



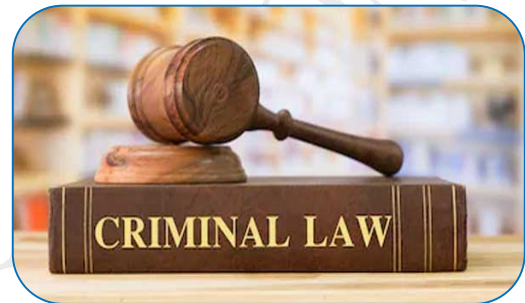
RIGHTS OF AN ARRESTED PERSON UNDER CRIMINAL LAW: A STUDY

Shallu Nuniwal

**Assistant Professor (Law), University Institute of Legal Studies,
Panjab University, Chandigarh.**

ABSTRACT :

Any person has to be treated as a human being, irrespective of the fact that such person is a criminal. The accused persons are also granted certain rights, the most basic of which are found in the Indian Constitution and Code of Criminal Procedure 1973. In our legal system the accused is presumed innocent till his guilt is proved so he is entitled to some protection from misuse of those powers by the government. An accused has certain rights during the course of any investigation; enquiry or trial of offence with which he is charged, and he should be protected against arbitrary or illegal arrest. He must be aware about his all legal as well as constitutional rights while he is under arrest so that there should not be miscarriage of justice. This article is devoted to enforcement of human rights and judicial trends and to study new tools forged by the judiciary in recent years which have given a new meaning to fundamental rights jurisprudence in India. It talks about various rights of an arrested person provided under the criminal law.



KEYWORDS : *Rights of an Arrested Person, Constitution, Trial etc.*

INTRODUCTION

The term "accused" has not been specifically defined in the code but what we generally understand is that the accused means the person charged with an infringement of the law for which he is liable and if convicted then to be punished. In other words, a person who is charged with the commission of offence. An offence is defined as an act or omission made punishable by any law for the time being in force. An accused cannot have similar footing with the convicted person.¹ Arrest means

"A seizure or forcible restraint; an exercise of the power to deprive a person of his or her liberty; the taking or keeping of a person in custody by legal authority, especially, in response to a criminal charge".² In the Bill of Rights Ordinance, 1991 affirms that every accused has a right to be presumed innocent until his guilt is proved. Thus, the accused person has every right like other citizen of the country except his curtailment of person liberty in conformity with laws. The basic difference is that an accusation has been

¹ Nogen Senabaya Deori, Chief Judicial Magistrate, "Rights of accused at pre-trial Stage" available at <http://tinsukiajudiciary.gov.in/source/misnotice/Rights%20of%20Accused.pdf>.

² The free Dictionary, available at <http://legal-dictionary.thefreedictionary.com/arrest>.

made against the accused person for violation of law or offence prevalent in the country. The rights of the accused person are of much concern today.³

The Third Report of the National Police Commission identifies the wrongful use of arrest powers as one of the chief sources of corruption in the police and that nearly 60% arrests made by police officers are unnecessary and unjustified. In the said report strongly opposed the practice of carrying out indiscriminate arrests. The Hon'ble Supreme Court of India said that an arrest cannot be made simply because it is lawful for a police officer to do so. Arrest and detention in police lock up can cause incalculable harm to the reputation and self-esteem of a person. Therefore, arrest should not be made in a routine manner on mere allegation that a person has committed an offence. The Hon'ble Supreme Court gave the guidelines⁴ what should be the basis of arrest are as follows:

- 1) Arrest are not be made in a routine manner. The officer making the arrest must be able to justify its necessity on the basis of some preliminary investigation.
- 2) An arrested person should be allowed to inform a friend or relative about the arrest and where s/he is being held. The arresting officer must inform the arrested person when s/he is brought to the police station and is required to make an entry in the diary as to whom the information was given.
- 3) It is the duty of the magistrate before whom the arrested person is produced to satisfy her/ himself that the above requirements have been complied with.

In *Prem Shankar Sukla Vs. Delhi Administration*,⁵ the Hon'ble Supreme Court observed that using handcuffs and fetters (chains) on prisoners violates the guarantee of basic human dignity, which is part of our constitutional culture. This practice does not stand the test of articles 14 (Equality before law), 19 (Fundamental Freedoms) and 21 (Right to Life and Personal Liberty). In the said case, the following directives were given in respect of Handcuffing:

- 1) Handcuffs are to be used only if a person is involved in serious non-bailable offences, has been previously convicted of a crime: and /or
- 2) is of desperate character, violent, disorderly or obstructive: and /or
- 3) is likely to commit suicide: and /or is likely to attempt escape.
- 4) The reasons why handcuffs have been used must be clearly mentioned in the Daily Diary Report. They must also be shown to the court.
- 5) Once an arrested person is produced before the court, the escorting officer must take the court's permission before handcuffing her/him to and fro from the court to the place of custody.
- 6) The magistrate before whom an arrested person is produced must inquire whether handcuffs or fetters have been used. If the answer is yes, the officer concerned must give an explanation.

Right to be informed of ground of arrest

Right to be informed of the grounds of arrest is a precious right of an arrested person. To avoid camouflage and manipulations qua time and contents of grounds of arrest later, timely information of the grounds of arrest is the legal requirement. Section 50(1) Criminal Procedure Code and article 22(2) of the Constitution of India provides that 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. If the arrested person is not communicated the grounds of his arrest then such arrest will be

³ Yashveer Singh, "Rights of arrested person in India", *International Journal of Applied Research* 2015, available at <http://www.allresearchjournal.com/archives/2015/vol1issue5/PartE/112.1.pdf>.

⁴ *Joginder Kumar Vs. State of U.P. & Ors.*, SCC 1994 260.

⁵ 1980 SCC 526.

illegal and violation his fundamental right.⁶ Section 50-A making it obligatory on the part of the police officer not only to inform the friend or relative of the arrested person about his arrest etc. but also to make entry in a register maintained by the police. The magistrate is also under an obligation to satisfy himself about the compliance of the police in this regard.⁷

Right to consult a legal practitioner

Right to consult a legal practitioner is a very important right for the purpose of preparing the defence. If this right is not freely exercised then it will cause great injustice to the accused. So the accused can prepare his defence by describing all the incidents freely to his advocate it is necessary to provide him right to consult his legal practitioner of his own choice. The right of an accused person to consult his lawyer begins from the moment of his arrest.⁸ Article 22(1) of the Constitution provides that no person who is arrested shall be denied the right to consult a legal practitioner of his choice. Non compliance with this requirement and failure to inform the accused of this right would vitiate the trial.⁹ It cannot be laid down as a rule of law that in every capital case where the accused is unrepresented, the trial should be held to be vitiated and a court of appeal or revision is not powerless to interfere if it is found that the accused was so handicapped for want of legal aid that the proceedings against him may be said to amount to negation of fair trial.¹⁰

Right of an arrested indigent person to free legal aid

The right to get free legal aid at the expense of state is a constitutional right which is implicit in article 21 and Article 39-A of the constitution, a directive principle of the constitution of India. This constitutional obligation to provide legal aid to an indigent accused person does not arise only when the trial commences but also when the accused is for the first time produced before the magistrate as also when he is remanded from time to time. So it cast a duty on all magistrates and courts to inform the indigent accused about his right to get free legal aid.¹¹ This Constitutional right cannot be denied if the accused failed to apply for it. It is clear that unless refused, failure to provide free legal aid to an indigent accused would vitiate the trial resulting in setting aside of the conviction of the accused.¹²

Right to be informed of right to bail

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.¹³ Section 50 of the Code of Criminal Procedure is in conformity with article 22(1) of the Constitution. Any person arrested has to be intimated about the grounds of his arrest as also his right of bail. Non compliance of this provision renders the arrest and detention illegal. So the magistrate is to satisfy himself about the compliance of article 22(1) of the Constitution before ordering remand of the accused.¹⁴

⁶ Preeti Singh, "Rights of Arrested Person" available at <http://www.legalservicesindia.com/article/article/rights-of-arrested-person-1635-1.html>.

⁷ *Joginder Singh v. State of U.P.* SCC 1994 260. See also *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610.

⁸ *Moti Bai v. state*, AIR 1954 Raj.241; *Sudarshan De v. Emperor*, ILR 62 Cal. 384.

⁹ *Suk Das v. Union Territory of A.P.*, 1986 SCC627.

¹⁰ *Janardhan Reddy v. State of Hyderabad*, AIR 1951 SC 217

¹¹ *Khatri v. State of Bihar*, (1981) 1 SCC 627.

¹² *Suk Das v. Union Territory of A.P.*, (1986) 2 SCC 401.

¹³ Section 50(2) of Code of Criminal Procedure.

¹⁴ *Ashok v. State*, 1987 Cr. LJ 1750 (MP)., *In re, Madhu Limaye* AIR 1969 SC 1014: 1969 Cr LJ 1440.

Right to be produced before the Magistrate without delay.

Whether the arrest is made without warrant by a police officer, or whether the arrest is made under a warrant by any person, the person making the arrest must bring the arrested person before a judicial officer without unnecessary delay. It is also provided that the arrested person should not be confined in any place other than a police station before he is taken to the magistrate. Sections 56 and 76 of Cr.P.C provides that Person arrested to be brought before Magistrate without any delay. The State and its police authorities to ensure that this constitutional and legal requirement to produce an arrested person before a Judicial Magistrate without an amount of delay and within 24 hours of the arrest be scrupulously observed. If the police officer fails to produce an arrested person before a magistrate within 24 hours of the arrest, he shall be held guilty of wrongful detention.¹⁵

Person arrested not to be detained for more than twenty four hours without judicial Authority

Section 57 of the Cr. P.C provides the protection to the arrested person not to be detained beyond twenty four hours. This section of the code of criminal procedure is strengthened by article 22(2) of the Constitution which incorporated as a fundamental right. If any person is arrested without warrant or under a warrant, the arrested person must be brought before the magistrate or court within 24 hours. A detention of a person in police custody beyond 24 hours, is illegal. It can neither be cured nor waived. Such person or any other person on his behalf, can petition the High Court for a writ of Habeas Corpus. This is a constitutional remedy and cannot be denied even on the ground that an alternative remedy is available.¹⁶ The object is to ensure the safety of a citizen against the vagaries of the police by giving him the right to approach the Magistrate directly, if the police does not act according to law. Before he takes cognizance of the offence, it should be open to the Magistrate to verify whether the information received by him is true or not.¹⁷

Right To Be Examined By A Medical Practitioner

When any person is arrested, he shall be examined by a medical officer in the service of Central or State Government and in case the medical officer is not available by a registered medical practitioner soon after the arrest is made. If there is arrest of any women, the examination of the body shall be made only by or under the supervision of a female medical officer and in case the female officer is not available then by a register medical practitioner.¹⁸ Earlier the position was different. Before the Amendment Act, 2008, the examination of the body of the arrested person was done on the request of the arrested person under the order of the magistrate for the purpose of elucidating the evidence. The magistrate had a power to reject the request of examination if he considers it for the purpose of vexatious or delay or for defeating the ends of justice.¹⁹ But after the Amendment Act of 2008 the position is clearly different. Now the section makes it mandatory for the medical examination of every arrested person so that there should not be any possibility of tempering with the evidence which is most important for the administration of justice.

Right to Silence

The 'right to silence' is a principle of common law and it means that normally courts or tribunals of fact should not be invited or encouraged to conclude, by parties or prosecutors, that a suspect or an accused is guilty merely because he has refused to respond to questions put to him by the police or by the Court. The Right to Silence and the accompanying right against self-incrimination are the two aspects of fair trial and therefore cannot be made a subject matter of legislation. Right to fair trial is the basic premise of all

¹⁵ *Khatri (II) v. State of Bihar*, AIR 1981 SC 928.

¹⁶ *Poovan vs The Sub-Inspector Of Police And others*, 1993 CriLJ 2183 para 9.

¹⁷ *Ibid.*

¹⁸ Section 54 of the Code of Criminal Procedure.

¹⁹

procedural laws. The Constitution of India guarantees every person right against self incrimination under Article 20(3) which states that:—"No person accused of any offence shall be compelled to be a witness against himself." The provisions of Art. 20(3) and section 161(1) substantially cover the same area so far as police investigations are concerned. The ban on self-accusation and the right to silence, while on 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. The accused Person cannot be forced to answer questions merely because the answers thereto are not implicative when viewed in isolation and confined to that particular case. He is entitled to keep his mouth shut if the answer sought has a reasonable prospect of exposing him to guilt in some other accusation actual or imminent, even though the investigation under way is not with reference to that. In determining the incriminatory character of an answer, the accused is entitled to consider and the Court while adjudging will take note of the setting, the totality of circumstances, the equation, personal and social which have a bearing on making an answer substantially innocent but in effect guilty in import. However, fanciful claims, unreasonable apprehensions, and vague possibilities cannot be the hiding ground for an accused person. He is bound to answer where there is no clear tendency to criminate.²⁰

Right to Speedy trial

Delay in trial also impinges upon fairness of trial. As per Section 309 Cr.P.C., the trial once started is to continue on day-to-day basis. If it has to be adjourned to another date, then reasons have to be stated. The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this Court, as the guardian of the fundamental rights of the people as a sentinel on the qui-vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, appointment of additional judges and other measures calculated to ensure speedy trial.²¹ The investigation in trial should be held "as expeditiously as possible". In all summons trials (cases where the maximum punishment is two years imprisonment) once the accused has been arrested, the investigation for the trial must be completed within six months or stopped on an order of the Magistrate, unless the Magistrate receives and accepts, with his reasons in writing, that there is cause to extend the investigation.²²

CONCLUSION

It is the reality that in spite of the various safeguards in the Cr.P.C. as well as the in the Constitution, the power of arrest given to the police is being misused till this day. It is also believed that the police often use their position of power to threaten the arrested persons and take advantage of their office to extort money. There have also been innumerable reports on custodial violence that lead many to believe that deprivation of basic rights of the arrested persons has become common place nowadays.

The Mallimath Committee in its Report on the reforms in the Criminal Justice System has stated that the accused has the right to know the rights given to him under law and how to enforce such rights. There have also been criticisms that the police fail to inform the persons arrested of the charge against them and hence, let the arrested persons flounder in custody, in complete ignorance of their alleged crimes. This has been attributed to the Colonial nature of our Criminal Justice System where the duty of arrest was thrust upon the Indian officers while the Britishers drew up the charge against the accused. Thus, it is entirely possible that the English origins of the Indian Criminal Justice system may have resulted unwittingly in the

²⁰ *Nandini Satpathy vs Dani (P.L.)*, 1978 AIR 1025, 1978 SCR (3) 608.

²¹ *Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar*, 1979 AIR 1369, 1979 SCR (3) 532.

²² *Ibid.*

rights of the arrested persons falling through the cracks. To protect the rights of the arrested person it is most important to make reforms in the police administration because police agency plays an important role in the investigation of an offence and the magistrate should comply with the requirements relating to the rights of the arrested person.

END NOTE

1. Nogen Senabaya Deori, Chief Judicial Magistrate, "Rights of accused at pre-trial Stage" available at <http://tinsukiajudiciary.gov.in/source/misnotice/Rights%20of%20Accused.pdf>.
2. The free Dictionary, available at <http://legal-dictionary.thefreedictionary.com/arrest>.
3. Yashveer Singh, "Rights of arrested person in India", *International Journal of Applied Research* 2015, available at <http://www.allresearchjournal.com/archives/2015/vol1issue5/PartE/112.1.pdf>.
4. *Joginder Kumar Vs. State of U.P. & Ors.*, SCC 1994 260.
5. 1980 SCC 526.
6. Preeti Singh, "Rights of Arrested Person" available at <http://www.legalservicesindia.com/article/article/rights-of-arrested-person-1635-1.html>.
7. *Joginder Singh v. State of U.P.* SCC 1994 260. See also *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610.
8. *Moti Bai v. state*, AIR 1954 Raj.241; *Sudarshan De v. Emperor*, ILR 62 Cal. 384.
9. *Suk Das v. Union Territory of A.P.*, 1986 SCC627.
10. *Janardhan Reddy v. State of Hyderabad*, AIR 1951 SC 217.
11. *Khatri v. State of Bihar*, (1981) 1 SCC 627.
12. *Suk Das v. Union Territory of A.P.*, (1986) 2 SCC 401.
13. Section 50(2) of Code of Criminal Procedure.
14. *Ashok v. State*, 1987 Cr. LJ 1750 (MP)., *In re, Madhu Limaye* AIR 1969 SC 1014: 1969 Cr LJ 1440.
15. *Khatri (II) v. State of Bihar*, AIR 1981 SC 928.
16. *Poovan vs The Sub-Inspector Of Police And others*, 1993 CriLJ 2183 para 9.
17. *Ibid.*
18. Section 54 of the Code of Criminal Procedure.
19. *Nandini Satpathy vs Dani (P.L.)*, 1978 AIR 1025, 1978 SCR (3) 608.
20. *Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar*, 1979 AIR 1369, 1979 SCR (3) 532.
21. *Ibid.*