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KNOW YOUR RIGHTS: THE IMPORTANCE OF INFORMING ARRESTED PERSONS OF GROUNDS OF ARREST AND RIGHT TO BAIL

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Abstract:

The right to be informed of the grounds for arrest and the right to bail are fundamental principles of criminal justice systems around the world. This abstract explores the importance of informing arrested persons of these rights.

First, informing arrested persons of the grounds for arrest ensures that they are aware of the reasons for their detention and can exercise their right to challenge the legality of their arrest. This promotes transparency and accountability in law enforcement and protects individuals from arbitrary detention.

Second, informing arrested persons of their right to bail allows them to seek release from custody while awaiting trial or sentencing. This is a crucial safeguard against pre-trial detention and helps to prevent the overuse of imprisonment. Bail also enables individuals to better participate in their defense, maintain their employment, and care for their families.

However, despite the importance of these rights, they are often not fully respected in practice. Arrested persons may be held without being informed of the grounds for arrest or denied bail without justification. This can result in unjust and prolonged detention, which violates international human rights standards.

In conclusion, informing arrested persons of the grounds for arrest and their right to bail is essential for promoting accountability and protecting the rights of individuals in the criminal

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justice system. It is important that these rights are upheld in practice to ensure fair and just treatment of all persons in custody. The purpose of this study is to look at how important it is to notify arrested people about the "Grounds of their Arrest and Right to Bail." This paper discusses the conduct of police officer or other person in arresting the accused with or without a warrant as per Code of Criminal Procedure, 1973. This study also deals with some pertinent questions related to say topic and articulately explains their answers. Finally, it elucidates both constitutional and civil remedies available to someone who has been arrested or detained illegally.

Keywords: Arrested person, Trial, Bail, Grounds of arrest, Human Rights, Safeguard.

1.1 Person Entitled to Know Grounds of Arrest

The *Constitution of India* mandates that an arrestee, as soon as possible, must be informed of the grounds of his arrest³. The *Code of Criminal Procedure, 1973* also puts an obligation on a police officer or other person making arrest to forthwith communicate the person arrested the grounds of his arrest⁴.

Section 50 Code of Criminal Procedure, 1973 States that-

Person arrested to be informed of grounds of arrest and of right to bail.

(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

³ Constitution of India Article 22(1).

⁴ Code of Criminal Procedure, 1973 section 50.

This section provides that any person arrested without warrant shall immediately be informed of the grounds of his arrest, and, if the arrest is made in a bailable case the person shall be informed of his right to be released on bail. A similar provision in case of arrest with warrant obtains in **section 75**. Arrest without compliance of this provision will be illegal and will make the officer or person making such illegal arrest liable to all such remedies as are available in case of an illegal arrest.

Section 50 is mandatory. If particulars of offence are not communicated to an arrested person his arrest and detention are illegal. If he alleges by affidavit that he was not communicated with full particulars of the offence the police officer's diary cannot be perused to verify his claim of oral communication of such particulars.⁵

The provision providing that a person arrested must be informed of grounds of arrest and of right to bail under the *Code of Criminal Procedure, 1973* enjoins that every police officer or other person arresting any person without warrant will forthwith communicate to him full particulars of the offence for which he is arrested or other grounds of such arrest.

In order to protect the rights and freedom of the accused people against whom ex parte evidence is gathered during the police investigation and who are arrested on the basis of such evidence, the provisions of the Code of Criminal Procedure, 1973 requiring that the person so arrested must be informed of the grounds of arrest and of the right to bail are enacted as a matter of abundant caution. This allows them to know at the initial stage why they are arrested and also to exercise their right to remain free.

It is only when the accused is apprehended on spot while committing the crime, and handed over to the police, that a presumption may be raised that the reasons for detention are within the knowledge of the accused⁶.

Provisions of the *Code of Criminal Procedure, 1973 section 50* are not only in conformity with the *Constitution of India Article 22(1)* but are also mandatory⁷. The non-compliance with the mandatory

⁵ Ajitkumar Sarmah v State of Assam, 1976 Cr LJ 1303(Gau).

⁶ Om Prakash Dwivedi v State, (1996) Cr LJ 603 (All).

⁷ Govinda Prasad v State of West Bengal, (1975) Cr LJ 1249 (Cal);

statutory and the constitutional provision amounts to non-compliance with the procedure established by and renders the arrest and detention of the arrestee illegal⁸

1.2 Why it is so important to know the grounds of Arrest?

Knowing the grounds of arrest is important for several reasons.

First, it ensures that the person being arrested understands why they are being taken into custody. This information is crucial for the individual to be able to defend themselves in court and to prepare a legal defence.

Second, knowledge of the grounds of arrest allows the person to challenge the arrest if they believe it is unjustified or illegal. For example, if a person is arrested without a warrant and there are no reasonable grounds for the arrest, they may be able to challenge the legality of the arrest in court and seek compensation for any damages they may have suffered as a result.

Third, knowledge of the grounds of arrest is important for accountability and transparency in the criminal justice system. If the grounds for arrest are not clearly communicated to the person being arrested, it can lead to confusion and mistrust of the police and the legal system. By ensuring that the grounds for arrest are clearly communicated, it promotes trust and confidence in the system, and ensures that the police are held accountable for their actions.

Provisions of the *Code of Criminal Procedure, 1973 section 50* are not only in conformity with the *Constitution of India Article 22(1)* but are also mandatory⁹. The non-compliance with the mandatory statutory and the constitutional provision amounts to non-compliance with the procedure established by and renders the arrest and detention of the arrestee illegal¹⁰.

⁸ Sheela Barse v State of Maharashtra, AIR 1983 SC 378.

⁹ N Ratna Kumari v State of Odisha, (2014) Cr LJ 4433 (Ori).

¹⁰ Ashok v State, (1987) Cr LJ 1750 (MP).

1.3 Communication to be in writing in all instances section 50 of Cr.P.C

According to the section 50 Code of Criminal Procedure, 1973, it is mandatory for the police or arresting officer to inform a person who has been arrested about the grounds of their arrest and their right to bail. While the provision does not specify that this communication must be in writing in every case, it is essential that the arrested person receives full particulars of the offense for which they have been arrested or the grounds for their arrest.

Failure to communicate full particulars of the offense or grounds of arrest to the arrested person could result in the arrest being deemed illegal. The liberty of citizens should not be curtailed except in accordance with the law, and therefore, even if the arresting officer communicates orally about the offense, it is imperative to ensure that the arrested person receives complete information about the reasons for their arrest.

The communication referred to in the provision specifying that the person arrested must be informed of grounds of arrest and of right to bail under the *Code of Criminal Procedure, 1973*¹¹, need not be, in every case, in writing¹²

The liberty of citizens may not be curtailed except in accordance with law. Even if oral communication about the offence is made, but it is not known whether full particulars of the offence were given to the arrested person or not, the arrest would be illegal¹³.

In conclusion, the Code of Criminal Procedure, 1973, mandates that the police or arresting officer must inform an arrested person about the grounds of their arrest and their right to bail. While the provision does not require the communication to be in writing in every case, it is crucial that the arrested person receives complete information about the offence or grounds for their arrest. Failure to do so may lead to the arrest being deemed illegal, which is a violation of citizens' fundamental right to liberty. The importance of timely and effective communication cannot be overstated in the

¹¹Code of Criminal Procedure, 1973 section 50(1).

¹²Sunil Chainani v Inspector of Police, (1988) 2 Bom HCR 118

¹³Ajit Kumar Sarmah v State of Assam, (1976) Cr LJ 1303 (Gau).

criminal justice system, and it is imperative to ensure that every arrested person is informed of their rights and the reasons for their arrest to uphold the principles of justice and fairness.

1.4 particulars of the offense or grounds of arrest to be communicate to the arrested person

“Forthwith”, means, “simultaneous with or immediately”¹⁴. Where grounds of arrest are not communicated to the arrested person, then though the case would ultimately be decided not on that ground but on merits, the rejection of bail by the magistrate would be bad¹⁵.

In view of *Article 39A of the Constitution*, the Supreme Court has directed that whenever a person is arrested by the Police and taken to the Police lock-up, the Police must immediately give intimation of the fact of such arrest to the nearest Legal Aid Committee and such Committee must take immediate steps for providing legal assistance to the arrested person at *State cost*, provided he is willing to accept such legal assistance.¹⁶

The Constitution of India, under Article 39A, ensures equal justice and free legal aid to citizens. In line with this, the Supreme Court has directed that whenever a person is arrested by the police and taken to the police lock-up, the police must immediately inform the nearest Legal Aid Committee about the arrest. The Committee must then take immediate steps to provide legal assistance to the arrested person at State cost, provided they are willing to accept such assistance.

This direction ensures that the fundamental right of access to justice is upheld, and even those who cannot afford legal representation can receive legal aid. Furthermore, the requirement of immediate intimation of arrest to the Legal Aid Committee highlights the importance of timely and effective communication in the criminal justice system.

¹⁴*Ashok v State*, (1987) Cr LJ 175 (MP).

¹⁵*Govind Prasad v State of West Bengal*, (1975) Cr LJ 1249 (Cal).

¹⁶*Sheela v State of Maharashtra*, AIR 1983 S C 378

This provision dealing with person arrested to be informed of grounds of arrest and of right to bail under the *Code of Criminal Procedure, 1973*¹⁷ is a new one, added on the recommendation of the joint committee. Its stipulations are material and may not to be overlooked. It brings the law in conformity with the *Constitution of India*¹⁸, enabling the arrested person to move for *habeas corpus* to obtain his release¹⁹.

The provisions dealing with protection against arrest and detention in certain cases under the *Constitution of India*²⁰, provide that a person who is arrested will not be detained in custody without being informed, as soon as may be, of the grounds for such arrest.

2.1 International Covenants and the United Nations on Human Rights regarding illegal detention

The concept of 'human rights' is not of recent origin. The expression was first employed in the Declaration of United Nations signed by the Allied Powers on January 1, 1942. The concept owes its origin, in western thought, to the Bill of Rights, 1689 which declared for the first time that "excessive bail ought not to be required nor excessive fine imposed, nor cruel and unusual punishment inflicted". The French Declaration on the Rights of Man and the Citizen also spoke of "freedom from arrest except in conformity with the law", in addition to "liberty, property, security and resistance to oppression" which were declared to be the natural and inalienable rights of man. The first ten amendments to U.S. Constitution effected in 1791, speak of all the above concepts and more. The Declaration of United nations dated January 1, 1942 stated, inter alia, "complete victory over their enemies is essential to defend life, liberty, independence to preserve human rights and justice in their own lands as well as in other lands".

The Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on December 10, 1948 declared that no one shall be subject to arbitrary arrest, detention or exile (Article 9).

¹⁷ Under the *Code of Criminal Procedure, 1973* section 50.

¹⁸the *Constitution of India* Article 22(1).

¹⁹*Govind Prasad v State of West Bengal*, (1975) Cr LJ 1249 (Cal).

²⁰ Article 22, *The Constitution of India*.

Article 9(1) of the International Covenant on Civil and Political Rights 1966 declares, inter alia, that “everyone has the right to liberty and security of person (and that) no one shall be subject to arbitrary arrest or detention”.

3.1 Remedies against illegal arrest and detention

Knowing the grounds of arrest is crucial because it helps individuals determine whether or not their arrest was lawful. If an arrest is made without proper legal justification, it is considered illegal and can result in unlawful detention. If an individual is illegally arrested and detained, they have the right to seek legal remedies for the violation of their fundamental rights.

One of the primary remedies for illegal arrest and detention is the writ of habeas corpus. This is a legal action that allows a person who is being detained to challenge the lawfulness of their detention before a court. The writ requires the detaining authority to produce the person in court and provide legal justification for their detention. If the court finds that the detention is illegal, it may order the person's release.

Additionally, an individual who has been unlawfully arrested and detained may have the right to sue for damages. This can include compensation for any physical or emotional harm suffered as a result of the illegal detention, as well as any financial losses incurred.

Therefore, knowing the grounds of arrest is crucial because it can help individuals determine whether or not they have been illegally detained and can take legal action to seek redress for any violations of their rights.

3.2 Constitutional remedies available against illegal arrest:

The Constitution of India recognizes the right to personal liberty and freedom as one of the fundamental rights under Articles 19, 20, and 21. Article 21 specifically states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. This means that any arrest or detention made by the authorities must be in accordance with the law and should not violate the fundamental rights of the person being arrested or detained.

In case the police have arrested or detained any person without proper authority or by violating the

established procedure, such arrest and detention would be considered invalid and unconstitutional. To provide a constitutional remedy against such unlawful arrest or detention, the Constitution of India provides the writ of habeas corpus under Article 32 or 226.

The writ of habeas corpus is a legal order issued by the court that directs the authority to produce a detained person before the court and to justify the reasons for their detention. If the court finds that the detention was unlawful or without proper authority, it can order the immediate release of the person from detention.

Therefore, the writ of habeas corpus serves as a crucial constitutional remedy to protect the right to personal liberty and freedom guaranteed under the Constitution of India. It empowers the courts to act as a check against any arbitrary exercise of power by the authorities and ensures that the fundamental rights of citizens are protected.

3.3 Civil remedies available against illegal arrest:

Tort is also called a civil wrong which includes the restraining of a person wrongfully, by another person who was not authorized under the law to do such act, which leads to restriction of freedom of movement of the person who has been so restrained.

An individual, who has suffered false imprisonment, can seek monetary compensation either by filing a civil or criminal suit, depending on the situation. Section 19 of the Code of Civil Procedure, 1908 provides that one can file a civil suit for compensation of damages.

Section 35A of the CPC deals with compensatory costs, under Section 357 of the Code of Criminal Procedure, 1973 the Court can award compensation.

Conclusion:

Arrested Person is technically an innocent person as per criminal law as the accused is presumed to be innocent until proven guilty and his/her rights and liberties are fully protected. In a democratic country like India, under-trial prisoners or accused person have numerous rights under Indian Constitution like Fundamental Rights- Right to life and personal liberty, Right against self-incrimination, Right to maintain silence, Right to equality and right to seek constitutional remedy etc. and under criminal procedure also his rights are protected.

It is very important for every accused person to his constitutional and legal rights and remedies on being arrested. It is also a legal duty of the police to handle the accused with care as the accused person is kept under legal custody and he must be protected. In *Hussainara khatoon vs. State of Bihar*²¹ the Supreme Court held that right to speedy justice is an essential part of article 21 of Indian constitution. It is also the duty of the State to take measures for speedy trial and setup fast-track courts throughout the State. There should be no handcuffing of the accused person at the time of arrest unless there are justifying circumstances.

According to the report of NCRB at least 60-70% of prison population consists of under-trial prisoners and there is need for liberal bail provisions for safeguarding the rights of the accused. The accused also has a right to seek bail and get represented by a lawyer of his choice.

²¹ 1979 AIR 1369