

## RIGHTS OF THE ACCUSED

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### Introduction

“The creation of Constitutional government is a most significant mark of the distrust of human beings in human nature. It signalizes a profound conviction, born of experience, the human beings vested with authority must be restrained by something more potent than their own discretion.”

- Raymond Moley

Accused is an individual or group of individuals who have been charged with or is in trial of a crime. Accused is a wrongdoer who has committed an act which is wrong in the eyes of law. An accused could have done civil or criminal wrong, minor or a serious crime. An accused until proven guilty is deemed to be innocent, and while we assume a person is innocent and is charged with accusation of commission of a crime the person is entitled with certain rights.

In many democratic countries, the burden of proof lies with the prosecution which certainly means that it is upon the prosecution the proof that the defendant is guilty beyond the reasonable doubt and it is to be proven wrong by the defendant by proving oneself innocent. The legal maxim ‘*ei incumbit probatio qui dicit, non qui negat*’ this means the burden of proof lies on the one who declares and not on one who denies. This maxim clearly explains why we need to have certain rights for the accused such that no wrong is done to a person such that there is violation of his/her Human Rights.

In the case of *Kishore Singh Ravinder Dev v. state of Rajasthan*,<sup>1</sup> The Supreme Court held that for the safeguarding of rights of accused for the view to protect accused dignity as human beings and for the benefit of just and fair trial the Constitutional evidentiary and procedure have certain elaborated provisions.

**Rights of accused:** In India, the rights of accused are divided into rights which are given before trial, rights of accused during the trial and also after the trial. The only motive to provide so many rights is to maintain justice i.e. no wrong should be done to an innocent. The accused person, like any other person in the country has all the rights provided by the Grundnorm of the nation, only limited liberty to the accused as per the laws. The rights of accused are:

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<sup>1</sup> 1981 AIR 625, 1981 SCR(1) 995

1. **Accused rights prior to the beginning of trial:** On the basis of the FIR registered to the police or the complaint made to the Magistrate the Police acts and arrests the person or makes a check on the accused's property. The rights are given to the accused such that there is no violation or hampering of their life and liberty. Before the trial begins this stage is very crucial for the granting of justice. The rights of accused are:

- **Right to know the accusation and charges:** In accordance with the article 22 of the Indian constitution after making the arrest police must tell the accused about why the said person is under custody. In Criminal procedure code, 1973 also it is mentioned that the arrested person must be given with the details of the charges filed against him. The section 50(1) of Cr.P.C. provides that any person arrested without warrant shall be immediately informed of the grounds of arrest.

In the case, *Joginder Singh v. State of U.P.*<sup>2</sup> The Supreme Court of India gave certain guidelines for the arrest of a person; it was held that the Police Officer shall inform the arrested person of the right of knowledge of charges framed on the accused and reason of arrest.

- **Right against wrongful arrest:** This right is given to accuse only if the arrest made is with issuance of warrant. In *Bhim Singh, MLA v. State of J&K and others*,<sup>3</sup> the Supreme Court held that “the police officer should have the greatest regard for the personal liberty of citizens, their mala fide, high handed and authoritarian conduct in depriving the personal liberty of a person has to be strongly condemned.”
- **Right to be presented to the magistrate:** According to Indian Constitution Police officer making an arrest must present the accused before a judicial magistrate within 24 hours of the arrest, this is mentioned in Article 22(2) and failing to do so will make the police officer wrongfully liable for the act.

Section 56 of Cr.P.C. states that if a Police Officer makes arrest without warrant, then the arrested person must be presented before the Judicial Magistrate with jurisdiction and it must be done without any unnecessary delay. In addition to this Section 76 of the act states that the arrested person must be presented within the court within 24 hours of arrest and the time of travel from the place of arrest to the Magistrate Court can be excluded.

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<sup>2</sup> (1994) 4SCC 260

<sup>3</sup> AIR 1986 SC 494, 1986 CriLJ 192, 1985 (2) SCALE 1117, 1985 4SCC 677, 1986 (1) UJ 458 SC

- Right of accused of privacy and protection against unlawful searches: The privacy of an accused cannot be infringed just on the account of presumption of an offence. The Police Officer cannot violate the privacy of the accused and cannot make any search without presenting a search warrant.
- Rights against ex-post facto law: An ex-post facto law is a law that retroactively changes the legal consequences (or status) of action that were committed, or relationships that existed, before the enactment of law. In Criminal law, it may criminalize actions that were legal when committed; it may aggravate a crime by bringing it into a more severe category than it was in when it was committed; it may change the punishment prescribed for a crime, as by adding new penalties extending sentences; or it may alter the rules of evidence in order to make conviction for a crime likelier than it would have been when the deed was committed.<sup>4</sup>

In *Keshavanan Madhavan Menon v. the State of Bombay*,<sup>5</sup> it was stated that the Fundamental rights which are guaranteed does not have any retrospective effect or impact.

In *R.S. Joshi v. Ajit Mills Ltd*,<sup>6</sup> The Supreme Court of India held that Article 20(1) relates to the constitutional protection given to individuals who are charged with an offence prohibited by law before a criminal court.

- Right against Double Jeopardy: Fundamental right which is guaranteed under Article 20(2) of Constitution of India incorporates the principles of “autrefois convict” or Double jeopardy which means that person must not be punished twice for the offence. Doctrine against Double Jeopardy embodies in English common law’s maxim ‘nemo debet bis vexari, si constat curice quod sit pro una iti eadem causa’ (no man shall be punished twice, if it appears to the court that it is for one and the same cause). It also follows the “audi alteram partem rule” which means that no person can be punished for the same offence more than ones. And if a person is punished twice for the same offence it is termed Double jeopardy.<sup>7</sup>

*The State of Bombay v. S.L. Apte and anr*,<sup>8</sup> The Constitution Bench of this Court while dealing with the issue of double jeopardy under Article 20(2), held: “To operate as a bar the second prosecution and the consequential punishment there under, must be for “the same offence”.

<sup>4</sup> Ex Post Facto Law, Available at: [https://en.wikipedia.org/wiki/Ex\\_post\\_Facto\\_Law](https://en.wikipedia.org/wiki/Ex_post_Facto_Law) (Last accessed May 31, 2020)

<sup>5</sup> 1951 AIR 128, 1951 SCR 228

<sup>6</sup> AIR 1977 SC 2279

<sup>7</sup> Double Jeopardy - Can an accused be actually punished twice for same offence in India, available at: <http://www.legalservicesindia.com/article/1633/Double-Jeopardy-in-India.html> (last accessed June 01, 2020)

<sup>8</sup> AIR 1961 SC 578

- Right Against Self-incrimination: The Indian Constitution provides immunity to an accused against self-incrimination under Article 20(3) – ‘No person accused of an offence shall be compelled to be a witness against himself’. It is based on the legal maxim “nemo tenetur prodere accusare seipsum”, which means “No man is obliged to be a witness against himself.”<sup>9</sup>  
In *Kharak Singh v. State of Uttar Pradesh*,<sup>10</sup> The Supreme Court held that giving a DNA test on occasion of investigation is not self-incriminatory. The Apex Court allowed the test of DNA for procuring as evidence.  
In *Balasaheb v. State of Maharashtra*,<sup>11</sup> was held that a witness who himself is an accused in a complaint case for the same incident cannot claim absolute immunity from testifying in the case. However, accuse if wish so can refuse to answer any question which can be incriminatory to him.
- Right to consult a lawyer: The accused has a right to consult a lawyer. Article 22(1) of Indian Constitution provides the right to choose and elect a lawyer to be accused for his defense in the court of law for whatever crime he is charged with. Section 41D of Cr.P.C. allows prisoners to consult their lawyers during the time of interrogation. Section 303 of Cr.P.C. grants right to the accused to be defended by the lawyer of his choice even if the proceedings have been initiated.
- Right of Bail: The arrested person has the right to get released on bail. Section 50(2) of Cr.P.C. grants the arrested person the right to get bail. The person can get bail by doing some arrangements such as providing surety and securities. In *Mantoo Majumdar v. State of Bihar*<sup>12</sup>The Supreme Court of India upheld the right of release of accused who are undertrial on their bond and without sureties as they have spent six years in prison waiting for trial. In *Prahlad Singh Bhatti v. N.C.T. Delhi and Ors*<sup>13</sup> the Supreme Court has held that, “the condition of not releasing the person with bail charged with an offence punishable with death or imprisonment for life shall not be applicable if such person in under the age of 16 years or is a woman or is sick or infirm, subject to such conditions as may be imposed.”
- Right to legal Aid: Legal aid means providing free legal services to the needy and poor who cannot have such services for a case or proceeding in court, tribunal or before a judicial authority. Article 39A of the constitution talks about equal justice and free legal aid. It states that it is the duty of the state to promote equal justice and provide legal aid to its citizens. Section 304 of Cr.P.C. states that if the accused cannot afford sufficient means for a lawyer the court must provide a lawyer for defense of accused.

<sup>9</sup> Right against Self-incrimination in India, Available at: <https://blog.ipleaders.in/right-against-self-incrimination/> (last accessed June 02, 2020)

<sup>10</sup> 1963 AIR 1295, 1964 SCR (1) 332

<sup>11</sup> 1994 CriLj 3044

<sup>12</sup> AIR 1980 SC 846

<sup>13</sup> AIR 2001 SC 1444

- In *Hussainara Khaton v. State of Bihar*,<sup>14</sup> It was held that if the accused cannot afford legal services then he has the right of free legal aid by the state. In *Suk Das v. Union Territory of Arunachal Pradesh*,<sup>15</sup> it was held that if the state fails to provide free legal aid to the accused, unless it was refused, it would jeopardize the trial. It might also affect the conviction and sentence.
  - Right to be examined by a Doctor: Section 54 of Cr.P.C. implies that if an arrested person claims that a medical examination of his body will lead towards a detail that will let go of the fact of commission of a crime by him, or it can lead to an evidence that the crime would have been committed by some other person. The Court has complete authority to grant an order of medical examination of accused at his request if the court is satisfied that it is not for the purpose to delay justice or defeat justice.
  - Right to Fair and Just Trial: This is a concept which is embodied in the Indian Constitution. A fair trial is a trial which is conducted by a judge in an impartial way. In *Zahira Habibullah Sheikh and Ors. V. State of Gujarat and Ors.*<sup>16</sup> The Supreme Court held that in a criminal case one has a by default right of being dealt fairly. Denial of a fair trial is injustice to the accused and to the victim as well. In *Rattiram v. State of Madhya Pradesh*<sup>17</sup>, The Supreme Court observed that fair trial is an essential part of Criminal Jurisprudence. It was stated that denial of Fair trial is deemed to be denial of Human Rights.
2. Rights of the Accused during Trial: There are several rights provided to the accused at the time of trial which is the duty of the state to ensure that it is done and the process of law is being followed. The rights are subjective to bring an impartial trial such that it will not be violative of justice for the accused and will protect the accused from torture or force of incrimination. The right of accused during trial is:
- Right to be present: Section 273 of Cr.P.C reads as, “Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused or, when his personal attendance is dispensed with, in the presence of his pleader.” This means that all the evidence and the statement recorded in a case must be made in the presence of the accused or the Lawyer of the accused.
- In *State of Maharashtra v Dr. Praful B. Desai*,<sup>18</sup> The emphasis was laid on the words “Except as otherwise expressly provided” of section 273 of Cr.P.C. The contention was made that it is not cleared that whether evidence or statement can be collected through Video conferencing.

<sup>14</sup> 1979 AIR 1369, 1979 SCR (3) 532

<sup>15</sup> (1986) 2 SCC 401, 1986 SCC (Cri) 166

<sup>16</sup> (2006) 3 SCC 374

<sup>17</sup> AIR 2012 SC 1485

<sup>18</sup> Appeal (crL.) 476 of 2003, Appeal (crL.) 477 of 2003

The court held that, “At this stage we must deal with a submission made by Mr Sundaram. It was submitted that video-conferencing could not be allowed as the rights of an accused, under Article 21 of the Constitution of India, cannot be subjected to a procedure involving "virtual reality". Such an argument displays ignorance of the concept of virtual reality and also of video conferencing. Virtual reality is a state where one is made to feel, hear or imagine what does not really exist”.

3. **Additional Rights to the accused:** there are certain other rights which are meant to be provided to the accused before the trial begins, during the time of trial or post-trial. These rights are granted to the accused such that there will be no wrong done to the accused, and for the purpose of granting justice. These rights are:

- **Right of maintaining health care and safety of the accused:** Section 55A of Cr.P.C. implies that maintenance of health care and safety of an arrested person is the sole responsibility of the person who has brought the accused in custody. The aim behind the establishment of such principle was to save arrested people from inhumane treatment in prison.
- **Right of compensation if arrested reasonably:** Under Section 358, it is stated that in case a person compels the police to arrest another person, which the Magistrate thinks that there is no ground for such arrest, the Magistrate may order compensation not exceeding Rs 1000, to be paid by the person who causes such arrest. The fine is given as a way of compensation for the loss of time and expenses or other matter, as the judge may think fit. If more than one person is arrested on such basis, then each of them should be awarded a compensation not exceeding Rs 100, as the Magistrate thinks fit.<sup>19</sup>
- **Right of furnishing of notice in case of cognizable offence:** Section 41A of Cr.P.C. implies that if the accused is being arrested for a cognizable offence then a notice must be furnished for appearance by the police official for appearance of accused at a specific time, date and location.

India is a democratic country with supremacy of its constitution. Establishment of law is for the purpose of establishment of justice. To prevail justice in country courts are established to maintain peace and order. Rights granted to prisoners are part of human rights, “every human being, in every society, is entitled to have basic autonomy and freedoms respected basic needs satisfied.” The constitution of India grants some Fundamental Rights to the individual who is being captured for an offence or is being accused of. In India the principle of “innocent until proven guilty” is followed and that is why so many rights have been granted to accused or arrested persons in the country such that, “thousand accused can be punished but one innocent shouldn’t be punished.”

<sup>19</sup> Judgment under the Criminal Procedure Code, 1973, iPleaders, available at: [https://blog.iplayers.in/judgment-under-the-criminal-procedure-code-1973/#Compensation\\_for\\_wrongful\\_arrests\\_under\\_Section\\_358](https://blog.iplayers.in/judgment-under-the-criminal-procedure-code-1973/#Compensation_for_wrongful_arrests_under_Section_358) (last accessed June 04, 2020).