



Progression and protection of human rights of an arrested person in special reference to the code of criminal procedure

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Abstract

Human rights are those legal rights which are available to all the persons irrespective of their caste, creed and sex, place of birth or religion and region. The philosophy of human rights provides that all persons under any form of detention or imprisonment shall be treated in a humane manner and dignity as they are also the human being. So, they should be entitled for certain basic rights which are available to any other person, as a human.

There are various international instruments which state about the rights of such arrested persons. At the national level, these rights are also recognised under the Constitution of India as fundamental rights in its part III. The Code of Criminal Procedure, 1973 also provides for the protection of rights of arrested person.

The object of this paper is to give an account of the provisions conferring and protecting the interest and rights of arrested person.

Keywords: human rights, arrest, rights of arrested persons, international instruments on rights of arrested person

Introduction: Human Rights

The term "human right" comprised two words human and right. The term human which is synonym to the word humane, pertaining to the characteristics and quality of man or mankind whereas the term 'right' refer to anything which is just, apt and correct morally and socially in the eye of law. So, human rights are those rights which are given to the human being for their subsistence. Justice Krishna Iyer said human rights are those rights which are required to ever human from womb to the tomb. It includes social, political economic, sexual and cultural rights like right to life, right to education, right to work, freedom of speech and expression, right to development etc. They are the rights which are available to all the human being irrespective of their caste, creed and sex, place of birth or religion and region. They are directly related with the human being so, they should be regarded and implemented by all civilized nations^[1]. They are bestowed by nature without any discrimination and that is why they are also known as natural rights.

Section 2(d) of Human Rights Act, 1993 define the term human right as-

"Human right means the right relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforceable courts in India".

Various international documents like Universal declaration on Human Rights (UDHR) 1948, International Covenant on Civil and Political Rights (ICCPR) 1996 and International Covenant on Economic Social and Cultural Rights and various other international treaties has incorporated the provisions for giving protection to human rights. Therefore, human rights are also known as basic rights without which an individual cannot live a dignified life and, that is why they are available to all

the human beings. Constitution of India has also recognised these rights as fundamental rights in its part III.

UDHR which is considered as a fundamental document granting protection to human rights at the international level enlisted the various civil, political, social, economic and cultural rights. It does not comprise any provision for the enforceability of these rights. They are the two international conventions, ICCPR and ICESCR which actually provide enforceability to the rights recognise in the UDHR.

Human rights are so significant that they are almost recognised in every civilized country of the world. They are available to all the human being without making any difference on any of the ground like nationality, region, religion, sex and so on. They are the collective rights as they are given to all. Although it does not mean that human rights are not focussing on individuals. The scope and ambit of human rights is very wider it does not limit to only a particular group or individual belonging to particular country etc. They are based on principle of natural law and justice, believing everyone equal.

Human rights are based on the philosophy of *vasudevai kutumbhkum* which means entire world is a family. So, everyone has the right to live and cherish. We all depend on each other and each of us as a nation depends upon other nations. Thus, no one has the right to lead others as each one deserves equality and regards.

Usually all the human beings seek peaceful and harmonious life and, for obtaining the same they lived in organised society taken care by the some authorities or regulating bodies. However, among these peace loving human beings there are people or a particular group of human being which is distraught and deviant to the regulating bodies and authorities of the country.

For controlling and regulating such anti social human, the justice system was introduced. But, for the prevalence of justice it is necessary that victim and a wrong doer both would get opportunity to establish their aversions. Hence, the law provides protection and safeguard to an arrested person also at the time of arrest and detention and, during the period of custody and imprisonment.

Hence, it is established that charging a person for commission of some crime and, conviction or sentence does not reduce the status of a human into a non-human being, therefore it can be said that even if a person is convicted and not entitled to all the rights which are enjoyed by every person, is entitled to some of the rights when undergoing incarceration ^[2].

International Perspectives of Arrested persons' Rights

The philosophy of human rights provides that all persons under any form of detention or imprisonment shall be treated in a humane manner and dignity. There are mainly three provisions of UDHR namely article 9, 10 and 11 which are specifically related with the rights of an arrested person. Article 9 of the UDHR provides protection from arbitrary arrest, detention or exile. It says arrest, detention or imprisonment shall be strictly carried out in accordance with the provision of law by competent official authorised by law for doing so. This shows that though the law empowered the official for making an arrest but the official has the duty to make arrest in accordance to law.

Article 10 says "*everyone is entitled to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charges against him*". The object of this provision is to ensure fair and independent trial before an impartial jury.

Sub-clause(1) of article 11 provides "*everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence*". This is one of the principle of natural justice that if a person is charged for a criminal offence then he should be presumed innocent unless and until his guilt is proved beyond doubt and, trial should be made in accordance to law. Article 11(2) says- "*No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed*". This provision is based on the principle of retrospective effect which means no one can be punished for any offence which is not subsist as an offence at the time when it was committed.

The General Assembly of United Nation on December 9, 1988 adopted resolution 43/173 for the protection of arrestee, imprisoned and detained person. This resolution comprised of thirty- nine principles for ensuring humane treatment ^[3] to an arrested like protection arrest should be made in accordance to law ^[4], not to be subjected for any cruel, inhumane or degrading treatment or punishment ^[5], right to know about the ground of arrest ^[6], right to consult with his lawyer ^[7], right to be visited and communicate with the outside world ^[8], prohibition for compelling accused to give confession and statement ^[9], proper medical examination, care and treatment

should be given to an accused ^[10], right to obtain reasonable quantities of educational, cultural and informational material ^[11], etc.

However, contrary to all these provisions the human rights of an arrested person are mostly curtailed. And, the most shocking fact is they are curtailed by the one who are accountable and appointed by the law for maintaining and preserving peace and harmony in the society.

Meaning of Arrest

The provisions related to arrest are specified in chapter v of the code from section 41 to 46. However, the term arrest is nowhere defined under the Code of Criminal Procedure (Cr.P.C, here and after refer as Code), 1973. The manner of making an arrest is given under section 46 of the Code. An arrest of a person is said to be made when his body is actually touched or confine by a police officer or other person, unless there is a submission to the custody by word or action. For making an arrest effective, the law enable a private person or a police officer who is making an arrest to use all necessary power. However, if a suspected thief who has been arrested and, escapes from the custody of the police officer, then such police officer has no right to cause the death of such person for effecting arrest. This mean the police officer or any other private person is bound to use proportionate power to effect arrest.

Section 41 says a police officer can arrest an accused without warrant in cognizable cases ^[12]. This is the reason a police officer can make arrest even without the permission of court. Hence, immediate arrest is required in such cases.

Rights of Arrested Person under the Code of Criminal Procedure

- a. Arrest should be made in accordance to the procedure prescribed by law:** Section 41 B provides for the procedure for making an arrest i.e. putting mandate on police officer to make arrest in accordance to the procedure of law ^[13].
- b. Right to meet an advocate of his choice during interrogation:** Section 41 C provides that whenever a person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout the interrogation. This provision was inserted by Code of Criminal Procedure (Amendment) Act, 2008(5 of 2009). However, the Supreme Court of India in D. K. Basu v. state of Bihar
- c. Right to get a receiving or receipt showing the article taken in possession by the police officer at the time of search of arrested person:** Section 51 says that when a person is arrested by a police officer or when an arrest is made by a private person and, the private person handed over the arrested to a police officer, then police officer has the duty to search the arrested person, prepare the list of article which he has taken into the possession and put the article in a safe custody and, give the receipt to arrested person.
- d. Examination of arrested person by medical officer:** Section 54 provides, whenever an arrest is made the arrested person should be examine by a medical officer, who might be registered medical officer in the service of

central or state government and, in case if medical officer is not available at that time then examination can be done by a medical practitioner. Whereas the proviso of section 54 sub-clause (1) provides that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case if female medical officer is not available then by a female medical practitioner.

- e. **Identification of person arrested:** Section 54 A says where a person is arrested on a charge of committing an offence and his identification is required for the purpose of investigation, the court having jurisdiction may, on the request of the investigation officer, direct the arrested person to be present himself.
- f. **Health and safety of arrested person:** Section 55A provides for health and safety of an accused. This provision put a mandate on the officer having custody of an arrested person for taking reasonable care of the health and safety of the accused. Arrested person are often subject to violence by the co inmates as well as by police officials. In *Khatri v. state of Bihar* ^[14] around eighty inmates were subjected to violence by the police officials by puncturing their eyes by needle and pouring them acid. For protecting the interest of prisoners the supreme court has given direction to the police officials that the prisoners shall not be subjected to physical mishandling by jail officials and they should be given adequate medical and health facilities.
- g. **Person arrested or detained to be taken before magistrate or officer in charge of police station:** Section 56 says whenever a police officer is making an arrest without warrant, then subject to the provision of bail the code put a mandate upon such officer to produce such person to the magistrate or officer in charge of the police station without undue delay.
- h. **Person arrested not to be detained more than twenty four hours:** This right is enshrined in section 57 of the Code of Criminal Procedure. It put a mandate on the police officer to produce the arrested person to the nearest judicial magistrate. The provision says whenever a police officer arrested a person without warrant then he cannot detain the arrested person more than twenty- four hours unless the custody is extended by a magistrate under section 167. However, the time spent in journey should not be computed within twenty- four hours.
- i. **Arrest should be made strictly in accordance to the code:** Section 60 provides that arrest should be made in compliance to the provision of the code or any other law for the time being in force providing for arrest.

References

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2. Khwaja Abdul Muntaqim. Protection of Human Rights National and International Perspective (Law Publisher, Allahabad, 2014 -15).
3. *DBM Patnaik v State of Andhra Pradesh*, AIR 1974 SC 2092, *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675

4. UN Resolution, 1988 Principle 1.
5. *Ibid* Principle 2.
6. *Ibid* Principle 6 and 7.
7. *Ibid* Principle 10.
8. *Ibid* Principle 18
9. *Ibid* Principle 19.
10. *Ibid* Principle 21.
11. *Ibid* Principle 24.
12. *Ibid* Principle 28.
13. Section 2(c) define Cognizable cases as those cases which are defined as cognizable case in schedule I and, in which a police officer can make an arrest without warrant.
14. Section 41 B says every police officer while making an arrest shall-
 - a. Bear an accurate , visible and clear identification of his name which facilitate easy identification;
 - b. Prepare a memorandum of arrest which shall be-
 - i. Attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;
 - ii. Counter signed by the person arrested; and
 - c. Inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or friend named by him to be informed of his arrest.
15. 1981 SCC(1) 627.