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Author:

Bhavya Vijaya Lakshmi

Symbiosis Law School, Noida

2nd Year, BBA LL.B.**RIGHTS OF AN ARRESTED PERSON UNDER THE INDIAN
CRIMINAL LEGAL SYSTEM****ABSTRACT**

The constitution of India provides every individual with a set of basic rights, called the Fundamental Rights. The fundamental rights enshrined in our constitution guarantees several basic human rights to the citizens of our country. Article 21 of the Indian constitution provides for rights which are valid for arrested, undertrials and convicts. These rights protect and prevents the arbitrary despotic use of power by the authority. The makers of the constitution ensured to grant basic humanitarian rights to every individual, even if she/he is a convicted criminal or an accused. In the leading case of Kishore Singh Ravinder Dev v. State of Rajasthan¹, it was said that the laws of India i.e., Constitutional, Evidentiary and procedural have made elaborate provisions for safeguarding the rights of accused with the view to protect his dignity as a human being and giving him benefits of a just, fair and impartial trail. It can therefore be said that, the punishments in the Indian Penal code are bound by the fundamental rights of an individual. The Indian Penal Code, 1860 (IPC) is the official criminal code of India. It is a comprehensive code intended to cover all substantive aspects of criminal law. Criminal Procedure Code (CrPC) is the main legislation on procedure for administration of substantive criminal law in India. It was enacted in 1973 and came into force on 1 April 1974. This research article deals with the various rights which is held with an arrested person. It also mentions the various legal recourse and remedies on being arrested or accused. The paper would like to explicit that one of the basic tenets of our legal system is the benefit of the

¹ 1981 AIR 625, 1981 SCR (1) 995

presumption of innocence of the accused till he is found guilty at the end of a trial on legal evidence. In a democratic society even the rights of an accused is inviolable. The research article would also mention the various precedents established by the courts.

INTRODUCTION

An arrest is using legal authority to deprive a person of his or her freedom of movement. An arrest is generally made with an arrest warrant. An arrest may be made without a warrant if probable cause and demanding circumstances are presented at the time of the arrest. When used in its ordinary and natural sense, the term arrest denotes the apprehension or restraint or the deprivation of one's personal liberty.² As per Legal Dictionary by Farlex, "Arrest" means "a seizure or forcible restraint and an exercise of power to deprive a person of his or her liberty by keeping a person in custody by legal authority, especially, in response to a criminal charge." The preamble to our constitution points out the keywords which are essential for formulating any laws, or treating any citizen of the country. These keywords are Justice, liberty, equality and fraternity. The procedure of treatment of a conflict is also revolving around these keywords and these are the ultimate goals to achieve. Our statute is carefully formulating to maintain the balance between punishment and anyone's personal liberty³ and hence doesn't permit the detention of any person without proper legal sanction. "No freeman shall be taken or imprisoned or deceased or outlawed or banished or any ways destroyed, nor will the King pass upon him or commit him to prison unless by the judgment of his peers or the law of the land."⁴

RIGHTS BEFORE AND DURING ARREST

As per the procedure, if a person breaks a law, a complaint petition or a First Information Report (FIR) is filed in the concerned police station or to the magistrate. After the complaint is filed, the authority has the duty to arrest the law breaker. However, in order to do so, a specific procedure has to be followed. Chapter V of CrPC lays down for the procedure of an arrest.

² Ratanlal & Dhirajlal, Commentary on the Code of Criminal Procedure 93 (18th ed. 2006).

³ Article 21 Of Constitution Of India: Protection Of Life and Personal Liberty. "NO person shall be deprived of his life or personal liberty except according to a procedure established by law."

⁴ English Magna Carta, 1215

Section 41(1) CrPC lays down that, any police officer may without an order from a magistrate and without a warrant arrests any person who has committed a cognizable offence, who is in possession of a stolen property, or is a state offender, who obstructs a police officer in discharge of his duty, who attempts to escape from lawful custody, who is declared as a deserted from any of the Armed Forces of the Union or who is a released convict and breaches his contract of release etc.

Section 42 of CrPC authorizes a police officer to arrest a person for an offence which is non-cognizable if the person to be arrested refuses to give his name and residence.

Section 43 CrPC gives the right to a general citizen to carry out an arrest of a person who in his presence commits a cognizable or a non-bailable offence or who is a proclaimed offender.

Section 44 CrPC talks about arrest by a magistrate. As per section 44(1) of CrPC, the Magistrate has been given the power to arrest an individual who has committed an offence in his presence and also commit him to custody.

However, the case is different for a cognizable and non-cognizable offence. Section 2(c) of CrPC deals with cognizable offence. Cognizable offence stands for an offence in which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a court.⁵ And non-cognizable offence is offence in which an arrest warrant is required to make an arrest.⁶

Another legal recourse lies with a person who anticipates his arrest. If a person has sufficient reason to believe that he might be arrested in near future, he can file a petition for anticipatory bail. Section 438 deals with Anticipatory bail.

RIGHTS OF AN ARRESTED PERSON

- **Every arrested person has the right to remain silent.** As held by Justice Malimath Committee, right to silence is extremely needed in societies where anyone can be arbitrarily held guilty of any charge. Thus, the convict is not under any obligation to talk during investigation. However, they should speak in front of a Magistrate, but it

⁵ Section 2(c) CrPC- "cognizable offence" means an offence for which and "cognizable offence" means a case in which, a police officer may, in accordance with the first schedule or under any other law for time being in force, arrest without warrant.

⁶ Section 2(1) CrPC- "non cognizable offence" means an offence for which, and "non cognizable case" means a case in which, a police officer has no authority to arrest without warrant.

should be voluntarily and without any duress. 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. In the decision of Supreme Court in the case of *Nandini Sathpathy v/s. P.L.Dani*⁷ it was held that no one can forcibly extract statements from the accused and that the accused has the right to be silent during the course of interrogation. The case established an interpretation regarding the right of an accused person to be silent while police interrogation in relation to Article 20(3) of the Indian Constitution and Section 161(1) of the CrPC. Article 20 of the Constitution of India provides fundamental rights to its citizen to be protected against any criminal offences that stand against him, that is Article 20(1) of the Constitution is also known as Ex Post-facto, which means that a person who is charged for an offence cannot be charged against any other act which is not in violation of any existent act and also it says that a person will only be charged for the penalty which is enforced at the time the offence took place. Moreover, in 2010 The Supreme court also made narco-analysis, brain mapping and lie detector test as a violation of Article 20(3).

- **An accused has the right to know the grounds of their arrest** and the offences under which they have been charged.⁸ Article 50(1) and 55 of CrPC deals with the rule and if not followed, it makes the arrest illegal. Article 22(2) of the Indian Constitution says that "no person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds of such arrest nor shall he be denied the right to consult, and to be defended by a legal practitioner of his choice." This right is very important for the person arrested as he may be innocent. If he gets to know of the grounds of arrest then it enables him to apply for bail or in appropriate circumstances for a writ of habeas corpus, or to make fast and suitable arrangements for his defense. Also, it gives the arrestee the right that any one person close to him is informed about his arrest immediately. If the case of arrest is to be made under a warrant, then Section 75 CrPC. provides that "the police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and if so required, shall show

⁷ 1978 AIR 1025, 1978 SCR (3) 608

⁸ *Madhu Limaye vs The State Of Maharashtra*, 1978 AIR 47, 1978 SCR (1) 749

him the warrant.” If the substance of the warrant is not notified, the arrest would be unlawful. It was established in Madhu Limaye case. Madhu Limaye was a member of the Lok Sabha. He and several other persons were arrested. Madhu Limaye addressed a petition in the form of a letter to the Supreme Court under Article 32 mentioning that he along with his companions had been arrested but had not been communicated the reasons or the grounds for arrest. one of the contentions raised by Madhu Limaye was that there was a violation of the mandatory provisions of Article 22 (1) of the Constitution. The Supreme Court observed that Article 22 (1) embodies a rule which has always been regarded as vital and fundamental for safeguarding personal liberty in all legal systems where the Rule of Law prevails. The court further observed that the two requirements of Clause (1) of Article 22 are meant to afford the earliest opportunity to the arrested person to remove any mistake, misapprehension or misunderstanding in the minds of the arresting authority and, also to know exactly what the accusation against him is so that he can exercise the second right, namely of consulting a legal practitioner of his choice and to be defended by him.⁹ The rules emerging from decision such as Joginder Singh v. State of U.P. and D.K. Basu v. State of West Bengal, have been enacted in 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.

- **Every person who is arrested has a right to consult a legal practitioner.** This has been mentioned as a fundamental right in Article 22(1) of the Constitution. Section 50(3) of the Code also lays down that the person against whom proceedings are initiated has a right to be defended by a pleader of his choice. The legal provisions for the same can be found in Sections 41(D), 50(3), 303 of CrPC and Article 22(1) of Constitution of India. This was expressed in the case of Janardhan Reddy v State of Hyderabad.¹⁰
- **The constitution also provides for free legal aid to the accused.** The Supreme Court in the case of in Khatri (II) v. the State of Bihar has held that the state is under a constitutional obligation to provide free legal aid to an indigent accused person as is

⁹ <http://www.legalservicesindia.com/article/1635/Rights-of-Arrested-Person.html>. (Last Assessed On 1st August 2021)

¹⁰ 1951 AIR 217, 1951 SCR 344

implicit in Article 21 of the Constitution. The constitutional obligation to provide free legal aid does not arise only when the trial commences but also attaches when the accused is for the first time produced before the magistrate, as also when remanded from time to time. The Supreme Court has therefore cast a duty on all magistrates and courts to inform the indigent accused about his right to get free legal aid. The apex court has gone a step further in *Suk Das v. Union Territory of Arunachal Pradesh*, wherein it has been categorically laid down that 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 entailing setting aside of the conviction and sentence. This provision proves to be most efficient in India, owing to the vast population lying below the poverty line. *Hussainara Khatoon vs State of Bihar*¹¹ and *M.H.Hoskote v State of Maharashtra*¹² lays down the precedent for the same.

- **Right to Be Taken Before a Magistrate Without Delay.** Section 56 of CrPC states that “Person arrested to be taken before Magistrate or officer in charge of police station- A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station”. Section 76 says that the person arrested is to be brought before Court without delay- The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person. This was shown in the case of *State of Punjab v Ajaib Singh*¹³.
- **The accused had the Right to a Fair and speedy Trial.** The Constitution under Article 14 guarantees the right to equality before the law. The Code of Criminal Procedure also provides that for a trial to be fair, it must be an open court trial. This provision is designed to ensure that convictions are not obtained in secret. In some exceptional cases the trial may be held in camera. However, the accused has no right to select or determine by which other court the case is to be tried. The Constitution also

¹¹ 1979 AIR 1369, 1979 SCR (3) 532

¹² 1978 AIR 1548, 1979 SCR (1) 192

¹³ 1965 AIR 1619, 1965 SCR (2) 845

provides an accused the right to a speedy trial. Although this right is not explicitly stated in the constitution, it has been interpreted by the Hon'ble Supreme Court of India in the judgment of Hussainara Khatoon. This judgment mandates that an investigation in trial should be held as expeditiously as possible.

- **Double Jeopardy-** A convict cannot be punished for the same offense twice. It is mentioned in Article 20(2) of the constitution and is based on the maxim, *nemo debet bis vexari, si constat curice quod sit pro una iti eadem causa*.
- **Information Regarding the Right to Be Released on Bail.** Section 50(2) CrPC provides that “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 in bail that he may arrange for sureties on his.”
- **The arrested person also has the right against unlawful detention.** Section 57 of CrPC deals with it. If the arrested person is not produced before a magistrate within 24 hours of the arrest, by the police officer then he shall be held guilty of wrongful detention.
- **Laws also grant special security, if the accused is female.** If the arrestee is a woman, it is necessary that she is handled by a female constable. According to Section 51(2) when it is necessary to cause a female to be searched, the search shall be by another female with strict regard to decency. Body searches of females should only be carried out by women and with strict regard to decency.
- **An arrested person also has the right to be examined by a medical practitioner.** Medical facility and examination are extremely important to ensure the physical well-being of the person. It also helps in gathering relevant evidence. It is presented in section 54 of CrPC. The case precedent was established in *Anil Lohande v State of Maharashtra*.

CONCLUSION

In a country like India, there is a huge possibility of misuse of power. The power of arrest given to the police comes with a set a reasonable restriction. Nonetheless, it becomes the breeding ground of despotic and autocratic violence by the authority. The involved authorities can easily pressurize the arrested person and compel them to confess or extort money from them. There have been several instances of police brutality leading to dead of a person in police custody. This also connects us to the awful condition of our prisons. The basic essence of our constitution provides for a beneficiary set up. There is no question about the heinous crime done by a person. He/she will be liable for the punishment as prescribed by the law. However, the fact that he is a criminal does not deprive him of his rights as a human. The simple analogy behind it is that, "Thousand accused can be punished but one innocent shouldn't be punished". Therefore, the criminal justice system is such formulated so as to reach the goal of Justice following the natural law. The executive or police are considered to be the law protectors. Thus, it is their duty to protect the citizens from harassment and prevent from taking laws in their hands. There is an eminent need to bring changes in Criminal Justice Administration so that state should recognize that its primary duty is not to punish, but to socialize and reform the wrongdoer and above all it should be clearly understood that socialization is not identical with punishment, for it comprises prevention, education, care and rehabilitation within the framework of social defence. Thus, in the end we find that Rule of law regulates the functionary of every organ of the state machinery, including the agency responsible for conducting prosecution and investigation which must confine themselves within the four corners of the law. "Darkness of Cages shall Allow you to Breathe For Thou shall not be Killed of Inhumanity !!"