



# **VBCL Law Review**

**ISSN No. 2456-0480**

**DECEMBER 2022**

**Vaikunta Baliga College of Law**

(A Unit of Dr. T. M. A. Pal Foundation, Manipal)

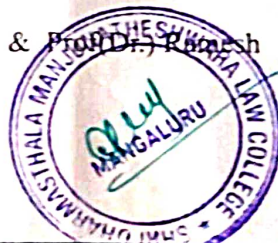
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### CONTENTS

S.No. Topics	Page No.
1. Informed Consent -A Continuous Dynamic Process Dr. Nirmala Kumari K	1-8
2. Legal Regulation of Surrogacy – Does India Still Trail Behind? Dr. Sandeep Menon Nandakumar	9-18
3. A Study of Product Liability with Special Reference to India Mr. Raghunath K.S	19-26
4. A Study of the Procedural Safeguards and Rights of the Accused under Indian Laws Dr. K.L. Chandrashekhara	27-40
5. Need for Strengthening the Fourth Pillar of Democracy Issues and Concerns Dr.Ashwini. P	41-55
6. A Critical Study on Legal Implications of Minor's Agreement in India Dr. Bore Gowda S.B	57-64
7. Judicial Interpretation of Education Institutions and Hospital as an Industry with Special Reference to Industrial Disputes Act, 1947 Dr. Deepu P	65-72
8. Corruption in Health Care and Hospitals: A Critique Dr. C B Naveen Chandra	73-79
9. Climate Change And Indian Courts: Are We on the Right Track Dr. Naveen S.	81-102
10. The Anti-Defection Law in India - A Critical Study. Mr.K. S. Jayakumar. & Prof. (Dr.) C. Basavaraju	103-109
11. An Analysis of Legislative Measures to Prevent Female Foeticide in India Mr. Savitha A P & Prof. (Dr.) C. Basavaraj	111-119
12. A Critical Analysis of Cryptocurrency in India The Present and Future Mr. Ashraya. S. Chakraborty & Prof. (Dr.) Ramesh	121-129
13. A Critical Analysis of Significance and Applicability of the POCSO Act, 2012. Ms. Enitha B.M & Prof. (Dr.) Ramesh	131-136



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## A REFLECTION ON THE RIGHTS OF THE ACCUSED

Ms. Suma Suresh Kogilgeri

### ABSTRACT

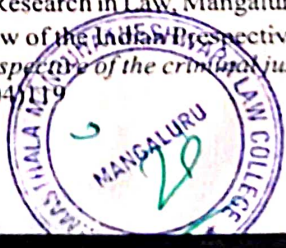
*Every individual by virtue of being human, enjoy certain rights called "human rights". This statement equally holds good for the accused person. In our adversarial legal system, an accused is presumed to be innocent until proven guilty. In this context accused is conferred with several rights at each stage of the justice delivery system. Since State is more powerful, the rights of the accused are very much required. Otherwise, the powerful police officers may abuse their power jeopardizing the rights of the innocent person. On the other hand, sometimes, it is felt that our criminal justice system is more sympathetic to the accused and seems to neglect the victims of crime. There are certain rights conferred on the accused which stand as an obstacle in the justice delivery system. Therefore, in the present state of increasing crime rates and low conviction rates, there is a need to reflect on the rights of the accused.*

**Keywords:** Human rights, Accused, Crime, State, Victim.

### INTRODUCTION

Though it is said that the modern concept of human rights owes its origin to the West, still the roots of human rights may be traced back to the ancient civilization throughout the world. Tracing the origin of human rights, Paul Lauren says: "all of the major religions of the world seek in one way or another to speak of the issue of human responsibility to others"<sup>1</sup>. Thus,

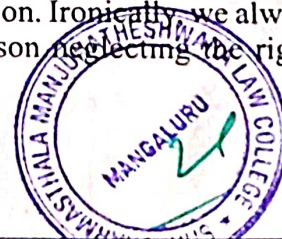
<sup>1</sup> Assistant Professor and Research Scholar, Shri DharmasthalaManjunatheshwara Law College, Centre for Post Graduate Studies and Research in Law, Mangaluru. Mahendra P. Singh, 'Human Rights-A Bird Eye View of the Indian Perspective' in K.I Vibhute, *Criminal Justice - A human rights perspective of the criminal justice process in India* (1stedn, Eastern book company, 2004), 119



human rights are innate to all people everywhere throughout the world. There are certain rights which are inevitable to human existence. These rights are not given at the whim of the rule maker. Human rights as such are inherent and inalienable. They cannot be taken away or restricted at the whims of the state. Human rights are enshrined in International Covenants, and various legislations and upheld by the Judiciary time and again. The definition of the term 'human right' as provided in the Protection of Human Rights Act, 1993 says, 'the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforceable by courts in India.'<sup>2</sup> The protection and promotion of human rights are a global concern. The accused does not cease to be a human being by committing a crime. He still enjoys rights at the time of his arrest, after arrest, during the trial and after conviction. The right to live with dignity enshrined under Article 21 of the Indian Constitution is conferred to the accused person also. Provisions are made in the UN Charter; Universal Declaration of Human Rights; International Covenants on Civil and Political Rights(1966); the optional protocol to the International Covenant on Civil and Political Rights (1966); the Declaration on the Protection of All Persons from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1975) and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1987) for the protection of rights of the accused. The World Conference on June 25, 1993, adopted the Vienna Declaration on Human Rights and declared "*Human Rights and Fundamental freedoms are the birth rights of all human beings*". The rights conferred on the accused act as a check on the power of the State, which is often abused. The Constitution of India also has given several rights to individuals including the accused under chapter III which speaks about Fundamental Rights. That apart, the Judiciary has evolved several human rights by widening the scope of Article 21 of the Indian Constitution. A few of these rights are also available to the accused person. For the realisation of the rights corresponding duty is cast either on the other individual or on the State. Not only constitutional rights but statutes like the Criminal Procedure Code, 1973 speak about the rights of the accused person. Being a signatory to a number of the International Covenants related to human rights. India also ratified several international treaties in relation to the protection of human rights. And also considering the importance of human rights the Indian Parliament passed the Human Rights Protection Act, 1993 for the protection of human rights.

However, considering the low conviction rate in our country and the growing crime rate has given the impression that the accused is empowered with several rights, which needs introspection. Ironically, we always speak and discuss the rights of the accused person neglecting the right of the

<sup>2</sup> The Human Rights Act 1993, s 2(d)



victim to seek justice. In our criminal justice system accused is presumed to be innocent until proven guilty. The victims of crime are the most neglected part of our criminal justice system. An accused right to remain silent is always confronted with the right of the victim to seek justice and the duty of the police to unravel the truth. In today's changing crime scenario, one has to pause and think about striking the balance between conflicting rights and duty. In this article, an attempt has been made to highlight the few prominent rights of the accused person and to reflect on those rights in the changed crime scenario.

### CARDINAL PRINCIPLE OF THE CRIMINAL JUSTICE SYSTEM

The police, the prosecutors, the defence counsel, the courts, prison authorities and correctional services personnel are the key role players in the criminal justice system. The cardinal principle of our criminal justice system is that an accused person is presumed to be innocent until proved guilty. In the adversarial legal system,<sup>3</sup> a burden is imposed on the prosecution to prove the guilt of the accused beyond reasonable doubt and until and unless the prosecution relieves its burden, the court cannot declare the accused guilty.<sup>4</sup> Every criminal trial commences with the basic presumption that the accused is presumed innocent until proven guilty and it runs throughout the trial.<sup>5</sup> Due to this presumption various legal and constitutional rights are conferred on the accused<sup>6</sup>.

Since the criminal justice system's primary goal is to maintain peace and order in society, the State takes the responsibility of punishing the guilty. The police as the state's principal law enforcing agency must bring offenders to book. However, the procedure adopted by the police to achieve this objective has to conform to civilised standards. Therefore, the procedure adopted should be just, fair, and reasonable.<sup>7</sup> The police on any account cannot take recourse to extra-legal methods for the sake of crime detection. Thus, the rights of the accused are considered sacrosanct in a democratic society, after all, he is also a human being. It is a matter of fact that, to protect the dignity of the accused and ensure him benefits of a just, fair and impartial trial<sup>8</sup>, the laws of India – the Constitution, the Evidence

3 The adversarial system or adversary system is a legal system used in common law countries where two advocates represent their parties' case or position before an impartial person or group of people, usually a judge or jury, who attempt to determine the truth and pass judgment accordingly.

4 *Kali Ram v. State of H.P.*, (1973) 2 SCC 808

5 *Talab Haji Hussain v Madhukar Purushottam Mondkar*, AIR 1958 SC 376

6 Right to be produced before Magistrate within 24hrs of his arrest, right to know the grounds of his arrest, right to be represented, right to free legal aid, right to fair trial, right to remain silent, right to bail etc.,

7 *Maneka Gandhi (Smt.) v. Union of India*, AIR 1978 SC 597

8 *Kishor Singh Ravinder Dev v. State of Rajasthan*, AIR 1981 SC 625



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Act, and the Criminal Procedure Code have made elaborate provisions for protecting the right of the accused.

Occurrence of crime is considered an offence against society thus the complainant i.e., State is represented by the Public Prosecutor and the accused is defended by the defence counsel. In this process, actual victims of crimes have less or no role in the prosecution of the accused person. At the most, the victim is examined as a prosecution witness and nothing more than that. The violation of the law is not only an offence against society but also an invasion of the personal right of the victim<sup>9</sup>. It would not be wrong to say here that, a victim of a crime has all right to seek justice. In case of acquittal of the accused, the victim has no right to compel the prosecution of the crime committed against him. The victim is also devoid of the right to challenge the sentence imposed on the accused. Various legal and constitutional rights are conferred on the accused<sup>10</sup>. Ironically, no such exclusive rights are conferred on the victims other than compensation. After many efforts finally, by way of the 2008 amendment to the Criminal Procedure Code, compensation is given to the victim under Section 357A<sup>11</sup> irrespective of the conviction of the accused. The victim's voice is not heard in the criminal justice system. Merely giving compensation does not amount to delivering justice unless the accused is punished. Merely awarding compensation may give an indirect licence to commit crimes. The aim of the criminal justice system should be to unravel the truth and put the real culprit behind the bar. Then only justice seems to be done.

### EVOLUTION OF RIGHTS OF THE ACCUSED

#### Indian perspective

The rights of the accused are rooted in the ancient Indian legal system as well. In ancient India, the king was the supreme. He was responsible for the administration of justice in his kingdom. The procedure in civil and criminal cases was the same. Just like in civil cases, in criminal cases also both the party's presented a plaint and defence statement before the court. The accused was allowed to produce witnesses to prove his innocence. Sometimes, when no concrete evidence is available on either side and in case of high treason or very serious offences ordeal<sup>12</sup> was used as a means of proof to find out the guilt or innocence of the accused. The accused enjoyed certain rights like the accused being allowed to prove his contention during

9 Bharat B. Das, *Victims in the Criminal Justice System* (APH publishing corporation 1997) 12

10 Right to be produced before Magistrate within 24hrs of his arrest, right to know the grounds of his arrest, right to be represented, right to free legal aid, right to fair trial, right to remain silent, right to bail etc.,

11 See The Criminal Procedure Code 1973, s 357A

12 An ancient test of guilt or innocence by the subjection of the accused to severe pain, survival of which was taken as divine proof of innocence.



the trial. He was permitted to produce any witnesses in his defence, to prove his innocence.<sup>13</sup>

During the Ashoka period, the accused were given the right to self-defence, not only self-defence but also defence of women and weak people who are not able to defend themselves, right against illegal arrest and torture. Even Brihaspati mentions that any offence done in consequence of self-defence is not an offence. According to Brihaspati following persons were exempted from arrest, one who is engaged in studies, about to marry, sick, distressed by sorrows, insane, infant, intoxicated, very old man, woman, etc. Even Narada has mentioned that persons, like one who is about to marry, suffering from illness, about to offer sacrifice, affected by calamities and finally a minor, should not be arrested.<sup>14</sup>

### International perspective

We can also say that the rights of the accused person evolved along with the emergence of the concept of Human rights. Because human rights were conferred to all individuals including the accused person. The roots of protecting the rights of individuals could be traced back to the Babylonian laws. Babylonian king Hammurabi introduced a set of laws to govern his dynasty, which later came to be known as Hammurabi's code. It consists of 282 rules to ensure justice. Hammurabi's code was very strict, it was based on the maxim "eye for an eye and a tooth for a tooth". The punishment was very harsh which includes cutting the guilty party's tongue, hands, breast, eye or ear etc., Since the punishment was very severe, the accused person was presumed innocent until he is proven guilty and we can say that it is one of the earliest codes to recognise the presumption of innocence.<sup>15</sup> The presumption of innocence is implied in Rule 1<sup>16</sup> of Hammurabi's code. It was also necessary that charges be proved at trial by the accuser.

There is also mention of the protection of the accused against arbitrary arrest and imprisonment without a trial in the Magna Carta<sup>17</sup>. The Petition

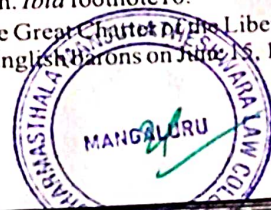
13 V.D. Kulshrestha's, *Landmarks in Indian Legal and Constitutional History*(9th edn, Eastern book company 2009) 10-11

14 Dr.D.P.Verma, Dr. Ramesh Chandra Chhajta (HPS), *Human Rights of Arrested Person in Ancient India: An Appraisal*, IOSR Journal Of Humanities and Social Science (IOSR-JHSS) Volume 19, Issue 12, Ver. 1 (Dec. 2014), PP 85-91 e-ISSN: 2279-0837, p-ISSN: 2279-0845. <<https://www.iosrjournals.org/iosr-jhss/papers/Vol19-issue12/Version-1/N0191218591.pdf>> accessed 12 October 2022

15 Joshua J. Mark, 'Code of Hammurabi' (World History Encyclopedia, 24 June 2021) <[https://www.worldhistory.org/Code\\_of\\_Hammurabi/](https://www.worldhistory.org/Code_of_Hammurabi/)> accessed 14 October 2022

16 If a man brings an accusation against a man, and charges him with a capital crime, but cannot prove it, the accuser shall be put to death. *Ibid* footnote 16.

17 The Magna Carta also called as Magna Carta or the Great Charter of the Liberties of England granted by King John of England to the English barons on June 15, 1215.





of Rights, 1628 also emphasises arbitrary imprisonment. Later, the Bill of Rights, of 1689 also condemned excessive bail and cruel and unusual punishment. Further, the Universal Declaration of Human Rights, 1948(UDHR), the International Covenant on Civil and Political Rights, 1966(ICCPR), the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) and two optional protocols which constitute the International Bill of Rights also declares the rights of the accused person comprehensively under its various provisions which is discussed at length further in this article. Apart from the above-mentioned covenants, there are Regional Conventions on Human rights the European Convention on Human Rights, 1950<sup>18</sup>, the American Convention on Human Rights, 1969<sup>19</sup>, and the African Charter on Human and Peoples' rights, 1981<sup>20</sup> also emphasises the right of accused persons.

The Universal Declaration of Human Rights has exercised a profound influence on the makers of the Indian Constitution. India being a signatory to the UDHR made a huge impact on the drafting of the Indian Constitution. The rights in ICCPR are enumerated under chapter III of the Indian Constitution which deals with Fundamental Rights and the rights under ICESCR are enumerated under chapter IV of the Indian Constitution which deals with the Directive Principles of State Policy.

Though various periods witnessed accused rights, a new dimension was accorded to the rights of the accused with the establishment of the Universal Declaration of Human Rights in the year 1948. The significant features in the UDHR and Covenants were adopted all over the world in their legal system.

### ELUCIDATION OF THE RIGHTS OF THE ACCUSED

The various rights of the accused under international instruments, the Constitution of India, and various legislations are pertinent in this regard.

#### International instruments

- Right to a fair trial is enshrined under Article 10 of the Universal Declaration of Human Rights, 1948 and Article 14(1) International Covenant on Civil and Political Rights, (ICCPR) 1966. The right to a fair trial includes the principle of equality of arms<sup>21</sup>, the principle of the public hearing, the right of the accused to be tried before a competent, independent and, and impartial tribunal established by law.
- Presumption of innocence of the accused is enumerated under Article 11(1) of the Universal Declaration of Human Rights, 1948, Article

18 See European Convention on Human Rights, 1950 Articles 3, 6, 7

19 See American Convention on Human Rights 1969, Articles 5, 7, 8, 9

20 See African Charter on Human and Peoples' rights 1981, Article 5, 6, 7.

21 Means parties must be given equal rights during proceedings before the tribunal.

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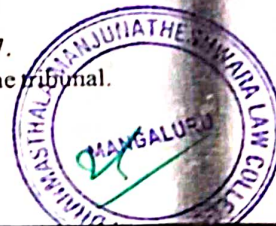
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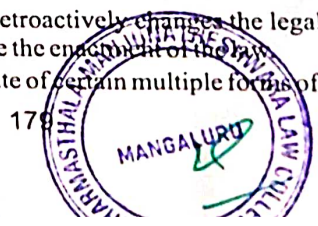
14(2) of the ICCPR,1966, Article 6(2) of the European Convention of Human Rights, and Article 8(2) of American Convention of Human Rights.

- Right to be informed of the charges against the accused is protected under Article 14(3)(a) of ICCPR, 1966.
- Right to an expeditious and fair trial is provided under Article 6(1) and Article 8(1) of the European Convention on Human Rights and the American Convention on Human Rights respectively.
- Accused is protected against trial in his absence under Article 14(3)(b) of ICCPR, 1966. It speaks about the prohibition of trial in absentia.
- Right to counsel is ensured under Article 14(3)(b) of ICCPR and Article 6(III)(b) of the European Convention on Human Rights.
- Accused has the right to examine or have examined witnesses under Article 14(3)(e) of ICCPR, 1966.
- Right to an interpreter under Article 14(3) (f) of ICCPR, 1966.
- Accused enjoy the right to remain silent under Article 14(3)(g) of ICCPR, 1966.
- Under Article 5 of UDHR,1940 accused is protected from torture, inhuman degrading treatment or punishment.
- Article 9 of the UDHR explains that "no one shall be subjected to arbitrary arrest, detention, or exile".

**The Constitution of India, 1950**

- Article 20 of the Constitution ensures three-fold protection to the accused. Firstly, the prohibition of *ex-post-facto law*<sup>22</sup>, secondly, the right against double jeopardy<sup>23</sup> and thirdly, the right against self-incrimination.
- Accused is empowered to know the grounds of arrest, right to consult and right to be defended by a legal practitioner under Article 22(1) of the Constitution.
- Right to be produced before a magistrate within 24 hours of arrest under Article 22(2) of the Constitution.
- Right to free legal aid is ensured under Article 39-A of the Constitution.

22 An ex post facto law is a law that retroactively changes the legal consequences of actions that were committed, before the enactment of the law.  
 23 Protection against the use by the state of certain multiple forms of prosecution.



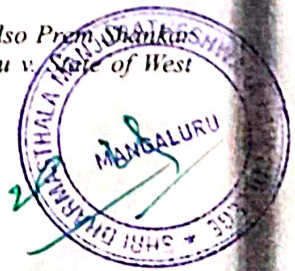
### JUDICIAL INTERPRETATION OF CONSTITUTIONAL RIGHTS OF THE ACCUSED

Judiciary is considered the guardian of human rights. Judicial activism is like a tool in the hands of the judiciary to meet the changing demands of society. Judiciary widely interpreted the 'right to life and 'personal liberty' under Article 21 of the Constitution and incorporated several rights to the accused person like the right to live with human dignity, right to bail<sup>24</sup>, right against solitary confinement<sup>25</sup>, right to a speedy trial<sup>26</sup>, right against third-degree methods<sup>27</sup>, right to a fair trial<sup>28</sup>, right against illegal detention<sup>29</sup> etc. Apart from this, the Judiciary has also laid down guidelines specifically to protect the rights of the accused. In *Joginder Kumar v. State of Uttar Pradesh*, the Court in its guidelines emphasised that arrest should not be made routinely on mere allegations of commission of the offence. The police should carry out an investigation for finding the genuineness and bona fide of a complaint before an arrest is made. Again, to combat custodial violence, the Hon'ble Supreme Court in *D. K. Basu v. State of West Bengal*<sup>30</sup>, issued guidelines to be followed in all cases of arrest or detention till legal provisions are made on that behalf as a preventive measure.

#### The Criminal Procedure Code, 1973

- As provided under sections 50, 55 and 75 of the Criminal Procedure Code, in case of arrest of the accused with or without a warrant, he has got right to know the grounds for his arrest.
- Accused should be informed of his right to bail as per section 50(2) of the Criminal Procedure Code.
- Accused should be produced before the magistrate without unnecessary delay as per sections 56 and 76 of the Criminal Procedure Code.
- Accused enjoys the right of not being detained for more than 24 hours without judicial scrutiny under section 57 and proviso to section 76 of the Criminal Procedure Code.
- Right of the accused to consult a legal practitioner is provided under section 303 of the Criminal Procedure Code.

24 *Babu Singh v. State of U.P.*, (1978) 1 SCC 579  
 25 *Sunil Batra (I) v. Delhi Administration*, AIR 1978 SC 1675  
 26 *Hussainara Khatoon (I) V. State of Bihar*, (1980) 1 SCC 81  
 27 *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96; see also *Prem Shankar Shukla v. Delhi Administration*, AIR 1980 SC 1535; *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416  
 28 *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248  
 29 *Rudal Shah v. State of Bihar*, AIR 1983 SC 1086  
 30 AIR 1997 SC 610



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- Right to free legal aid and to be informed about this right is enshrined under section 304 of the Criminal Procedure Code.
- Under section 54 of the Criminal Procedure Code the accused has got right to be examined by a medical practitioner.

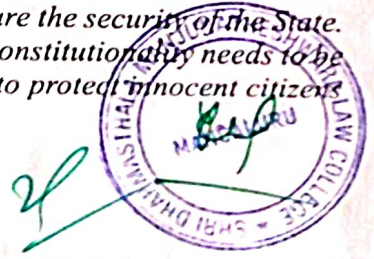
EVALUATION OF THE RIGHTS OF THE ACCUSED

In our Criminal Justice system, the accused is presumed to be innocent until proved guilty. Accordingly, various rights have been conferred on the accused. Today, we live in the 21<sup>st</sup> century where everything is digitalised. With the development of technology, crime knows no boundaries. Criminals use the most sophisticated methods to commit crimes. The collection of evidence, tracking the accused and arresting them is a big challenge to the investigating officer. Even if the accused is caught and charge-sheeted, the trial takes much longer time to deliver judgement. Amidst, all these difficulties and challenges certain rights conferred on the accused like the presumption of innocence, right to privacy, and right to remain silent stand as an obstacle in the justice delivery system.

When a person commits a gruesome murder, brutal rape, domestic violence, dowry death, terrorist activities, organised crime, economic crime, online fraud/cheating, bank fraud, trans-national crimes, waging war against the state, creating communal violence, human trafficking, Communal violence, anti-defection cases and host of other crimes, and during the investigation when questioned, accused exercise right to remain silent and right to privacy. Ironically, no adverse inference can be drawn against the accused, if he chooses to remain silent. In criminal cases accused is the main source of information. If not the accused, then who else will know the facts? If every accused claims the right to privacy, then no crimes would be detected. Crimes are often committed in secrecy or the dark. Cooperation of the accused is required to deliver quality justice. If the case is clue-less, if the investigation is in dark it is very much necessary that the accused cooperate with the investigating officer.

No doubt, the presumption of innocence is the cardinal principle of the criminal justice system. However, taking into consideration the changed crime scenario, certain special legislation has been introduced wherein the initial presumption is the guilt of the accused and it is for the accused to prove his innocence. This was much needed and commendable step taken by the legislators. The reverse onus clause is found in the Food adulteration Act, the Protection of children from sexual offence Act, etc., In Noor Aga v. State of Punjab<sup>31</sup>, Justice Sinha while upholding the reverse onus clause as constitutionally valid made the following observations "that individual liberty must be subject to social interest to ensure the security of the State. In addition, he stated that a penal provision's constitutionality needs to be tested on the anvil of the state's responsibility to protect innocent citizens"

31 (2008)16 SCC 417.



and hence, the rights of the accused and societal interest need to be balanced. The court seemed to justify the shift in the legal burden on the ground that the shift is not automatic and accrues only once the prosecution has met the threshold of establishing the actus res and foundational facts according to the procedure stipulated".

When we speak about justice, fair trial etc., we should not only look from the accused perspective but also the victim's angle. After all, it is he who should be satisfied finally. The object of a criminal trial is to put the real culprit behind the bar. Since the success of the criminal trial depends upon the collection of reliable evidence. The investigating officer should be empowered with the scientific methods of investigation like narco analysis, brain mapping and polygraph tests. These tests are held to be violative of the rights of the accused against self-incrimination, the right to remain silent and the right to privacy<sup>32</sup>. However, no right is absolute reasonable restrictions can be imposed. In the changed crime scenario if the accused is allowed to exercise these rights in all circumstances. The delivery of justice would only be left imaginary. To put life to the words "justice is not only done but seems to be done", the scientific method of investigation like narco analysis, brain mapping and polygraph tests is the need of the hour. Not in all cases but considering the facts and circumstances of a few cases it should be allowed without the accused consent. What is required today is a balanced approach between the rights of the accused, victims and law enforcement agencies.

**CONCLUSION**

After analysing the above facts, questioning the rights conferred on the accused will not lead us anywhere, as it is obvious that since State is more powerful than the individual, there are more chances that police misuse their power and implicate an innocent person. But this does not mean that in all circumstances accused should be conferred with overbroad rights. Every right has a correlative duty, the duty is cast on the investigating officer to investigate the case to find the truth. Moreover, the victim also has the right to seek justice. In times of increasing crime rate, it is very much necessary to curtail the rights of the accused in the interest of society at large. Every criminal case is unique. Even after suffering at the hands of the accused, it is very strange to know that, the victim has no role in the criminal justice system but still the accused enjoyed rights at every stage of the administration of criminal justice. Our Criminal Justice System is accused-oriented which needs to be reoriented towards justice and truth. If not, it erodes the victim's faith in the justice delivery system and points to the credibility of the administration of the criminal justice system. The need of the hour is a balanced approach to protect the rights of the accused vis-à-vis victims so that justice is delivered.

32 Selvi and others v State of Karnataka, AIR 2010 SC 182



POSSIBLE  
RELATIONSHIP

The word... true but is... cannot be a... real owner... owner of a p... without bein... through the... unqualified... property. Th... be seen as a... one has the p... by himself. I... prohibits the... unlawful wit... concept oste... ostensible on... the paper wi... of ostensible... jurispruden... specification... Transfer of... express impl... property. the

Assistar