

## **What Are the Rights of an Arrested Person?**

Any person has to be treated as a human being, irrespective of the fact that such person is a criminal. The accused persons are also granted certain rights, the most basic of which are found in the Indian Constitution. The basic assumption behind these rights is that the government has enormous resources available to it for the prosecution of individuals, and individuals, therefore, are entitled to some protection from misuse of those powers by the government. An accused has certain rights during the course of any investigation; enquiry or trial of offence with which he is charged, and he should be protected against arbitrary or illegal arrest. Given below are some of the most important rights of an arrested person:

### **Rights of Arrested Person**

#### **1. Right to Silence**

The 'right to silence' has been derived from common law principles. It means that normally courts or tribunals should not conclude that the person is guilty of any conduct merely because he has not responded to questions which were asked by the police or by the court. The Justice Malimath Committee in its report was of the opinion that right to silence is very much needed in societies where anyone can be arbitrarily held guilty of any charge. As per the law of evidence, any statement or confession made to a police officer is not admissible in a court of law. Right to silence is mainly concerned about confession. The breaking of silence by the accused can be before a magistrate but should be voluntary and without any duress or inducement.

As per Article 20(3) of Constitution of India guarantees every person has been given a right against self-incrimination, it states that any person who has been accused of any offence, shall not be compelled to be a witness against himself. The same was again reiterated by a decision of Supreme Court in the case of *Nandini Sathpathy v. P.L.Dani*; wherein it was held that no one can forcibly extract statements from the accused and that the accused has the right to keep silent during the course of interrogation (investigation). The Supreme Court again in the year

2010, held that narco-analysis, brain mapping and lie detector test are in violation of Article 20(3) of the Constitution of India.

## **2. Right To Know The Grounds of Arrest**

2.1) As per Section 50(1) of Cr.P.C., every person who is being arrested by any police officer, without any warrant, is entitled to know the full particulars of offence for which he is being arrested, and that the police officer is duty bound to tell the accused such particulars and cannot deny it.

2.2) As per Section 55 of Cr.P.C., when any person is being arrested by any police officer, who is deputed by a senior police officer, then such subordinate officer shall before making such arrest, notify the person to be arrested the substance of the written order given by the senior police officer specifying the offence or other cause for which the arrest is to be made. If this provision is not complied with, then the arrest would be rendered illegal.

2.3) if the person is being arrested under a warrant, then as per Section 75 of Cr.P.C, any person who is executing such warrant must notify the person to be arrested, the particulars of such warrant, or even show such warrant if needed. If the substance of the warrant is not notified, the arrest would be unlawful.

2.4) the Constitution of India also confers this right as one of the fundamental rights. Article 22(2) of the constitution provides that “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.”

## **3. Information Regarding The Right To Be Released On Bail**

Any person who is to be arrested without a warrant and is not accused of a non-bailable offence has to be informed by the police officer that he is entitled to be released on bail on payment of the surety amount.[\[1\]](#) This helps persons who are arrested for bailable offences and are not aware of their right to be released on bail.

## **4. Right To Be Taken Before A Magistrate Without Delay**

Irrespective of the fact, that whether the arrest was made with or without a warrant, the person who is making such arrest has to bring the arrested person before a

judicial officer without any unnecessary delay. Further, the arrested person has to be confined in police station only and nowhere else, before taking him to the Magistrate. These matters have been provided in Cr.P.C. under sections 56 and 76 which are as given below:

Section 56 of Cr.P.C. states that “*Person arrested to be taken before Magistrate or officer in charge of police station- 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*”.

Section 76 of Cr.P.C. states that “*Person arrested to be brought before Court without delay- 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*”.

Further, it has been mentioned in the proviso of Section 76 that such delay shall not exceed 24 hours in any case. While calculating the time period of 24 hours, the time necessary for the journey is to be excluded. The same has been enumerated in the Constitution as a Fundamental Right under Article 22(2). This right has been created with a view to eliminate the possibility of police officials from extracting confessions or compelling a person to give information.

If the police officials fails to produce an arrested person before a magistrate within 24 hours of the arrest, the police officials shall be held guilty of wrongful detention.

## **6. Rights at Trial**

### **6.1) Right To A Fair Trial**

The Constitution under Article 14 guarantees the right to equality before the law. The Code of Criminal Procedure also provides that for a trial to be fair, it must be an open court trial. This provision is designed to ensure that convictions are not obtained in secret. In some exceptional cases the trial may be held in camera.

### **6.2) Right To A Speedy Trial by the Constitution of India**

Though this right has not been specifically mentioned in the Constitution, however, the SC in the Hussainara Khatoon case has made it mandatory that the investigation in the trial must be conducted “as expeditiously as possible.”

In cases, wherein the maximum punishment that can be imposed is 2 years, once the accused is arrested, the investigation for the trial has to be completed within the period of six months or stopped on receiving an order from the Magistrate, unless the Magistrate receives and accepts, with his reasons in writing, that there is cause to extend the investigation.

### **7. Right To Consult A Legal Practitioner**

Every person who is arrested has a right to consult a legal practitioner of his own choice. This has been enshrined as a fundamental right in Article 22(1) of the Constitution of India, which cannot be denied in any case. Section 50(3) of the Code also lays down that the person against whom proceedings are initiated has a right to be defended by a pleader of his choice. This starts begins as soon as the person is arrested. The consultation with the lawyer may be in the presence of police officer but not within his hearing.

### **8. Rights Of Free Legal Aid**

The Supreme Court in the case of in Khatri(II) v. the State of Bihar has held that the state is under a constitutional obligation (implicit in Article 21) to provide free legal aid to an indigent accused person as is implicit in Article 21 of the Constitution . This right does not come into picture only at the time of trial but exists at the time when the accused is produced the first time before the magistrate, as also when remanded from time to time. The Supreme Court further states that failure on the part of the state to inform the accused of this right will vitiate the whole process of trial. Therefore, a duty is imposed on all magistrates and courts to inform the indigent accused of his right to get free legal aid. The apex court has gone a step further in Suk Das v. Union Territory of Arunachal Pradesh, wherein it has been laid down that this constitutional right cannot be denied if the accused failed to apply for it. It is 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.

## **9. Right To Be Examined By A Medical Practitioner**

Section 54 of Cr.P.C. enumerates this right. It states that:

Section 54 of Cr.P.C:- “Examination of arrested person by medical practitioner at the request of the arrested person- When a person who is arrested, whether on a charge or otherwise, alleges, at the time when he is produced before a Magistrate or at any time during the period of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body, the Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice.”

Important case

### **D.K. Basu v. State of W.B**

Despite several attempts being made by issuing guidelines in various cases, to eradicate the possibility of the committing torture by the police officials, there were frequent instances of police atrocities and custodial deaths. Therefore, the Supreme Court, in this case, issued some guidelines which were required to be mandatorily followed in all cases of arrest or detention. Following are some of the important ones-

The person who is going to arrest any accused should bear accurate, visible, and clear identification along with their name tags with their designation.

The police officer who is arresting the arrestee must prepare a memo of arrest, and it should be attested by at least one person who may either be a family member of the arrestee or any other respectable person in the locality. The memo must contain the date and time of arrest and must also be countersigned by the arrestee.

If the person who has signed the memo of arrest is not a family member, relative or friend of the arrestee, then the arrestee is entitled to have one friend or relative being informed about his arrest as soon as possible.

The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

Entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

The police officer should, on the request of arrestee, record at the time of his arrest major and minor injuries, if any, present on arrestee's body, after subjecting the arrestee to an examination. The "Inspection Memo" must be signed both by the arrestee and the police official making such arrest, and one copy of that memo must be provided to the arrestee.

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

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

The court also ordered that in every district and state headquarters, a police control room should be established, wherein every arrest which is being made must be reported by the police officer making such arrest within 12 hours of such arrest, and it should be displayed on a conspicuous notice board.

The Court also emphasized failure to fulfill the given requirements would render the concerned officer liable for contempt of court along with departmental actions, and such proceedings can be initiated in any High Court having the territorial jurisdiction over the matter.