



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ANALYSIS OF SAFEGAURDS GUARANTEED TO AN ACCUSED UNDER INDIAN CRIMINAL JUSTICE SYSTEM

SUBMITTED BY:- SMT. VARSHARANI KUNDLIK GANGARDE

CLASS:- LL.M 1st YEAR, SEMESTER:2

ROLL NO.119

(2023-2024)

Progressive Education Society's

Modern Law College, Pune

Savitribai Phule Pune University,Pune 411007

ABSTRACT:

The criminal justice administration systems in India place human rights, liberty and dignity for human life at a much higher pedestal. In constitutional jurisprudence of criminal justice systems, an accused is presumed to be innocent till proved guilty this principle enshrined in legal maxim "Ei incumbit probatio qui dicit non qui negat".¹ That the Administration of justice is not only limited to the conviction of the guilty person and acquittal of the innocent one but it also deals with the fair and speedy trial. The alleged accused is entitled to true investigation and fair trial and the role of prosecution is expected to be balanced in the trial of a crime. The term accused is not defined under Indian Penal Code or Code of Criminal Procedure or any other penal law. Generally, a person who charged with a crime and if convicted then to be punished is term as accused. In simple words a person who involved in the commission of an offence is called as accused. Cardinal principle of criminal law is accused presumed to be innocent until prosecution proved guilt beyond reasonable doubt. However, if accused came to be arrested then his reputation damaged irreparably tarnishes the name of his family and deprive the source of sustenance. That arresting any person without following due process of law is serious infringement of individual liberty. Therefore, in this article I will make endeavor to highlight certain safeguards provided to accused in Indian criminal justice administration system which can easily assist any person dealing with criminal case and to obviate the fear in the mind of the accused.

INTRODUCTION:

¹ Dr. Anirudh Prasad, Outlines of Legal Language in India,137,(3rd ed., 2006).

As per the principle enshrined Constitution of India, "No person shall be deprived of his life or personal liberty except according to procedure established by law,² nor shall any person be denied equality before the law or the equal protection of the laws within the territory of India". That process of arrest must be just, fair, legal and justified. In India there is principle of criminal law that accused has to presumed to be innocent until guilt is proved. This article is in the context of the procedural and constitutional rights of the accused before and after the arrest and landmark Judgments in India.

SAFEGUARD OF ACCUSED UNDER CONSTITUIN OF INDIA:-

1. RIGHT TO EQUALITY

Equality before Law:- The State shall not deny to any person equality before the law or protection of Laws within the territory of India.³

2. PROTECTION AGAINST EX POST FACTO LAW :

Protection in respect of conviction for offences.

Art. 20(1) of Constitution of India: No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.⁴

Legislature can make law prospective or retrospective. However this article provides limitation on law making power and prohibit to make retrospective criminal law i.e. **ex post facto law**.

3. PROTECTION AGAINST DOUBLE JEOPARDY :-

As per provision enshrined in Art. 20(1) of Constitution of India no person shall be prosecuted and punished for the same offence more than once.⁵ And we can observe this principle common law rule in maxim " Nemo debet bis vexari pro una et eadem causa"⁶.

Section 300 of Code of Criminal Procedure incorporate principle of double jeopardy.

The personal liberty of citizens and others is covered by Articles 20 to 22,

² Art.21, the Constitution of India.

³ Art.14, the Constitution of India.

⁴ Art. 20(1), the Constitution of India.

⁵ Article 20(2) of Constitution.

⁶ Dr. Anirudh Prasad, Outlines of Legal Language in India,131,(3rd ed., 2006)

according to a recent ruling by the Honorable Supreme Court. No one shall be punished more than once for the same offense, according to Article 20(2). Statutory protections found in Sections 300 of the CrPC, 40 of the Indian Evidence Act, 1872, 71 of the IPC, and Section 26 of the General Clauses Act, 1897, all serve as further safeguards against double jeopardy.⁷

4. PROTECTION AGAINST SELF INCRIMINATION :-

Article 20(3) of Constitution:

No person who is an accused of any offence shall be compelled to be a witness against himself. In the one case before the Hon'ble Supreme Court issue was whether the involuntary administration of the impugned techniques Narco Analysis Test, polygraph examination and the Brain Electrical Activation Profile (BEAP) test violates the "right against self-incrimination" enumerated in Article 20(3) of the Constitution? Hon'ble Supreme Court has held that these kind of techniques violates the right against self-incrimination guaranteed under Constitution. This is because the underlying rationale of the said right is to ensure the reliability as well as voluntariness of statements that are admitted as evidence. Hon'ble Supreme Court has recognised that the of Article 20(3) of Constitution extends to the investigative stage. Section 161(2) of the Code of Criminal Procedure, 1973 protects accused persons, suspects and witnesses who are examined during an investigation. The result of test cannot be admitted in evidence if they have been obtained by compulsion and without consent. The results obtained from such tests cannot be treated as material evidence. that none of the methods in question should be used against an individual in any way, not even when conducting a criminal inquiry. That would be an unjustified infringement on someone's right to personal freedom."⁸

5. Protection of Life and Personal Liberty

Article 21 of Constitution: No Person shall be deprived of his life or personal liberty except according to procedure established by law. Freedom of life and liberty is the most important fundamental right of human being.⁹

In **Maneka Gandhi Vs Union of India**, Hon'ble Supreme Court has held that law and procedure must be fair, just and reasonable this is very important aspect.¹⁰

In respect of Speedy trial, the Hon'ble Supreme Court has observed in the case of **Hussainara Khatun Vs. State of Bihar AIR 1979 SC 1360**, A procedure would violate Article 21 and cannot

⁷ T.P. Gopalakrishnan Vs State of Kerala Criminal Appeal nos.187-188 of 2017 (Supreme Court 08/12/2022).

⁸ Selvi Vs State of Karnataka, AIR 2010 SC 1974.

⁹ Art. 21 the Constitution of India.

¹⁰ Maneka Gandhi Vs Union of India, AIR 1978 SC 597.

be considered reasonable, fair, or just if it does not guarantee a reasonably speedy trial.¹¹

6.PROTECTION AGAINST ARBITRARY ARREST AND DETENTION :- Protection against arrest and detention: (Art. 22 of Constitution)

This article offers some protection in the event of an arrest. The reason for an arrest must be disclosed to any person under custody. He also has the right to consult an advocate, which cannot be restricted. The person who has been arrested must appear before a judicial magistrate within twenty-four hours of the arrest. This right does not, however, apply to anyone who is now an enemy alien or who has been arrested or held in accordance with a legislation that calls for preventative custody.¹²

Section 41D of the Code of the Criminal procedure : Right of arrested person to meet an advocate of his choice during interrogation:- Any person who is detained and questioned by the police has the right to speak with advocate of his choice during that portion of the process, but not all of it.

Section 303 of the Code of the Criminal procedure: Right of person against whom proceedings are instituted to be defended:

Any individual facing charges in a Criminal Court or facing legal action under this Code is entitled to legal representation from a chosen pleader.¹³

Article 39A of Constitution: Equal Justice and Free Legal Aid.

Through appropriate legislation, the state will ensure that the legal system operates in a way that advances justice based on equal opportunity and will, in particular, offer free legal aid or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic disabilities.¹⁴

Section 304 of the code of the criminal procedure provides that where, in a trial before the court of session, the accused is not represented by a pleader, and The court shall appoint a pleader for defense of accused at the state's expense if it appears that the accused lack of financial means

¹¹ Hussainara Khatun Vs. Home Secretary, State of Bihar, AIR 1979 SC 1360.

¹² Art. 22 the Constitution of India.

¹³ S.303, Code of Criminal Procedure,1973.

¹⁴ Dr .J. N. Panday, Constitutional Law Of India, 391 (45th ed., 2008).

to hire one.¹⁵

In the landmark case that pertains to the principles of justice and legal aid is **HussainaraKhatoon v. State of Bihar**. In this case, the Supreme Court of India emphasized the right to speedy trial and held that the state is under an obligation to provide free legal aid to an accused person who is not able to seek legal representation.¹⁶

In the landmark case of **Khatri v. the State of Bihar**, it has been made mandatory for Session Judges to inform the accused person about their rights to free legal aid and also advise accused if they are unable to appoint a counsel to defend for themselves because of poverty or destitution.¹⁷

In **Sheela Barse v. Union of India**, The Hon'ble Court decided that Article 21 of the Indian Constitution guarantees everyone the fundamental right to speedy trial.¹⁸

Also, in the case of **Suk Das v. Union Territory of Arunachal Pradesh**, Hon'ble court has stated that India has many illiterate people unaware of their rights. As a result, it is critical to develop legal literacy and awareness among the general public and is also an essential component of legal aid.¹⁹

Any person can set the law in motion by filing complaint of cognizable offence. Investigation Officer by conducting investigation files charge-sheet before court. The accused undergoes trial by examination of witnesses. After conclusion of trial, a Judge may deliver judgment whereby either acquit or convict accused.

Thus, we can divide entire criminal procedure into three parts i.e. (A) During investigation, (B) During trial and (C) after trial.

(A) SAFEGAURD TO ACCUSED DURING INVESTIGATION :-

The first stage of a criminal administration system is the pre-trial stage. Here an FIR is filed on the basis of which the police makes arrest of a accused person, searches his property. That the stages prior to the commencement of a court trial are extremely crucial. So,

¹⁵ Ratanlal and Dhirajlal's, The Code of Criminal Procedure, 578,579 (17th ed., 2004)

¹⁶ HussainaraKhatoon v. State of Bihar, AIR 1979 SC 1322.

¹⁷ Khatri v. the State of Bihar, 1981 CrLJ470 : (1981) 1 SCC 627.

¹⁸ Sheela Barse v. Union of India ,AIR 1986 SC 1773.

¹⁹ Suk Das v. Union Territory of Arunachal Pradesh AIR 1986 SC 991.

any person accused of a crime must be granted the following rights.

- 1) **Section 41A of The Code of the Criminal procedure** provides the notice of appearance of arrested person before a police officer.
 - The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person to appear before him or at any other location that may be specified in the notice. This person must be the subject of a reasonable complaint, credible information, or a reasonable suspicion that he has committed a cognizable offense. If such person comply with notice, he shall not be arrested. But on failure, person can be arrested for reasons recorded, by the police officer believes that he should be arrested.
 - Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court on this behalf, arrest him for the offense mentioned in the notice.²⁰

In **Arnesh Kumar vs. State of Bihar & Anr**, the Supreme Court has directed that the notice of appearance in section 41A CrPC should be served on the accused before making the arrest. The Court issued directions to prevent unnecessary arrests. That the court is of opinion that such arrests are humiliates, curtails freedom and leave behind scars forever. The endeavor is to ensure that police officer should not arrest accused unnecessarily and Magistrate should do not authorize such detention in casual and mechanical manner. The Supreme Court also gave the following directions:

- All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the requirements for arrest are laid down under Section 41, Cr.P.C.;
- All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);
- The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the magistrate for further detention;

²⁰ S.41A, Code of Criminal Procedure, 1973.

- The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;²¹
- The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate. that period of two weeks may be extended by the Superintendent of police of the district and the reasons for same has to be recorded in writing;
- Notice of appearance in terms of Section 41A of Cr.P.C. be served on the accused within two weeks from the date of institution of the case, that two weeks may be extended by the Superintendent of Police of the District and reasons for that has to be recorded in writing;
- Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court.
- Authorizing detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.²²

That in **Munawar Vs. The State of M.P**²³, Hon'ble Supreme Court directed to follow direction as mandated by the Supreme Court in *Arnesh Kumar Vs. the state of Bihar*, In Munawar case since the police had failed to issue a notice under Section 41A Cr.P.C., the applicants ought to have been straightway admitted to interim bail .

- 2) **Section 41B of the Code of the Criminal procedure** states the arrest procedure and duties of the officer making an arrest. Unless the memorandum is attested by a member of his family, inform the person arrested that he has a **right to have a relative or a friend named by him be informed of his arrest.**
- 3) **Section 41D of the Code of the Criminal procedure** stipulates that when any person is arrested and interrogated by the police, such person is entitled to meet advocate of his choice.

²¹ Arnesh Kumar vs. State of Bihar &Anr, (2014) 8 SCC 273.

²² Arnesh Kumar vs. State of Bihar &Anr, (2014) 8 SCC 273.

²³ Munawar Vs. The State of M.P W.P (Cri) No.62/2021 (Supreme Court 05/02/2021).

4) **Section 49 of the Code of the Criminal procedure** stipulates that the person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

5) RIGHT TO BE INFORMED OF GROUND OF ARREST AND OF RIGHT OF BAIL :- Section 50 of CrPC.

Every police officer or other person arresting any person shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. At the time of arrest, duty casted on police officer to prepare memorandum of arrest which is attested by at least one family member of the person arrested and counter signature of person arrested. This enables the arrested person to know the grounds of arrest and to prepare for his defence.²⁴ Article 22 (1) of Constitution of India provides the right to be informed 'as soon as may be' of ground of arrest.

6. RIGHT TO BAIL IN BAILABLE OFFENCE :-

If accused arrested in bailable offence, the police officer shall inform the person arrested that he is entitled to be released on bail and that he may be arrange surety. The principle is bail is rule and jail is the exception.

Section 50 (2) of the Code of the Criminal procedure states that where a police officer arrests without warrant any person other than a person accused of a non-bailable offense, that person arrested must be informed that he is entitle to release on bail and prepare to furnish surety.

7. Section 50-A of the Code of the Criminal procedure talks about the obligation of the police officer making the arrest to inform about the arrest to a nominated person –

Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person to give such information.²⁵

8. Section 55 of the Code of the Criminal procedure stipulates that the subject to the terms of the arrest, a police officer who arrests without a warrant should produce the arrested individual without undue delay before the Magistrate with jurisdiction or a police officer in charge of the

²⁴ Ratanlal and Dhirajlal's, The Code of Criminal Procedure, 65, 66 (17th ed., 2004).

²⁵ Ratanlal and Dhirajlal's, The Code of Criminal Procedure, 65, 66 (17th ed., 2004).

police station.

9. Section 75 of the Code of the Criminal procedure provides that the police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested and, if so required, shall show him the warrant.

10. RIGHT TO PRODUCE WITHIN 24 HOURS BEFORE MAGISTRATE :-

Section 76 of the Code of the Criminal procedure : (r/w Art.22)

The police officer or other person executing a warrant of arrest shall (subject to provision of section 71 as of security) without unnecessary delay, bring the person arrested before the Court before which he is required by law to produce such person:

Provided that such delay shall not, in any case, exceed twenty- four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Article 22 (1) of Constitution of India provides that the arrested individual should be produced before a judicial magistrate within 24 hours of his arrest. When the police arrest a person has to bring before Judicial Magistrate without any delay and longer period under all the circumstances shall not exceed 24 hours exclusive of a time necessary for journey from the place of arrest to the Magistrate's court. In case of a complaint Magistrate should check the time of arrest by questioning the person accused and see that this important constitutional safeguard for the personal liberty of the subject is not violated. If there is failure to produce before Magistrate within 24 hours it would be made arrest illegal.

In the historic ruling in *Joginder Kumar v. State*, it was decided that even though the police were legally permitted to detain anyone in connection with a criminal investigation, each arrest had to be appropriate. Arrests could not be made on a regular basis based only on a suspicion or accusation that they were involved in a crime.²⁶

11. RIGHT NOT TO BE HANDCUFFED :-

In the event of making an arrest the police officer shall not handcuffed or chained the accused. In the case of **Citizens for Democracy Vs State of Assam & Others** Hon'ble

²⁶ *Joginder Kumar vs. state*, (1994) 4 SCC 260.

Supreme Court has held that handcuffing is prima facie inhuman, unreasonable, arbitrary and as such repugnant to **Article 21** of the Constitution of India. To prevent the escape of an under-trial is no doubt in public interest, but to bind a man hand-and-foot, fetter his limbs with hoops of steel, shuffle him along in the street and stand nun for hours in the courts is torture to him, defile his dignity, vulgarise society and foul the soul of our constitutional culture.²⁷

12. RIGHT OF ACCUSED TO MEET AN ADVOCATE DURING INTERROGATION :- (Section 41D of CrPC, r/w Art.22(2))

When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation.

13. RIGHT OF WOMAN ACCUSED:- Section 46(4) of CrPC

No woman shall be arrested after sunset and before sunrise. Only in exceptional circumstances, woman can arrest after sunset, but prior to that police officer to make written report and obtained prior permission of the Judicial Magistrate First Class within whose local jurisdiction offence committed or arrest to be made. Arrest of woman must be made by lady police officer or in the presence of lady police.²⁸

Women accused of any offence, if arrested so soon after child birth that they cannot at once be taken before the Magistrate without personal suffering and risk to health, should not ordinarily be removed until they are in a proper condition to travel. They should be allowed to remain under proper charge in the care of their relations, or be sent to the nearest dispensary and suffered to remain there until the officer in charge of the dispensary certifies that they are sufficiently recovered. In such cases, sanction must be obtained by the Police from the nearest Magistrate for their detention at their homes, or in the dispensary, beyond the period of 24 hours allowed by Section 57 of the Code of Criminal Procedure. The same procedure should be followed in the case of other accused persons who are too ill to travel.²⁹

14. RIGHT TO BE DEFENDED BY LAWYER DURING REMAND :-

If a person arrested is unable to appoint lawyer, then it is a duty of a court to employ a lawyer for him. In the case of **Md. Ajmal Md. Amir Kasab Vs State of Maharashtra** Hon'ble Supreme Court held that it is the duty and obligation of the Magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and in case he has no means to

²⁷ Citizens for Democracy Vs State of Assam & Others (1995) 3 SCC 743.

²⁸ Ratanlal and Dhirajlal's, The Code of Criminal Procedure, 63(17th ed., 2004).

²⁹ S.D Dighe & A.K. Gupte, Criminal manual issued by The High Court Of Judicature At Bombay.20 (18th ed.,2017)

engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from Articles 21 and 22(1) of the Constitution and needs to be strictly enforced. We, accordingly, direct all the Magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the Magistrate concerned liable to departmental proceedings.³⁰

15. RIGHT TO KEEP SILENCE.

Section 164 of CrPC When a confession or statement is made in court, the magistrate must determine whether the announcement was made voluntarily or not. No one can be compelled to speak in court against their will. The right to remain silent is based on constitutional provisions. The right to a fair trial is important because it helps ensure that people are treated fairly in court.

Article- 20(3) of the Constitution of India reiterates that no person accused of any offence shall be compelled to be a witness against himself.³¹

In the Landmark judgment of **Nandini Sathpathy vs. P.L. Dani & others**, the Court noted that Article 20(3) existed in the form of general fundamental right protection and was available to every accused person in India. Still, its wording was not very specific about which situations it applied to. Also, no one can forcibly extract statements from the accused, and the accused has the right to keep silent during interrogation (investigation).³²

16. RIGHT TO MAKE COMPLAINT ABOUT ILL-TREATMENT DURING CUSTODY

:-

Use of third-degree method by police is prohibited. If any allegation of ill-treatment is made by a person arrested, the Magistrate shall then and there examine his body, if he consents, to see if there are any marks of injuries as alleged, and shall place on record the result of his examination. If the prisoner refuses to permit such examination, the refusal and the reason therefore, shall be recorded. If the Magistrate finds that there is reason to suspect that the allegation is well founded, he shall at once record the complaint and cause the prisoner to be examined by a Medical officer or Registered Medical Practitioner as provided in Section 54 of

³⁰ Md. Ajmal Md. Amir Kasab Vs State of Maharashtra, (2012) 9 SCC 1.

³¹ Dr .J. N. Panday, Constitutional Law Of India, 220 (45th ed., 2008).

³² Nandini Sathpathy vs. P.L. Dani & others AIR 1978 SC 1025.

the Code of Criminal Procedure and shall make a report to the Sessions Judge.³³

16A. Right to be examined by medical practitioner:

Section 54 of the Code of the Criminal procedure stipulates that when any person is arrested, he shall be examined by a medical officer in the service of central or state Governments and in case the medical officer is not available by a registered medical practitioner soon after arrest is made:

Provided that where the arrested person is a female, examination of body shall be made only by or under the supervision of female medical officer and in case female medical officer is not available, by a female registered medical practitioner.

the medical officer or medical practitioner shall prepare the record of examination mentioning injuries or mark of violence, approximate time when such injuries or marks may have been inflicted and copy of report shall be furnished to the arrested person or person nominated by such arrested person.³⁴

16B. Health and Safety of arrested person: Section 55A CrPC:

It shall be the duty of the person having custody of an accused to take reasonable care of the health and safety of the accused.³⁵

17. RIGHT TO DEFAULT BAIL :-

Section 167 of Code of Criminal Procedure provide certain time limit for detention during investigation. Whenever any person is arrested and detained in custody, and it appears that investigation cannot completed within period of **NINETY DAYS** where investigation is relates to an offence punishable under with death, imprisonment for life or imprisonment for a term of not less than ten years, and **SIXTY DAYS** where the investigation relates to any other offences, and on expiry of said period of ninety days or sixty days, the accused shall get indefeasible right to release on bail.³⁶

18. SAFEGAURD TO ACCUSED AFTER CONCLUSION OF INVESTIGATION :-

³³ S.D Dighe & A.K. Gupte, Criminal manual issued by The High Court Of Judicature At Bombay.20 (18th ed.,2017)

³⁴ S.54, Code of Criminal Procedure,1973.

³⁵ S.55-A, Code of Criminal Procedure,1973.

³⁶ S.167, Code of Criminal Procedure,1973.

After investigation, if Investigation Officer to take the opinion that there is no sufficient evidence then he files report under section 169 of Code of Criminal Procedure. However Investigation Officer files final report i.e. A, B, C summary report or if sufficient evidence gathered then Investigation Officer file charge-sheet under section 173 of Code of Criminal Procedure.³⁷

19. RIGHT TO GET COPIES OF CHARGE-SHEET FREE OF COST :-

It is a duty of a Magistrate to furnish copy of charge-sheet free of cost to the accused. **Section 207 of Code of Criminal Procedure** provides that copy of police report be furnished to accused free of cost so that accused can able to know the charge brought against him. **Section 208 of Code of Criminal Procedure** provides for cases instituted on complaint where Magistrate issuing process under offence exclusively triable by Sessions court. In such cases Magistrate to furnish copy of complaint, 202 report, issue process order etc. to accused.³⁸

20. RIGHT TO DISCHARGE :-

If a Magistrate or Sessions Judge after going through a record and after hearing both sides, comes to the conclusion that no prima facie case is made out or no sufficient ground exists to proceed against accused or charge against the accused to be groundless, then accused shall be discharged.³⁹

(B) SAFEGAURD TO ACCUSED DURING TRIAL :-

1. ACCUSED PRESUME TO BE INNOSANT DURING TRIAL :-

Under criminal jurisprudence, the accused presumed innocent until proven guilty. The burden is cast upon the prosecution to prove the offence alleged against an accused beyond reasonable doubt to fasten criminal liability on the accused.⁴⁰

2. RIGHT TO KNOW CHARGES LEVELLED AGAINST HIM :-

If after consideration of material on record, the Magistrate or Judge is of opinion that there is grounds for presuming that accused has committed an offence, he shall frame charge in writing against accused. It is duty of court to read over and explain charge to the accused in vernacular language.

3. RIGHT TO SPEEDY TRIAL :-

³⁷ Ss 169, 173, Code of Criminal Procedure, 1973.

³⁸ Ss 207, 208, Code of Criminal Procedure, 1973.

³⁹ S.239, Code of Criminal Procedure, 1973.

⁴⁰ Dr. Anirudh Prasad, Outlines of Legal Language in India, 137, (3rd ed., 2006).

In **Hussainara Khatoon Vs. Home Secretary, State of Bihar** Hon'ble Supreme Court held that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty, except according to procedure established by law; that such procedure should be "reasonable, fair and just". The Court further observed that "No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21".⁴¹

4. RIGHT TO BE PRESENT DURING TRIAL :-

Section 273 of Code of Criminal Procedure provides that all evidence and statements must be recorded in the presence of the accused or his criminal lawyer. The accused also right to cross-examine prosecution witnesses.

In the technology era, the accused may present via video conference system. Recording of evidence by way of video conferencing vis-a-vis Section 273 Cr.P.C. has been held to be permissible in a decision of **State of Maharashtra Vs. Dr. Prafulla B. Desai**⁴².

5. RIGHT TO EXPLAIN EVIDENCE: (SEC 313 OF CRPC)

After prosecution evidence is completed and incriminating evidence brought on record, a duty casted on the court to examine accused and give him opportunity to explain any circumstances which may tend to incriminate him. Section 313 of Code of Criminal Procedure is applies to Summary trial, summons trial, warrant trial as well as sessions case trial.⁴³

6. RIGHT TO BE DEFENDED BY A PLEADER OF HIS CHOICE :-

Section 303 of Code of Criminal Procedure:

R/W Art.22 of constitution.

Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.

(C) SAFEGAURD TO ACCUSED AFTER TRIAL

1. RIGHT TO GET COPY OF JUDGMENT FREE OF COST IN CASE OF CONVICTION :-

⁴¹ Hussainara Khatoon Vs. Home Secretary, State of Bihar (1980)1 SCC 81

⁴² State of Maharashtra Vs. Dr. Prafulla B. Desai (2003)4 SCC 601

⁴³ S.313, Code of Criminal Procedure,1973.

When the accused is sentenced to imprisonment, a copy of the judgment shall, immediately after the pronouncement of the judgment, be given to him free of cost.

2. RIGHT TO APPEAL FROM CONVICTION :-

Any person convicted on a trial in which a sentence of imprisonment awarded, has statutory right to appeal to the court as prescribed under **section 274 of Code of Criminal Procedure.**

3. RIGHT TO RELEASE ON PROBATION :-

Section 4 of Probation of Offenders Act.

Any person is convicted for the offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour.

4. RIGHT AGAINST SOLITARY CONFINEMENT :-

In **Sunil Batra (1) Vs Delhi Administration**, the important question raised before the Supreme Court was whether solitary confinement imposed upon convicted prisoners was violative of Article 14, 19, 20 and 21 of Constitution of India. Hon'ble Supreme Court held that continuous keeping a prisoner in fetters day and night reduces the prisoner from a human being to an animal and that this treatment was cruel and unusual the use of bar fetters was against the spirit of Constitution. **However section 56 of Prison Act declared valid.**⁴⁴

5. RIGHT TO COMPENSATION :-

Section 358 of Code of Criminal Procedure.

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 for causing such arrest, the Magistrate may award such compensation.

CONCLUSION :-

The purpose of any criminal justice system is to punish the offender and protect the innocent. The wrong doer should be punished in accordance with the law and the innocent

⁴⁴ Sunil Batra (1) Vs Delhi Administration AIR 1983 SC 339.

should be safeguarded by the law. That Criminal proceedings start with the presumption of innocence of accused. All aforementioned provisions serve to protect the dignity of the accused as a human being. There were several incidents of custodial tortures and deaths. It seems that inspite providing various legal safeguards, police regularly arrested person accused as routine course. Of course, the accused may be arrested by using procedures established by law, but the rights of the accused cannot be putting aside. Thus, it is a matter of concern for all that innocent must not suffer in the name of justice. The criminal justice administration systems in India place human rights, liberty and dignity for human life at a much higher pedestal. The alleged accused is entitled to fair and true investigation and fair trial and the prosecution is expected to play balanced role in the trial. The criminal justice administration system should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law.

BIBLIOGRAPHY

Statue:

1. The Code of Criminal of Criminal Procedure, 1973.

Books:

1. Dr.J.N.Panday , Constitutional Law Of India.
2. Dr. Anirudh Prasad, Outlines of Legal Language in India.
3. M. R. Mallik, Bail Law and Practice.
4. Ratanlal and Dhirajlal's, The Code of Criminal Procedure.
5. S.D Dighe & A.K. Gupte, Criminal manual issued by The High Court Of Judicature At Bombay.

Websites:

1. Double Jeopardy Law Hunt, available at, <https://lawhunt.in/double-jeopardy/> last seen on 04/04/2024.
2. Critical analysis of Selvi v State of Karnataka, available at, <https://www.lawctopus.com/academike/critical-analysis-selvi-v-state-karnataka/> last seen on 04/04/2024.