

Rights of Accused Person and Legal Mechanism for the Protection of Accused Person

Ms. Palwinder Kaur Hanzra

Ph.D Holder, Laws, Guru Nanak Dev University, Amritsar

Abstract:

how the rights of accused are violated during investigation and what are legal mechanism that can protect the accused person. Many judgements are given by apex court that lay down the guidelines that protect the accused from police torture during investigation.

Introduction

Every human being has some basic rights by birth to death that cannot be denied like freedom, equality, live with dignity and respect. Every human being also includes an accused person who is charged with some criminal acts. The Indian legal system believes in the basic principle of criminal jurisprudence that is presumption of innocence, (the court shall presume innocent until proven guilty) fair trial, no one should be condemned unheard, fair decision. The basic principles of criminal jurisprudence are enshrined in our Indian Constitution under article 14, 20, 21, 22.¹

Rights of accused person

Accused person have many rights to protect and defend himself before, on or after arrest and before, during or after trail.

Rights of accused person before arrest

Right to get Anticipatory bail: any person who has reason to believe that he may arrest on the accusation of having committed a non-bailable offence, he may apply to high court or session court to release on bail on the event of arrest. The court may release him on certain conditions like he shall not directly or indirectly make any threat, inducement or promise to any person who is acquainted with the facts of the case, shall not leave India without previous permission of the court, or any other condition as the court may think fit.²

The supreme court gave guidelines while granting anticipatory bail that mere fear is not a belief and it is a device to secure the individual's liberty; neither a passport to commission of crime nor a shield against any kind of accusation. Anticipatory bail can also be granted after first information report has been lodged but person has not been arrested. The court granting such bail is entitled to cancel or recall anticipatory bail after consideration the facts and circumstances may arise after granting bail.³

¹ <https://www.legalserviceindia.com> (last visited April23, 2025)

² The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023) S.482.

³ *Gurbaksh Singh Sibia vs. State of Punjab*, AIR 1980 SC 1632.

The constitution bench held that anticipatory bail will be effective till the conclusion of the trial, in some cases court may impose more conditional taking into consideration the seriousness of the case⁴

Rights of accused on arrest

Right to know the grounds of arrest: Arrested person shall have right to know the grounds of arrest and police officer and person arresting shall communicate the grounds of arrest and if he has committed bailable offence he shall inform to arrested person that he is entitled to get bail.⁵ The apex court held that arrests should be made on reasonable satisfactory grounds, arbitrary arrest based on mere suspicion or allegations must be avoided. An arrested person being held in custody is entitled to inform to his friend or relative or other person who is known to him or take an interest in his welfare.⁶

Right to be taken before a magistrate without delay: person who is arrested with or without warrant must bring before judicial magistrate without unnecessary delay.⁷ He shall not be detained more than twenty-four hours⁸, otherwise it will violate the fundamental rights of accused person because this right is expressly protected under Indian Constitution.⁹

The supreme court of India seriously concerned with the violation of fundamental rights of accused person like unlawful detention and inhumane treatment with under trial prisoners and court strongly urged upon the state and its police to ensure that this constitutional and legal requirement must be rigidly observed. This kind of healthy provisions enables the magistrate to keep check over police investigation.¹⁰

The apex court has observed that Article 22(2) relates to arrests without warrant, in case of arrest on warrant the judicial mind had already been applied to the need for arrest.¹¹

Right to consult a legal practitioner: When person is arrested and interrogated by the police, arrested person has right to meet an advocate of his own choice during interrogation, though not throughout interrogation.¹²

Right to defend: Person against whom the proceeding is instituted has right to defend by an advocate of his choice.¹³

Right to get free legal aid: The supreme court held that it is compulsory to state to provide free legal aid to an indigent accused person not only at the stage of commencement of trial but also attaches when accused is first time produced before magistrate.¹⁴ Non-compliance with these requirements and failure to inform the accused of this right would vitiate the trial. This right is also implicated in Article 21 of the

⁴ *Sushila Aggarwal vs. State of NCT Delhi*, AIR 2020 SC 831.

⁵ The Bharatiya Nagarik Suraksha Sanhit, 2023 (Act 46 of 2023) S.47

⁶ *Joginder Kumar vs. State of U.P.*, AIR 1994, 1349.

⁷ The Bharatiya Nagarik Suraksha Sanhit, 2023 (Act 46 of 2023) S.57.

⁸ The Bharatiya Nagarik Suraksha Sanhit, 2023 (Act 46 of 2023) S.58.

⁹ The Constitution of India, Article 22.

¹⁰ *Khatris vs. State of Bihar*, (1981)1 SCC 627.

¹¹ *State of Punjab vs. Ajaib Singh*, AIR 1953 SC 10.

¹² The Bharatiya Nagarik Suraksha Sanhit, 2023 (Act 46 of 2023) S.38.

¹³ The Bharatiya Nagarik Suraksha Sanhit, 2023 (Act 46 of 2023) S.340.

¹⁴ *Hussainara Khatoon vs. State of Bihar*, (1980)1 SCC 98.

constitution of India.¹⁵ It is specifically mentioned that this constitutional right cannot be denied if accused failed to apply.¹⁶

The supreme court imposed duty on the magistrate and court to inform the accused person about his right to get free legal aid and this constitutional right of accused may prove delusive unless accused instantly and properly informed about it.¹⁷

Right to be examined by medical practitioner: The accused person have right to medically examined that enable him to defend and protect himself properly.¹⁸

The supreme court held that compulsory scientific test like narco- analysis, polygraph test, brain mapping test, violates the fundamental right against self-incrimination under article 20(3). these type of technical test force the individuals to provide information against his will, it will not be admitted as evidence.¹⁹

Health and safety: it is the duty of person who has custody of accused person to take care the health and safety.²⁰

Accused handcuff in exceptional circumstances: The supreme court held that handcuff should be a last resort when there is clear and present danger of escape, breaking out the police control and not mere assumptions. So, handcuffing is permitted only in exceptional cases not in routine, the arresting officer is required to record reasons for handcuffing otherwise it would violate the procedure established by law which must be fair/just/reasonable.²¹

Right to get bail

Right to get bail in bailable offences: where the accused person is arrested or detained without warrant by an officer-in-charge of police station is prepared to give bail, the police officer or court is bound to release him.²²

Right to get default bail or compulsory bail: the investigation has not been completed within 90 days where the investigation related to the offence punishable with death, imprisonment for life or imprisonment for the term of ten years or more and 60 days where the investigation relates to any other offence, accused person shall be released on bail if he is prepared and does furnish bail, person who is released on default bail shall be deemed to be so released as on bail under chapter 35 of the bharatiya nagrik suraksha sanhit, 2023.²³

When accused filed an application and is prepared to offer bail on being directed, then it has to be held that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and condition of bail and the accused has not furnished the same.²⁴ “availed of” does not mean mere filing of application for bail expressing therein willingness of the accused to furnish the bail bond, but the stage for actual furnishing of bail bond must reach. If

¹⁵ *Sukdas vs. U.T of Arunachal Pradesh*, (1986)2 SCC 401.

¹⁷ *Mohd. Ajmal Amir Kasab vs. State of Maharashtra*, (2012) 9 SCC 1

¹⁸ The Bharatiya Nagarik Suraksha sanhit, 2023 (Act 46 of 2023) S.53.

¹⁹ *Selvi vs. State of Karnataka* AIR 2010 SC 1974.

²⁰ The Bharatiya Nagarik Suraksha Sanhit, 2023 (Act 46 of 2023) S. 56.

²¹ *Prem Shanker vs. Delhi Administration*, AIR 1980 SC 1535.

²² The Bharatiya Nagarik Suraksha Sanhit, 2023 (Act 46 of 2023) S. 478.

²³ The Bharatiya Nagarik Suraksha Sanhit, 2023 (Act 46 of 2023) S.187.

²⁴ *Sanjay Dutt vs. Central bureau of investigation*, (1994)5 SCC 410.

challan is filed before that then there is no question of enforcing the right after filing of challan because thereafter the right under default cannot be exercise.²⁵

Rights of accused on trail

Right to get fair and speedy trail: Right to get free trail is not explicitly mention in criminal laws but such right can be derived from article 14 of the Indian constitution, it states that all person are equal before law it means that all the parties to dispute have equal right to represent their case, no one is above the law, law shall be applied irrespective the class, position, religion, caste.²⁶

The Supreme Court has held that right to life and personal liberty include right to get speedy trail is fundamental right that is enshrined in article 21 of the constitution of India. Right to get speedy trail encompasses all the stages of the judicial process, from investigation to retrial. Unless the procedures prescribed by law ensure a speedy trail, it cannot be said to be reasonable, fair or just. Expeditious trail and freedom from detention are part of human rights and basic freedom and judicial system which allows detention of accused person for long time without trail must be held to be denying the human rights to such under trail, in other words justice delay means justice deny.²⁷

Right to keep silence: Article 20 of the constitution of India states that no one can be compelled to be a witness against himself. This fundamental right is protection against self-incrimination. The court held that person have right to keep silence when police officer ask any question during investigation, which is against the interest of accused or can held liable for criminal liability and self-incrimination does not apply only to the questions which are directly incriminating information but also to the questions that might have potential to expose the individual to a criminal charge.²⁸ There should be a balance between the right of accused and the power of police to investigate the case, the power of police is not absolute, and it should be exercised within the constitutional limits. The court also held that there should be important safeguards that can ensure the exercise of right to silence without any fear of coercion or undue pressure.²⁹

Right to be free from torture and maltreatment: the court expressed concern about the harsh and unbearable conditions prevailing in prisons, prisoners should not be tortured and maltreated in prisons and held fundamental right of prisoners under article 14, 19 and 21. The Jail authorities does not have any right to torture or giving punishment to prisoners without the permission of the court and whenever fundamental right were infringed people can directly knock the doors of the supreme court and high court by article 32 and 226 respectively. Section 30 (2) of the prison Act, 1894 clearly states about solitary confinement by the prison authority but there is nothing about torturing the prisoners, even convicted people have right to life and personal liberty³⁰

Right against double jeopardy: Nemo debet bis puniri pro uno delicto which means no man ought to be punished twice for same offence and this maxim is explicitly mention in Article 20(2) no person shall be prosecuted and punished for the same offence more than once and section 26 of general clause act, 1897 says where an act or omission constitutes an offence under two or more enactments, the offender

²⁵ *Ibid.*

²⁶ <https://blog.ipleaders.in> (last visited April 25, 2025)

²⁷ *Abdul Rehman Antulay vs. R.S.Nayak*, AIR 1998 SC 1531.

²⁸ *Nandini Satpathy vs. P.L.Dani*, AIR 1978 SC 1025.

²⁹ *Ibid.*

³⁰ *Sunil Batra vs. Delhi Administration*, AIR 1978 SC 1675.

shall be liable to be prosecuted or punished under either or any those enactments, but shall not be liable be punished twice for the same offence, and section 300 of criminal procedure code, says that person once convicted or acquitted not to be tried for same offence. So, accused have fundamental right and legal protection against double jeopardy if he has been prosecuted and convicted for the offence.³¹

Additional Rights

Section 358 of criminal procedure code, any person who is arrested by police officer and magistrate finds that there is no ground for such arrest, the magistrate may award such compensation not exceeding one thousand rupees to person arrested for the loss of time and expenses³²

Section 35(3) the police office shall issue a notice regarding the person against whom a reasonable complaint or credible information has been received that he has committed a cognizable offence, to appear before him or at such place that is mention in notice. They are required to issue a notice to accused to appear within two weeks of the case being registered, with extension possible upon approval by the superintendent of police.³³ The supreme court has established guidelines to prevent arbitrary arrests in cases where the maximum punishment is less than seven years and non-compliance with these guidelines can lead to departmental action against police officers and even contempt of court proceedings.³⁴

Conclusion

The right to life and personal liberty is a basic human right recognized by the General Assembly of the United Nations in its Universal Declaration of Human Rights. Our constitution also recognize as a fundamental right under article 21 which is upheld by supreme court in number of landmark verdicts, still, in present days custodial death and torture has been increased and seems like no impact on police. The Supreme Court in *Paramvir singh vs. baljit singh* issues guidelines regarding the installation of CCTV cameras in police stations outlining specific areas that need surveillance defining the responsibilities of various committees at state and district levels, and aims to ensure accountability, transparency, prevent custodial abuses and ensure fair treatment of individuals in police custody, protect human rights. The legislation has duty to make laws that can protect accused rights and police should make accountable for their harsh acts. Arrest of any person is social stigma that no one can forget because it directly hit to social, professional and personal life, so, there should be a law for the prevention of groundless arrest. After making arrest, provision of laws and guidelines should have to follow. At the last but not the least we are living in democratic set up and civilized society, so basic human rights should not violate even though a culprit person.

³¹ *Thomas das vs. state of Punjab*, AIR 1959 SC 375.

³² <https://www.lexology.com> (last visited April 25, 2025)

³³ *Arnesh Kumar vs. State of Bihar*, AIR 2014, SC 2756.

³⁴ *Ibid.*