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## Safeguard against Arbitrary Arrest and Detention

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*We dwell in a world where crimes take place every now and then, but amidst all these crimes there are certain arrests made which are arbitrary in nature. Arbitrary arrest means an arrest where the reason for the arrest is not known by the accused, it is absolutely authoritative arrest, and these types of arrests are undemocratic in nature because if the reason is not known by the accused then it can be a violation of his freedom to gain knowledge and infringement of the right to movement. It should be noted that when a person is made aware of his reason for arrest then it cannot be an infringement of the right to move if the reason is believable and is supported with evidence. We should remember the fact that safeguards and protection by laws are not only for the victims but they are also for the accused because arresting and detaining a person without any supportive or strong evidence is a violation of his/her fundamental rights. So the question arises is there any law that protects the arrested person or are there any safeguards for the arrested person? The answer is yes, there are laws that protect the accused from authoritative arrest or provide certain rights to the accused. The safeguards against such arrest are prescribed in the Indian Constitution. In this paper, we will discuss in detail the safeguards against arbitrary arrest.*

**Keywords:** *arbitrary arrest, detention, safeguards, authoritative arrest, right to movement.*

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## INTRODUCTION

Article 22<sup>1</sup> provides protection against arbitrary arrest and detention. This article is as follows:

- There are some ordinary cases where certain laws are made for the arrest of the accused. The primary thing we should know is that the person detained in the custody should be informed about the reason for his/her arrest. They should be given a chance to consult a legal practitioner of their choice.
- The law does not give authority to police officers to decide the number of days they can keep a detained person in custody, it is mandatory for them to produce the accused before the magistrate within 24 hours of their arrest.

The points discussed in clauses (1) and (2)<sup>2</sup> should not apply to someone who is considered an alien or to any person who is arrested and detained under the Preventive Detention Act. The detention of any person should not exceed the time of three months unless and until there is an advisory board made consisting of people who are qualified to be judges of the High Court. Any detention which is beyond three months without the permission of the advisory board tends to be a violation of the rights of the accused, and the detention can be termed illegal. It is common to think that among all these laws the rights of an arrested person are under ordinary law. So, let's have a look at the rights of a person under ordinary law.

Rights of an arrested person under ordinary laws- Clauses (1) and (2) of article 22 guarantee four rights for a person who is arrested for any offence:

- (a) The accused has the right to get informed as soon as possible of the grounds on which the accused is arrested.
- (b) The accused has the right to choose a lawyer or legal practitioner of his choice.
- (c) The accused should be produced before a magistrate within 24 hours of their arrest.

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<sup>1</sup> Constitution of India, 1950, art.22

<sup>2</sup> Constitution of India, 1950, art.22(1) and (2)

- (d) The accused should be released from detention beyond 24 hours until and unless there is special order from the magistrate.

It is important to note that these fundamental rights are available for both citizens and non-citizens but the only exceptions are there for the ones arrested under the Preventive Detention Act. As we are aware that every law has its own interpretation so they need to be well defined in order to make it easier for people to understand and perceive it in the right form. So, we will have a brief look in form of definition along with some case laws of the above-mentioned fundamental rights.

**1. The right to be informed of grounds of arrest** – This is the most important right of an accused because until and unless the reason for his arrest is not known by the accused it would be nearly or absolutely impossible for him to prepare for its defence. The law clearly specifies that the accused should be made aware of the reasons for their arrest as soon as possible. Any delay in this would lead to a violation of the fundamental rights of the accused.

In the case of *Joginder Kumar v State of Uttar Pradesh*<sup>3</sup> the judges of the honourable Supreme Court certain rules and regulations or to be precise some guidelines relating to the arrest of a person, this was done to make sure that there is the protection of the rights of common people and the to avoid any oppression or corruption from the side of the ones in charge of maintaining the law. It clearly stated that an arrest cannot be made on mere suspicion, there has to be some strong evidence with it. Reasonable Justification for the arrest was the criteria to make the arrest term 'valid'. Arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the police officer effecting the arrest that such an arrest was necessary and justified.

This makes it clear that the arrest cannot be made on mere suspicion, supportive evidence is essential for the person to get arrested. This would bring relief and protection to the ones who may have been wrongly arrested. We should remember the fact that arresting someone

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<sup>3</sup> *Joginder Kumar v State of Uttar Pradesh* (1994), AIR 1349

without any strong reason or belief is an injustice done to the person, which is against the basic principle of democracy protection, and justice to every citizen or to be precise everyone.

There was a report released by NPC (National Police Commission) that stated that the major reason for an increase in corruption in our country is the power of arrest in the police department. The percentage and statistics specified in the report would create fear among citizens of the country in relation to the protection of their fundamental rights. Somewhere down the line people would be scared of police from whom they should feel safe and secure:

**2. Right of choosing a legal practitioner** - It is a known fact that we all are part of a society where there are varied kinds of people in terms of their monetary or financial stability. Generally, the elites manage to get a legal practitioner of their choice, but what about those who cannot afford one? This is the law that mandates the state to provide a lawyer to the accused who cannot afford one, or else justice would never prevail in the true sense. This system was first started in America but slowly as some cases took place in India like the case of Maneka Gandhi, this system or law got implemented in our country too.

The same guidelines were given in the case of *Hussainara Khatoon v Home Secretary, State of Bihar*<sup>4</sup> that no person or accused should be deprived of this right just because of their poor financial stability. They have the equal right to get themselves defended and presented by a legal practitioner or lawyer. It would be really difficult to imagine a situation where an accused is not provided with proper legal assistance or a lawyer just because of his/her financial instability, this would make the poor more vulnerable to the injustice that already prevails in a large amount of our country. So it should be the duty of the state to make sure that efficient lawyers are provided to every accused irrespective of their financial status. Only the elites should not have the privilege to have proper legal assistance.

**The rights of the accused during the first stage production before the magistrate** - The law obviously gives the right to the accused to get presented by a lawyer and to defend themselves against self-incrimination but it cannot be termed as a violation of these rights if these are not

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<sup>4</sup> *Hussainara Khatoon v Home Secretary, State of Bihar* (1979), AIR 1369

read or given to accused at the beginning or before his confession is recorded and this is specified under section 164<sup>5</sup> of Cr.P.C. The purpose has always been to know or find the truth and not to protect the accused from punishment for his wrongdoing.

There is a very famous case that took place in our country. It is the case of *A.S Mohammed Rafi v State of Tamil Nadu*<sup>6</sup>, in this case, the bar council of Coimbatore has decided that they would not defend any policemen who are accused of any crime. This led their resolution to question their professionalism and professional ethics, and the judges of the honourable Supreme Court clearly stated that these resolutions would lead to undemocratic ideas and beliefs. It stated that whatever the nature of the crime everyone has the right to get themselves defended if those rights are taken away then injustice would be served because there are possibilities that the accused may be falsely blamed.

**Right to be produced before the Magistrate** - 24 hours is the time limit set by the law to bring the accused before the magistrate.

**Detention beyond twenty-four hours requires special permission from the magistrate** - detention for more than twenty-four hours is not possible in police custody, the accused must be sent to judicial custody. This law provides protection against non-judicial authorities and it is for those who have been accused of an offence of criminal or quasi-criminal nature or some act prejudicial to the state or public interest. Thus under articles 22(1) and (2), the arrested person has the right to be produced before the nearest magistrate within a period of 24 hours. This would enable the arrested person to get a speedy trial, if there is a failure to produce the arrested person before the nearest magistrate within twenty-four hours it would make the arrest illegal. This is also available to a person under a warrant issued by a speaker of the legislative assembly of Uttar Pradesh for committing contempt of court.

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<sup>5</sup> Code of Criminal Procedure, 1973, s 164

<sup>6</sup> *A.S Mohammed Rafi v State of Tamil Nadu* (2010) Criminal Appeal No. 2310/2010

## **CONCLUSION**

There have been numerous cases where time and again the constitutional validity of laws were challenged, many accused were arrested and detained because some people misused their powers since we are firm believers of democracy these laws which provide safeguards to the accused to have helped in prevailing justice. No accused should be treated as guilty by any officer in charge. This brings us to the fact that these safeguards are not only protection for the accused, these laws act as a protection to our democratic ideas. The importance and right of getting proper legal aid is something we all should know, and educate people about it. Therefore, through this article, we aim to spread awareness among people about the rights of the accused when they are arrested and detained. There has always been a discussion about the victims and their pain, which is highly appreciable but we tend to forget the fact that an accused if wrongly blamed is a victim. Implementing strong force and pressure on the accused by any authority is absolutely unjustified until and unless their crime or guilt is proven over.

There are plenty of examples where we have seen that police officer for their selfish desires arrest and detain the vulnerable class of people like poor or illiterate ones, this is because they are not aware of these rights. We should never celebrate 'just' the arrest of a person because arrest does not mean the person is guilty it just means that there can be a possibility of the arrested person committing the crime. Our legal system and its practitioners are the pillars of democracy, it is their primary duty to be there for the people whenever they are in need. Nobody in this world should be denied the right to get defended for any sort of crime they are arrested for. Taking away the right of their defence is a monarchical form of governance.