

# Arrest and the rights of the arrested in India

## Introduction

*"Darkness of Cages shall Allow you to Breathe*

*For Thou shall not be Killed of Inhumanity !!"*

Every person has to be treated as a human being first, irrespective of the fact that such person is a criminal. Even so the accused is considered innocent till proven guilty by a court of law. It is a characteristic of our democratic society that even the rights of the accused are deemed to be sacrosanct, even though he is charged with an offence.

Our statute is quite careful towards anyone's "personal liberty" and hence doesn't permit the detention of any person without proper legal sanction. It is provided by the article 21 of our constitution that there will be no person who shall be deprived of his life or personal liberty except according to procedure. The scope for corruption and connected malpractices arises at several stages in the day-to-day working of the Police. It can start at the time of registering a case, for taking a call to arrest or not arrest or for extortion or collecting 'hafta' for interfering in civil disputes, for producing false evidence and so on.

The power of arrest is the most important source of corruption and extortion by the police officers. From the moment, a case is registered by the Police on a cognizable complaint, they get the power to arrest any person who may be 'concerned in that offence', either on the basis of the complaint itself or on credible information otherwise received.

The procedure laid down by Article 21 must be followed in a 'right, just and fair' and not in any arbitrary, fanciful or oppressive manner. It is expected that the arrest should not only be legal but justified also. Even the Constitution of India, recognizes the rights of arrested person under the Fundamental Rights. Hence, the accused has been provided with certain rights under the law.

## What is arrest?

# Definition and meaning

Generally, a person who breaks the law is arrested. So, what is arrest? In general term, 'arrest' would mean that when a person is arrested they lose some of their freedom and liberty. They are put under restraint.

The Criminal Procedure Code of 1973, however, that deals with the aspects of arrests, has not defined the 'Arrest'. When a person is arrested, then the arrested person is taken into custody of an authority empowered by the law for detaining the person. The person is then asked to answer the charges against him and he is detained so that no further crime is committed.

At times, there is restraint by the legal authority but sometimes the person on his own submits to the custody of the person making the arrest.

As per Legal Dictionary by Farlex, "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."

In Indian law, Criminal Procedural Code 1973 (hereinafter referred to as CrPC), chapter V (Section 41 to 60) talks about Arrest of a person but it does not define arrest anywhere.

## Types of Arrest: Two types of arrest

1. An arrest made in view of a warrant issued by a magistrate
2. An arrest made without such a warrant but in accordance with some legal provision permitting such an arrest

## Who can arrest?

The arrest can be made by police, magistrate and even a private person

Section 41(1) CrPC Says: Any police officer- may without an order from a magistrate and without a warrant arrest any person who has committed a cognizable offence, who is in possession of 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 deserter from any of the Armed Forces of the Union, who is a released convict and breaches his contract of release etc.

Section 42 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 gives the right to a private person like you and me 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 arrest by 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, CrPC exempts the members of Armed forces from being arrested for anything done by them in discharge of their official duties except after obtaining the consent of the government (section 45 CrPC).

Section 46 of CrPC explains how arrest is made with or without warrant. Section 46(4) special protection as females, that forbids arrest of women after sunset and before sunrise, except in exceptional circumstances in which case the arrest can be done by a woman police officer after making a written report obtaining a prior permission from the concerned judicial magistrate of first class within whose local jurisdiction the offence is committed or the arrest is to be made.

## **Constitutionality of Section 107 and 151 of CrPC**

For the purpose of arresting without a warrant, a police officer may pursue such an individual into any place in India as stated under Section 48. Section 49 of the Code says that the arrested person shall not be subject to any unnecessary restraint or physical inconvenience unless it is required to do so to prevent his escape.

Section 151 gives power to the police officials to arrest a person, without a warrant, on the suspicion that he may commit a cognizable offence. However, this comes with certain conditions: the anticipated offence should be cognizable and the officer should feel that the offence would be prevented only by an arrest of the suspect. Section 107 gives similar powers to the magistrate. However, Numerous petitions have been filed questioning the constitutional validity of these sections as it gives plenty of room for the misuse of powers under these sections.

# Landmark Case Laws

**Birendra Kumar Rai vs Union of India 1992**

It was held that to make an arrest the police officer need not be handcuff the person, and it can be completed by spoken words also if the person submits to custody himself.

It was held in the case of **Bharosa Ramdayal vs Emperor, 1941**, that if a person makes a statement to the police admitting himself of committing an offence, he would be considered to submitting to the custody of the police officer. Also, if the accused goes to the police station as directed by the police officer, he has again considered to have submitted to the custody. In such cases, physical contact is not required.

In **Kultej Singh vs Circle Inspector of Police, 1992**, it was held by the court that keeping a person in custody in the police station or confining the movement of the person in the precincts of the police station amounts to arrest of the person.

**Medha Patkar v. State (2007)**: This is a case in MP regarding the Sardar Sarovar Project. Some landowners and other people who were affected by this project in MP gathered on the road, shouting slogans, demanding land for land and other rehabilitation measures. The gathering was peaceful without disturbing public order and peace but despite this the Police took it upon themselves to beat the protestors and arrest all of them under Section 151 of CrPC and also summoned by the Magistrate under Section 107 of CrPC. There were women and children too among the protestors. When the protestors did not submit a personal bond then sending them to jail, **still amounted to the violation of Article 21 of the Constitution of India.**

## Rights of an arrested person in India

### Introduction

The accused in India are afforded certain rights, the most basic of which are found in the Indian Constitution. Article 21 of Indian Constitution provides few rays of hope to the lives of arrested, under trials and convicts. The treatment of such people has to be humane and in the manner prescribed by law. Hence, the accused has been provided with certain rights under the law.

The rights are as follows and have been discussed in the chapters that follow, of this project in detail.

## **They are as follows and there is a brief mention of the legal provisions for them.**

### **Grounds of Arrest: Right to be informed**

This right has been given the status of a Fundamental right in the Indian Constitution. 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 arrangement for his defence. Also, it gives the arrestee the right that any one person close to him is informed about his arrest immediately.

Madhu Limaye Case is an example here.

The legal provisions for the same can be found in:

Section 50(1), 55, 75 of CrPC and Art 22(2) of the Constitution of India

### **Right to Silence**

Just because the accused /arrested person chose to be silent under interrogation doesn't mean that he is guilty. There is much speculation if this right is to be exercised in modern times as mentioned in Justice Malimath Committee's report.

**Nandini Sathpathy vs P.L.Dani**: In this case it was mentioned that no one can forcibly extract statements from the accused, who has every right to keep silent if he so chooses.

The legal provisions for the same can be found in:

### **Art 20(2) of the Constitution of India**

## **Right to be released on Bail**

Article 21 of the Indian Constitution says that every individual shall have a right to liberty as per procedures established by law. However, an accused cannot be given all these liberties till he is proven innocent. But he needs to be informed that he has a right to apply for bail in bailable offences and even in non-bailable offences, bail is granted by the Court after taking into factors such as nature or seriousness of the offence, the character of the evidence etc.

Case Law: Uday Mohanlal Acharya v. State of Maharashtra

The legal provisions for the same can be found in:

Sections 50(2), 436, 437, 438 of CrPC

Sections 42, 43, 56, 59, 169, 170, 436, 437 and Schedule I Column 5 of CrPC also confer the right to grant bail to the accused but by the police under certain rules.

## **Right to be taken before Magistrate without delay**

Whether the arrest was made with or without warrant. The person making such an arrest is duty bound to present the accused before the magistrate within 24 hours excluding the time taken for traveling from the place of arrest to the Magistrates' court.

Case Law: State of Punjab v Ajaib Singh

The legal provisions for the same can be found in:

Sections 56, 71, 76 of CrPC

## **Rights regarding detention**

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.

This right has been created with a view-  
i. that the arrestee is not compelled to give confessions, or as a means of

compelling people to give information;  
ii. So, the police stations don't act like prisons for which they are unsuitable.

Case Law: Gunupati Keshavram v. Nafisul Hasan

The legal provisions for the same can be found in:

Section 57 of CrPC, Art 22(2) of the Constitution of India

## **Rights at trial**

Keeping with the international system of law, our constitution upholds the fair trial system and the same is also seen in our procedural law. Fair trial is necessary to protect the accused individual's basic rights from unlawful and arbitrary deprivation and it is also based on the principle of natural justice.

Case Laws:

- *Rattaram v. Territory of Madhya Pradesh AIR 2012 SC 1485.*
- *Zahira Habibullah Sheik and Ors. v. Province of Gujarat and Ors (2006) 3 SCC 374*

The legal provisions for the same can be found in:

Article 14 and 21 of Constitution of India

## **Right to consult a legal practitioner**

The Supreme court upheld the right of consulting a legal practitioner by an accused as a Constitutional right under Articles 21 and 22(1) of the Constitution of India.

Case Law: Janardhan Reddy v State of Hyderabad is an example.

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

## **Rights to free legal aid**

In India, this facility is provided to all poor accused inspite of the severity of the crime they have committed. This is for the 3-tier justice system in totality at every stage. This service is provided both for the trial and appeal as neither the Indian Constitution nor does the Legal Services Authorities Act makes any distinction between them.

Case Laws:

- Hussainara Khatoon vs State of Bihar
- M.H.Hoskote v State of Mahashtra

The legal provisions for the same can be found in:

Section 304 CrPC, Articles 21, 39(A) of Constitution of India

## **Right to be examined by a medical Practitioner**

This is an absolute necessity to put on record any mark or injuries or ascertain the health of the accused when taken into custody and put it on record. Subsequently this also works as check to ensure if there was any torture by the powers that be during interrogation or during custody.

Case Law: Anil Lohande v State of Maharashtra

The legal provisions for the same can be found in:

Section 53 and 54 of CrPC

## **Right of the accused to produce evidence**

Very important right to the proceedings of a fair trial.

Case Law: Joginder Kumar v State of U.P

The legal provisions for the same can be found in:

Section 243(1), 273 of CrPC.



