

IV.2 : UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966.

The International Covenant on Civil and Political Rights, 1966 (ICCPR in short) includes and elaborates upon most of the parallel rights enumerated in the Universal Declaration of Human Rights. While it does not include the right to own property or the right to asylum, it does include additional rights such as the right to self-determination and certain cultural rights for ethnic, religious, and linguistic minorities. The covenant establishes a Human Rights Committee of eighteen elected experts who study reports of the individual state's efforts to guarantee the rights included in the covenants.

The international Covenant on Civil and Political Rights, 1966 is the part of the International Bill of Human Rights. This covenant came into force on 23rd march, 1976. It was adopted by the General Assembly of the United Nations in its resolution No. 2200A (XXI), UNdoc. A/6316 (1966). India accessed it on 10th April, 1979. It comprises, as its name suggests, the civil and political rights of the human beings living in the world. This document also contains

some basic rights and guidelines which the court of law are required to follow while dealing with the cases before it. While the UDHR was only one kind of recommendation to the world nations to safeguard the minimum human rights of the people, the ICCPR is enforceable. Article 28 of the ICCPR provides for establishment of Human right Committee consisting of ten members from the member nations. This committee scrutinizes the reports submitted by the states about the implementation of the provisions contained therein. These provisions contain accountability on the state parties. This international instrument bears great significance in the realm of human rights. On minute scrutiny, the following rights have been found from the ICCPR which are very much related with the functioning of the courts:

I. RIGHT TO HAVE EFFECTIVE REMEDY

Article 2 of the Convention states in clear term that each state party to the present covenant undertakes (a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial,

administrative or legislative authorities, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy and (c) to ensure that the competent authorities shall enforce such remedies when granted.

Thus from the above, it is clear that the law as enshrined in this article is one step ahead from the UDHR, 1948. This article makes it clear that if an offence is committed or an infringement of law is done by any person including the Government or public servant in its official capacity too, he or she should not be scared. All are amenable to appropriate proceedings and resultant punishment or other appropriate outcome.

Further, this article speaks about the mandate that only passing an appropriate order by the judiciary or competent tribunal is not sufficient. It is to be implemented in its letter and spirit which in other words means that the aggrieved person or the victim is entitled to get justice in the real sense of the term. "To develop the possibilities of judicial remedy' is very important in this Article. It is a path finder provision to the state parties that if there is lack of law and institutions providing remedies to the people, then, to make arrangement for necessary enactments of law or amendment of the

existing law as well for establishing the legal forums wherein the grievances can be ventilated and redress are achieved adequately.

II. RIGHT TO LIFE WITH DIGNITY

Article 6 of the convention in its three sub-articles speaks about three sorts of rights which are related to each other. Sub-article (1) speaks that every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. Sub-article (2) speaks that in countries which have not abolished death penalty, sentence of death may be imposed only for serious crimes in accordance with the law in force at the time of commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. Sentence can only be carried out pursuant to a final judgment rendered by a competent court and the third (3) sub-article speaks that any one sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

This Article, apart from speaking on the right to life further indicates that death penalty be abolished by the member state with an option that if death penalty is not abolished in member country

then the same may be imposed only in rare cases. Life is very valuable. It cannot be given back if it is taken away. Further, it provides that if a person is sentenced to death by a competent court then he shall be given the right to pray for pardon or commutation of the sentence. The person sentenced to death should not be stopped on the final verdict of the court of law. The state being the sovereign and supreme may look into the matter humanely and the convict may avail the benefit to leave in this world till he is having the period of life.

III. PROHIBITION IN SENTENCING A CHILD AND PREGNANT WOMEN TO DEATH

Article 6 (4) of the Covenant provides that sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried on pregnant women. The women and children below eighteen years of age are vulnerable groups in the society. This sub-article is a negative mandate to the courts of law that in no circumstances a child below the age of eighteen years of age is put to death sentence and death sentence shall not be executed on a woman who is pregnant. A woman who is pregnant if put to death, the child in the womb would also expire automatically. The child in the womb is also a person in the eye of

law. Who knows the child would be born may become the protector of law in due course of time. Therefore, the court is to see that in no circumstances any death sentences is executed on a woman who is carrying a baby.

IV. RIGHT AGAINST TORTURE, CRUEL OR INHUMAN TREATMENT OR PUNISHMENT

Article 7 of the Covenant provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. This article provides two areas to be looked into by the courts seriously. Firstly, the court of law is to see that no person, either as an accused or a convict, be subjected to any physical or mental torture nor he be treated in a manner which degrades his human dignity. Secondly, such person cannot be forced to undergo any scientific or medical experimentation without his free consent.

This provision is somewhat reiteration of the provision of the UDHR. Now, it is an incumbent duty of the court to see that the people who are brought before the court are not given any cruel or degrading treatment in any manner. Use of handcuff when the

accused is ready to follow the instruction or readily submitted his person before the police will amount to cruel and degrading treatment. Behaving the accused in an unruly manner or torture in any form either in the police custody or in judicial custody will also amount to cruel treatment with an accused. Further, forcing the accused to undergo scientific examination like Polygraph Test, DNA test without his consent are also prohibited by this portion. These are totally prohibited and the courts are to see that these rights of the accused are protected in its reality.

V. RIGHT NOT TO BE ARRESTED ARBITRARILY

Article 9 of the Covenant provides that everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention; no one shall be deprived of his liberty except on such grounds and in accordance with the procedure as are established by law. This article provides that the right to liberty cannot be curtailed without any just and cogent ground. However, the liberty of a person can be curtailed only by following the due process of law.¹ The right if at all required to be curtailed, it must be in accordance with the law as formulated by the state.

If a person violates the law of the land, then his liberty of free movement can be curtailed. He can be arrested and detained in

custody. Of course, the curtailment of the liberty is governed by the procedural law. It cannot be curtailed whimsically or arbitrarily. In our country the police, other investigating agencies, court, even in certain occasion private individual has the right to arrest a person if he has committed a cognizable offence or there appears reasonable apprehension that he has committed the offence or that he is an absconder.² It will be the solemn duty of the court to see as to whether the person who is produced before him was unnecessarily arrested or detained in police station. At the same time, the court is to see whether the further detention in judicial custody is really required or not. The court is required to apply its mind before passing any order of detention in as much as once the person is detained without any justifiable reasons or authority of law, his right cannot be given back to him.

VI. RIGHT TO INFORMATION OF THE GROUND OF ARREST

The second para of Article 9 of the Convention provides in its clear term that any one who is arrested shall be informed, at the time of his arrest, of reasons for his arrest and shall be promptly informed of any charges against him. Therefore, it is clear from the plain language that whenever a person is arrested by any

investigating agency, the person arrested must be informed the accusations or charge against him. This is intended to prevent unnecessary arrest by the investigating agencies.

As stated above, right to life and liberty is recognized as the basic human right of an individual. It cannot be abrogated at the will of the arresting agency. Arrest of a person cause harm not only to the status and reputation of the person arrested but also to his family members. Once a person is arrested, it flows in the society and the society takes it granted that he had committed an offence. If the person is released subsequently on the fact that his arrest was not necessary, then also the reputation he lost cannot be regained easily. Therefore, unless there is cogent ground that interrogation of the person under custody is required or that the person intended to be arrested may hamper or temper the material evidence of a case or that the person may escape arrest cannot be made. Further, before arresting the person he must be informed the reason thereof.³ Otherwise he will remain uninformed and may not be in a position to defend the accusations.

VII. RIGHT TO BE RELEASED DURING TRIAL

The third Para of Article 9 of the Covenant provides that any one arrested or detained on a criminal charge shall be brought

promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. Any one who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

The first part of the provision speaks that whenever a person is apprehended by the police authorities, he or she must be produced before the officer (courts) without unnecessary delay.⁴ Therefore, the court is to scrutinize the 'arrest memo' to find out as to when the person was arrested and when he is produced before him. If it is seen that the person is not produced before the court in time as per law, then it will be a violation of the human rights of the accused. Secondly, it is not necessary that the person facing trial should face trial under detention. Once the trial starts it indicates that the prosecuting agency has already produced the material particulars which have been found during investigation against the

accused. This necessarily entails that the release of the accused under detention would not hamper the investigation. Further, the person in detention may be detained on false or vexatious accusations. Therefore, if he or she is ready to face the trial by regularly appearing the court he should not be detained in the prison. This is an imperative to the courts of law that if the accused person can give sufficient sureties or guarantors then he or she be released on bail.

VIII. RIGHT TO REALIZE COMPENSATION

The fourth para of Article 9 provides that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right of compensation. This article empowers, rather, entitles a person to claim and receive adequate compensation from the state authority if he or she was arrested or detained without any justifiable ground.⁵ This is in the nature of a warning to the investigating agencies to see that the right to personal liberty of a person should not be infringed.

As stated above, right to life is sacrosanct. It cannot be curtailed without following the due process of law. A person cannot be arrested arbitrarily. Once the person is arrested without any just ground, his human right is said to has been violated. Since his

human right has been violated, naturally he must have the right to have fair and effective remedy. This remedy apart from necessary legal action against the erring arresting agencies is compensation. The compensation must be adequate. If the same is inadequate then it cannot be said to be an effective remedy. Based on this provision the Hon'ble Supreme Court of India and various High Courts directed the state to pay compensation to the victim of unlawful arrest. The details are discussed in the following chapter.⁶

IX. RIGHTS OF DETAINED PERSONS

Article 10 of the Covenant provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human being. It also provides that the accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subjected to separate treatment appropriate to the status as unconvicted persons. It also provides that accused-juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

It further provides that the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall

be segregated from adults and be accorded treatment appropriate to their age and legal status. Thus, from the above provisions it is clear that if a person is detained on certain accusations or detained on his conviction he does not lose his basic human rights to have recognition as a human being. Therefore, his status as a human being be given to him with its basic tenets such as in providing medical treatment, necessary meals, lodging and so on. Similarly, the law mandates that the person so detained be provided such a treatment so that he may overcome the past histories and would be in a position to rehabilitation in the society for the rest of his life.

x. NO IMPRISONMENT MERELY ON VIOLATION OF CONTRACTUAL OBLIGATION

Article 11 of the Convention provides that no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation. It is the duty of the court to see that when a person is found guilty of committing any offence, then only he is sentenced to imprisonment. Punishment is imposed for a wrong which is done with malafide intention. It consists of *mens rea* i.e. guilty mind. But, contractual obligation generally lead to civil law remedies where relief is available by way of reparation or compensation. This is done so because the violator violated the term of contract. He might

not had any intention to defraud the other side but due to other reasons could not fulfill the terms of the contract. Therefore, considering the sanctity of the right to life and liberty, the court is to see that merely on violation of contractual obligation a person is not sentenced to imprisonment.

XI. RIGHT OF FAIR AND PUBLIC HEARING

Article 14 of the Covenant provides that all persons shall be equal before the courts and tribunals. It provides that in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice, but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

Hearing on a disputed fact must be fair and impartial. It must be open in the presence of the parties and their representative lawyers. However, there are certain cases such as the offences of rape, molestation, chastity of a woman, enquiry against a juvenile are required to be taken in camera or in private chamber of the presiding officer of the court. This is intended to protect the basic right of the privileged class of people.

XII. PRESUMPTION OF INNOCENCE

Like the provision of UDHR the second para of Article 14 of this covenant provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. Therefore, it is clear that the court of law is barred from inferring any negative presumption on the person facing trial before it. In no circumstances, there can be any room in the mind of the court that the person facing trial in the court committed any offence as alleged until he faced the complete trial and ultimately found guilty to had committed the offence.

A person when brought to trial before a competent court may not commit the offence as alleged or that he may commit the alleged offence due to the circumstances faced by him. As for instance if a

person commits murder for his self defence law may not punish him. Secondly, the burden of proving the fact that the person charged committed the offence is always on the prosecution. The prosecution is required to prove the charge in accordance with the law. Therefore, the law enforcing agencies including the courts are to see that no adverse inference is drawn against a person who is brought before it on a criminal charge.

XIII. FREE AND FAIR TRIAL INCLUDING LEGAL ASSISTANCE

The second para of Article 14 of the covenant provides that in the determination of any criminal charge against a person, everyone shall be entitled to the following minimum guarantees, in full equality. They are the right (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) to have adequate time and facilities for the preparations of his defence and to communicate with counsel of his own choosing; (c) to be tried without undue delay; (d) to be tried in his presence, and to defend himself in persons or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interest of justice so requires, and

without payment by him in any such case if he does not have sufficient means to pay for it. (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) To have the free assistance of an interpreter if he cannot understand or speak the language in the court; (g) Not to be compelled to testify against himself or to confess guilt.

The aforesaid guarantees are almost similar to the fair trial provision. The above provisions are guaranteed to a person accused of an offence so as to enable him to know about the accusations against him. It is also intended that by knowing the accusations against him, he would be able to defend his position either individually or through his engaged representative counsel.

XIV. SEPARATE SYSTEM OF DEALINGS FOR THE JUVENILES

The second part of Article 14 of the Covenant provides that in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. Juvenile i.e. a person who has not completed the age

of 18 years is treated a subject of reformation. It is the early stage of life. Still there is chance of change of the prevalent projects in his mind. Therefore, keeping in mind the future of the juvenile, society and nation as a whole it is affirmed by the international community that in no case juveniles who are in conflict with law be combined or treated alike with those who are adult. In all cases the juveniles are to be tried and dealt separately in accordance with the procedures that are suited for them. The juveniles should not be treated and tried like other ordinary criminals.

XV. RIGHT TO APPEAL

No judge or magistrate can claim that the decision given by him is absolute or final. On that context, the third para of Article 14 provides that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. This right is inherent in a person in as much as the judgment or order that has been passed by the original court may not be a correct and reasoned one. Therefore, the convict must be given adequate opportunities to get the judgment or order reviewed either by way of appeal or revision through the appropriate court. A person cannot be deprived off from availing this right in any manner.

In our country, there is a hierarchy of courts. The Supreme Court is at the top, thereafter the High Court and then the subordinate courts. The judgment and order passed by the original court are not never treated as final except which are passed on consent of the parties. The reason behind the principle is that the judgment and reasoning of a judge may not be fit in the given case or that there might be chance of miscarriage of justice. Therefore, if on the final order of the original court the person is asked to suffer the sentence or to pay the compensation as the case may be he might not get fair justice.

XVI. RIGHT TO REALIZE COMPENSATION

The fourth para of Article 14 of the Convention provides that when a person has by a final decision convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

It cannot be said with force that all the accusations registered and tried upon are based on true facts. There are instances when a false prosecution is initiated against a person. In such a situation, if the person accused off gets acquittal honorably and not on the principle of 'beyond reasonable doubt', he or she must be compensated adequately. Although his reputation cannot be revived ante, still by paying him at least some money which he incurred in pursuing the case in the court of law, would amount to a little bit relaxation for him.

XVII. RIGHT AGAINST DOUBLE JEOPARDY

The fifth para of Article 14 provides that no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

However, if a person who had committed an offence but he was not prosecuted for the same before a court, he cannot claim the defence of double jeopardy. Similarly, the prosecution of such person must be before a court or judicial tribunal established by law. Therefore, if an offence was referred to a village *panchayat* or *sarpanch* not empowered to adjudicate the offence, and the same matter was ended on some verdict, then such person cannot take

the defence of double jeopardy before the court of law in as much as the earlier prosecution or proceeding did not commence before a regular court or tribunal established by law. Further, the offence on which the person seeks the benefit must be the same for which he was prosecuted and punished in the previous proceeding. The benefit cannot be claimed for two separate offences.

XVIII. NON-APPLICATION OF *EX-POST FACTO* LAW

Article 15 of the Convention provides that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal 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 when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the higher penalty, the offender shall benefit thereby. However, this article has a proviso to it which provides that nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal offence according to the general principles of law recognized by the community of nations.

As for instance, in our country prior to the enactment of the Hindu Marriage Act, 1955 a Hindu spouse could marry more than one during the life time of the spouse. However section 5(i) of the said Act prohibits marrying more than one spouse during the life time of the spouse. Hence, a hindu who married two wives prior to 1955 cannot be prosecuted for the offence of bigamy.⁷

REFERENCES

1. The **Fifth** and **Fourteenth** Amendments to the **United States Constitution** contain a Due Process Clause. Due process deals with the **administration of justice** and thus the Due Process Clause acts as a safeguard from arbitrary denial of life, liberty, or property by the Government outside the sanction of law. In short, due process indicates a process of law which is just and fair.
2. Section 41 of the Code of Criminal Procedure provides the law of arrest without warrant. It provides that (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-
(a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or (b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any
implement of house-breaking; or (c) who has been proclaimed as an offender either under this Code or by order of the State Government; or (d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or (e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ; or
(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or (g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of
India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or (h) who, being a released convict, commits a breach of any
rule made under sub-section (5) of section 356; or (i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.
Further, section 73 (1) of the Code provides that the Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable, offence and is evading arrest.
3. Section 50 of the code provides that (1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.
(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.
4. Section 57 of the code provides that person arrested not to be detained more than twenty-four hours. No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is

reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

5. Section 358 of the Code provides that (1) Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding one hundred rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.
(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding one hundred rupees, as such Magistrate thinks fit.
(3) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.
6. See chapter vi.ii.
7. Section 494 of the Indian Penal Code provides that whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Exception- This section does not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

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