



# **CRIMINAL JUSTICE ADMINISTRATION AND HUMAN RIGHTS**

**By: Justice U.C. Dhyani**

- Voyage to Discovery of Truth
- Reconstruction of Past Events
  - Articles 20, 21 and 22



# ARTICLE 20 = ARTICLE 35 (BANGLADESH)

Protection in respect of conviction for offences

- (1) No person shall be convicted of any offence except for violation of the 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
- Plus something more in Bangladesh



## **ARTICLE 21 = ARTICLE 32 (BANGLADESH)**

Protection of life and personal liberty

- No person shall be deprived of his life or personal liberty except according to procedure established by law
- In Bangladesh the words “save in accordance with law” have been used.



# ARTICLE 22 = ARTICLE 33 (BANGLADESH)

Protection against arrest and detention in certain cases

- (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice



- (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate



- (3) Nothing in clauses ( 1 ) and ( 2 ) shall apply (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention
- (4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:
- (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order



- (6) Nothing in clause ( 5 ) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose
  - (7) Parliament may by law prescribe
    - (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub clause (a) of clause ( 4 );
    - (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
    - (c) the procedure to be followed by an Advisory Board in an inquiry under sub clause (a) of clause ( 4 )
- Right against Exploitation





- Burden of Proof
- Oral and Medical Evidence
- Direct and Indirect Evidence
- Circumstantial Evidence---  
distance between  
'May Be' ---- 'Must Be'
- Human Rights
- Legal Aid



# Principles of Natural Justice

- Audi Alteram Partem
- Nemo iudex in re Causa Sua

## Arbitrariness



- Disadvantaged Require--- ‘Courts’  
Special consideration as a protector  
of Rights.
- Right to Maintain/Remain Silence
  - Miranda v. Arizona 1966 US.



- Narco Analysis--- Selvi (2010)  
page 1974--- These tests cannot  
be administered on any accused  
without his consent.



# PRISON JUSTICE

- Tek Chand Committee 1977
  - Mulla Committee
- Sheela Barse AIR 1983 Sc 378
  - Kumkum Chaddha 1983
  - Sunil Batra I, Sunil Batra II
- Prem Shanker v. Delhi Administration
  - Handcuffs and Bar Fetters
- Nandani Satpati v. PL Dani AIR 1978 SC 1025
  - on Privilege against self incrimination



# PROTECTION OF HUMAN RIGHTS ACT, 1993

- 2(d) - “human rights” means 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



# THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH

- Came into force on 16.12.1972
- Part II and III contain Human Rights
- Fundamental Principles of State Policy provide for Economic, Social and Cultural Rights.
- Fundamental Rights provide for Civil and Political Human Rights.



- This is third Constitution of the Country.
- First, Proclamation of Independence of 10<sup>th</sup> April, w.e.f. Her Independence on 26.03.1971.
- Second, Provisional Constitution of Bangladesh Order of 11.01.1972.
- The first one, a Two Page Constitution, later replaced to ensure for the People Human Rights in these words:
- **Fundamental human rights and freedom, equality and justice, political, economic and social**





- Owe their origin to Universal Declaration of Human Rights, 1948.
- Human Rights, were called **RIGHTS OF MAN**.
- Proposal of Mrs. Eleanor Roosevelt to term them as Human Rights was accepted on 10.12.1948 in General Assembly.



- **Inherent and Inalienable**
- Very necessary for expression of Humanity and Personality/ Individuality
- Without it nobody can live as a human being.
- Irrespective of Race, Sex, Colour , Nationality etc.



- International covenant of Civil and Political Rights of 1966.
- International covenant of Economic, Social and Cultural Rights of 1966.
- Declaration on the Granting of Independence to Colonial Countries and People of 1960.
- The declaration on the Right to Development of 1986.
- Municipal Legal Instrument of such kind are the Constitutions of India, Bangladesh, USA, UK, France etc.



# Source of Human Rights

- **Magna Carta of 1215**
- **Petition of Rights of 1628**
- **Bill of Rights of 1689 of England**
- **Declaration of Independence of 1776 as adopted by 13 Colonial Countries of North America.**
- **Bill of Rights in Virginia,**
- **French Declaration of Rights of Man and of the Citizen of 1789.**



## SIX FUNDAMENTAL RIGHTS SHOWING THE RESEMBLANCE TO ARTICLE OF UDHR, ARE:

- Right to life and personal liberty save in accordance with law (Constitution Article 32, and UDHR Article 3),
- Right to safeguard as to arrest and detention (Constitution Article 33, and UDHR Article 9),
- Right not to be subjected to forced labour (Constitution Article 34, and UDHR Article 4),



## SIX FUNDAMENTAL RIGHTS SHOWING THE RESEMBLANCE TO ARTICLE OF UDHR, ARE:

- Right to protection in respect of trial and punishment (Constitution Article 35, and UDHR Article 10),
- Right to freedom of religion subject to law, public order and morality (Constitution Article 41, and UDHR Article 18), and
- Right to enforcement of fundamental rights (Constitution Article 44, and UDHR Article 8).



# FUNDAMENTAL RIGHTS FOR CITIZENS ONLY ARE –

- Right to equality before law and to equal protection of law (Constitution Article 27, and UDHR Article 7),
- Right not to be discriminated against on ground of religion, race, caste, sex or place of birth (Constitution Article 28, and UDHR Article 7),
- Right to equality of opportunity in public employment (Constitution Article 29, and UDHR Article 21.2),



- Right not to accept any title, honour, award or decoration without the prior approval of the President of Bangladesh (Constitution Article 30, from outside the UDHR),
- Right to protection of law and to be treated in accordance with law (Constitution Article 31, and UDHR Article 7),
- Right to freedom of movement subject to reasonable restrictions imposed by law (Constitution Article 36, and UDHR Article 13),





- Right to assembly subject to reasonable restrictions imposed by law [Constitution Article 37, and UDHR Article 20(1)],
- Right to form associations or unions subject to reasonable restrictions imposed by law [Constitution Article 38, and UDHR Article 20(1)],
- Freedom of thought and conscience as well as right to freedom of speech and expression and freedom of press subject to reasonable restrictions imposed by law (Constitution Article 39, and UDHR Article 18),



- Right to enter upon lawful profession or occupation subject to any restrictions imposed by law [Constitution Article 40, and UDHR Article 23(1)],
- Right to acquire, hold, transfer or dispose of property subject to any restrictions imposed by law (Constitution Article 42, and UDHR Article 17), and
- Right to be secured in home and to privacy of correspondence and other communication subject to reasonable restrictions imposed by law (Constitution Article 43, and UDHR Article 12)



- The Declaration is like a brave banner flying from the highest tower in the world which no one can ignore.....( **M. C. Chagla**)
- The Declaration of the Rights of Man... has become part and parcel of our mental makeup.... these principles have become the silent immaculate premise of our outlook.....( **Dr. Ambedkar**)



# OPEN HOUSE SESSION

