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Rights of an Arrested Person

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An Arrest of a person in simple words means the deprivation of a person of his liberty and freedom by any legal authority. An arrest of a person causes restraint in the person's practice of fundamental rights. The arrest of an accused person is necessary to maintain peace and harmony in the society and also to refrain that person from performing any further offences in the future. The offence can be either criminal or civil. A person who is arrested cannot practice his or her fundamental rights mentioned in the Indian Constitution. As mentioned above about the importance and definition of the arrest of the offender, they are also provided with a set of rights to protect and assist them in the trials of the Court. The rights are provided to them so that they can defend themselves with help of the legal practitioners, such as being arrested the offender is deprived of their fundamental rights but they are also granted a certain set of different rights, especially for the arrested person to practice and defend themselves. This essay mentions the "Rights of an arrested person" in detail.

Keywords: *arrest, liberty, right to life, offender, legal authority.*

INTRODUCTION

The Code of Criminal Procedure is intended to provide a mechanism for the enforcement of criminal law. An arrest is one of the most important actions for ceasing the criminal activities of an individual or a group. Under the CrPC sections, 41 to 60A¹ deal with the arrest of a

¹ Code of Criminal Procedure, 1973, ss 40-60A

person. Arrest means the apprehension of a person by legal authority resulting in deprivation of his/her rights and liberty. It is done because a person is apprehended for doing something against the law. Despite being arrested for unlawful activities and actions, the arrested person exercises some rights in the favour, the rights are different and in a more restricted form than the rights a citizen of India, who is a non-offender, would be able to exercise. The rights are mentioned in the CrPC under certain sections.

ARREST OF A PERSON

An arrest of a person is when the restraint is total and deprivation of liberty is complete. There can be a number of causes for an arrest of a person. An arrest of a person is when the restraint is total and deprivation of liberty is complete. There can be a number of causes for an arrest of a person. The offence can either be criminal or civil. The arrest of the person is followed by interrogation and investigation of the arrested person. The arrest is important to maintain peace and harmony in society. The arrest would refrain the offender from practising any more offences in the future.

There are two types of arrest:

- Arrest made with the warrant issued by the Magistrate.
- Arrest made without the warrant.
- Arrest made by any other person known as "Private Arrest". This arrest is commenced only if the offender commits any non-bailable offence.

The conditions for the arrest of the person:

1. To secure attendance at trial.
2. To obtain the correct name and address.
3. To prevent obstructing a Police Officer from Execution of his duty.
4. To retake a person who escaped from custody.

5. To prevent such a person from committing any further offence.
6. To prevent disappearance with evidence used in the trial.
7. To prevent inducement, treat any person acquainted with facts of cases.

In India, everyone is allowed to practice their rights with free will and without any restrictions but if the person engages in any criminal activities then they are deprived to practice such rights. In some cases, the accused is sometimes tried falsely for the offences and then the arrested person should be given protection, at this time the rights of the arrested person come into consideration. Under the law, there are a set of rights mentioned for the arrested person to practice. These rights provide the personal assistance and protection to defend themselves from any being treated inappropriately. The Indian Constitution under Article 21² states that no person shall be deprived of his personal liberty except according to procedure established by law.³

RIGHTS OF AN ARRESTED PERSON

Right to know the ground of arrest:

Section 50(1)⁴ of CrPC states that each law officer or other person arresting someone without a warrant shall forthwith communicate to him or her full particulars of the offence that he or she is arrested for or other grounds for such arrest. Article 22⁵ of the Indian Constitution mentions that nobody who is arrested shall be detained in custody without being informed as soon as is also, of the bottom for such arrest nor shall be denied the proper to consult and to be defended by a legal practitioner of his choice. The arrested person must be informed about the grounds

² Constitution of India, 1950, art.21

³ Richa Goel, 'Rights of an Arrested Person' (*Ipleaders*, 22 May 2019) <<https://blog.ipleaders.in/rights-of-an-arrested-person/>> accessed 15 May 2022

⁴ Code of Criminal Procedure, 1973, s 50(1)

⁵ Constitution of India, 1950, art.22

for the arrest as soon as possible once without delay. In one every one of the cases, it absolutely was held that the right to information is the precious right of the arrested person.⁶

Right to be released on bail:

Section 50(2)⁷ states that where the police officer arrests without warrant somebody apart from someone accused of a non-bailable offence. Section 436⁸ of CrPC states that bail should be granted to the person accused of a bailable offence. A person who has been accused of a bailable offence has the right to be released on bail, the object of the bail is to produce the arrested person a good chance to prove himself innocent, if so. The person should get an opportunity to defend himself within the court of trial.

Right to be produced before a magistrate:

Section 56 and 57⁹ of CrPC state that the Person arrested to be taken before a magistrate or officer accountable of the police station- A officer making an arrest without a warrant shall, without unnecessary delay and subject to provisions herein contained on bail, take or send the person arrested before a magistrate having jurisdiction within the case, or before the officer of a station and person arrested to not be detained over than twenty- four hours. No police officer shall detain in custody an individual arrested without a warrant for an extended period than under all the circumstances of the case is reasonable, and such period shall not, within the absence of a special order of a Magistrate under section 167¹⁰, exceed twenty- four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, respectively. In both the situations where an arrest is created without a warrant and where the arrest is created with a warrant, the arrested person has the right to be present before the magistrate as soon as possible with no delay. The person might not be detained beyond the said period by the magistrate and also if the arrested person is not presented before the magistrate and without reasonable cause, the arrest is termed unlawful.

⁶ *Udaybhan Shuki v State of UP* (1999) Cri LJ 274

⁷ Code of Criminal Procedure, 1973, s 50(2)

⁸ Code of Criminal Procedure, 1973, s 436

⁹ Code of Criminal Procedure, 1973, ss 56 and 57

¹⁰ Code of Criminal Procedure, 1973, s 167

Right to protection against arrest and detention:

Section 49¹¹ CrPC states that there should be no more restraint than is justly necessary to prevent the escape of the accused person i.e. reasonable force should be used for the aim, if necessary. Article 22(4)¹² says that not everybody is detained beyond the amount of three months except on the advice of the Advisory Board. The force applied for the detention of the arrested person should be the maximum amount as necessary to restrain the person from practising the fundamental rights.

Right to consult a legal practitioner:

Section 41D¹³ CrPC gives the accused the right to be consulted and defended by a legal practitioner of his or her own choice. Article 22(1)¹⁴ of the Constitution provides that no one who is arrested shall be denied the right to consult a legal practitioner of his choice. The arrested person is entitled to be defended by his or her own choice of legal practitioners to assist him to prove no guilty, if so.

Right to free legal aid:

This right is for those who do not seem to be financially capable enough to conduct a case or any legal proceedings in an exceeding court of law. This ensures produce justice supported the chance through free legal aid or the legislation to those who have been accused and cannot afford legal practices reason being economically weak.

Right to be examined by a medical practitioner:

Section 54(1)¹⁵ states that the accused has the right to proceed with a medical examination or checkup of his full body just in case this examination will afford evidence that will disprove the commission of an offence or crime on him or prove the commission by other people at the

¹¹ Code of Criminal Procedure, 1973, s 49

¹² Constitution of India, 1950, art.22(4)

¹³ Code of Criminal Procedure, 1973, s 41D

¹⁴ Constitution of India, 1950, art.22(1)

¹⁵ Code of Criminal Procedure, 1973, s 54(1)

time when he is presented before the magistrate or at any time during the detention. The magistrate has the facility to either persevere with it or cancels it. This helps the arrested person to be able to defend himself within the case.¹⁶

CASE LAWS

Joginder Kumar v State of UP¹⁷

In this case, it had been held that it is the right of the accused to be informed of the ground of his or her arrest, informed someone of his arrest, and consult a lawyer. Also, there should be a transparent justification and reason to arrest, and not only because the police officer has the power to try to do so. This case law is taken into consideration for searching for rules other than those mentioned in CrPC.

State of Punjab v Ajaib Singh¹⁸

In this case, an arrest has been defined, as “Arrest could be a physical restraint which is placed on someone as a result of accusations of the crime or offence he has committed”. The order of the detention was not in accordance with the Defence of India Act, 1962 and rules that has to be considered at the time because the judge was only the Additional District Magistrate.

Hussainara Khatoon v State of Bihar¹⁹

In this case, it absolutely was held that if the arrested person is not able to afford the legal practitioner reason being economically weak then that person must be entitled to free legal aid. It is the duty of the state to provide free legal aid so on to promote justice and equality.

¹⁶ Gurmeet, 'Rights of Arrested Person' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-7839-rights-of-arrested-person.html>> accessed 15 May 2022

¹⁷ *Joginder Kumar v The State of UP* (1994), AIR 1349

¹⁸ *State of Punjab v Ajaib Singh* (1953) AIR 10

¹⁹ *Hussainara Khatoon v The State of Bihar* (1979), AIR 1369

EFFECTS OF THE NON-COMPLIANCE WITH THE LEGAL PROVISIONS OF ARREST

In case of non-compliance mentioned in the Code and the other enactments, it will not make the trial void. This has no effect on the liability of the accused. The arrested person has the right to defend himself under sections 96 to section 106²⁰ of The Indian Penal Code. The arrested person can approach the court in case of wrongful confinement and claim damages with the help of a civil suit.

CONCLUSION

As to sum up, the rights of an arrested person are one the vital parts of the Indian Constitution. These rights are necessary to maintain harmony and a peaceful relationship between the police officer and the arrested person. Also, these rights provide the arrested person with illegal arrest and detention. The rights also hold a lot of importance as it gives the arrested person a fair opportunity to prove himself or herself not guilty with the help of legal practitioners because there are a lot of cases in which a person is falsely arrested for the offence and then they would need the assistance of these rights. The accused can also approach the court of law in case these rights are not provided to them or they are detained from practising these rights. These rights are necessary because “1000 CULPRITS CAN BE PUNISHED BUT, ONE INNOCENT SHOULD NOT BE PUNISHED”, the arrested person is granted these rights to defend himself/herself in case they are innocent and have been framed, no innocent shall be punished or no person shall be punished without giving fair opportunity to prove himself/herself innocent.

²⁰ Indian Penal Code, 1860, ss 96-106