious view that the crucial task of the committee is "to bring the

focus back from the accused to the victim".

The above mentioned views of the Malimath Committee are not to be understood to construe that any of the existing legal safeguards to the accused are to be withdrawn. It is the natural and anticipated phenomenon that the accused would fight tooth and nail and thoroughly utilise all his rights/safeguards to get acquitted, except where he cannot afford to do so due to his financial constraints or ignorance or where he is victimized by way of threat, promise, duress, *etc.* On the other hand, the police authorities followed by the Public Prosecutor who represent the State, though duty-bound to protect the interests of the victim and the society, may not take genuine interest in doing so, unless they have high morals and integrity. The absence of driving-force, added with the absence of accountability, has got quite a damaging effect on the Criminal Justice System. If such authorities are corrupted or otherwise morally weak, it can ruin the system. The over-work in the Court rooms with the unfilled vacancies in Judiciary is likely to deteriorate the situation. Thus it is the inefficient and unaccountable justice administering machinery of the Executive which is primarily responsible for the present plight. There is a need to strengthen and streamline the justice administering machinery and to make them highly accountable simultaneously. All the existing vacancies of the Judges of Supreme Court, High Courts and Lower Courts are to be filled up expeditiously so as to dispose of the pending cases, and the Executive has got no genuine reason for not doing so.