

A STUDY OF RIGHTS AND SAFEGUARDS OF ACCUSED IN INDIA

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ABSTRACT

A person accused of an offence is put under the peril of his life and liberty. Therefore, it becomes necessary that certain safeguards should be provided to him. These protections are almost common to all civilized legal systems of the world including that of India. Many procedural rights and privileges are laid down under the Indian Constitution, 1950, Criminal procedure Code (Cr.P.C), 1973, Indian Evidence Act, 1872; which are available to the accused. Some of them have been guaranteed and made available by the Indian Constitution too. These rights have been inherited in India from common law. In this background, the main aim and objectives of this study are to know the various rights, privileges and protections available to the person who has complaint against him, who is in the custody of police and who is facing the trial in the court. The present study contains three parts namely, in the part first Rights and Safeguards in Constitution of India, in the part second discussed about the Rights provided to person of Accused under Criminal procedure Code, 1973 and Indian Evidence Act, 1872, and in last part discussed about the Recommendations of National Human Rights Commission's (NHRC) Guidelines for Arrest. The present study is based on secondary data like Books, journals, crime reports and internet surveys etc.

Key Words: Rights, Accused, Safeguards, Law, Custody, Trial.

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Introduction

The law affords some protections to the accused. It is a principle of criminal jurisprudence that the accused should not be unnecessarily jeopardized and the natural justice demands fairness in trial and conviction. Criminal law and its process cannot be appreciated without some understanding of the rights and protections given to the accused person not only during his trial but also before and after trial. These rights and protections aim at providing a fair trial to an accused so as to eliminate any possible abuse of process resulting in miscarriage of justice. This has to be so since criminal law is expected to maintain certain values in a civilized society and the means to obtain conviction of a guilty person are no less important than getting the conviction itself.

An accused is a person against whom an accusation has been made for alleged commission of crime or for his alleged involvement in the commission of crime, which invites punishment under penal laws of the country. The accused also have got certain rights, privileges and protections, which are laid down in Indian Constitution, 1950, Criminal Procedure Code, 1973, Indian Evidence Act, 1872 and Recommendations of National Human Rights Commission and Justice Malimath V. C. Committee on reforms of Criminal Justice system, March 2003 etc.

Objectives of the Study

Main objectives of the study are shown as below:

1. To Understand the Rights of Accused provided in the Constitution of India.
2. To know the Protections of an Accused lay down under Criminal Procedure Code (Cr.P.C), 1972 and Indian Evidence Act, 1872.
3. To know the Recommendations made by the NHRC regarding Safeguards of an Accused.

Result and Discussion

(I). Rights and Safeguards in Constitution of India:

(1) Article 14 of the constitution lays down that, “the state shall not deny to any person equality before law or the equal protection of laws within the territory of India” the core of the right of

equality is that the state is under an obligation to take necessary steps so that every individual is given equal respect and concern which he is entitled to as human being.

Every person, whatever, is his rank or position, is subject to the jurisdiction of the ordinary courts. Similarly, the equal protection of the laws is a pledge of protection or guarantee of equal laws. What article 14 prohibits and forbids is discrimination between persons who are substantially in similar conditions or circumstances. Keeping in view the inherent principle of criminal law, procedure of trial for juvenile offenders was classified separately from adult offenders.

(2) Article 15, prohibits discrimination on grounds of religion, race, caste, sex or place of birth.

(3) Article 20, provides protection in respect of conviction for offences. The right secured by clause 1 of Article 20, corresponds to the provisions against ex post- facto laws of the American constitution which declares that no ex post- facto laws shall be passed. Broadly speaking ex post- facto laws are laws which nullified and punished what had been lawful when done. This means that a person can only be convicted of an offence, if the act charged against him was an offence under the law enforce at the date of the commission of the act. In other words, if an act is not an offence at the date of commission, no future law can make it an offence. (Chief inspector of mines v. K. C. Thapar)

Thus, section 304-B of IPC 1860, which was inserted in the code on 19.11.1986, creating an distinct offence of dowry death and providing a minimum sentence of seven years imprisonment, does not apply to such death caused before the insertion of the section because of Article 20(1). (Soni Devraj Bhai Babu Bhai V. state of Gujarat)

It is only retrospective criminal legislation that is prohibited and not the imposition of civil liability retrospectively, for example, a tax can be imposed retrospectively.

Double jeopardy and Estoppel

The plea of double jeopardy is to be distinguished from the rule of issue estoppel in a criminal trial. The rule of issue estoppel is that where an issue of fact has been decided by a competent

court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or resjudicata against the prosecution not as a bar to the trial and conviction to the accused for a different or distinct offence, but as barring the reception of evidence to disturb that finding of fact when the accused is tried subsequently even at a different trial. The rule is not the same as the plea of double jeopardy, because firstly, the rule does not introduce any variation in the code of criminal procedure either in investigation, enquiry or trial and secondly, it does not prevent the trial of any offence as does the rule of double jeopardy, but only precludes evidence being led to prove a fact in issue as regards, which evidence has already been led and a specific finding recorded at an earlier trial, before a competent court.

4. Article 21 of the constitution says that “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

The supreme court of India upheld the right of the detenu to have interviews with members of her family friends, and her lawyer (Francis Coralie v. Union territory of Delhi).

5. Article 22 of constitution guarantees protection against arrest and detention in certain cases. Clauses (1) and (2) of Article 22 confers four rights upon a person who has been arrested, firstly, he shall not be detained in custody without being informed, as soon as may be, of the grounds of his arrest. If information is delayed, there must be some reasonable ground justified by the circumstances (Tarapada De v. State of West Bengal). Secondly, he shall have the right to consult and to be represented by a lawyer of his own choice. (Sec 303. Cr.P.C 1973). Thirdly, every person who has been arrested has the right to be produced before the nearest magistrate within 24 hours of his arrest. In computing this period of 24 hours, the time spent on the journey from the place of arrest to the court of the magistrate is to be excluded. This requirement is dispensed in custody beyond the said period of 24 hours without the authority of the court. (State of U.P v. Abdul Samad).

(II). Rights provided to person of Accused under Criminal procedure Code (Cr.P.C), 9173 and Indian Evidence Act, 1872:

1. Right to know grounds of arrest:

In every case of arrest with or without a warrant the person arresting shall communicate to the arrested person without delay the grounds of his arrest is made in a bailable offence, the person shall be informed of his right to be released on bail. It is mandatory (Sec 50, 55 and 75 of Cr.P.C)

Section 50 (1) carries out the mandate of Article 22 (1) of constitution (Govind v. State of West Bengal).

Section 55 of Cr.P.C. underlines the procedure when police officer depute subordinate to arrest without warrant. A verbal order is sufficient if arrest is to be made in the presence of the police officer giving the order; otherwise a written order from him is essential for legal arrest. Arrest without written order is illegal.

2. Right of being produced before a magistrate:

That is police officer making an arrest without warrant shall without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a magistrate or court having jurisdiction in the case (Sec 56 of Cr.P.C.).

In case of every arrest, the person making the arrest is require to produce the arrested person before the magistrate within 24 hours, exclusive of the time necessary for the journey from the place of arrest to the magistrate's court. (Sec 57. Cr.P.C.). It is constitutional and legal requirement and must be strictly observed. (Khatri's case).

3. No unnecessary restraint:

Section 49 of Cr.P.C. speaks of 'no unnecessary restraint', that is the person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

4. Right to be examined by a medical practitioner:

Section 54 of Cr.P.C. lays down for examination of arrested person by medical practitioner at the request of the arrested person. The accused must be informed of his right. (Sheela Barse v. State of Maharashtra)

If any arrested person alleges at the time, when he is produced before a magistrate or at any time during the period of his detention in custody, that the examination of his body will afford evidence, which will disprove the commission by him of any offence or which will establish the

commission by any other person of any offence against his body, then the magistrate on the request of the arrested person, is required to direct the examination of his body by a registered medical practitioner. However, the magistrate need not to give such a direction if he considers that the request for examination has been made by the arrested person for the purpose of vexation or delay for defeating the ends of justice.

It also enables the person concerned to establish that the offence charged was not committed by him (for example in rape case) or that he had been subjected to physical injury while in custody.

5. Right to counsel:

Any person accused of an offence before a criminal court or against whom proceedings are instituted under code of criminal procedure, may of right be defended by the lawyer of his choice the right begins from the moment of arrest. The consultation with the lawyer may be in the presence of the police officer but not within his hearing. The right to consult and to the defended by a legal practitioner of accused's choice is now recognized in Article 22 (1) of Constitution.

Section 304 of Cr.P.C. 1973, provides for legal aid to the accused at state expense in certain cases, when he is unable to hire a lawyer to defend him. The right to free legal service is reasonable, fair, just and implicit in Article 21 of Constitution (Maneka Gandhi v. Union of India).

6. Statements to police not to be signed – used of statements in evidence

The words of section 162 Cr.P.C. are wide enough to include a confession made to a police officer in the course of an investigation. The statements if reduced in writing then it shall not be signed by the maker of the statement. The prohibition extends to all statements (confessional or otherwise) during a police investigation made by any person whether accused or not (in police custody or not), whether reduced writing or not, subject to the proviso. In view of the ban in the section, no witness can be asked, what he said to the police during the investigation, nor may a police officer be asked what a witness said to him, nor may any be stander be questioned as to what he heard another person say to the police during the investigation. Statements of accused before the police cannot be used as substantive evidence.

Section 162 does not refer to every statement recorded by the police but only to statement in the course of an investigation under chapter 12 into cognizable and non-cognizable offences. The ban does not apply to any statement to the police before starting investigation.

7. Right to trial in his presence:

It is provided that all evidence shall be taken in presence of the accused or when his personal attendance is dispensed with, in presence of his pleader (Sec 273 Cr.P.C.).

8. Right to public trials:

The court wherever it may be held, it must be like an open court with access to the public generally so far as accommodation in court permits (Sec 327 Cr.P.C.)

9. Interpretation of Evidence to the accused or his pleader:

Section 279 (1) says, wherever any evidence is given in a language not understood by the accused, and he is present in court in person, it shall be interpreted to him in open court in a language understood by him.

10. Accused person to be competent witness:

Section 315 (1) lays down that, any person accused of an offence before a criminal court shall be competent witness for the defence and may give evidence on oath in disproof of the charges made against him, or any person charged together with him at the same trial, provided that he shall not be called as a witness except on his own request in writing. The right to give evidence for the defence is of inestimable value to an innocent accused in clearing himself of the charges against him, though it may not be an advantage to a guilty person. In many cases the circumstances in favour of the accused's innocence are known to him alone and are incapable of being explained by any person other than himself.

11. No influence to be used to induce disclosure:

Section 316 of Cr.P.C. lays down that except as provided in sections 306 and 307 of Cr.P.C. no influence by means of any promise or threat or otherwise shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

12. Magistrate may dispense with personal attendance of accused:

Section 205 Cr.P.C., lays down that (i) whenever a magistrate issues a summon, he may if he see reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader; (ii) but the magistrate inquiring into or trying the case may in his discretion, at any stage of the proceedings, direct the personal attendance of the accused and if necessary, enforce such attendance in the manner herein above provided.

13. Right of being presumed innocent throughout the trial section 105 of India Evidence Act, 1872:

In criminal law, the general rule is that the accused person must always be presumed to be innocent and the onus of proving everything essential to the establishment of the offence is on the prosecution. He stands before the court as an innocent man till he is proved to be guilty. This section is however an important qualification of this rule. In view of it, the prosecution not obliged to prove absence of facts, which might bring the case within a special exception which the accused might setup in his defence. Section 105 says, "when a person is accused of any offence the burden of proving the existence of circumstances bringing the case within any of the general exception or proviso contained in any other part of the same code, or in any law defining the offence, is upon him, and the court shall be presume the absence of such circumstances".

14. Burden of proof:

As per section 101 of Evidence Act, in criminal cases, the burden of proving the guilt of the accused beyond all reasonable doubt always rest on the prosecution and therefore, if it fails to adduce satisfactory and reliable evidence to discharge that burden and prove its case beyond all reasonable doubt, the accused is entitled to be acquitted. (Saju v. State of Kerala and George v. State)

15. Recording of confessions and statements:

Confessional statements to the police by accused with his free will are absolutely excluded under section 25 of the evidence act. All statements by the witness to the police are also shut out by section 162 of Evidence Act except for the strictly limited purpose of contradiction of prosecution witness during trial.

Section 164 of Evidence Act, should be read together with section 24,25,26,29 of the Evidence Act, and so read the following result follows:

- (i) Confession shall not be made to a police officer.
- (ii) It must be made in presence of magistrate.
- (iii) The magistrate shall not record it unless he is upon enquiry satisfied that, it is voluntary.
- (iv) He shall record it in manner laid down in section 164 read with section 281.

16. Release of accused, when evidence deficient:

The section 169, Cr.P.C. applies to an accused, who is not forwarded to a magistrate. If upon investigation by the police officer, in charge of police station, it appears that there is nothing to justify the sending up of the accused for trial, he shall release him after taking a bond for appearance and report the fact to the magistrate (Sec 173(4)). The bond is for the contingency that the magistrate may not be agree with the police report and may consider the evidence sufficient to put the person on trial.

17. Transfer on application of the accused:

Section 191, Cr.P.C. proceeds on the principle that the accused has been given the right to the tried by a magistrate other than the one who took cognizance under section 190(1) (C).it is obligatory on magistrate to tell the accused of this right and failure to do so vitiates the trial. But it can be exercised “before any evidence is taken”.

18. Supply to the accused copy of police report and other documents:

Section 207, Cr.P.C. casts a duty on the magistrate to supply copies of documents specified in the section to the accused free of cost. This is obligatory on magistrate under section 238 Cr.P.C. to see that they are so furnished.

As per section 208, in respect of cases exclusively triable by court of session and instituted on complaint or otherwise than on a police report, the magistrate is duty bound as in section 207, to furnish the accused free of cost copies of (i) statements of all persons examined by the magistrate, (ii) statements and confessions recorded under section 161 or 164 and (iii) documents on which prosecution relies. Provision has also been made for inspection of documents as in section 207, when the document is voluminous. This is on order to enable the accused to get adequate information about the charge against him and prepare for his defence.

19. Framing of charge:

Where the judge frames any charge, the charge shall be read over, explained to the accused in a manner which leaves no doubts that he has understood it thoroughly, and then accused's plea is to be recorded (i.e., guilty or not guilty). Section 228 and section 240(2) of Cr.P.C.

20. Substance of accusation to be stated and compensation for accusation without reasonable cause:

The accused is entitled to be furnished substance and grounds of accusation and asked whether he pleads guilty or has a defence to make (sec 251 and 173 Cr.P.C.). Compensation can be given in a case instituted by police upon information given to them by a person but not in a case charged by police after investigation. The person must be accused of an offence (whether under penal law or any other law).

Compensation can only be granted when magistrate while acquitting or discharging the accused, is also of further opinion that there was no reasonable ground for the accusation. (Sec 235 Cr.P.C)

21. Sentence hearing:

The accused has a right to be heard on the question of sentence when convicted. (Sec 235. Cr.P.C.)

22. Right to produce and examine defence witnesses:

It refers to a stage when the prosecution closes its case of examining all witnesses and the accused has entered upon his defence. If the accused asks for any process to compel the attendance of his witness or for cross examination of any prosecution witnesses, it shall be granted unless the magistrate thinks that the object is vexation or delay.

23. Record of evidence in absence of accused:

Section 299 Cr.P.C. provides for record of prosecution evidence even, where accused is absconding and there is no immediate prospect of arresting him but there can be no conviction in absence of the accused.

24. Right against double jeopardy:

Persons once convicted or acquitted not to be tried for the same offence. The section is based on the principle that no man's life or liberty shall be twice put in jeopardy for same offence and on the same set of facts. (Sec 300. Cr.P.C.)

25. Right of sanction for prosecution:

Section has to be taken for prosecution of judges and public servants, for contempt of lawful authority of public servants, for offences against public justice. (Sec 195, 196, 197 Cr.P.C.)

26. Release of lunatic pending investigation or trial:

Whenever a person is found under section 328 & 329, to be of unsound mind and incapable of making his defence, the magistrate or court, whether case is one in which bail may be taken or not, may release him on sufficient security being given for his proper care and appearance, when required before magistrate (section 330 Cr.P.C.) in case of lunatic accused, proceedings are stayed until he reverts to sanity.

27. Right to cross examines prosecution witnesses:

Witnesses shall be first examined in chief, then cross – examined (if the adverse party so desires), then re-examined (if the party calling him so desires). Leading questions may be asked in cross examination. But leading questions must not, if objected to by the adverse party, be asked in examination-in-chief, or in re-examination, except with the permission of court.(sec

137, 138, 141, 142, 143 & 145 Evidence Act) if the defence wishes to cross examine a witness on a previous statement in writing with a view to discredit him, it is permissible.

28. Right to examine his own hostile witness:

The court may in its discretion permit the person who calls a witness to put any question to him, which might be put in cross examination by the adverse party. A party is not bound to accept the testimony of his own witness as correct. (Sec 154 Evidence Act)

29. Right to bail:

In bailable and non-bailable offences, the commission of which is alleged on accused and when he is arrested or detained, he may be released on bail as provided under section 436 & 437 of Cr.P.C.

30. Judgment copy to be given to accused after judgment, and right to appeal:

After the judgment is delivered, a copy of judgment shall be given immediately to the accused and in case of conviction he will have right to appeal against judgment. (Sec 363 and 383 Cr.P.C.)

The aforesaid mentioned rights available to the accused are important and essential to ensure ends of criminal justice system.

31. Right of women accused while arrest and medical examination:

The following guidelines should be followed on Arrest of women; According to NHRC guidelines on arrest, as far as practicable, women police officers should be associated where women are arrested, that too, arrest of women between sunsets or sunrise should be avoided. According to section 51(2) when it is necessary to cause a female to be searched, the search shall be by another female with strict regard to decency. Body searches of females should only be carried out by women and with strict regard to decency.

The Hon'ble Supreme Court in Sheela Barse v. st of Maharashtra. It was held that it is the duty of the police officer making arrest see that arrested females are segregated from men and kept in female lock-up in the police station. In case there is no separate lock-up, women should be kept in a separate room.

According to proviso, section 160(1) code of criminal procedure, 1973, women should not called to the police station or to any place other than their place of residence for questioning inasmuch as it says that no male person under the age of fifteen or woman shall be required to attend at any place other than the place in which such male person or women resides.

Women should be guarded by female constable/ police officers. They must be questioned in the presence of policewomen. According section 53(2) of Cr.P.C. and 10 basic standards for law enforcement officials proposed by Amnesty international, medical examination of woman should be carried only under the supervision of female medical practitioners.

32. Compensation may be award by the court for Arrest groundlessly:

According to section 358 of code criminal procedure; (1) whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground of causing such arrest, the Magistrate may award such compensation, not exceeding (one thousand rupees), to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding (one thousand rupees), as such Magistrate thinks fit.

(3) All compensation awarded under this section may be recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

National Human Rights Commission Guidelines for Arrest:

A large number of complaints pertaining to Human Rights violations are in the area of abuse of police powers, particularly those of arrest and detention. It has, therefore, become necessary, with a view to narrowing the gap between law and practice, to prescribe guidelines regarding arrest even while at the same time not unduly curtailing the power of the police to effectively maintain and enforce law and order and proper investigation.

Arrest

- As a rule use of force should be avoided while effecting arrest. However, in case of forcible resistance to arrest, minimum force to overcome such resistance may be used. However, care must be taken to ensure that injuries to the person being arrested, visible or otherwise, is avoided.
- The dignity of the person being arrested should be protected. Public display or parading of the person arrested should not be permitted at any cost.
- Searches of the person arrested must be done with due respect to the dignity of the person, without force or aggression and with care for the person's right to privacy. Searches of women should only be made by other women with strict regard to decency. (S.51 (2) Cr.P.C.)
- The use of handcuffs or leg chains should be avoided and if at all, it should be resorted to strictly in accordance with the law repeatedly explained and mandated in judgment of the Supreme Court in Prem Shanker Shukla v. Delhi Administration [(1980) 3 SCC 526] and Citizen for Democracy v. State of Assam [(1995) 3 SCC 743].
- As far as is practicable women police officers should be associated where the person or persons being arrested are women. The arrest of women between sunset and sunrise should be avoided.
- Where children or juveniles are sought to be arrested, no force or beatings should be administered under any circumstances. Police Officers may for this purpose, associate respectable citizens so that the children or juveniles are not terrorised and minimal coercion is used.
- Where the arrest is without a warrant, the person arrested has to be immediately informed of the grounds of arrest in a language which he or she understands. Again, for this purpose, the police, if necessary may take the help of respectable citizens. These grounds must have already been recorded in writing in police records. The person arrested should be shown the written reasons as well and also given a copy on demand. (S.50 (1) Cr.P.C.)

- The arrested person can, on a request made by him or her, demand that a friend, relative or other person known to him be informed of the fact of his arrest and the place of his detention. The police should record in a register the name of the person so informed. [Joginder Kumar's case (supra)].
- If a person is arrested for a bailable offence, the police officer should inform him of his entitlement to be released on bail so that he may arrange for sureties. (S.50 (2) Cr.P.C.)
- Apart from informing the person arrested of the above rights, the police should also inform him of his right to consult and be defended by a lawyer of his choice. He should also be informed that he is entitled to free legal aid at state expense [D.K. Basu's case (1997) 1 SCC].
- When the person arrested is brought to the police station, he should, if he makes a request in this regard, be given prompt medical assistance. He must be informed of this right. Where the police officer finds that the arrested person is in a condition where he is unable to make such request but is in need of medical help, he should promptly arrange for the same. This must also be recorded contemporaneously in a register. The female requesting for medical help should be examined only by a female registered medical practitioner. (S.53 Cr.P.C.)
- Information regarding the arrest and the place of detention should be communicated by the police officer affecting the arrest without any delay to the police Control Room and District / State Headquarters. There must be a monitoring mechanism working round the clock.
- As soon as the person is arrested, police officer affecting the arrest shall make a mention of the existence or non-existence of any injury(s) on the person of the arrestee in the register of arrest. If any injuries are found on the person of the arrestee, full description and other particulars as to the manner in which the injuries were caused should be mentioned in the register, which entry shall also be signed by the police officer and the arrestee. At the time of release of the arrestee, a certificate to the above effect under the signature of the police officer shall be issued to the arrestee.

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