

DE JURE NEXUS LAW JOURNAL

Author:

Pratik Singh

Faculty of Law, University of Delhi

Law Graduate.

Do Rights Cease to Exist for an Accused in India?**INTRODUCTION**

A lot of hullabaloo around the latest Sushant Singh Rajput Suicide case has raised many imminent legal and factual questions. The demand for justice has seen the people taking sides. The cacophony on television debates with experts exploring various legal angles and the call for arrest of the accused, already presuming her to be guilty along with the visuals of her jostling through crowd of media persons to reach the office of the investigative agencies draw us to a question: do rights cease to exist for a person once he is named an accused in an offence? The answer is “no”. So the next question that follows is what rights does an accused have in India? Are these rights sufficient or there is a need for more rights so that the accused is protected from prejudices? What rights should be introduced so as to prevent the sufferings and stigmatization of the accused as was faced by them in Jasleen Kaur case and Rohtak sisters’ case, which have been discussed later in this article? The article will explore the existing rights with the provisions of Criminal Procedure Code and the constitution where they are codified as well as the proposed rights.

INDIAN CONSTITUTION AND UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 20 of the Indian Constitution says that “no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence.” Therefore it provides protection to an accused from ex-post facto laws. The Universal

Declaration of Human Rights, 1948 too protects an accused from ex-post facto laws in its Article 11 para 2. Ex post facto laws are the ones that apply and punish retrospectively.

The doctrine of “autrefois acquit” and “autrefois convict” apply in Indian laws. These have been incorporated in Article 20(2) of the constitution and section 300 of CrPC. The doctrines state that once an accused has been tried and convicted or acquitted by a competent court, he cannot be subsequently tried for the same offence as this might cause him undue harassment.

Right to be informed ground of arrest

Section 50 of the CrPC, provides for the police officer or any person making an arrest without a warrant to communicate the grounds of arrest to the person arrested. Similar provision is made under Article 22(1) which states that no person shall be detained in custody without being informed about the grounds of such arrest. Therefore, this is not merely an statutory right but a constitutional right as well.

Section 55 of the CrPC provides for an order in writing specifying the person to be arrested, the offence etc. to be given by a police officer making an investigation to his subordinate, requiring him to arrest without warrant and the subordinate shall notify to the person being arrested about such details as are mentioned in the order. Under section 75 of the CrPC the police officer or other person making an arrest under a warrant shall show the warrant to the person being arrested, if so required. He shall notify the substance of the warrant to the person being arrested. Failing to comply will render the arrest illegal.¹

If the arrest is made by a magistrate without a warrant under section 44, he shall still be required to notify the arrested person about the grounds of arrest under Article 22(1) of the constitution.

To be taken before the Magistrate

Article 22(2) of the constitution along with section 56 of the CrPC provides for the arrested person to be taken before a magistrate without unnecessary delay. The accused is to be produced before the magistrate within 24 hours of arrest.

Not to be detained for more than 24 hours

¹ Ajit Kumar v. State of Assam, 1976 Cri LJ 1303 (Gau)

Section 57 of CrPC debars an arrested person to be detained for more than 24 hours without producing him before a magistrate. This 24 hour is exclusive of the time required to transport the accused from the place of arrest to the Magistrate Court. This right is also incorporated under Article 22(2) in the Constitution. The proviso to section 76 also provides a similar rule. In *Sharifbai v. Abdul Razak*² it was held that the police officer will be held guilty for wrongful detention if he fails to produce the arrested person before the magistrate within 24 hours.

Information to nominated person

Section 50-A of CrPC directs that the police officer or any person making an arrest shall forthwith give the information of arrest and the place where the arrested person is being held or detained to a family member or friend or anyone as nominated for this purpose by the person arrested. This rule came as a result of judgements like *D.K. Basu vs State of West Bengal*³ and *Joginder Singh vs State of UP*⁴. The arrested person shall be informed about this right by the police officer as is required by section 50-A(2).

Right of medical examination after arrest

Section 54 of CrPC gives the right to be examined by a medical officer or medical practitioner to the arrested person. Under sub section 3 of the section, a copy of the report prepared by the medical practitioner after examining the arrested person shall be furnished to him or the person nominated by him. The supreme court in *Sheela Barse vs. State of Maharashtra*⁵ held that the Magistrate shall inform the arrested accused about his right to get medically examined under section 54 of the CrPC.

Right to be defended by a lawyer

An arrested person has the right to consult and be defended by a legal practitioner. This is a fundamental right as provided under article 22 of the constitution. Section 303 of CrPC too gives

² AIR 1961 Bom 42

³ (1997) 1 SCC 416

⁴ (1994) 4 SCC 260

⁵ (1983) 2 SCC 96

this right to an accused. In *Sunder Singh vs. Emperor*⁶ it was ruled that the consultation with a lawyer maybe in the presence of a police officer but shall not be in his hearing.

Right to free legal aid

The right to consult a legal practitioner would make no sense if it cannot be exercised by an accused on account of paucity of funds. Therefore the right to free legal aid to the accused is provided in the constitution. Apart from Article 22, Article 21 implicitly gives this right to an accused. In *Maneka Gandhi Vs. Union of India*⁷ it was held that the right to free legal services is, therefore, clearly an essential ingredient of ‘reasonable, fair and just’ procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person.

Article 39A as a directive principle makes it a duty of the state to provide free legal aid to an accused who is needy. Section 304 of CrPC contains provisions for providing free legal aid to accused at State expenses in certain cases.

Protection against Self-Incrimination

Article 20(3) prohibits an accused to be compelled to testify or be a witness against himself. Supreme Court in *M.P.Sharma v. Satish Chandra*⁸ held that this right is available to anyone who is an “accused” in a case. It was also settled in this case that an accused has protection from “compulsion to be witness” and this also protects him from giving “evidence against himself.”

In *Nandini Satpathy v. P.L. Dani*, Supreme Court settled that this protection extends to the stage of police investigation too instead of being confined to the court.

Right to be released on bail in bailable offences

The CrPC through section 50(2) makes sure that an accused arrested without warrant for a bailable offence, is informed by the police officer about his right to be released on bail. Though

⁶ 32 Cri LJ 339

⁷ (1978) 1 SCC 248

⁸ AIR 1954 SC 300

an arrested person has a right to get bail, this right is not available to someone arrested for non-bailable offences. The arrested person accused of a non-bailable offence can still apply for bail but cannot claim it as a right.

The courts follow the principle that “bail is the rule and jail an exception” as detention infringes the Right to Life and Liberty as guaranteed under Article 21.

Right to copy of receipt after search

An accused in a non-bailable offence when arrested shall be searched and the articles seized shall be shown in a receipt a copy which shall be given to the arrested person. An accused who is arrested for a bailable offence, but fails to furnish bail shall be searched too and he is also entitled to receipt of seized articles taken from his possession.

Protection against unnecessary restraint

Section 46(3) of CrPC grants protection to an accused from police action in making arrest which results in death of the accused. This protection is available to the accused unless he is accused of an offence punishable with death or life imprisonment. Similarly, under Section 49 an accused cannot be subjected to more restraint than necessary to prevent his escape.

A police officer cannot touch while arresting a female accused unless the police officer is a female. Section 46(4) grants protection to female accused from being arrested after sunset and before sunrise, except under exceptional circumstances.

Right to know the accusations

The principle of fair trial requires that the accused be given fair opportunity to defend himself. And a fair opportunity can be said to be given only when the accused is informed about the accusations against which he has to defend himself. Section 218 provides for different charge for every distinct offence he is accused of.

Sections 228, 240, 246 and 251 of CrPC make provisions for reading and explaining the charges framed against him to the accused and asking whether he pleads guilty or not.

Right to presence during trial

An accused has been granted the right to personal presence during trial, so that he could witness the proceedings and get a better understanding of how things are unfolding in the court in his case. Section 273 of CrPC requires evidence to be taken in presence of the accused or his pleader. In *Ram Shankar v. State of Bihar*, it was held that the failure to observe this provision will render the trial vitiated.⁹ But this section is subject to certain exceptions under sections 205, 293, 299 and 317 of CrPC.

Interpretation of evidence to accused

Section 278 of CrPC provides for reading out the evidence of each witness to the accused and if the language in which the evidence is recorded is not understood by the accused, it shall be interpreted to him in the language understood by him. Similarly, section 279 requires such evidences, which have been given in a language not understood by the accused to be interpreted to him in open court in a language which he understands. However, the Supreme Court in *Shivanarayan Kabra v. State of Madras* ruled that non-compliance with Section 279(1) of Criminal Procedure Code will be considered as merely an irregularity not vitiating the trial if there was no prejudice or injustice caused to the accused person.¹⁰

Right to receive copies of police report and related documents

According to Section 207 of CrPC, the magistrate is under a duty to furnish to the accused, free of cost, copies of FIR, statements recorded by the police and of other relevant documents forwarded to the Magistrate along with the police report. The Supreme Court opined in *Gurbachan Singh v. State of Punjab*¹¹ that the right to have copies of statements recorded by the police is only in respect of statements recorded in the same case, and not in respect of statements recorded in any other case.

Under section 238 of CrPC, when an accused appears or is brought before a magistrate for commencement of trial, the magistrate shall have to satisfy himself that he has complied with the provisions of section 207. If the omission to supply copies under section 207 has led to injustice

⁹ 1975 Cri LJ 1402, 1403 (Pat)

¹⁰ AIR 1967 SC 986, 990

¹¹ AIR 1957 SC 623

towards the accused, the conviction of the accused would be set aside and a fresh trial would commence after furnishing him the required documents.

Right to cross examine and produce evidence

It was observed by the court in *Sukanraj v. State of Rajasthan*¹², that a criminal trial which denies the accused person the right to cross-examine prosecution witnesses is based on weak foundation, and cannot be considered as a fair trial. Similarly in *Habeeb Mohd v. State of Hyderabad*¹³ the Supreme Court ruled that if a magistrate refuses to issue process to witnesses named by the accused, without any legal justification, it shall vitiate the trial.

Accused a competent witness

Section 315 of CrPC enables an accused to be a competent witness and to present evidences in disproof of the accusations or charges leveled against him. But he shall not be made a witness unless he himself in writing requests to be made one.

Right against Wrongful arrest

If a person causes the arrest of another person wrongfully, the court is empowered by Section 358 to direct the complainant to pay compensation to the accused. For this section to be invoked, there should be absence of reasonable grounds for the arrest and also a direct nexus is to be established between complainant and the arrest.

Right to Appeal

Appeal is a review procedure where the appellant approaches a superior court against decision of a subordinate inferior court whose decision or judgement the appellant claims to be fallacious and thereby prays to correct it. The right to appeal though is not an inherent right and can only be availed when the law expressly provides for the same.

¹² AIR 1967 Raj 267, 268

¹³ AIR 1954 SC 51

ANALYSIS

The Indian criminal law and the constitution of India provide several rights to the accused to protect him from unlawful and unreasonable actions of the investigative authorities and to ensure prevalence of justice. These rights are available from before arrest till trial and even after the final outcome or judgement. After the judgement is delivered the accused has the right to appeal which is implicit in Article 21 of the constitution.¹⁴

Even after a plethora of rights are available, it does not mean that an accused is not exposed to injustices. Although enough laws and rights have been created to prevent any sort of bias against the accused, yet some fresh rights or protections need to be created in Indian Criminal law. One such right that is the need of the hour is the Right against media trial. We are seeing an emergence of parallel trial in media where an accused is declared guilty without any lawful appreciation of facts and evidences and a public uproar is created which tends to interfere with the due course of justice. It at times creates bias even in the minds of judges. Therefore the accused may be denied an actual fair trial.

Another right that needs to be explicitly incorporated in the Criminal law is the Right to Speedy Trial. There are huge number of under-trials languishing in Indian jails without being produced before a court even for once. Though certain provisions like Sections 309(1) and 437(6) do bestow similar rights but these are confined to a particular stage of criminal justice delivery system. Even the Supreme Court in *Hussainara Khatoon vs. State of Bihar*¹⁵ opined that speedy trial forms an essential constituent of the “reasonable, fair and Just procedure” as guaranteed under Article 21 of the Indian Constitution. A much robust provision which is more general in approach is required that provides speedy trial so that the accused doesn’t have to go through mental trauma and harassment.

A right against disclosure of identity of an accused charged of an offence in which the victim’s identity is prohibited to be unveiled is imperative. Laws dealing with offences like rape, sexual harassment etc. require the identity of the victim to be protected. But the accused’s identity is

¹⁴ M.H. Hoskot v. State of Maharashtra (1978) 3 SCC 544

¹⁵ AIR 1995 SC 366

disclosed and even before his guilt could be established he is socially stigmatized. His honor and respect in the society is hardly restored even when he is acquitted and is proved to be innocent.

Another right which an accused should have is right against social exclusion. There have been incidents where once a person is named accused in an offence, especially sexual offences, he is socially excluded. He is terminated from his job, is boycotted from local shops etc. Even before the accused is convicted he is punished on daily basis by society. The Jasleen harassment case of 2015 in Delhi is a glaring example of such exclusion. An article titled "*After 4 Years of Public Shaming & struggle, Saravjeet Singh finally proven not guilty in Jasleen Kaur Case*"¹⁶ in The Logical Indian highlights the accused's social stigmatization. On the same lines was the Rohtak sisters' case which was covered by The Print in its article titled "No jobs for us: Haryana men thrashed by sisters say clean chit for sexual abuse hasn't helped"¹⁷, underlines the need for such rights to the accused. Since, it is not just and equitable to make a person suffer solely because he has been accused for an offence even before he is declared guilty, he should have a right against social exclusion.

The criminal laws in India are going through major transformational phase and the rights of victim and accused are being enhanced so that justice doesn't fail and no innocent is punished. The principle of hundreds of guilty persons may get scot free but no innocent should be punished prevails.

¹⁶ <https://thelogicalindian.com/news/saravjeet-singh-jasleen-kaur/>

¹⁷ <https://theprint.in/india/governance/no-jobs-for-us-haryana-men-thrashed-by-sisters-say-clean-chit-for-sexual-abuse-hasnt-helped/130084/>