

Rights of Arrested Person

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Abstract

'No one guilty until proven', thus even an arrested person shall not be deprived basic rights. The researcher in this research paper will focus on the various right that have been given to the arrested person in Criminal Procedure Code and various articles that are enumerated in Constitution of India which guarantee certain right to the arrested person as well.

Keywords- arrested person, rights, arrest, police

Research Objective

- To know the various rights provided by Criminal procedure code and Constitution of India to the arrested person.

Research Methodology

The methodology used in this paper is Doctrinal. No primary sources have been used. It is based on the information and data collected from secondary source. They include books, Criminal Manual. Doctrinal research is a theoretical study where most secondary sources of data are used to seek to answer one or two legal propositions or questions or doctrines.

Introduction

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

There is an underlying presumption of innocence wherein no person is guilty until proven so thus the onus of proof in general lies with prosecutor. Thus, rights of accused in democratic society are respected. These rights may be in regard the time of arrest, at times of search or seizure, or during the process of trial and so on.

'Arrest' means the deprivation of a person of his liberty by legal authority or at least by apparent legal activity. For instance, a police officer apprehends a person committing an offence is legal but a dacoit apprehends a person for ransom is not arrest since, there was no legal authority. Mere restrain on movement is not arrest but when the restrain is total and deprivation is complete, then it that will amount to arrest. Constitution of India and Universal Declaration of Human Rights guarantees basic human right to all, a person cannot be denied of the same on the grounds that he/she has been detained. Various rights are guaranteed to the arrested person that can be inferred from Code of Criminal Procedure, Constitution of India and law of precedents. Article 21¹ of Constitution of India guarantees that, "no person shall be deprived of his life or personal liberty except according to the procedure established by law." Right to Fair trial, right to free legal aid, right against delayed execution, right against custodial harassment, right to speedy trial, right to information are included in the ambit of Article 21.

¹ Constitution Of India

There are certain circumstances in which police officers, magistrate or a private citizen are authorized to make an arrest without a warrant. These circumstances are enumerated under section 41 to 44 of Criminal Procedure Code, 1973. Under section 46 of the code, the manner of arrest can be affected by any such person has been provided:

“(1) In making the arrest the policer officer or other person making the same shall actually touch or confine the body of a person to be arrested, unless there be a submission to the custody by word or action:

[Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.]

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

2 [(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.]”

Arrest, being a restraint on the liberty of a person, can only be affected by actually contacting or touching the body of such a person or by submission into the custody of a person making the arrest. An oral declaration of arrest in the absence of contact or submission to custody will not amount to an arrest². Although the submission to the custody as mentioned, may be by expressed words or may be indicated by conduct.³ For example, if a person has made a statement to a police officer, accusing himself of committing an offence, then it would be considered that he has submitted hi self to the custody of the police officer.⁴

Rights under constitution

(1) Indian Constitution under Article 22(1)⁵, Constitution of India- it is a fundamental right, which says: “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.” The right to be informed of the grounds of arrest is one the most precious right granted to the arrested person⁶. Timely

² Harmohanlal v. Emperor, (1929) 30 Cri LJ 128

³ Paramhansa v. State, AIR 1964 Ori 144

⁴ Bharosa v. Emperor, (1941) 42 Cri LJ 390

⁵ Constitution Of India

⁶ Udaybhan Shuki v. State of U.P., 1999 Cri LJ 274 (All)

knowledge of grounds of arrest helps arrested person in many ways, for example, it enables the arrest person to move to the proper court for bail etc.

Also, the grounds of arrest should be communicated in a language that is understood by the arrested person, otherwise it cannot be said that sufficient compliance has been made as per the constitutional requirement.⁷

In the cases where arrest is made by the Magistrate without a warrant under section 44 of Cr.P.C, this sort of case is neither covered in any of the sections of Cr.P.C (section 50, Section 55 and Section 75 of Cr.P.C) nor by any other provision requiring the Magistrate to communicate the ground of arrest, although as per article 22(1) of Constitution of India, it is a mandate for Magistrate also and he is bound to state the grounds of the arrest to the arrested person.

- (2) Article 22(2) Constitution of India, *“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.”* Mandates that an arrested person should be presented before the Magistrate within 24 hours of the arrest.
- (3) Right to consult a legal practitioner- Article 21(1) of Constitution of India provides that, *“no person who is arrested shall be denied the right to consult a legal practitioner of his choice.”* Further, it has been held by Supreme Court of India that the State is a constitutional mandate to provide free-legal aid to an indigent accused person, and this constitutional obligation to provide for free-legal aid does not only arise when the trial commences but also attaches when the accused is produced for the first time before Magistrate, as also when he is remanded from time to time.⁸ The Supreme Court of India has also observed that the non-compliance of this requirement and failure to inform the accused person regarding his rights would vitiate the trial.⁹

Also, as per the section 303 Cr.P.C., the person against whom the proceedings have initiated has the right of being defended by a pleader of his choice. The right of an accused person to consult his lawyer begins from the moment of his arrest.¹⁰ Although, the consultation can be in front of police officer but not within his hearing.¹¹

The Supreme Court of India, in the case *Suk Das v. UT of Arunachal Pradesh*¹², categorically laid, that this constitutional right cannot be curtailed or denied even if the accused fails to apply for it. It has been 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.

Rights under Criminal Procedure Code 1973

Criminal Procedure Code, 1973, gives some rights to the arrest persons as well-

⁷ *Harikisan v. State of Maharashtra*, (1962) 1 Cri LJ 797

⁸ *Khatri (2) v. State of Bihar*, (1981) 1 SCC 627

⁹ *Sudhsindhu De v. Emperor*, ILR (1934) 62 Cal 384

¹⁰ *Sudhsindhu De v. Emperor*, ILR (1934) 62 Cal 384

¹¹ *Sundar Singh v. Emperor*, (1931) 32 Cri LJ 339

¹² (1986) 2 SCC 401

- (1) Under section 50(1) of Cr.P.C gives Right to the arrested person, to know the ground of the arrest.

50(1) 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

Also, if a subordinate officer is deputed by a senior police officer to make an arrest under section 55, then such a subordinate officer shall, before making an arrest, notify the person to be arrested the substance of written order given by the senior police officer specifying the offence or any other cause for which the arrest is to be made, non-compliance of this provision, will render the arrest as illegal.¹³ In case, arrest is made under a warrant, Section 75 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 warrant is not notified, then too, arrest will amount to be unlawful.

In the case, *Joginder Kumar v. State of U.P.*¹⁴ and *D.K. Basu v. State of West Bengal*¹⁵, the rule was emerged, 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 an 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.

- (2) Under Section 50(2) of Cr.P.C gives right to the arrested person, the right to be released on bail.

“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 on bail and that he may arrange for sureties on his behalf.”

It may help a person who is unaware of his rights to be released on bail in a case of bailable offences.

- (3) Right to be taken before a Magistrate without delay

Whether the arrest is made with without a warrant by police officer or the arrest is made by any person with a warrant, the person making the said arrest shall bring the arrested person before a judicial officer without any delay. Also, it is been provided that a arrested person should not be confined in any place other than a police station before he has been taken to the Magistrate. The matters latter talked, are enumerated in Section 56 and 76 of the Cr.P.C. 56. *“—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. *“—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 twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s Court.”

- (4) Under section 57 of Cr.P.C, gives right to the arrested person, the right of not being detained for more than 24hours without judicial scrutiny.

¹³ *Ajit Kumar v. State of Assam*, 1976 Cri LJ 1303 (Gau)

¹⁴ (1994) 4 SCC 260

¹⁵ (1997) 1 SCC 416

Irrespective of fact, whether arrest is made without warrant or under a warrant, the arrested person should be presented before the magistrate or court within 24 hours of arrest.

57. "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".

Also, in case of arrest under warrant- a similar rule is provided in proviso of section 76 Cr.P.C. This right of being presented before magistrate within a period of 24 hours has been created with the following views-

- i) For prevention of arrest and detention for the purpose of extracting confessions, or as a mean for compelling people to give out information.
- ii) To prevent police stations been used as that they are prisons- a purpose which is unsuitable or they aren't made for
- iii) To afford an early recourse to a judicial officer independent of the police on all questions of bail or discharge.¹⁶

"The Supreme of India has strongly urged upon the State and its police authorities to ensure that this Constitutional and legal requirement to produce an arrested person before Judicial Magistrate within 24 hours of the arrest be scrupulously observed. This healthy provision enables the magistrates 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."¹⁷ In case, a police officer fails to produce an arrested person within 24 hours, then that police officer shall be held liable for wrongful detention.¹⁸ "The Magistrate can also exercise his powers for making searches under section 97 Cr.P.C. to issue a search warrant and in case of non-compliance to proceed against the officer for contempt and initiate proceedings under section 372 Indian Penal Code 1860."¹⁹

Under section 57 Cr.P.C., the words "special order of a Magistrate under Section 167", refers to the power of Magistrate, to order detention in police custody for a limited period in order to facilitate police investigations. Although, Magistrate before passing any such order under section 167 has to satisfy himself as to the necessity of remanding the accused to police custody.

- (5) Right to be examined by a medical practitioner- section 54 Cr.P.C., empowers court to get the arrested person medically examined.

Section 53 Cr.P.C., enables police officer to compel an arrested person to undergo a medical examination, in the view to facilitate investigation, whereas section 54 Cr.P.C., gives right to the accused person to get himself medically examined, enable him to defend and protect himself properly. "a person who is arrested should be given the right to have his body examined by a medical officer when he is produced before the Magistrate or at any time

¹⁶ Mohd. Suleman v. King Emperor, (1925-26) 30 CWN 985

¹⁷ Khatri (2) v. State of Bihar, (1981) 1 SCC 627

¹⁸ Sharifbai v. Abdul Razak, AIR 1961 Bom 42

¹⁹ Poovan v. Sub-Inspector of Police, 1993 Cri LJ 2183 (Ker)

when he is under custody, with the view to enable him establish the offence with which he is charged was not committed by him or that he was subjected to physical injury.”²⁰

Conclusion

Despite the multiple safeguards in the Cr.P.C. as well as the Constitution, it is widely considered that the police's power of arrest is still being exploited today. It is also thought that police officers frequently threaten arrested individuals and take use of their position to extort money. There have also been several stories of custodial cruelty, leading many to assume that detained people are deprived of their basic rights has been increasingly in recent years.

In its report on criminal justice reforms, the Mallimath Committee noted that the accused has the right to know what rights he has under the law and how to protect those rights. There have also been allegations that the police refuse to tell those arrested people of the charges levied against them, leaving them to struggle for themselves in detention, completely unaware of their supposed offences.

There is an urgent need for changes in Criminal Justice Administration so that the state recognizes that its primary responsibility is not to punish, but to socialize and reform the wrongdoer, and that it is clearly understood that socialization is not the same as punishment, because it includes prevention, education, care, and rehabilitation within the framework of social defence. As a result, we see that the Rule of Law regulates the functionaries of every organ of the state machinery, including the agencies in charge of prosecuting and investigating crimes, which must operate within the confines of the law.

It is the duty of Police to protect and preserve the rights of society. It's important to remember that this society encompasses everyone, including those who have been arrested. As a result, the police must continue to defend the arrested person's rights. In light of the foregoing, a police officer must ensure that handcuffs are not used unnecessarily, that the accused is not harassed unnecessarily, that the arrested person is informed of the grounds of his arrest, whether he is eligible for bail, and, of course, that he is produced before a Magistrate within twenty-four hours of his arrest.

²⁰ Joint Committee Report, p.ix.