

principle but a common sense observation of fact. It is this spirit that has led to the evolution of ADR Mechanisms for the dispensation of justice with efficacy and steadfastness!

ADR has applicability and benefits in areas varying from commercial to family law and in every area of industry where disputes may arise. The EU's Green Paper discusses various methods of on-line dispute resolution which has the advantage of being able to use innovative technology and communications between the parties can and should be rapid.

Ireland is an attractive location for international arbitration. Ireland has ratified the New York Convention on the Recognition and Enforcement of Arbitral Agreements and as an English speaking Common Law jurisdiction offers an effective cost efficient location for such arbitrations.

ADR is rapidly becoming developing as an alternative to litigation but has yet to receive the open acceptance of the legal and business communities. ADR is being introduced coyly but it is only a matter of time before ADR will find many suitors.

RIGHTS OF ARRESTED PERSON UNDER THE INDIAN CONSTITUTION

By

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Introduction :

Generally a police officer cannot arrest a person without any warrant, but in some cases the police can arrest any person without obtaining the warrant of arrest from the competent authority.

As a general rule every arrested person has certain rights, but those rights are not known to many persons. Like it may be said that every police officer has certain rights in arresting a person without a warrant. If an accused person arrested by a honest police officer, he will not be suffered but he arrested by a dishonest police officer definitely the accused will be suffer irreparable loss and cannot retain their life.

The Object of this Article is to analyze the rights of arrested person and the safeguards given to the accused/prisoners by the Constitution from the hands of the police.

Before discussing the rights of arrested person we should have to know what is the meaning of arrest.

Meaning of Arrest :

Arrest means to deprive the liberty of a person by some lawful authority for the purpose of compelling his apprehension. But every compulsion or physical restraint of a person is not arrest but when the restraint is total and deprivation of liberty is complete, it would amount to arrest. That the arrested person shall not be subjected to more restraint than is necessary to prevent his escape.

The Criminal Procedure Code reveals about the arrest and how to stop the misuse of powers of the police officer. The Courts also made several suggestions and guidelines with regard to the rights of arrested persons. But some police officers creating custodial violence by misusing their power and authority

by fraudulently and dishonestly. We cannot said all arrests are unjustified, but in most of cases police made unjustifiable things without making arrest. The police officer would be guilty of misconduct and personally liable for compensation or damages as may be summarily determined by the High Court. To determine the safeguards against arrest and preventive detention the Constitution incorporated Articles 20, 21 and 22.

Rights of arrested person

Article 20, clause (3) recognizes the privilege of an accused person to guard himself against self incrimination. The accused can refuse to answer any question that is put to him with the intention to incriminate him.¹ The protection under Article 20(3) is available to only accused of an offence. This Article provides that no person shall be compelled to be a witness against himself. This protection was not given to a person who voluntarily confess the offence before a competent Court.

Article 21 explains the Protection of life and personal liberty. The object of this Article is to give assurance for the safety of life and liberty of person. But such guarantee is subjected to an inherent limitation, it is not an absolute guarantee, before *Maneka Gandhi's* case². Until this case there is no guarantee in our Constitution against legislation upon personal liberty. It was expressed in he *Gopalan's* case also.

Article 22 of the Constitution provides certain safeguards against arrested persons and for preventive detention.

1. Right to know the grounds of arrest:-

The accused has a mandatory right to know the grounds of arrest. Therefore in every case of arrest with or without warrant the arresting person shall communicate to

the arrested person without any delay, the grounds for his arrest.³ This is a precious right of the arrested person and has been recognized by the Constitution Under Article 22(1) as one of the fundamental rights. Giving the information of the grounds of arrest without delay saves the arrested person in many ways. It gives him an opportunity to make expeditious arrangements for his defence.

2. Right to be released on bail:-

When a police officer arrests without warrant any person accused of a non-bailable offence he must inform the arrested person that he has a right to be released on bail.⁴

This is a new section. It has been now expressly provided that every person arrested without warrant should be informed of the grounds of his arrest and if the arrest is made without a warrant in a bailable case, the person should be informed of his right to be released on bail.

In *Setrucharla Chandrasekhara Raju v. State of A.P.*,⁵ case involvement of a plaintiff witness in the alleged Crime under Section 429 of IPC which occasioned the arrest. No evidence except that plaintiff's witness. Mandatory requirements compelling the arresting Police Official to inform the arrestee about the offence and his entitlement to bail – Non-compliance in the instant case.

It is further laid down that the grounds of arrest should be communicated to the person arrested immediately.

3. Right to be produced before a Magistrate without any delay – Sections 56 and 57:

These sections provide and gives a valuable right to the accused. The Police

1. *Nandini Satpathy v. Dani*, AIR 1978 SC 1025.

2. AIR 1978 SC 597

3. Section 50(1), Cr.P.C.

4. Section 50(2), Cr.P.C.

5. 2000 (2) ALT (CrL) 372 (A.P.)

Officer, who arrests the person, shall produce before the Magistrate within 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

That the accused's production before the Magistrate was well within the 24 hours of the arrest came to be criticized by the Bombay High Court. The Court ruled that the arrest commences with the restraint placed on the liberty of the accused and not with the time of arrest recorded by the arresting officer.⁶ The right has also been incorporated in the Constitution under Article 22(2) as one of the fundamental rights. Actual arrest not necessary for producing before Magistrate. Production before Magistrate mandatory even if investigation may not be completed within 24 hours.⁷ That cannot be construed as a right given to Police Officer to keep a person in custody in police station for 24 hours prior to arrest. Unauthorized detention before arrest is illegal.⁸

4. *Personal liberty:-*

Section 57, Cr.P.C. and of the Constitution Articles 21 and 22 clearly says that violation of procedure for arrest and detention by police even during investigation of crime amounts to breach of personal liberty violative of Articles 21 and 22 of the Constitution.

This right 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 an early recourse to a judicial officer

independent of the police on all questions of bail or discharge.⁹ Section 57 enables the Magistrates to keep a 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 down heavily upon the police. The procedure that should be followed in such cases has been spelt out by the Kerala High Court in Poovan¹⁰ as discussed in this para.

5. *Right to consult a legal practitioner:-*

Section 303 of the Criminal Procedure Code and Article 22(1) of the Constitution recognize the right of every arrested person to consult a legal practitioner of his choice. The right begins from the moment of arrest. The consultation with the lawyer may be in the presence of the police officer but not within his hearing.

6. *Free legal aid:-*

Article 21 gives a right to detainee to meet his legal adviser and family members and friends. Any unreasonable restriction in this regard would violate Articles 21 and 14. Right to legal aid is a part of the right under this Article. Hence the State is constitutionally bound to provide such aid.

In *Khatri (II) v. State of Bihar*¹¹, the Supreme Court has held that the State is under a constitutional mandate to provide free legal aid to an indigent accused person, and that this constitutional obligation to provide legal aid does not arise only when the trial commences but also when the accused is for the first time produced before the Magistrate as also when he is remanded from time to time. The Supreme Court has therefore imposed on all Magistrates and Courts to

6. *Ashak Hussain Allah Detba alias Siddique v. Asst. Collector of Customs(P)*, 1990 Cri.L.J. 2201 (Bom. H.C.) at 2205.

7. *Mrs. Iqbal Kaur Kwatra v. Director General of Police*, 1996 (2) ALT 138 (D.B.)

8. *E. Venkateswarulu v. Y. Suryanarana*, 1998 (2) ALT 65

9. *Muhammad Suleman v. King Emperor*, 30 CWN 985, 987(F.B.) (Per Rankin J.)

10. 1993, Cri.L.J. 2183 (Ker. H.C.)

11. (1981) 1 SCC 627; 1981 SCC (Cri.) 228, 233-234; 1981 Cri.L.J.470.

inform the indigent accused about his right to get free legal aid.

It has gone a further step in *Suk Das v. Union Territory of Arunachal Pradesh*¹², in which right to free legal aid was treated as an inherent right of the persons under Article 21 of the Constitution and it has been laid down that this constitutional right cannot be denied if the accused failed to apply for it. It is now 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.

7. Right to be examined by a Medical practitioner:-

Section 54 of the Code provides that the person arrested may request the Magistrate to order for the examination of his body. This section confers an important right on an arrested person. It is the right of an arrested person to have his medical examination done. It is the duty of the Magistrate to inform the arrested person to have this right to get himself medically examined. This right is most important in the cases of his complaint that he has been physically tortured and maltreated in police custody.

According to the Supreme Court, the arrested accused person must be informed by the Magistrate about his right to be medically examined in terms of Section 54.¹³

Apart from the above rights given by the Constitution the Supreme Court also gave the following guidelines with regard to the rights of arrested persons.

The Supreme Court by receiving a covering letter from *D.K. Basu*, Retired Justice, with an enclosure of a newspaper cutting

with regard to the custodial violence on arrested persons, took those letter as a PIL case and apart from the above mentioned rules the Supreme Court delivered the judgment and laid down the following guidelines in *D.K. Basu v. State of West Bengal*.¹⁴

Supreme Court of India to prevent custodial violence issued various guidelines to be followed in case of arrest of a person. It also issued direction to the Director Generals of Police and Home Secretaries of the Union of India and States to report about complying of guidelines and it also ordered to Broadcast the guidelines on Doordarshan and all India Radio.

Supreme Court laid down certain basic requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as a measure to prevent custodial violence.

The requirements are as follows:

1. Particulars of Police Personnel:-

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. Witness to arrest:-

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 either be 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.

12. AIR 1986 SC 991; (1986) 2 SCC 401 = 1986 SCC (Cri.) 166 = 1986 Cri.LJ 470

13. *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96 = 1983 SCC (Cri.) 353 = 1983 Cri.LJ. 642 and Also see *Mukesh Kumar v. State*, 1990 Cri.L.J. 1923 (Del. H.C.)

14. AIR 1997 SC 610; (1997) 1 SCC 416 = 1997 SCC (Cri.) 92.

3. *Information must be notified:-*

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.

4. *Details of Injuries:-*

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.

5. *Medical Examination:-*

The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by the Director, Health Services of the State or Union Territory concerned. The Director, Health Services should prepare such a panel for all tehsils and district as well.

6. *Documents must be sent:-*

Copies of all documents including the memo of arrest referred to above should be sent the Illaqa Magistrate for his record.

7. *Permission to meet Lawyer:-*

The arrestee may be permitted to meet his lawyer during interrogation, though not throughout interrogation.

8. *Communication:-*

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 need for having more transparency in the accused-police relations has been emphasized by the Supreme Court in *Joginder Singh v. State of U.P.*¹⁵

(i) 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 is practicable that he has been arrested and where he is being detained.

(ii) The police officer shall inform the arrested person when he is brought to the police station of this right.

(iii) 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 follow from Articles 21 and 22(1) and enforced strictly.

The Magistrate is obliged to satisfy himself that these requirements have been complied with.¹⁶

The Supreme Court also opined that failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned 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 right to compensation for the victims of unlawful arrest and detention has been

15. (1994) 4 SCC 260

16. (1994) 4 SCC 260, 268

recognized by the Supreme Court in *Nilabati Behera v. State of Orissa*.¹⁷

It is to be noted that these instructions are applicable to authorities like Directorate of Revenue Intelligence, Directorate of Enforcement, C.B.I., C.I.B., C.I.S.F., *etc.*, which have the power to effect arrest and detain persons for interrogation.

A police officer should not arrest a person only by suspecting that a person involved in a criminal activity beyond reasonable doubt. If the arrested person is not an accused it is the violation of his fundamental rights and justice, he cannot escape from the wrongful arrest. For that reason only all these rights are conferred on the arrested person. The main aim of these rights are making the arrest as a documentary evidence. With regard to the arrest they must mention all the details in a record, case diary, Inspection Memo, doctor's report, details of injuries and immediately send the documents to the Magistrate *etc.* by giving these instructions to the police so that the relatives of the arrested person can easily know the details of the arrest by observing the record and it may be useful to apply for bail.

It may be also stated by the Supreme Court if a police officer arrested a person illegally, the consequences of non-compliance with the provisions relating to arrest as follows:

1. A trial will not be void simply because the provisions relating to arrest have not been fully complied with.
2. Though the illegality or irregularity in making an arrest would not vitiate the trial of the arrested person, it would be quite material if such a person is prosecuted on a charge of resistance to or escape from lawful custody.

3. If the arrest is illegal, the person who is being so arrested can exercise the right of private defence in accordance with, and subject to, the provisions contained in Sections 96 to 106 of the IPC.
4. If the public servant having authority to make arrests, knowingly exercises that authority in contravention of law and effects an illegal arrests, he can be prosecuted for an offence under Section 220 of the IPC. Apart from this special provision, any person who illegally arrests another is punishable under Section 342 of the IPC for wrongful confinement.
5. If the arrest is illegal, it is a tort of false imprisonment, and the arrested person is entitled to claim damages from the person who made such an arrest.

It has been ruled by the Supreme Court in *Nilabati Behera* that victims of unlawful arrest and detention have right to compensation.¹⁸

It may be mentioned here that the provisions relating to arrest cannot be bypassed by alleging that there was no arrest but only informal detention. Informal detention or restraint of any kind by the police is not authorized by law.

Conclusion:

By discussing the rights of the arrested persons it was known that whether the fundamental rights are given to the arrested person or not? According to Justice *Bhagavathi* prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed. Conviction for a crime does not reduce the person into a non-person whose rights are subject to the whim of the prison administration. But this situation was different in the present society. In the

17. (1993) 2 SCC 746. Also see *D.K. Basu* case, and *People's Union for civil Liberties v. Union of India*, 1997 SCC (Cri.) 434.

18. *Ibid.*

society an arrested person released by proving his innocence also cannot survive because no one can provide any job and due to that arrest their family members will be suffered.

It is stated that the Indian police is well known to all the people throughout the world about their harassment, third degree methods, atrocities on the innocent people, whether they are innocent or offenders. That is the reason of incorporating the Articles 20, 21 and 22 to give safety to the arrested persons from the police. Article 22 is the extension of Article 20 and 21, but the police are not following the provisions, these Articles are remained on papers only.

The police arresting the persons without any reasonable doubt and by the influence of

political leaders, higher officials and by the influence of business magnates arresting, torturing and harassing to confess the crime which they have not done, and they also not producing them before the Magistrate within 24 hours of the arrest. Moreover the police manipulating date of arrest and the case diary before submitting to the Magistrate. These things cannot be known to the ordinary persons and they cannot prove in the Court of law.

Even literate people do not know what are the rights and entitlements under the law. The law ceases to be their protector because they do not know that they are entitled for the protection of law and they can avail the legal services programmes for putting an end to their exploitation and winning their rights.

SEXUAL HARASSMENT OF WOMEN

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Introduction :

Woman played an important role in the life of man like as mother, sister, wife, daughter. Indian history also says without the support of women we cannot achieve anything. Due to that our Indian epics, Vedas and Upanishads says “Yatra Naryantu Pujiyathe tatra Devata Ramante”. The meaning of this phrase is ‘where females are honoured, there the deities are pleased. But these words are not followed by the men from that time to till the modern era.

From last several decades the women were subjected to sexual harassment

irrespective of their age, religion, caste and economic status. It was well known thing to all over the world.

By seeing the critical condition of the women *Mahatma Gandhiji* stressed with melted heart, on the occasion of Independence of India, “I can say that India would get its full freedom only if a woman walks in the street in the midnight”. Now the guidelines given by Mahatma are ridiculed. Under the spirit of the Constitution, from time to time Indian Parliament enacted several Acts and making amendments to the old laws but these all are remain on papers only. But the miserable stories of the women in all religions are the same. It destroys the dignity