

RIGHTS OF ACCUSED AT PRE-TRIAL STAGE

The term " **accused** " has not been specifically defined in the code but what we generally understand is that the accused means the person charged with an infringement of the law for which he is liable and if convicted then to be punished. In other words, a person who is charged with the commission of offence. An offence is defined as an act or omission made punishable by any law for the time being in force. An accused cannot have similar footing with the convicted person. In the Bill of Rights Ordinance, 1991 affirms that every accused has a right to be presumed innocent until his guilt is proved. Thus, the accused person has every right like other citizen of the country except his curtailment of person liberty in conformity with laws. The basic difference is that an accusation has been made against the accused person for violation of law or offence prevalent in the country. The rights of the accused person are of much concern today. Belatedly though, it has been observed the blatant and flagrant violation of their rights in different stages. The implication of article Art. 21 of the Constitution of India is that a person could be deprived of his life or personal liberty only in accordance with procedure established by law. As per Art. 22 of C.O.I., a person who is arrested for whatever reason, gets three independent rights. The first is the right to be told or informed the reasons for the arrest as soon as an arrest is made, the second is the right to be produced before a Magistrate within 24 hours and the third is the right to be defended by an advocate of his choice.

The Third Report of the National Police Commission identifies the wrongful use of arrest powers as one of the chief sources of corruption in the police and that nearly 60% arrests made by police officers are unnecessary and unjustified. In the said report strongly opposed the practice of carrying out indiscriminate arrests. The Hon'ble Supreme Court of India said that an arrest cannot be made simply because it is lawful for a police officer to do so. Arrest and detention in police lock up can cause incalculable harm to the reputation and self-esteem of a person. Therefore, arrest should not be made in a routine manner on mere allegation that a person has committed an offence. In **Joginder Kumar Vs. State of U.P.& Ors. 1994SCC 260**, the Hon'ble Supreme Court gave the guidelines what should be the basis of arrest are as follows:

1/ Arrest are not be made in a routine manner. The officer making the arrest must be able to justify its necessity on the basis of some preliminary investigation.

2./ An arrested person should be allowed to inform a friend or relative about the arrest and where s/he is being held. The arresting officer must inform the arrested person when s/he is brought to the police station and is required to make an entry in the diary as to whom the information was given.

3./ It is the duty of the magistrate before whom the arrested person is produced to satisfy her/ himself that the above requirements have been complied with.

In **Prem Shankar Sukla Vs. Delhi Administration, 1980 SCC 526**, the Hon'ble Supreme Court observed that using handcuffs and fetters (chains) on prisoners violates the guarantee of basic human dignity, which is part of our constitutional culture. This practice does not stand the test of articles 14 (Equality before law), 19 (Fundamental Freedoms) and 21 (Right to Life and Personal Liberty). In the said case, the following directives were given in respect of Handcuffing:

1./ Handcuffs are to be used only if a person is :

- a) involved in serious non-bailable offences, has been previously convicted of a crime: and /or
- b) is of desperate character- violent, disorderly or obstructive: and /or
- c) is likely to commit suicide: and /or
- d) is likely to attempt escape.

2./ The reasons why handcuffs have been used must be clearly mentioned in the Daily Diary Report. They must also be shown to the court.

3./ Once an arrested person is produced before the court, the escorting officer must take the court's permission before handcuffing her/him to and fro from the court to the place of custody.

4./ The magistrate before whom an arrested person is produced must inquire whether handcuffs or fetters have been used. If the answer is yes, the officer concerned must give an explanation.

In **D.K.Basu V State of West Bengal AIR 1997 SC 610** the Hon'ble Supreme Court of India has observed that the violation of human rights and irregularity of arrest procedure and in inadequate compensation to the accused person. The custodial torture is the naked violation of human rights and degradation of human dignity. In certain police stations it was observed that the police used to torture and adopt the method third degree to get confession of the accused person. It is agreed that the police has legitimate right to arrest a criminal and to interrogate her/him in the course of investigation. However, the law does not permit the use of third degree methods or torture on an accused person. Actions of the State must be right, just and fair. Torture of accused persons for extracting any kind of confession would neither be right nor just nor fair. In order to avoid such type of violation the Hon'ble Supreme Court of India laid down the following guidelines:

- 1. Use of third degree methods or any form of torture to extract information is not permitted.
- 2. Police personnel carrying out arrest and interrogation must

bear accurate, visible and clear identification / name tags with their designations.

3. Particulars of all personnel handling interrogation of an arrested person must be recorded in a register.
4. A memo of arrest stating the time and place of arrest must be prepared by the police officer carrying out an arrest. It should be attested by at least one witness who is either a family member of the arrested person or a respectable person from the locality where the arrest is made. The memo should also be counter-signed by the arrested person.
5. The arrested or detained person is entitled to inform a friend, relative or any other person interested in her/ his welfare of him regarding the place of detention and the reason of arrest as soon as practicable. The arrested person must be made aware of this right as soon as s/he is arrested or detained.
6. The arrested person may be allowed to meet her/ his lawyer during interrogation but not throughout the interrogation.
7. The time, place of arrest and venue of custody of the arrested person must be notified by telegraph to next friend or relative of the arrested person within 8-12 hours of arrest in case such person lives outside the district or town. The information should be given through the District Legal Aid Organization and police station of the area concerned.
8. An entry must be made in the diary at the place of detention in regard to the arrest. The name of the friend/relative of the arrested person who has been informed and the names of the police personnel in whose custody, the arrested person is being kept should be entered in the register.
9. The arrested person should be examined by a medical doctor at the time of arrest if s/he so requests. All bodily injuries on the arrested person should be recorded in the inspection memo' which should be signed by both the arrested person and the police officer making the arrest. A copy of the memo should be provided to the arrested person.
10. The arrested person should be subject to a medical examination every 48 hours by a trained doctor who has been approved by the State Health Department.
11. Copies of all documents relating to the arrest including the memo of arrest should be sent to the Area Magistrate for her / his record.
12. A police control room should be provided at all district and state headquarters where information regarding arrests should be prominently displayed. The police officer making the arrest must inform the police control room within 12 hours of

the arrest.

13. Departmental action and contempts of court proceedings should be initiated against those who fail to follow above-mentioned directives.

Further, the Constitution Framers of our country were of the view that the rights of the accused person can be well defended by rendering Free Legal Aids (Art.39(A) C.O.I.) and shall be given to the under trial prisoners/ accused persons who cannot engage their lawyer. In **Ajmal Keshab's case**, the Hon'ble Supreme Court of India inter-alia directed the magistrate to inquire/ asked the accused about the injury if any and to appoint the Lawyer for the accused who cannot engage any Advocate to defend his/her rights/case on the day of production.

Prepared and Presenter,



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