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## Rights of an Arrested Person in India

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**ABSTRACT:**The code has not defined the term arrest. The term arrest means apprehension of a person by legal authority so as to cause deprivation of liberty. As per Legal Dictionary by Farlex, Arrest means 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. Therefore, this paper discusses in brief that the rights of an arrested person consist of what all provisions and the background of the rights of the arrested persons.

**KEYWORDS:** Arrest, Freedom, Legal Confinement, Liberty, Prison.

### I. INTRODUCTION

Every right is an entitlement to do something, both moral and legal. Each person is born with certain constitutional rights to which he is entitled, such as the right to life and the right to democracy, etc. Similarly, every citizen of every nation has those rights which, in the sense of universal brotherhood and conscience, are totally fair without discrimination, such as the right to life, the right to liberty, the right to democracy, the right to education, the right to equality, the right to freedom of faith and many more. However, if a citizen is detained/arrested for committing a crime, the same rights of an individual may be surrendered. Although an accused citizen still has those rights that are explained below.[1]

Appropriate entry must be made in the diary and be maintained by the police which must furnish all the important information related to the arrest of the person which must further include the details of the person accompanying the arrested person and also the details of the person to whom information regarding the arrest has been made.

The official diary must also include the name and additional particulars of the police officials under whose custody the arrested person is. Moreover, a medical examination has to be conducted but after the request of the arrested person to put on record any minor or major injuries suffered by the arrested person. This inspection memo is supposed to be signed by both the police officials as well as the arrested person. The arrested person has the right to meet his lawyer while in prison and during interrogation. In addition to these, all the copies of the entire documentation must be sent across to the Magistrate for his record which must also include the arrest memo. The Supreme Court again in the year 2010, held that narco-analysis, brain mapping and lie detector test are in violation of Article 20(3) of the Constitution of India.[2]

Every entity, regardless of the fact that such a person is a criminal, needs to be regarded as a human being. Any protections, the most fundamental of which are found in the Indian Constitution, are also given to the accused

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individuals. The underlying premise behind these protections is that the government has immense forces at its disposal for the persecution of persons, and individuals are thus entitled to some protection from the government's abuse of those powers. During the process of the prosecution, an arrested party has certain rights; the investigation or conviction of the crime in which he is charged and should be covered from unlawful or unlawful detention. From common law rules, the 'right to secrecy' was extracted. This suggests that it cannot normally be inferred by judges or tribunals that the man is guilty of any conduct simply because he has not replied to questions raised by the police or by the judge. In its report, the Justice Malimath Committee was of the opinion that in communities where everyone may be unfairly found guilty of any charge, the right to silence is quite important. Any allegation or confession made to a police officer is not admissible in a court of law, as per the law of proof. The right to silence is associated specifically with confession.[3]

## II.DISCUSSION

The police officer or other person serving an arrest warrant must, without undue delay, carry before the Court of Justice the person detained before which it is necessary by statute to deliver such a person.

In any scenario, this delay does not exceed 24 hours. When measuring the 24-hour duration, the time needed for the journey should be omitted. The same was enumerated as a constitutional right in the Constitution. In order to remove the risk of police officers obtaining confessions or forcing an individual to provide information, this right was established.

If an accused suspect fails to be taken before a judge within 24 hours of the detention, the police officers shall be held guilty of wrongful detention, if

- It points out the reasons for arresting a police officer without a warrant.
- That has been engaged in some cognizable offense, such as homicide, kidnapping, robbery, stealing, etc.
- Who is in charge, without a valid reason, of any house-breaking firearm or weapon or
- Who was declared a perpetrator either under the CrPC or by order of the State Govt. or
- Who is in possession or in possession of any stolen goods
- Who obstructs a police officer in the performing of his duties or who has fled or seeks to run from lawful detention or
- Who is fairly accused of being a deserter by either of the Union or Union Military Forces the person interested with any statute relating to extradition or extradition
- Who commits a violation of any law made under subsection (5) of Section 356 CrPC or Section 356 CrPC as a discharged prisoner.
- Any order from another police officer identifying the person to be detained and the crime and other reason for which the arrest is to be made was issued for whose arrest.

Khatri v. State of Bihar [v] Section 57 is concerned primarily with the matter of the time of custody. The legislative and legal requirements for taking the accused person before the Judicial Magistrate within 24 hours of the arrest must be scrupulously upheld. The purpose is that, with the least time, the suspect may be taken before a magistrate able to try or commit. In order to escape prosecution and imprisonment, in order to obtain confession or as a way of forcing individuals to supply information, the right to be taken out of police custody by being placed before a

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magistrate is necessary. It can also be remembered that the right has been further enhanced as a constitutional right by its inclusion into the constitution. (2) Article 22(2):

Both persons arrested and kept in custody shall be taken before the nearest magistrate for a period of twenty-four hours after such detention, with the exception of the time required to move from the place of arrest to the court of the magistrate, and no such person shall be held in custody without the authority of the magistrate for a period beyond that period.[4]

The right to be taken before a judge has been established with a view within a duration not reaching 24 hours of his detention.

(1) To deter and apprehend people for the purpose of obtaining confession or as a way of forcing them to supply information;

(2) To prevent police stations from being used as though they were in custody for reasons for which they are inappropriate;

(3) To enable a judicial officer, independent of the police, to make an early recourse to any questions of bail or discharge. If, within 24 hours of the arrest, a police officer fails to produce an accused citizen before a magistrate, he shall be found guilty of wrongful imprisonment.[5]

### III. CONCLUSION

India is facing an immense problem of unlawful arrests and custodial deaths that are primarily triggered by illegal arrests. These issues contradict the meaning of Article 21 of the Indian Constitution as well as the basic human rights that the Universal Declaration of Human Rights makes available to all. Stipulations published in D.K. Basu v/s West Bengal is not being adequately enforced by the Supreme Court of India, so it takes an hour to try to properly apply the provisions and recommendations given, which will definitely yield better outcomes, thereby helping to minimize the number of unlawful arrests and subsequent custodial deaths. The detained convicted person must, according to the honorable supreme court, be told by the judge of his right to be medically examined. Although section 53 requires a police officer to require a suspect accused to undergo a psychiatric test in order to encourage the investigation.[6]

The salutary idea that a female medical practitioner should conduct the medical examination of a female has been embodied in section 53 (2). Section 54 notes if an accused person believes the medical examination of his body would lead to a detail that would dismiss the fact that he committed the crime, or any detail that might lead to proof against his body of some other person's commission of the crime.

Where there are fair reasons for assuming that an arrestee's investigation on charges of committing rape or any crime would include evidence in order to perform such an offense, CrPC shall be allowed to medically analyze blood, blood traces, urine, hair samples, finger nail clippings using new and scientific methods, including DNA and such other examinations. This is the most important rights that maintain a harmonious relationship between police and arrested individuals and provides security for arrested individuals from any illegal arrest and detention, every individual has the right to move freely everywhere; but if a person is committed a crime that is harmful to society as

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a whole, arrest is necessary, similarly there are many false individuals arrested by police so the The arrested person is also given the right to take care of unlawful torture and fake encounter, third-degree torture of the arrested person. Rights also aid the accused to protect him against the offense levied

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