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## Rights of arrested person in India

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### Abstract

The Constitution of India also contains various provisions guaranteeing the rights of the accused in all circumstances. While Article 14 guarantees equality before the law and equal protection of the laws, Article 21 states that "no person shall be deprived of his life or personal liberty except according to procedure established by law." Article 22 of the Constitution guarantees protection against arrest and detention in certain cases. It states that 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.

**Keywords:** Rights arrested person India

### 1. 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. 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 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.

The accused in India are afforded certain rights, the most basic of which are found in the Indian Constitution. The general theory behind these rights is that the government has enormous resources available to it for the prosecution of individuals, and individuals therefore are 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 an offence with which he is charged and he should be protected against arbitrary or illegal arrest. Police have a wide powers conferred on them to arrest any person under Cognizable offence without going to magistrate, so Court should be vigilant to see that these powers are not abused for lightly used for personal benefits. No arrest can be made on mere suspicion or information. Even private person cannot follow and arrest a person on the statement of another person, however impeachable it is.

Though the police has been given various powers for facilitating the making of arrests, the powers are subject to certain restraints. These restraints are primarily provided for the protection of the interests of the person to be arrested, and also of the society at large. The imposition of the restraints can be considered, to an extent, as the recognition of the rights of the arrested person. There are, however, some other provisions which have rather more expressly and directly created important rights in favour of the arrested person.

In the leading case of *Kishore Singh Ravinder Dev v. State of Rajasthan*, 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 (accused) dignity as a human being and giving him benefits of a just, fair and impartial trial. However in another leading case of *Meneka Gandhi v. Union of India* it was interpreted that the procedure adopted by the state must, therefore, be just, fair and reasonable.

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## 2. Rights of Arrested Person

### I. 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 Justice Malimath Committee writes about the origin of the right to silence that "it was essentially the right to refuse to answer and incriminate oneself in the absence of a proper charge. Not initially, the right to refuse to reply to a proper charge." The Justice Malimath Committee's assumption is that the right to silence is only needed in tyrannical societies, where anyone can be arbitrarily charged. It assumes that whenever a charge is "proper", there is no need for protection of the accused. In this backdrop it becomes necessary to examine the right to silence and its companion right against self-incrimination. These 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 procedural laws. The very prescription of procedure and the evolution of procedural law have to be understood in the historical context of the anxiety to substitute rule of men by rule of law. In law any statement or confession made to a police officer is not admissible. Right to silence is mainly concerned about confession. Breaking of silence by the accused can be before a magistrate but should be voluntary and without any duress or inducement. To ensure the truthfulness and reliability of the facts he stated the magistrate is required to take several precautions. Right to silence and the right against self-incrimination have been watered down quite considerably by interpretation than by legislation. The defendant if he so desires can be a witness in his trial. His confession outside the court either to the police officer or to the magistrate is admissible. He is encouraged to betray his colleagues in crime on promise of pardon. He is expected to explain every adverse circumstance to the court at the conclusion of evidence with the court having jurisdiction to draw adverse inference while appreciating the evidence against him.

The constitution of India guarantees every person right against self incrimination under Article 20 (3) "No person accused of any offense shall be compelled to be a witness against himself". It is well established that the Right to Silence has been granted to the accused by virtue of the pronouncement in the case of *Nandini Sathpathy vs P.L.Dani*, no one can forcibly extract statements from the accused, who has the right to keep silent during the course of interrogation (investigation). By the administration of these tests, forcible intrusion into one's mind is being restored to, thereby nullifying the validity and legitimacy of the Right to Silence.

### II. Right to Know the Grounds of Arrest

Firstly, according to Section 50(1) Cr.P.C. "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."

Secondly, when a subordinate officer is deputed by a senior police officer to arrest a person under Section 55 Cr.P.C., such subordinate officer shall, before making the arrest, notify to the person to be arrested the substance of the written order given by the senior police officer specifying the offence or other cause for which the arrest is to be made. Non-compliance with this provision will render the arrest illegal.

Thirdly, in case of arrest to be made under a warrant, Section 75 Cr.P.C. 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 him the warrant." If the substance of the warrant is not notified, the arrest would be unlawful.

Indian constitution has also conferred on this right the status of the fundamental right. Article 22(2) of the constitution provides 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."

The right to be informed of the grounds of arrest is a precious right of the arrested person. Timely information of the grounds of arrest serves him in many ways. It enables him to move the proper court for bail, or in appropriate circumstances for a writ of habeas corpus, or to make expeditious arrangement for his defence.

In *re, Madhu Limaye* the facts were: Madhu Limaye, Member of the Lok Sabha 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.

Whenever that is not done, the petitioner would be entitled to a writ of Habeas Corpus directing his release. Hence, the Court held that Madhu Limaye and others were entitled to be released on this ground alone.

It appears reasonable to accept that grounds of the arrest should be communicated to the arrested person in the language understood by him; otherwise it would not amount to sufficient compliance with the constitutional requirement. The words "as soon as may be" in Article 22(1) would mean as early as is reasonable in the circumstance of the case, however, the words "forthwith" in Section 50(1) of the code creates a stricter duty on the part of the police officer making the arrest and would mean "immediately".

If the arrest is made by the magistrate without a warrant under Section 44, the case is covered neither by any of the section 50, 55 and 75 nor by any other provision in the code requiring the magistrate to communicate the grounds of arrest to the arrested person. The lacuna in the code, however, will not create any difficulty in practice as the magistrate would still be bound to state the grounds under Article 22(1) of the Constitution.

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.

### III. Information Regarding the Right to Be Released On Bail

Section 50(2) Cr.P.C. 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.” This will certainly be of help to persons who may not know about their rights to be released on bail in case of bailable offences. As a consequence, this provision may in some small measures, improve the relations of the people with the police and reduce discontent against them.

### IV. Right to Be Taken Before a 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. These matters have been provided in Cr.P.C. under section 56 and 76 which are as given below:

56. 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.

76. Person arrested 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.

Provided that such delay shall not, in any case, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s Court.

When police though obtained remand of arrested person without producing him before magistrate within requisite period, it was held that there was gross violation of his rights under Article 21 and 22 (2). In *Bhim Singh v. State of J. & K.* The Court observed that when a person is imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases the Court has the jurisdiction to compensate the victim by awarding suitable monetary compensation. In this case a member of the Legislature Assembly was arrested while *en route* to seat of Assembly and in consequence, the member was deprived of his constitutional rights to attend the Assembly Session. The Court held that responsibility for arrest lay with higher echelons of the Government and it was fit case for compensating the victim by awarding compensation. Compensation of Rs. 50,000/- was awarded.

### V. Right of Not Being Detained For More Than 24 Hours without Judicial Scrutiny.

Whether the arrest is without warrant or under a warrant, the arrested person must be brought before the magistrate or court within 24 hours. Section 57 provides as follows:

57. Person arrested not to be detained more than twenty-four hours- No police officer shall detain in custody a person

arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s Court.

This right has been further strengthened by its incorporation in the Constitution as a fundamental right. Article 22(2) of the Constitution proves that “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.” In case of arrest under a warrant the proviso to Section 76 provides a similar rule in substance.

The right to be brought before a magistrate within a period of not more than 24 hours of arrest has been created with a view-

- i. To prevent arrest and detention for the purpose of extracting confessions, or as a means of compelling people to give information;
- ii. To prevent police stations being used as though they were prisons- a purpose for which they are unsuitable;
- iii. To afford to an early recourse to a judicial officer independent of the police on all questions of bail or discharge.

In a case of *Khatri(II) v. State of Bihar*, the Supreme Court has strongly urged upon the state and its police authorities to ensure that this constitutional and legal requirement to produce an arrested person before a Judicial Magistrate within 24 hours of the arrest be scrupulously observed. This healthy provision enables the magistrate to keep check over the police investigation and it is necessary that the magistrates should try to enforce this requirement and where it is found disobeyed, come heavily upon the police.

If 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.

In a case of *Poovan v. Sub- Inspector of Police* it was said that whenever a complaint is received by a magistrate that a person is arrested within his jurisdiction but has not been produced before him within 24 hours or a complaint has made to him that a person is being detained within his jurisdiction beyond 24 hours of his arrest, he can and should call upon the police officer concerned; to state whether the allegations are true and if so; on what and under whose custody; he is being so helped. If officer denies the arrest, the magistrate can make an inquiry into the issue and pass appropriate orders.

### VI. Rights at Trial

#### i. Right of Fair 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. Every accused is entitled to be informed by the court before taking the evidence that he is entitled to have his case tried by another court and if the accused subsequently moves such application for transfer of his case to another court the same must be transferred. However, the accused has no right to select or determine by which other court the case is to be tried.

### **ii. Right of Speedy Trial**

The Constitution 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". 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.

### **VII. Right to Consult a Legal Practitioner**

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. Further, as has been held by the Supreme Court that state is under a constitutional mandate (implicit in article 21) to provide free legal aid to an indigent accused person, and 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. It has been held by the Supreme Court that non-compliance with this requirement and failure to inform the accused of this right would vitiate the trial. Section 50(3) also provides that any person against whom proceedings are instituted under the code may of right be defended by a pleader of his choice. The right of an arrested person to consult his lawyer begins from the moment of his arrest. The consultation with the lawyer may be in the presence of police officer but not within his hearing.

### **VIII. Rights of Free Legal Aid**

In *Khatri(II) v. State of Bihar*, the Supreme Court has held that the state is under a constitutional mandate (implicit in Article 21) to provide free legal aid to an indigent accused person, and 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. However this constitutional right of an indigent accused to get free legal aid may prove to be illusory unless he is promptly and duly informed about it by the court when he is produced before it. 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.

### **IX. Right to Be Examined By a Medical Practitioner**

Section 54 now renumbered as Section 54(1) provides:  
54. Examination of arrested person by medical practitioner at the request of the arrested person  
When a person who is arrested, whether on a charge or otherwise, alleges, at the time when he is produced before a Magistrate or at any time during the period of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of

any offence against his body, the Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice.

### **X. Right of the Accused to Produce an Evidence**

The accused even has right to produce witness in his defense in case of police report or private defense. After the Examination and cross examination of all prosecution witness i.e. after the completion of the prosecution case the accused shall be called upon to enter upon his defense and any written statement put in shall be filled with the record. He may even call further for cross examination. The judge shall go on recording the evidence of prosecution witness till the prosecution closes its evidence.

The accused in order to test the veracity of the testimony of a prosecution witness has the right to cross-examine him. Section 138 of Indian Evidence Act, 1872 gives accused has a right to confront only witnesses. This right ensures that the accused has the opportunity for cross-examination of the adverse witness. Section 33 of Indian Evidence Act tells when witness is unavailable at trial, a testimonial statement of the witness maybe dispensed by issuing commission. The testimony at a formal trial is one example of prior testimonial statements which can be used as documentary evidence in a subsequent trial.

When in the course of investigation an accused or any other person desiring to make any statement is brought to a magistrate so that any confession or statement that he may be deposed to make of his free will is record. Confession statements by accused to the police are absolutely excluded under Section 25, Evidence Act.

### **Important Judicial Pronouncements on Arrest**

#### ***Joginder Kumar v. State of U.P***

In order to have transparency in the accused- police relations the Supreme Court held that right of arrested person upon request, to have someone informed about his arrest and right to consult privately with lawyers are inherent in Articles 21 and 22 of the Constitution. The Supreme Court observed that no arrest can be made because it is lawful for the Police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest should be made by Police Officer without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest.

#### ***The Supreme Court issued the following requirements:***

1. An arrested person being held in custody is entitled, if he so requests, to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as practicable that he has been arrested and where is being detained.
2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.
3. An entry shall be required to be made in the Diary as to who was informed of the arrest.

These protections from power must be held to flow from Articles 21 and 22 (1) and enforced strictly.

### ***D.K. Basu v. State of W.B***

The frequent instances of police atrocities and custodial deaths have promoted the Supreme Court to have a review of its decisions like Joginder Kumar, Nilabati Behera etc. Therefore, the Supreme Court issued in the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures.

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody, by a doctor in the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.
9. Copies of all the documents including the memo of arrest, referred to above, should be sent to illaqa Magistrate for his record.
10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

11. A police control room should be provided at all Districts and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the Officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

The Court emphasized that failure to comply with the said requirements shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of Court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter. The requirements flow from Articles 21 and Article 22 (1) of the Constitution and need to be strictly followed. The requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the Courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

### **3. Conclusion**

It is generally believed 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 commonplace 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 rights of the arrested persons falling through the cracks.

There is imminent need to bring in 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.

It is the duty of the police to protect the rights of society. It must be remembered that this society includes all people, including the arrested. Thus, it is still the police's duty to protect the rights of the arrested person. Hence, in light of the discussed provisions, a police officer must make sure that handcuffs are not used unnecessarily, that the accused is not harassed needlessly, that the arrested person is made aware of the grounds of his arrest, informed whether he is entitled to bail and of course, produced before a Magistrate within twenty-four hours of his arrest.

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