BLOGS

Rights of an Arrested Person in India

Samridhi M · 07 Jul 2023

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Introduction

The preservation of individual rights and freedoms is at the heart of each democratic nation's goal of a just and equitable society. As a thriving democracy, India respects these ideals by giving certain essential rights to all citizens, including those who find themselves on the wrong side of the law.

When a person is arrested in India, they have a number of rights that are designed to ensure justice, due process, and the preservation of human dignity. Understanding these rights is critical not only for people facing arrest, but also for society as a whole, since it emphasizes the significance of a fair and responsible criminal justice system.

This post looks into an arrested person's rights in India, offering insight on the legal safeguards in place to protect their rights during the arrest, custody, and trial processes.

What does it mean to be arrested?

When someone violates the law, they may find themselves in a situation where they are taken into custody by law enforcement officials. But what exactly does an arrest entail?

Generally, an arrest occurs when police officers apprehend a suspect and restrict their freedom, usually before they are taken to a detention facility, such as a jail. Although the **Code of Criminal Procedure of 1973** addresses various aspects of arrests, it does not provide a specific definition of the term.

When a person is detained or arrested, they are placed under the control of a lawful authority authorized to detain individuals. Subsequently, the arrested person is typically questioned regarding the allegations against them and is held in confinement to prevent any further potential criminal activity.

Right to Know the Grounds of Arrest

Section 50 of the CrPC mandates that every officer or authorized person making an arrest without a warrant must inform the arrested person of the reasons for their arrest. This provision ensures transparency and allows the arrested person to understand the basis for their detention.

Additionally, **Section 50A of the CrPC** requires the arrested person to be informed of their right to notify a friend, relative, or any person from their family about their arrest. It ensures that the arrested person can reach out to someone for support and inform their loved ones about their situation.

Right to be Presented Before Magistrate without Delay

The right to be presented before a magistrate without undue delay safeguards against arbitrary detention. **Section 55 of the CrPC** states that a police officer making a warrantless arrest must produce the arrested person before the magistrate having jurisdiction or the police officer in charge of the police station, depending on the circumstances of the arrest.

This provision aims to prevent prolonged detention without oversight and ensures that the arrested person's case is promptly examined by a judicial authority.

Furthermore, **Section 76 of the CrPC** mandates that an arrested person must be brought before the court within 24 hours of their arrest, excluding the time required for transportation. This provision protects against unnecessary and prolonged detention by establishing a time limit within which the arrested person must be presented before a court.

Right to be Released on Bail

Section 50(2) of the CrPC stipulates that when a police officer arrests a person without a warrant for an offense other than a non-bailable offense, they must inform the arrested person that they have the right to be released on bail. The provision also allows the arrested person to

make arrangements for sureties, who will vouch for their presence during the trial.

Right to a Fair Trial

The right to a fair trial is a fundamental aspect of justice. Although the CrPC does not explicitly outline provisions regarding the right to a fair trial, such rights are derived from the Indian Constitution and various judicial decisions. **Article 14 of the Constitution** guarantees equality before the law, implying that both the prosecution and the defense must be treated impartially.

Right to Consult a Lawyer

Section 41D of the CrPC grants the arrested person the right to consult with their lawyer during the process of questioning by the police. This provision allows the arrested person to seek legal advice, understand their legal position, and make informed decisions.

Additionally, **Article 22(1) of the Constitution** guarantees the right to legal representation. The arrested person has the right to appoint a lawyer of their choice to defend them during the trial.

Right to Free Legal Aid

Section 304 of the CrPC stipulates that if a person on trial before a Sessions Court does not have a legal practitioner or lacks adequate means to appoint one, the court must provide them with a lawyer at the expense of the state.

Article 39A of the Constitution emphasizes the state's responsibility to provide free legal aid to secure justice for all. The court has held that the right to free legal aid begins from the moment the accused person is produced before the magistrate for the first time, regardless of whether they apply for it. Failure to provide legal aid to a needy accused person can invalidate the trial.

Other Rights of an Arrested Person

In addition to the rights mentioned above, there are several other rights of an arrested person in India. **Section 55A of the CrPC** places the responsibility on the custodial officer to take reasonable care of the safety and health of the detained person. The arrested person must be protected from any form of brutal treatment.

Section 358 of the CrPC establishes the right to compensation for an arrested person who has been wrongfully detained. This provision ensures that individuals who have been unlawfully deprived of their liberty are compensated for the damages suffered.

Furthermore, **Section 41A of the CrPC** allows the police officer to issue a notice to a person suspected of committing a cognizable offense, requiring them to appear before the officer at a specified time and place. This provision provides an opportunity for the person to cooperate with the investigation without the need for an immediate arrest.

Section 49 of the CrPC further emphasizes that the police officer must use no more restraint than necessary to prevent escape. Detention or restraint without formal arrest is considered illegal.

Important Case Laws

The case of ***D.K Basu vs State of West Bengal*** served as a significant milestone as it focused on the rights of arrested persons and placed certain obligations on police officers.

The court emphasized that failure to fulfill these duties could lead to contempt of court charges and departmental actions, which could be pursued in any High Court with jurisdiction over the matter.

The Supreme Court issued nine guidelines for the protection of accused persons and proposed amendments to various sections of the Code of Criminal Procedure.

1. Section 41B of the CrPC mandates that investigating police officers must wear visible badges clearly stating their name and designation. Additionally, when making an arrest, the police officer must prepare a cash memo with the date and time of arrest, which should be attested by a family member or a respected person from the locality. The cash memo should also be countersigned by the arrested person.

2. **Section 41D** ensures that the arrested person has the right to inform a friend, relative, or someone interested in their welfare about their arrest. This provision requires the police to inform the arrestee of their right to notify someone immediately upon being taken into custody.

3. A detailed entry must be made in the diary, including information about the arrested person, the name of the person informed about the arrest (known as the next friend), and the particulars of the police officers in custody. The arrestee also has the right to request a medical examination,

which should be recorded in an inspection memo signed by both the police officials and the arrested person.

4. The arrestee is entitled to meet their lawyer during and throughout the interrogation process. Copies of all documentation related to the arrest must be sent to the Magistrate for their records, including a memo of the arrest.

5. **Section 41C of the CrPC** directs the establishment of police control rooms at state and district headquarters, where the police officer making an arrest must inform within 12 hours of the arrest. This information should be displayed on a conspicuous board.

In the case of ***Yoginder Singh vs State of Punjab***, the court stressed the enforcement of **Article 21** and **22(1) of the Constitution**, emphasizing the arrestee's right to inform any friend, relative, or person of their interest about the arrest. The police officer must promptly inform the arrestee of this right upon taking them into custody, and an entry should be made in a diary recording the name of the person informed.

Similarly, in the case of ***Prem Shukla vs Delhi Administration***, the court ruled that prisoners should not be handcuffed routinely unless exceptional circumstances arise, preserving their dignity and rights.

These judicial pronouncements and guidelines highlight the commitment of the Indian legal system to protect the rights and well-being of arrested individuals. They serve as a reminder to law enforcement agencies to adhere to these standards and ensure that the rights of the accused are upheld during the process of arrest and detention.

Conclusion

It is important for law enforcement agencies, judicial authorities, and society as a whole to uphold and respect these rights. Adequate awareness and implementation of these rights can help in building a just and equitable legal system, where the innocence of the accused is presumed until proven guilty.

By recognizing and respecting the rights of arrested persons, India can ensure that the legal system functions as a safeguard against wrongful arrests, arbitrary detention, and human rights abuses. Upholding these rights strengthens the foundations of democracy and reinforces the principle of justice for all.