



RIGHTS OF ARRESTED PERSON- A CONSTITUTIONAL AND LEGAL ANALYSIS

By Kunal Garg
From Amity Law School, Noida

Abstract

The Indian legal system is based on the principle of "innocent till proven guilty." The Criminal Code of Procedure 1973 and the Indian Constitution grant certain protections to individuals arrested to protect their interest. Police powers to enforce arrests are subject to certain restrictions. The imposition of these limitations can be regarded as acknowledgment of the rights of the person arrested. The constitution of India also recognizes the rights of those arrested as fundamental rights. The researcher attempts to elucidate these basic rights in this article.

CHAPTER I

Introduction

The apex court in the case *State of Haryana v Dinesh Kumar*¹ cited the meaning of arrest given in Halsbury's laws of England "The word arrest when used in its ordinary and natural sense means the apprehension Or restraint or the deprivation of one's personal liberty. When used in legal sense in the procedure connected with criminal offense an arrest consists in the taking into custody of another person under authority empowered by law for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offense the essential element to constitute an arrest in the above sense are that there must be an intent to arrest under the authority accompanied by a seizure or detention of the

person in the manner known to law which is so understood by the person arrested"

The basic principle behind these protections is that the government has massive resources at its disposal for the prosecution of individuals, and so individuals are entitled to some protection from the government's abuse of those powers. During any investigation, an accused has certain rights; examination or prosecution of an offense for which he is charged, and should be shielded from unreasonable or unlawful detention. Police have broad powers to detain any individual under Cognizable Crime without going before a judge, and Court will be careful and see that such powers are not misused by being used lightly by personal benefit. There can be no arrest on the merely suspicion or facts. Even a private citizen cannot obey and detain another citizen on someone else's argument, however unjustifiable it may be.

Arrest so made comes with many rights enshrined by the constitution and the criminal procedure court which began at the time of arrest till the person is detained by the police. These rights are basic in nature and are provided to safeguard the individual arrested against the atrocities and misuse of power by the police inflicted on the accused. In a free society like ours, law is quite careful toward one's "personal liberty" and doesn't permit the detention of any person without legal sanction. Even article 21 of our constitution provides: "No person shall be deprived of his life or personal liberty except according to procedure established by law". The procedure contemplated by this article must be 'right, just and fair' and not arbitrary, fanciful or oppressive. The arrest should not only be legal but justified also a person in custody of the police, an under-trial or a convicted individual does not lose his human

¹ State of Haryana v Dinesh Kumar 2008 3 S.C.C. 222



and fundamental rights by virtue of incarceration. The intention of the legislature in laying down these principles has been that hundreds of guilty persons may get out free but even one innocent should not be punished. Indian Constitution itself provides some basic rights and safeguards to the accused persons which are to be followed by the authorities during the process of criminal administration of justice. Aim of this study is to provide careful consideration on the rights and privileges of the person captured under the criminal code of procedure and the constitution.

CHAPTER II Right to silence

The 'right to silence' arose from the principles of common law. It means that normally courts or tribunals should not conclude that the person is guilty of any behavior merely because he has not answered questions that the police or the court have asked. The Justice Malimath Committee in its report was of the opinion that in societies where anyone can be arbitrarily held guilty of any charge the right to silence is very much needed. Any statement or confession made to a police officer in a court of law is not admissible, as provided by the law of evidence. Court in the case of *Nandini Sathpathy v. P.L.Dani*²

Where it was held that no one could physically obtain answers from the accused and that the accused was entitled to remain silent during the investigation.

CHAPTER III Right to be informed of the grounds of arrest and right to bail

The primary requirement of lawful arrest is the notification of reasons of arrest along with the charges issued against the Arrestee. Section 50 (Criminal Procedure Code 1973) provides that a person arrested without a warrant should be informed of the full details of the offense and of the grounds for his arrest by a police officer or other person making the arrest, and where the offence is bailable of his right to be released on bail [right to bail sec.50(2)]. when a person is arrested with a warrant the police officer executing the warrant of arrest will notify the substance to the arrestee [sec 75] further [under sec 55] when a subordinate officer is deputed by a senior officer to arrest a person he will notify the person to be arrested the content of the written order given by the senior officer stating the offense or cause for which the arrest is made. Section 50 being mandatory, confers a valuable right and non-compliance with it amounts to disregard of procedure established by law. The timely information helps the accused person in many ways, as it offers an opportunity to explain any mistake or confusion in the executing authority's mind and to move the competent court for bail in suitable circumstances and for a writ of habeas corpus to plan his defense³. It is not necessary to furnish full details of an offence but adequate particulars put be given to the arrestee to enable him to understand the grounds of his arrest. The detention becomes unlawful when the grounds given are not proper and sufficient⁴.

Article 22 (1) of the Constitution provides that a person arrested for an offence under ordinary law be informed as soon as may be the grounds of arrest. The grounds of arrest should be communicated to the arrested

² *Nandini Satpathy v P.L. Dani and Anr.* A.I.R. 1978 SC 1025,

³ *Govind Prasad v state* 1975 C.R.L.J 1249 CAL

⁴ *Madhu Limaye vs The State Of Maharashtra* 1969 A.I.R. 1014 1969 SCR (3) 154



person in the language understood by him; otherwise it would not amount to sufficient compliance with constitutional requirements. (Johari 2004)⁵

CHAPTER IV

Right to be produced before a magistrate

The arrested person should be promptly produced before a judge or magistrate this right has been created to prevent the arrest from becoming means of compelling the arrestee to give information and to enable the judicial authority independent of the police to determine the question of bail or discharge. Section 56 of The Criminal Procedure Code stipulates that in the case of an arrest without warrant a police officer is expected without unnecessary delay to produce the arrested person before a before a magistrate having jurisdiction. section 57 states that no police officer can 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 will not (in the absence of a special order of magistrate under section 167) exceed 24 hours . Thus the person arrested should be produced before the magistrate within 24 hours of this arrest .The period of 24 hours does not include the time necessary for the journey from the place of arrest to the magistrates court. This right is not only a formality but it is substantial protection given to the accused so that if there is no case against him he can be released on bail or released immediately. It is important that the magistrate should try to enforce this condition and where it is found defied with come down heavily upon the police⁶

Article 22(2) of the Indian constitution states that In addition to the furnishing of the grounds of arrest the arrested person must be produced before the magistrate within 24 hours of his arrest. The period can be extended beyond 24 hours only under in the case of judicial custody Article 22 of the constitution is to give a shield against the acts of non judicial authorities or of the acts of Executive .Thus under these provisions of the constitution the accused has the right to be produced before a magistrate within the time of 24 hours thus securing a speedy trial. In the case of C.B.I v. Anupam j. Kulkarni⁷ the Supreme Court laid down the extensive guidelines that should be followed while making arrest of an accused person when under some circumstances investigation cannot be done within 14 hours. The court also held that production before magistrate within 24 hours is mandatory and from these the magistrate has the sole authority of extending the period of detention which will in not be more than 15 days. After this period depends the next step is judicial custody.

CHAPTER V

Right to consult with a lawyer or legal aid

According to section 303 of the code the right of every arrested person to consult a legal practitioner of his choice. The right begins from the moment of arrest⁸ which is the pre-trial phase. The arrestee also has the right to consult with his/her friends and relatives if they wish so⁹. The consultation with the lawyer meant to protect him is to be the presence a police officer on duty but not within the range of hearing of the officer¹⁰. According to Article 22 (1) of the

⁵ Johari JC. The constitution of India A Politico -Legal Study. Sterling Publishers Pvt. Ltd, 2004 .

⁶ Khatri v state of Bihar 1981 C.R.L.J. 470

⁷ CBI V/s Anupam J Kulkarni (1992) 3. S.C.C 141

⁸ Moti Bai v state A.I.R. 1954 Raj 241

⁹Francis Coralie Mullin v Administrator Union Territory of Delhi 1981 A.I.R. 746

¹⁰Joginder Kumar v State Of U.P 1994 A.I.R. 1349,



Constitution any person arrested cant be denied the basic right to consult or to be defended in the court of law by a legal practitioners this is mandatory for a fair and just trail to happen. The reason behind recognition of this right is simple that the accused may not have the competency and skills to fight his case.

In Hussainara Khatoon v. Home Secretary¹¹, Bihar, the Supreme Court has held that it is the constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty or indigence to have free legal services provided to him by the State and the state is under constitutional duty to provide a lawyer to such person if the needs of justice is so require. If free legal services are not provided the trial may be vitiated as contravening Article 21. It was also held (per Bhagwati J) that the state cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving, the administrative and judicial apparatus with a view to improving speedy trial.

CHAPTER VI

Special protection to women

Women shall not be arrested without the presence of a lady constable and further no female be arrested under sunset and Sheela Barse versus state of Maharashtra the apex code took note of the custodial violence in women lodge in police lockup and directed that there should be lockups in good localities exclusively for female suspects further the interrogation of females aspects should be

carried only in presence of female police officers¹² Section 53(2) of the criminal code established the statutory principle that a female medical practitioner should embody medical review. Supreme court in State of Maharashtra v Christian community¹³ welfare council held that when arresting a female accused all efforts should be made to keep a lady constable present but in the situations where the arresting officers are reasonably satisfied that any lady constable is not-available or it's not possible at the moment to secure her presence at the arrest sight and a delay can take place in investigation then the arresting officer should record these reasons and carry on with the arrest as usually made in case of arresting a man.

CHAPTER VII

Rights available to person under preventive detention

Right or safeguards available to person detained under preventive detention law [clauses 4 to 7 article 22 of the constitution] the expression preventive detention means to retain a person without trial. The purpose of preventive detention is to detain a person as a precautionary measure to prevent him or her from doing something on the apprehension that he or she is likely to do something wrong unless detained

Laws governing preventive detention are follows

- a) No detention beyond three months unless such detention is approved by the advisory board.

¹¹ Hussainara Khatoon v Home Secretary, State of Bihar 1980 S.C.C. 98

¹² Sheela Barse & Ors v Union Of India & Ors J.T.1986 136

¹³ State of Maharashtra Vs Christian Community Welfare Council of India 2003 8 SCC 546



- b) The detaining authority must communicate as soon as maybe to the detenu, the grounds for his detention.
- c) the detenu must be given the earliest opportunity of making a representation against the order of detention
- d) No detention beyond maximum period prescribed under the law made by parliament under clause 7(b)

CHAPTER IX

Consequences of non-compliance with arrest provisions

A trial will not be void because the arrest provisions have not been fully followed. If the court has jurisdiction over an offense and illegality will not overthrow the courts jurisdiction to try that offence¹⁴ it will also not affect that the accused person is guilty or not guilty of the offence which he is charged however illegality or irregularity of arrest would be quite material if such person is prosecuted on a charge of resistance to or to escape lawful custody. If a public servant, who has authority to make an arrest knowing the exercises that authority in contravention of law by making an illegal arrest he can be prosecuted under section 220 of IPC further if any person illegally arrest another person is punishable under section 342 IPC for wrongful confinement as illegal arrest is similar to false imprisonment and the one who makes such arrest exposes himself to a suit for damages in civil court. The provisions regarding arrest cannot be by passed by alleging that there was no arrest but only informal retention by police¹⁵

CHAPTER X

Safeguard against custodial torture

¹⁴ Prabhu v emperor A.I.R. 1944 Mad 369

Torture is the systematic deliberate infliction of acute pain in any form by one person to another. Experts in Supreme Court observed custodial violence (torture, rape or death) in police custody or lock up is a matter of deep concern it infringes article 21 of the constitution as well as the basic human rights. In 2008 (c.r.p.c amendment) a new section been inserted to take care of custodial torture to some extent. Section 55A (health and safety of arrested person) stipulates that it is the duty of person having the custody of an to take reasonable care of health and safety of the accused thus making it obligatory on the part of police having custody of the accused to take care of the health and safety of those arrested.

CHAPTER XI

Conclusion

The constitution states that the rights of accused are fundamental rights. Fundamental rights are considered to be basic and should be provided to all despite of them being incarcerated. These rights are well stipulates and elucidated on the paper but when it comes to the ground the reality seems to be extremely altered than what is written in the constitution. The police deployed to protect the society is often the one that destroys our faith in the system. Even those accused do not cease to be the citizens of our country and are still a part of the society that the police is deployed to protect. It is also clear that the police also use their power to undermine the people caught and use their fear to coerce cash. There are constant accounts of custodial abuse that Convince the deprivation of the captured individuals fundamental rights has turned out to be common these days. It is police responsibility to protect the rights of

¹⁵ Queen-Empress vs Gobardhan (1887) I.L.R. 9 All 528



society. It is still the duty of the police to secure the privileges of the captured person. There is an urgent need to make reforms in the Criminal Justice System such that the state can understand that its primary responsibility is not to prosecute but to socialize and improve the wrongdoer and, above all, it should be clearly recognized that socialization is not synonymous with incarceration, as it requires prevention, education, treatment and rehabilitation in the sense of social security. Furthermore, in the light of the regulations mentioned, a police officer must ensure that handcuffs are not inappropriately used, that the accused is not inappropriately threatened, that the detained person is made aware of the reasons for his detention, that he is notified of his right to bail and, of course, that he is brought before a Magistrate within 24 hours of his detention.

References:

1. RIGHT OF ARRESTED PERSON UNDER THE INDIAN CONSTITUTION
<http://gjar.org/publishpaper/vol2issue9/d3175r39.pdf>
2. The Functionaries under the Code of Criminal Procedure, 1973.pdf.
<https://www.scribd.com/document/443454462/The-Functionaries-under-the-Code-of-Criminal-Procedure-1973-pdf>
3. **Rights of Arrested Person**
<http://www.legalservicesindia.com/article/1635/Rights-of-Arrested-Person.html>
4. Rights of Arrested Person With Reference To Criminal and Constitutional
<http://www.onlinejournal.in/IJIRV3I6/200.pdf>
5. An analytical study on the rights of arrested and accused person in India and Malaysia Divya M
6. Remand by a Judicial Magistrate if Investigation is not completed. Retrieved

May 17, 2020, from
<http://www.legalserviceindia.com/legal/article-573-remand-by-a-judicial-magistrate-if-investigation-is-not-completed-within-24-hrs.html>

7.

RIGHTS OF ACCUSED AT PRETRIAL STAGE retrieved april 30 by
<http://tinsukiajudiciary.gov.in/source/misnotice/Rights%20of%20Accused.pdf>

8. Rights OF ACCUSED UNDER THE INDIAN CONSTITUTION

https://shodhganga.inflibnet.ac.in/bitstream/10603/127852/13/08_chapter%202.pdf

9. The constitution of India
<http://legislative.gov.in/sites/default/files/col4March2016.pdf>
10. The Code Of Criminal Procedure 1973
<http://lawcommissionofindia.nic.in/101-169/Report154Vol2.pdf>
