
RIGHTS OF ARRESTEES IN INDIA A COMPARATIVE STUDY WITH UK AND USA

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DEFINITION OF ARREST

- “A seizure or forcible restraint; an exercise of the power to deprive a person of his or her liberty; the taking or keeping of a person in custody by legal authority, especially, in response to a criminal charge.”
- The purpose of the arrest is to bring the arrested person to court without delay or otherwise to ensure law enforcement. An arrest has the function of informing society that an individual has been charged with a crime and can also reprimand and deter the arrested person from committing further crimes in the future. The Arrests can be made out on both criminal and civil matters, where the civil arrest is a drastic measure that is not been viewed with the favor by court. There are some limits that are being imposed by the Federal Constitution both civil and criminal arrests.

HOW ARREST IS MADE

Section 46 of Criminal Procedure Code –

1. In making of an arrest, the police officer or any other person making the arrest must confine the body of the person to be arrested, unless there is submission to custody by the word or by the action.
2. If the who is being arrested forcibly resists the attempt to arrest him, or tries to evade arrest, that police officer or the other person may use any means necessary to effect the arrest.
3. Nothing in this article gives the right to cause the death of a person who is not charged with an offense punishable by death or life imprisonment.
4. Except in the exceptional situation, no woman must be arrested after the sunset and

before sunrise, and where such exceptional circumstances exist, the female police officer shall make a written report, obtain the prior authorization of the judiciary i.e the Magistrate of the first class within its local territorial and subject matter jurisdiction of the offence committed or the arrest is to be made.

RIGHTS OF AN ARRESTED PERSON

1. Right to keep silence

- The right to remain silent is not been recognized by any law, but it can be derive its authority from the CrPC and the Indian Evidence Act. This right is mainly linked to the declaration and confession made in the court. Whenever a confession or declaration is made in court, it is the duty of the magistrate to ascertain whether this declaration or confession was made voluntarily or not. No one arrested can be forced to speak anything in court.
- **Article 20 (2)** states that no one may be compelled to testify against himself. This is the principle of self-incrimination. This principle was reiterated by the Case of *Nandini Satpathy V. P.L Dani*,¹ in this it stated that "No one can force anyone to make a statement or answer questions and the accused has the right to remain silent during the interrogation process."

2. Right to know the grounds of arrest

- **Section 50** of the CrPC stipulates that any police officer or other person authorized to arrest a person without a warrant must inform the arrested person of the offense for which he is arrested and of the other grounds for such arrest. It is the duty of the policeman and he cannot refuse it.
- **Section 50A** of the CrPC obliges a person making an arrest to inform a friend or relative or any other person in their interest of the arrest. The police officer must inform the arrested person that he has the right to be informed of his arrest to the designated person as soon as he is taken into custody.

¹ 1978 AIR 1025, 1978 SCR (3) 608

- **Section 55** of the CrPC prescribes that whenever a police officer has authorized his subordinate to arrest a person without a warrant, the subordinate officer must inform the arrested person of the substance of the written order that is given, specifying the offense and other grounds for arrest.
- **Section 75** of the CrPC stipulates that the police officer (or any other officer) executing the warrant must notify the arrested person of the substance and show him a warrant if necessary
- **Article 22(1)** of the Indian Constitution also states that no person shall be arrested by the police officer without informing the ground of arrest.

3. Information on the right to be released on bail

Section 50 (2) CrPC provides that "when a police officer arrests a person other than who is being charged with the non-bailable offence without a warrant, he must inform the person who arrested that he has the right to be released on bail that he can take security on its own ". This will certainly be helpful for people who may not be aware of their right to be released on bail for possible bail offenses. As a result, this provision may, in some small steps, improve the relations of the population with the police and reduce discontent against them.

4. Right to be taken before the magistrate without undue delay

- **Section 55** of the CrPC stipulates that a police officer making an arrest without a warrant must present the arrested person without unnecessary delay to the competent magistrate or a police officer in charge of police station, subject to the conditions of arrest.
- **Section 76** of the CrPC stipulates that the police officer who executes an arrest warrant must bring the arrested person before the court before which he is legally obliged to present the person. It stipulates that the person must be presented within 24 hours of their arrest. When calculating the 24-hour period, he must exclude the time required to travel from the place of detention to the District Court.
- **Article 22 (2)** of the Constitution stipulates that the police officer making an arrest must be presented to the magistrate within 24 hours of his arrest. If the police officer does not appear before the magistrate within 24 hours, he will be liable to improper detention.

5. Right to consult a legal practitioner

- **Section 41D** of the CrPC sets out the right of detainees to consult their lawyer during questioning.
- **Article 22(1)** of the Indian constitution provides that the arrested person has the right to appoint a lawyer and to be defended by the lawyer of his choice.
- **Section 303** of the CrPC provides that when a person is accused of having committed an offense before the criminal court or against which proceedings have been brought, he has the right to be get legal aid and to be defended by a lawyer of his choice.

6. Right to be examined by a Doctor

Section 54 of the CrPC states that when the arrested person claims that the examination of his body will lead to a fact which will disapprove of having committed an offense by him, or which will lead to the commission of an offense by any other person against his body, the court may order the medical examination of the accused at the request of the latter (accused), unless it is satisfied that such a request is made with the aim of defeating the justice.

7. Right to trial

Article 14 of the Constitution 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 a public trial. This provision is intended to ensure that convictions are not obtained in secret. In exceptional cases, the trial may be held in camera. Any accused has the right to be informed by the court before obtaining proof that he is entitled to have his case tried by another court and if the accused subsequently submits such a request for referral of his case to a third party. other court, this one must be transferred. However, the accused does not have the right to choose or determine by which other court the case is to be tried.

- 8. Right to a speedy trial-** The Constitution grants the accused the right to a speedy trial. Although this right is not precisely been stated in the constitution of India, it was interpreted by the Hon'ble Supreme Court of India in the judgment of *Hussainara Khatoon V. State of Bihar*². This judgment demands that an investigation into the trial be carried out "as

² 1979 AIR 1369, 1979 SCR (3) 532

expeditiously as possible". In all subpoena trials (cases where the maximum penalty is two years imprisonment) once the accused has been arrested, the trial proceedings must be completed within six months or stopped by order of the magistrate, at unless the magistrate receives and accepts, with his reasons in writing, that the investigation should be extended.

Right of free legal aid

- **Section 304** of the CrPC stipulates that when a trial takes place before the sessions court and the accused is not represented by the lawyer, or when it appears that the accused does not have sufficient means to appoint a litigant, the court can then appoint a pleader his defense at the expense of the State.
- **Article 39A** of Indian Constitution obliges a state to provide free legal aid for the purpose of ensuring justice. It is also given when the accused is brought before the magistrate for the first time and the time limit begins. The right of the accused cannot be denied, even when the accused does not request it. If the state does not provide legal aid to the indigent accused, it will nullify the entire process. In the case of *Sukh Das V. Union Territory of Arunachal Pradesh*³, the court ruled: "The right of the indigent accused cannot be denied even when the accused does not request it". If the state does not provide legal aid to the indigent accused, the entire trial will be void.

9. Right to present evidence

Section 243(1) of CrPC states that the accused person has all the right to present his evidence and to defend his case and the magistrate is duty-bound to record the written statements put by the accused of illegal arrests.

LANDMARK JUDICIAL PRONOUNCEMENTS RELATED TO RIGHTS OF ARRESTEE:-

CASE: *D.K. Basu V. State of West Bengal*

CITATION: 1997 1 SCC 416

³ 1986 AIR 991, 1986 SCR (1) 590

The continuous cases of police violence, atrocities in the detention and death have prompted to the Supreme Court to review its decisions like Nilabati Behera, Joginder Kumar, etc. Therefore, in this case the Supreme Court has set out the accompanying requirements and the guidelines which are to be followed in all arrest cases or detention until the legal provisions are taken in this favor as a preventive measure.

1. The police officer arresting and questioning and questioning the arrested person must bear a precise, clear and visible identification as well as a nameplate with his designation. The details of all such police officers who are involved in the interrogation of the arrested person must be recorded in a register or must be entered in a book to be kept by such an officer in such form as the state government may prescribe in his name. (Section-41 (b))
2. That the police officer arresting the accused prepare an arrest note upon arrest and this note must be attested to by at least one witness, who may be a friend or member of the family of the person arrested or any respectable person in the locality from which the arrest is made. It must also be countersigned by the person arrested and must contain the time and date of the arrest.
3. A person arrested or detained and held in custody in an interrogation center, police station or any other place of detention has the right to have a relative, friend, or any other person whom he knows or who is interested in the well-being of arrested person to be informed, as soon as he has been arrested and is detained at a particular place unless the witness attesting to the not of arrest is himself a relative or a friend of the person arrested. (Section-50 (A))
4. The place, time of arrest, and the place of police custody of an arrested person must be notified by the police when the relative or friend or any other person associated with the arrested person lives outside the city or the town. District through district legal aid organizations and the relevant area of the police station by telegraph within 8 to 12 hours of arrest.
5. The arrested person should be informed of this right to have someone informed of their arrest or detention as soon as they are arrested or detained.
6. An entry must be made in the diary or register of the place of detention or in which the arrested person was taken regarding the arrest of the person who must also disclose the name of the next friend or relative of the person who was arrested. informed of the arrest as well as the names and contact details of the police officers in whose custody the arrested person is.

7. The arrested person should if requested, also be examined at the time of arrest and minor and major injuries, if any, present on his body should be recorded at that time only. The “Memo of Inspection” should compulsorily be signed by both the arrested person and the police officer arresting and a copy must be given to the arrested person. (Section -53)
8. The arrested person must undergo a medical examination by a qualified doctor every 48 hours while in custody, by the doctor of the group of approved doctors appointed by the director of the health services of the State or of the State. Union territory concerned. the director of health services should also prepare such a panel for all Tehsils and districts.
9. Copies of all the documents including memo of the arrest, referred to above, should be sent to the Magistrate who has the jurisdiction of the case for his record.
10. The arrestee must be permitted to meet his lawyer of his own choice during interrogation and examination, though not throughout the interrogation.
11. A police control room should be established in all districts and state headquarters, where information about the arrest and place of custody of the arrested person should be communicated by the police officer. arrest, within 12 hours of arrest and to the police. control room, it should be displayed on the display panel in a conspicuous place. (Section-41 (C))

The Court stressed that the inability to follow the said necessities should separated from rendering the concerned authority at risk for departmental activity, likewise render him obligated to be rebuffed for scorn of Court and the procedures for hatred of Court might be initiated in any High Court of the nation, having regional ward over the issue. The prerequisites stream from Articles 21 and Article 22 (1) of the Constitution and should be carefully pursued. The necessities are notwithstanding the sacred and statutory protects and don't take away from different bearings given by the Courts every once in a while regarding the shielding of the rights and pride of the arrestee.

CASE: Joginder Kumar V. State Of Uttar Pradesh

CITATION: (1994) 4 SCC 260

- Hon’ble Apex Court deliberated various provisions and reports in fact and expressed that no arrest can be made since it is lawful for the police officer to execute so. The existence of power to arrest is one thing; justification for its implementation is another thing. The police officer must be able to justify the arrest apart from his rights to do so.

- Arrest and imprisonment in police lock-up of a human being can result indeterminable injury to the status and self-esteem of a human being. No arrest can be made in a daily method on a mere claim of commission of an offence made against a human being. It would be judicious for a police officer in the regard of preservation of the constitutional rights of a citizen and may be in his own engrossment that no arrest should be made without a sensible gratification reached after some investigation as to the truthfulness and bona fides of a complaint and a sensible belief both as to the person's involvement and even so as to the need to effect arrest. Refusing a person of his liberty is a important affair.
- The advices of the Police Commission merely send back the constitutional attendants of the fundamental right to personal liberty and freedom. A human being is not accountable to arrest merely on the intuition of collusion in an offence. There must be some causable justification in the opinion of the officer resulting the arrest that such arrest is mandatory and clarified. Besides some heinous offenses, an arrest should be neglected if a police officer issues a notice to the person to attend Station House and not to leave Station without permission.
- These rights are innate in Articles 21 and 22(1) of the Constitution and need to be acknowledged and honestly secured. For effective implementation of these fundamental rights, the Hon'ble Court issued the following guidelines:
 1. An arrested human being held in custody is allowed, if he so appeals to have one friend, relative or any other person who is known to him or likely to take an interest in his well-fare told as far as is practicable that he has been arrested and where he is being delayed.
 2. The arrested person shall be informed that when he is brought to the police station by a police officer.
 3. An entry shall be necessary to be done in the diary as to who was informed of the arrest. The protections from rights must be held to flow from Articles 21 and Article 22(1) and enforced strictly.

Further, it was directed that it shall be the responsibility of the Magistrate, before whom person arrested is to be presented, to satisfy himself that these necessities have all been complied with.

RIGHTS OF ARRESTED PERSON IN USA

The United States Supreme Court has ruled that you must be informed of the following, commonly known as your Miranda rights, as soon as you are taken into custody and questioned:

1. You have the right to remain silent under the law.
2. Whatever you say can and will be used against you in court.
3. You have the right to an attorney if you are unable to afford one, one will be appointed for you.

The arresting authorities must respect your rights in addition to informing you of them. For example, you cannot be legally required or forced to talk, answer questions, or sign any documents by a police officer or anyone else. If you are coerced into providing incriminating information through threats, persistent questioning, or any other means, you can prevent it from being used against you in court.

You have the right to make a reasonable number of phone calls or otherwise communicate with an attorney of your choice and a member of your family within a reasonable time after being taken into custody.

You have the right to an itemized receipt for any money or property taken from you after you are arrested.

You have the right to be "booked" within a reasonable time frame. The entry of a charge against you in a record known as the "arrest book" or "police blotter" is referred to as "booking."

If your detention continues for an unreasonable period of time without booking (more than several hours or possibly overnight), your attorney may petition a judge for a writ of habeas corpus. This is a court order directing the police to bring you before the court so that a judge can determine whether you are being held legally.

- **Notification of Accusation**

A criminal defendant has the right to know the nature and basis of the charges levelled against him. As a result, an indictment must allege all of the elements of the crime with such precision that the accused is put in jeopardy if the same charges are brought up in subsequent prosecution.

- **Custodial Interrogation**

The use of evidence obtained illegally by law enforcement officers is restricted by the Fifth Amendment. Originally, under common law, even a tortured confession was admissible. Common law in England in the eighteenth century stated that coerced confessions were inadmissible. The courts incorporated the common law rule into

American law. However, the use of cruel torture to extract confessions was common in some jurisdictions until at least 1991, despite the fact that the Supreme Court has repeatedly overturned convictions based on such confessions in cases such as *Brown v. Mississippi*.⁴

Law enforcement responded by employing subtler techniques, but courts ruled that such methods, even if they do not involve physical torture, can render a confession involuntary and inadmissible. In *Chambers v. Florida*⁵, the Court ruled that a confession obtained after five days of interrogation, during which the defendant was held incommunicado, was coerced.

*Miranda v. Arizona*⁶ was a seminal case concerning confessions. Ernesto Miranda signed a statement confessing to the crime, but the Supreme Court ruled that the confession was inadmissible because the defendant had not been advised of his rights. The Court ruled that "the prosecution may not use statements derived from the defendant's custodial interrogation unless it demonstrates the use of procedural safeguards effective in securing the privilege against self-incrimination." Custodial interrogation is initiated by law enforcement after a person has been arrested or otherwise restricted from moving freely.

Concerning the procedural safeguards to be used, unless other fully effective means of informing accused persons of their right to silence and ensuring a continuous opportunity to exercise it are devised, the following measures are required. Before any questioning, the person must be advised that he has the right to remain silent, that any statement he makes may be used against him as evidence, and that he has the right to the presence of an attorney, either retained or appointed." The warning to which Chief Justice Earl Warren referred is now known as the Miranda warning, and it is typically given to an individual before being questioned by police.

Several subsequent Supreme Court decisions have clarified Miranda. The questioning must take place under "custodial" conditions for the warning to be effective. Of course, someone who is imprisoned or under arrest is considered to be in police custody. Alternatively, a person is considered to be in "custody" if he has a reasonable belief that he cannot freely leave the confinement of law enforcement. The determination of "reasonability" is based on the totality of the objective circumstances. A simple

⁴ 297 U.S. 278 (1936)

⁵ 309 U.S. 227 (1940)

⁶ 384 U.S. 436 (1966)

appearance at a police station may be insufficient, but it is not required. According to the Court, age can be an objective factor. In *Yarborough v. Alvarado*, the Court determined that "a state-court decision that failed to mention a 17-year-old's part of the Miranda custody analysis was not objectively unreasonable.

- **Confrontation**

The Confrontation Clause refers to the common law rule that prohibits the admission of hearsay, or testimony by one witness as to the statements and observations of another person in order to prove that the statement or observation was accurate. The reasoning was that the defendant had no opportunity to question and cross-examine the person making the statements. Certain exceptions to the hearsay rule have been allowed, such as admissions by the defendant and dying declarations. Nonetheless, the Supreme Court ruled in *California v. Green* that the hearsay rule is not the same as the Confrontation Clause.

- **Compulsory process**

Any criminal defendant has the right to call witnesses in his favour under the Compulsory Process Clause. If any such witness refuses to testify, the court may compel him or her to do so at the request of the defendant. In some cases, however, the court may refuse to allow a defence witness to testify. For example, if a defence lawyer fails to notify the prosecution of a witness's identity in order to gain a tactical advantage, that witness may be barred from testifying.

RIGHTS OF ARRESTED PERSON IN UK

PACE not only grants police the authority to arrest people, but it also establishes guidelines for how suspects must be treated after they are apprehended.

The custody officer at the police station must explain to you that you have the right to:

1. get free legal advice
2. tell someone where you are
3. get medical help if you are feeling ill
4. see the rules that the police must follow

The officer must also show you a written notice informing you of your rights. You can request that this notice be written in your native language, or that an interpreter explain it to you.

Some people believe that being arrested violates their human rights under the European Convention on Human Rights (ECHR), which is directly applicable in the United Kingdom thanks to the Human Rights Act 1998.

According to Article 5 of the ECHR, "no one shall be deprived of their liberty except in the following cases." The article then goes on to describe one specific case.

"The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so".

In other words, if the police have a good reason to believe you've committed a crime, it's legal for them to arrest you. They must, however, always adhere to the procedures outlined in the law (such as PACE).

- **Arrest only on reasonable suspicion:**

According to *Fox Campbell and Hartley v. the United Kingdom*, having a "reasonable suspicion" implies the existence of facts or information that would satisfy an objective observer that the person in question may have committed the offence. What constitutes "reasonable" will depend on the circumstances, but arrest will not be made without reasonable suspicion.

- **Using more force than is absolutely necessary:**

It has been held that any use of potentially lethal force cannot be considered "absolutely necessary" in circumstances where it is known that the person to be arrested poses no threat to life or limb and is not suspected of committing a violent offence is prohibited by Article 2 of the Convention. Handcuffs are rarely used. In the vast majority of arrests, Europe considers the use of handcuffs and manacles to be barbaric and completely unnecessary. Typically, the accused is simply informed that he or she is under arrest and directed to enter the police car.

- **Right to remain silent:**

During an arrest, the police may not interview or interrogate the arrested person except at the police station. According to *John Murray v. the United Kingdom*, an accused is confronted with a fundamental dilemma relating to his defence at the start of police interrogation. If the

accused chooses to break his silence during interrogation, he risks jeopardising his defence without necessarily eliminating the possibility of inferences being drawn against him. Under such circumstances, the concept of fairness enshrined in Article 6 requires that the accused have the assistance of a lawyer from the start of the proceedings.

- **Legal Advice:**

According to the Police and Criminal Evidence Act of 1984, the arrestee must also be informed of his right to free independent legal advice. The suspect, whether under arrest or voluntarily present at the police station, must be reminded of his right to free legal advice during interrogation. The custody officer must expressly "tell him clearly of the following rights and of the fact that they are continuing rights that may be exercised at any stage during the period in custody to have someone informed of his arrest (sec 5) and to consult privately with a solicitor" (sec 6).

- **Release-** If the custody officer determines that he lacks sufficient evidence to charge the person before him, the person arrested shall be released either on bail or without bail, unless the custody officer has reasonable grounds to believe that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him.
- **Not to be detained for more than 24 hours:** Section 42(1) of the Police and Criminal Evidence Act states that a person shall not be detained in custody for more than 24 hours, or 36 hours in exceptional cases.

CONCLUSION

Promoting peaceful and inclusive societies, as well as providing equal access to justice for all, is critical at this time, because crimes against humanity are not decreasing and that's why rights to arrested person is necessary to be provided. As we have seen Rights to an arrested person is provided in India, USA & UK so that their fundamental rights can be protected.

Arrested person have right to know the reason why they are arrested, they have right to inform their relative/friend or whomsoever, they can ask for free legal advice, they have to be produced against a magistrate as it ensure their safety, they can ask for health check-ups, right to remain silent is also with them and all these rights are given to them so that their fundamental right or human rights doesn't get violated.

Basically, the rights provided to arrested people ensures that even if you are in the custody you have some bare minimum rights which you can use to prove your innocence and which leads to fair trials.