

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:

- *Rattiaran 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.

Conclusion

The Code of Criminal Procedure, 1973 provides certain safeguards but till date the power of arrest given to the police is being misused. It is believed till today that the police use authority in order to threaten arrested people and extort money from them. There have been reports that the police fail to inform the arrested people against the charges against them and do not provide them with adequate means of representation they should get. Thus it is very important to bring changes in Criminal Justice Administration so that the State knows that its primary duty is to seize and reform the wrongdoer and not just punish him. All of the proceedings go according to the Rule of Law which regulates functions of all organs of the State's Machinery. It also includes people and agencies conducting prosecution and investigation cases.

It is the first and foremost duty of the police to protect all individuals and their rights in society which also includes the arrested people. Thus, it is the duty of the police to also protect the rights of the accused and make sure that they are treated fairly according to the proceedings established by law and not harassed unnecessarily. The police should make sure that the person arrested is informed about his rights like grounds of arrest, if he / she is entitled to bail and produced before a magistrate within twenty four hours.