

Rights against Illegal Detention and Bail

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ABSTRACT

The basic grundnorm of ILLEGAL BAIL AND DETENTION devolves around the rudimentary facets of policies and procedures with respect to illegal bail and detention. despite being various constitutional and legal amendments, the stigma of illegal bail and detention still prevails in our society.

KEYWORDS: *Bail, Illegal, Detention, Human Rights, Preventive, Constitution*

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I. Introduction to Right Against Illegal Detention And Bail

Detention' is defined as the act of reserving a person or property. Whereas, 'illegal detention' is the unsubstantiated imprisonment or unlawful deprivation of liberty of an individual by arresting for an illegitimate cause or suspicion, along with continuous restraint on one's liberty by detaining such individual in custody.

There stands a massive difference between the definitions of 'arrest' and that of 'detention', therefore, one must know how to differentiate between the two. 'Arrest' under the Criminal Procedure Code has a different procedure altogether while detention is not as grave as an arrest; detention is of a shorter period than arrest, therefore, needs less burden of proof.

A Police officer can detain an individual, if he has reasonable doubt or suspicion that a crime has been or will be committed, or if he reasonably believes that an individual may have information regarding the same, the Police officer may then have the liberty of detaining the individual for a short span of time, in order to investigate into the matter. If an individual is ever detained, the authorities are allowed to frisk the person for any weapons, seek information regarding the crime that is believed to occur.

Lastly, unlike an arrest where a person can be held in custody for up to 24 hours or more, but according to the ruling of a reasonable timeframe, a person can't be detained for more than 20 minutes, depending upon the circumstances.

Arrest:- The Criminal Procedure Code of 1973, however, that deals with the aspects of arrests, has not defined the 'Arrest'. When a person is arrested, then the arrested person is taken into the custody of an authority empowered by the law for detaining the person. The person is then asked to answer the charges against him and he is detained so that no further crime is committed. The arrest is made for cognizable and non-cognizable offenses.

Who Can Arrest And Take Person into Detention

The arrest can be made by police, magistrate and even a private person

Section 41(1) CRPC Says: Any police officer- may without an order from a magistrate and without a warrant arrest any person who has committed a cognizable offence, who is in possession of stolen property, or is a state offender, who obstructs a police officer in discharge of his duty, who attempts to escape from lawful custody, who is declared as a deserter from any of the Armed Forces of the Union, who is a released convict and breaches his contract of release etc.

Section 42 authorizes a police officer to arrest a person for an offence which is non-cognizable if the person to be arrested refuses to give his name and residence.

Section 43 gives the right to a private person like you and me to carry out an arrest of a person who in his presence commits a cognizable or a non-bailable offence or who is a proclaimed offender.

Section 44 arrest by magistrate as per section 44(1) of CRPC, the Magistrate has been given the power to arrest an individual who has committed an offence in his presence and also commit him to custody.

However, according to section 45 of CRPC exempts the members of Armed forces from being arrested for anything done by them in discharge of their official duties except after obtaining the consent of the government.¹

Medha Patkar v. State (2007)²:- This is a case in MP regarding the Sardar Sarovar Project. Some landowners and other people who were affected by this project in MP gathered on the road, shouting slogans, demanding

¹ P.M Bakshi, *The Constitution of India*(2019 edition)

land for land and other rehabilitation measures. The gathering was peaceful without disturbing public order and peace but despite this the Police took it upon themselves to beat the protestors and arrest all of them under Section 151 of CRPC and also summoned by the Magistrate under Section 107 of CRPC. There were women and children too among the protestors. When the protestors did not submit a personal bond then sending them to jail, still amounted to the violation of Article 21 of the Constitution of India.

In, **KulteJ Singh vs Circle Inspector of Police (1992)**³:- it was held by the court that keeping a person in custody in the police station or confining the movement of the person in the precincts of the police station amounts to arrest of the person.

There is a landmark Judgement by the Supreme Court of India that sets out guidelines for arrest or detention of any person within the Union Of India:-

Joginder Kumar v. State Of Uttar Pradesh⁴

The case of Joginder Kumar v. State of Uttar Pradesh set standard grounds for arresting any person; the Apex Court set rules for arrest after the trial of this case, therefore, this case is known as the ‘guidelines for arrest case’. The case dealt with ‘Rights of individuals v. Protection of society’ due to the increment of crime rates and indiscriminate arrests over the years, therefore, the Hon’ble Supreme Court decided on creating equilibrium between the two.

Judgement.

In the case of Joginder Kumar v. State of Uttar Pradesh, the Hon’ble Supreme Court held that “No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafides of a complaint and a reasonable belief both as to the person’s complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to a person to attend the Station House and not to leave Station without permission would do.”

It was further observed by the court that according to English laws, an arrested person holds rights to inform someone about his arrest, upon request and also has the right to consult with a lawyer of his choice. The apex court stated that these rights provided to an arrested person vested in Articles 21 and 22(1) of the Indian Constitution and are required to be acknowledged and safeguarded.

What are the Types of Detention ?

There are two types of detention through which personal liberties of a person are curtailed. That are:-

Punitive Detention	Preventive Detention
Punitive detention is the detention as a punishment for the crime committed by an individual. It takes place after the actual commission of an offence or at least after an attempt has been made. The time taken from actual offence to detention can vary in length	Preventive detention is imprisonment that is putatively justified for non-punitive purposes, most often to prevent (further) criminal acts.

Preventive Detention

There is no universally agreed definition of preventive detention, and multiple types of detention are sometimes considered a form of preventive detention.

Usually, “preventive detention” is the detention of a convicted criminal who has served their sentence, but is considered too dangerous to release. In that case, the detention is considered “preventive” in that it is not intended to punish or deter the criminal, but to prevent the criminal from committing further crimes and/or also protect the public. This article focuses on this type of preventive detention, OR detention of a person without

² CriLJ 47, 2007 (4) MPHT 219

³ ILR 1991 KAR 3198, 1991 (4) KarLJ 358

⁴ [(1994) 4 SCC 260]

trial or conviction by a court. Its purpose is to not to punish a person for their past offences, but to prevent him from committing an offence in the near future.

Remand or pre-trial detention (detention of a suspected criminal prior to trial) and involuntary commitment (detention of people considered a risk to themselves or others due to mental illness) are sometimes considered a form of preventive detention. For example, in Peru, remand is called “prisión- preventiva”, literally “preventive prison (detention)”.

Preventive Detention Act(1950)

In India, preventive detention is for a maximum period of three months, a limit which can be changed by the Parliament. According to Preventive Detention Act 1950, it can be extended beyond three months up to a total of twelve months, only on the favourable recommendation of an advisory board, made up of High Court judges or persons eligible to be appointed High Court judges.

Preventive detention in India dates from British rule in the early 1800s, and continued with such laws as the Defence of India Act 1939 and the Preventive Detention Act 1950.

Some of the Detention acts in India are:-

- National Security Act (NASA) - Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic
- Substances Act (PTINDPSA) - Prevention of Black-marketing and Maintenance of Supplies of
- Essential Commodities Act (PBMSECA) - Conservation of Foreign Exchange and Prevention of
- Smuggling Activities Act (COFEPOSA)

Object/Grounds of The Preventive Detention:

The object of Preventive Detention is not to Punish but to prevent the detenu from doing something which is prejudicial to the State. The satisfaction of the concerned authority is a subjective satisfaction in such a manner. It comes within any of the grounds specified like

Security of the State

Public Order

Foreign affairs

Services essential to the community.

Mariappan vs The District Collector and ors(2014)⁵

In this case it was held by the Madras High Court that, detention and laws relating to detention are not to punish, but to prevent commission of certain offences.

What is the Constitutionality of the Act?

This question was answered by the Supreme court of India through a landmark judgement:-

A.K. Gopalan Vs. The State of Madras⁶

The preventive Detention Act, 1950, with the exception of section 14 thereof did not contravene any of the Articles of the Constitution and even though section 14 was ultra vires inasmuch as it contravened the provisions of Article 22 of the Constitution, as this section was severable from the remaining sections of the Act, the invalidity of Section 14 did not affect the validity of the Act as a whole, and the detention of the petitioner was not illegal.

Fundamental Rights That Protects a Person From Illegal Detention And Arrest

Fundamental rights are those rights that are guaranteed by the Constitution of our Country. We can directly approach the Supreme Court under Article 32, if these rights are violated.

Article 21:-Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to the procedure established by law."

This fundamental right is available to every person, citizen, and foreigners alike.

⁵ H.C.P.(MD) No.244 of 2014

⁷ AIR1950SC27

Article 21 provides two rights:

Right to life

Right to personal liberty

The fundamental right provided by Article 21 is one of the most important rights that the Constitution guarantees.

The Supreme Court of India has described this right as the 'heart of fundamental rights'.

The right specifically mentions that no person shall be deprived of life and liberty except as per the procedure established by law. This implies that this right has been provided against the State only. State here includes not just the government, but also, government departments, local bodies, the Legislatures, etc.

Any private individual encroaching on these rights of another individual does not amount to a violation of Article 21. The remedy for the victim, in this case, would be under Article 226 or under general law.

The right to life is not just about the right to survive. It also entails being able to live a complete life of dignity and meaning.

The chief goal of Article 21 is that when the right to life or liberty of a person is taken away by the State, it should only be according to the prescribed procedure of law.⁷

"That we can adopt and enact the Rule of Law and it can benefit the larger part of the society it is important that we should restrain liberty of some people. But this arrest should be on sound grounds and not on anyone whims and fancies". That why we have Article 22 in our Indian Constitution.

Article 22 :- It deals with protection from Arrest+ Detention.

It has 7 clauses:- (a) Clause 1&2 talks about Punitive Detention.

(b) Clause 3 talks about Exceptions

(c) Clause 4-7 talks about Preventive Detention.

All the civil statute that talks about detention or arrest eg:- contract or income tax act that are of civil nature are not cover under this article.

Punitive Detention	Preventive Detention
Punitive detention is the detention as a punishment for the crime committed by an individual. It takes place after the actual commission of an offence or at least after an attempt has been made. The time taken from actual offence to detention can vary in length	the practice of incarcerating accused individuals before trial on the assumption that their release would not be in the best interest of society—specifically, that they would be likely to commit additional crimes if they were released.

Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar⁸(1979)

The Court found that the under-trial prisoners whose list was filed before the Court have been in jail for periods longer than the maximum term for which they could have been sentenced if convicted. The Court recognized the callousness of the legal and judicial system and unjustified deprivation of personal liberty.

Clause 1 of Article 22 of Indian Constitution states that a person who has been arrested under normal circumstances (not under preventive detention), has the right to know the charges for which he has been arrested and can be detained further and he can't be denied off an attorney or a lawyer's service to represent him in court or to guide him and defend him in the court of law. The concerned authority, like the police or any other government authority, is compelled to tell him this information as soon as possible.

Clause 2 of Article 22 of Indian Constitution states that any person who has been arrested by an authority, must be presented before a magistrate within 24 hours of the arrest. This period of 24 hours doesn't include the time taken to travel to the court of the magistrate. The person cannot be detained or held in custody for more than twenty four hours. After that, it is with the authority or permission of the magistrate that an agency or government body can extend the period of the detention

Clause (3) of Article 22 however expressly take away the safeguards of clauses (1) and (2) of Article 22 in respect of a person arrested or detained under a law providing for Preventive Detention - (a) enemy alien, (b) arrested or detained under any law providing preventive detention.

Clause 4 of Article 22 of Indian Constitution deals with the provisions related to safeguard the misuse of the preventive detention powers of the government agencies. According to this, a person who has been detained under preventive detention, cannot be held for more than 3 months without the recommendation of an advisory board. This advisory board will be formed containing at least three members who are either high court judges or have the qualification to be high court judges.

Clause 5 of Article 22 of Indian Constitution mentions that an individual detained under any order which refer to preventive detention, may be given the right to know the grounds of detention and allowed to

⁷ Constitution of India

⁸ AIR 1369, 1979 SCR (3) 532

make representation against the said detention, on a time that the government sees fit and must be considered as soon as possible.

Clause 6 of Article 22 of Indian Constitution states that while disclosing the grounds of detention to a person, under clause (5) of Article 22 of Indian Constitution, the government has a right to withhold the specifics or facts which it may consider will harm the public interest. The Court has no power to impose its opinion as to whether it is against the public interest or not to disclose any particular fact or facts. Once the authority refuses to disclose any fact or facts in the 'public interest', the Court shall have no power to declare that it was not against the public interest to disclose those facts.

Clause 7 of Article 22 of Indian Constitution It describes the powers of the parliament as follows:

- a) The parliament can define the necessary situations in which a person or class can be detained for more than 3 months, without consulting with the Advisory Board. However, they will need to pass a law for this.
- (b) It can decide the maximum period of detention
- (c) It can modify or define the procedure which is to be followed by the advisory board.

How can we get our rights in case of Illegal Detention

We can directly approach to High Court under article 226 and Supreme court under article 32 filling a writ of Habeas Corpus.

The "Great Writ" of habeas corpus is a fundamental right in the Constitution that protects against unlawful and indefinite imprisonment. Translated from Latin it means "show me the body." Habeas corpus has historically been an important instrument to safeguard individual freedom against arbitrary executive power.

The Indian judiciary has dispensed with the traditional doctrine of **locus standi** so that if a detained person is not in a position to file a petition, it can be moved on his behalf by any other person. The scope of *habeas* relief has expanded in recent times by actions of the Indian judiciary.⁹

The Reasons why we need stringent laws against Illegal Detention

Our Country and Citizens have suffered a lot during the freedom struggle but never thought would see another dark era that was :-

- (a) Emergency that was proclaimed on the ground of internal disturbance in the year 1975 to 1977 by the Congress Government. All the fundamental rights were suspended and many opposition leaders and citizens were illegally detained.

During that time the country went through an utter- shock when the Hon'ble Supreme Court of India passed a controversial judgement that is known as

"the darkest hour"

ADM Jabalpur v Shivkant Shukla¹⁰

ADM Jabalpur case is a landmark judgment pertaining to the *Habeas corpus* case. This controversial judgment of P.N. Bhagwati was decreed during the Emergency of 1975 to 1977, a person's right to not be unlawfully detained (i.e. *habeas corpus*) can be suspended. This judgment received a lot of criticism since it reduced the importance attached to Fundamental Rights under the Indian Constitution. Going against the previous decision of High Courts, the bench which included Bhagwati concluded in favour of the then Indira Gandhi government while only Justice Hans Raj Khanna was opposed to it. Bhagwati openly praised Indira Gandhi during the Emergency period, later criticized her when the Janata Party-led government was formed and again backed Gandhi when she got re-elected to form government in 1980. Bhagwati was criticized for these change of stands, favouring the ruling government, which were deemed to have been taken to better his career prospects. Bhagwati later in 2011 agreed with popular opinion that this judgement was short-sighted and "apologised".

(b) **The Maintenance of Internal Security Act (MISA):-** It was a controversial law passed by the Indian parliament in 1971 giving the administration of Prime Minister Indira Gandhi and Indian law enforcement agencies very broad powers – indefinite preventive detention of individuals, search and seizure of property without warrants, and wiretapping – in the quelling of civil and political disorder in India, as well as countering foreign-inspired sabotage, terrorism, subterfuge and threats to national security. The law was amended several times during the subsequently declared national emergency (1975–1977) and used for quelling political dissent. Finally it was repealed in 1977, when Indira Gandhi lost the 1977 Indian general election and the Janata Party came to power.

⁹ Constitution of India

¹⁰ 1976 AIR 1207, 1976 SCR 172

(c) **Mysterious Custodian Deaths**:- there have been a lot of reports, where people detained dies mysteriously in the custody of police.

In the case of :- D.K Basu V State of West Bengal¹¹, the Executive chairman of West Bengal Legal Aid Services wrote to the Chief Justice of India about the deaths occurring in police custody which was treated as a writ petition and thus the Supreme Court issued guidelines that are:-

Police personnel should wear accurate, visible and clear identification and name tags with their designations while carrying out interrogation and arrest.

A memo of arrest shall be prepared by arresting police officer and shall be attested by at least one witness and countersigned by the arrestee.

One friend or relative of the arrestee shall be informed, as soon as practicable, of the arrest and detention at the place in question

Where the next friend or relative of the arrestee lives outside the district then he or she must be notified by the police of the time, place of arrest and venue of custody within 8 to 12 hours of the arrest

Arrestee must be informed of his right as soon as he or she is arrested or detained

An entry must be made in the diary at the place of detention regarding all the particulars like arrest of the person, name of next friend who has been informed and the names of the police officers in whose custody the arrestee is detained.

On request, the arrestee should be examined for injuries at the time of arrest and provided with a copy of the resulting report, signed by both the officer and arrestee.

. The arrestee should undergo a medical examination every 48 hours by a doctor from an approved panel

Copies of all documents regarding the arrest are to be sent to the appropriate local Magistrate for his or her records

International Human Rights Organizations and UN on Illegal Detention

Article 9(5) of the **International Covenant on Civil and Political Rights, 1966** provides that any person “who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”. While acceding to this covenant in 1979, the Government of India declared, inter alia that “under the Indian legal system, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State”.

Article 6 of the **African Charter on Human and Peoples’ Rights** and Article 7 of the **American Convention on Human Rights** provides for the prohibition of arbitrary arrest or imprisonment.

The European Convention on Human Rights specifically enumerates the grounds which can lawfully justify a deprivation of liberty in the Contracting States. It focuses on the rights of an individual towards liberty and security. No one shall be deprived of his liberty in the following circumstances in accordance with a procedure prescribed by law that is-

(a) lawful detention of an individual after conviction by a competent court;

(b) lawful arrest or detention of a person for not obeying the lawful order of a court

(c) the lawful arrest or detention of a person before the competent legal authority on reasonable suspicion of having committed an offence or fleeing after commission¹²

(d) lawful detention of a minor by lawful order for educational supervision or for bringing him before the competent legal authority; or any provision prescribed by law

(e) lawful detention of persons who are insane, alcoholics or drug addicts or for the prevention of the spreading of infectious diseases,

(f) lawful arrest or detention of any individual to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

Death occurring in custody is considered to be a very sensitive phenomenon, as the person is solely dependent on the custodial authority for all of his constitutional rights including access to health care and it is usually considered as unnatural death by the public at large. As such it creates a hue and cry among general population and sometimes, causes political involvement. But in contrast to general belief, deaths occurring in custody could be due to natural causes along with un-natural causes.

Natural deaths may be due to disease or intoxication already existing in the deceased prior to the custody and aggravated thereafter or may have developed after taken into the custody. These are mainly due to unawareness and sometimes, carelessness on the part of the officials about the health status of the inmates and also, due to poor condition of the cells where inmates are kept. Unnatural death may be due to various causes, such as

¹¹ (1997) 1 SCC 416

¹² [https://blog.ipleaders.in/illegal-](https://blog.ipleaders.in/illegal-detention/#:~:text=Illegal%20detention%20is%20the%20unjustifiable,by%20such%20person%20in%20custody)

[detention/#:~:text=Illegal%20detention%20is%20the%20unjustifiable,by%20such%20person%20in%20custody](https://blog.ipleaders.in/illegal-detention/#:~:text=Illegal%20detention%20is%20the%20unjustifiable,by%20such%20person%20in%20custody)

suicides, various accidents or tortures by the hand of officials and/or fellow inmates and can occur during any period of the custody.

Asian Centre for Human Rights (ACHR) in its report stated that, the Supreme Court had made it clear that prisoners are persons and are entitled to fundamental rights while in custody (in *Sunil Batra (II) v. Delhi Administration*. Later, in *Rama Murthy v. State of Karnataka*) and thus the SC identified as many as nine issues facing prisons and needing reforms which are:

Over-crowding

Delay in trial

Torture and ill-treatment

Neglect of health and hygiene

Insubstantial food and inadequate clothing

Prison vices

Deficiency in communication

Streamlining of jail visits

Management of open air prisons

What are the Rights of the the person who has been illegal/ legally arrested

Article- 22(1) of the Indian Constitution stipulates that no police official can arrest any individual without informing the accused the reason/ ground of his detainment/ arrest.

Section- 50 of the Code of Criminal Procedure (CRPC) says that every police official with authority to arrest someone without a warrant must inform the person getting arrested about the crime for which he is arrested and other relevant grounds for the arrest. This is the duty of the police official which he cannot refuse.

Section- 50A of CRPC makes it compulsory for the person/ police official arresting a person to inform of the arrest to any of his relatives or even friends who may have interest in the same.

Section- 55 of CRPC states that in situations where a police official authorises his junior to arrest a person without a warrant, the junior official must notify the arrested person of the order of delegation that is given which must also mention the crime and the grounds of arrest.

Section- 75 of CRPC states that the police official executing the warrant must notify the substance to the arrested person and furnish the warrant of the arrest when required.

2- Right to be produced before the Magistrate without unnecessary delay

Article- 22(2) of the Indian Constitution stipulates that the police official making an arrest must produce the arrested person before the Magistrate within 24 hours of the arrest failing to do so would make him liable for wrongful detention.

Section- 55 of CRPC states that in case a police official is making an arrest without a warrant, then he must produce the person arrested without any unnecessary delay before the Magistrate with jurisdiction or before a police officer in charge of the police station, depending upon the conditions of the arrest.

Section- 76 of CRPC states that the arrested person must be produced in court within 24 hours of his arrest, the same can must exclude the time duration which is required for the journey from the place of arrest to the Magistrate Court.

3- Right to be released on bail

Section- 50 (2) of CRPC provides that the arrested person has the right to get released on bail by making arrangement for the sureties or just inform him of his right when arrested without a warrant for an offence other than a non-cognizable offence.

4- Right to a fair and just trial

The legal provision regarding the right to a fair and just trial can be extracted from the Indian Constitution as well as a lot of Supreme court and High court judgments since no specified law has been stipulated in this regard.

Article- 14 of the Indian Constitution states that "every individual is equal before the law" which means that all the sides in a legal dispute must be treated equally.

The principle of natural justice must be considered with respect to both parties.

Similarly, a right to a speedy trial has also been upheld in "*Huissainara Khatoun v/s Home Secretary, State of Bihar*"¹³ where the court observed that "the trial must be disposed of as diligently as possible".

¹³ 1979 SCR (3) 532

5- Right to consult a Lawyer

Article- 22 (1) of the Indian Constitution provides that every arrested person has the right to choose and elect his lawyer to defend him in the court of law for whatever crime he may/ may not have committed.

Section- 41D of CRPC allows prisoners to be able to consult with their lawyers even during their interrogation.

Section- 303 of CRPC allows every alleged convict/ criminal the right to be defended by a lawyer of his choice even if the criminal proceedings against him have already begun.

6- Right to free legal aid

Article- 39A The government in an effort towards securing justice instituted Article- 39A to provide free legal aid to people in need. The same right to free legal aid is provided at the first instance of the production of the accused before the Magistrate in the court.

Moreover, this right to free legal aid for the accused cannot be refused even when the accused fails to ask for it himself. Now, a key note to remember, if the government is unable to provide free legal aid to the poverty-stricken accused person, then whole trial will stand to be void.

Section- 304 of CRPC provides a very significant right to every accused who is set to appear before a Sessions Court to appoint him a lawyer (totally free of cost) at the expense of the State. The court may appoint him a representing lawyer if the accused has no sufficient means to appoint himself a lawyer for his case then.

7- Right to keep quiet

The right to keep quiet does not have any mention in any Indian law, however, its authority can be derived from CRPC as well as the Indian Evidence Act.

The right to stay silent is principally related to the statement and confession made by the accused person in the court. In addition to this, it is the responsibility of the magistrate to perceive if any statement or confession made by the accused person was voluntarily or was after the use of force and manipulation. Therefore, police or any other authority for that matter is not allowed to compel an accused person to speak anything in the court.

Article- 20(2) Additionally, reiterates that no person whether accused or not cannot be compelled to be a witness against himself. This act of exposing oneself is the principle of self- incrimination.

8- Right to be examined by a Doctor

Section- 54 of CRPC asserts that if an arrested person claims that medical examination of his body would lead to a detail which would dismiss the fact of commission of the crime by him, or some detail that might lead to evidence towards commission of the crime by some other person against his body.

The court has complete discretion to order for a medical examination of an accused person at his request and the same is granted by the court when satisfied that the request is not made to delay or defeat justice.

9- Additional rights available to an arrested person

Section- 55A of CRPC asserts that maintaining reasonable health care and safety of every arrested person will be the sole responsibility of the person (police official) who has the custody of the accused.

This principle was established to protect the arrested person from cruel and inhuman treatment in the prison.

Section- 358 of CRPC is another groundbreaking effort towards the principle of natural justice where the arrested person is provided with compensation when arrested unreasonably.

Section- 41A of CRPC asserts that the police official must furnish notice to the person who has supposedly committed a cognizable offence to appear before him at a specified time, date and location.

Section- 46 of CRPC stipulates the mode of arrest of an accused person which includes submission to custody by the accused, physically touching the body, or to a body.

The police official must not cause death of the accused person while trying to arrest the person except when the person to be arrested is accused of an offence which is punishable with death or life imprisonment or when the accused person is trying to unnecessarily resist his arrest by turning violent and aggressive or when the accused is trying to escape.

Section- 49 of CRPC asserts that the police official must not restrain or detain the accused without a legal arrest.

The landmark case of D.K. Basu v/s West Bengal and Ors. concentrates on “the rights of an arrested person which further impels the police officer to act in a certain way”.

The court further observed that if the police official is unable to perform his duty properly, then he will be accountable for contempt of court and also for departmental inquiry. Such dispute can be initiated in any High Court that has the jurisdiction over the said dispute.

Regardless of numerous efforts to safeguard an accused person from unnecessary torture and inhuman conduct, number of custodial deaths and police atrocities are still common. Therefore, to overcome this, the Indian Apex court circulated 9 significant guidelines to protect an accused person which also included amendment to numerous sections of the CRPC which are as follows:

Section- 41B Every police official authorised to conduct the investigation/ arrest must supply clear, visible and valid badge where the name and designation of the police official is mentioned.

Besides this, the police official authorised to make an arrest must prepare a cash memo with complete details of the arrest like the date and time. The same document must have signatures of at least 1 family member or any one honourable person of the locality of the accused. The arrested person has to countersign the cash memo.

Section 41D entitles an arrested person to a right to have 1 friend or relative or any other person who he wants by his side during his arrest.

The police must inform the person arrested about his right to inform someone immediately when the person is detained or put under custody.

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

The official diary must also include the name and additional particulars of the police officials under whose custody the arrested person is. Moreover, a medical examination has to be conducted but after the request of the arrested person to put on record any minor or major injuries suffered by the arrested person. This inspection memo is supposed to be signed by both the police officials as well as the arrested person.

The arrested person has the right to meet his lawyer while in prison and during interrogation.

In addition to these, all the copies of the entire documentation must be sent across to the Magistrate for his record which must also include the arrest memo.

Section- 41C Every arrest made by any police official must be informed to the District and the State headquarters within 12 hours of any arrest which also needs to be displayed on the conspicuous board.

What are the Different Bail Provision Under Indian Penal Code

CHAPTER XXXIII (S.436-450) of the Code of Criminal procedure deals with bails and bonds.

There are three types of bail:-

Regular bail

When a person commits a cognizable non-bailable offence (offences which are so grave that a police officer can arrest the accused without a warrant or start the investigation without the permission of a court), the police can take him under custody and after the custody period expires he must be sent to jail. Section 437 and 439 of the Cr.P.C gives the accused the right to be released from such custody. So, a regular bail is the release of an accused from custody to ensure his presence at the trial.

Interim bail

This bail is granted as a temporary means and granted for a short period, either during the time of pendency of an application or when the application of anticipatory or regular bail is pending before the court. Interim bail is always conditional and can be extended, but if it expires before the accused has been granted an anticipatory bail or regular bail and he fails to pay the amount required for continuing the bail, then he loses his right of freedom and will be taken under custody.

Anticipatory bail

Anticipatory bail is self-defining. It is a type of bail which is given to someone who is in anticipation of getting arrested for a non-bailable offence by the police. This is a very essential bail in recent times because business rivals and other influential people often try to frame their opponents in false cases. This is an advanced bail mentioned under Section 438 of the Act. A person who has been granted an anticipatory bail cannot be arrested by the police.

Section 436(1) of C.R.P.C. lays down the conditions under which bail can be granted for bailable offences committed under the Indian Penal Code (1862). Whenever a person is arrested or detained by police for any non-bailable offence is produced before the court and he is prepared to give bail, he may be released on bail.

In this case, bail can either be granted by the police officer who has made the arrest or by the Court before which the person has been produced. Here bail will ordinarily be granted against furnishing of surety by the arrested person. However, if the arresting officer or the court is satisfied that the person is indignant and cannot furnish surety, he may be discharged on bail on the execution of a bond without sureties for his appearance.

Whether a person is indignant or not is also explained under this section. If within a period of one week of arrest, the person fails to give bail, he will be considered as an indignant person and will be eligible to be discharged on the execution of a bond without sureties.

At the time of granting bail to any person, the bail granting authority must be satisfied that:

the accused appears to be innocent, i.e. he has most probably not committed the offence.

that further enquiry for the offence is required to be conducted to find out whether he has committed the offence.

the offence is not a major one, i.e. it is not an offence punishable with death, life imprisonment or imprisonment up to 10 years.

#In India, court cases are long-drawn and may continue for years. For various reasons, the trying court may take a long time to give its verdict. Section 436A was inserted in CRPC to ensure that an accused person is not detained for an inordinate length of time. Any person, if accused of any offence, other than an offence where the prescribed punishment is death, will be released in bail-bond, during the period of investigation, if he has already been detained for more than half the length of maximum punishment prescribed for that offence. However, the section also gives the court the discretion to extend the period of imprisonment beyond this period, if so satisfied, but in no circumstances, up to the maximum length of punishment prescribed for the offence.

What are Conditions governing bail in a non-bailable offence

Shahzad Hasan Khan vs Ishtiaq Hasan Khan & Anr (28 April, 1987)¹⁴

Supreme Court observed that:- Liberty is to be secured through a process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution.

Section 437 of the Code of Criminal Procedure 1973, states that bail can also be granted for committing non-bailable offences. However, here the discretion is that of the Court and the accused cannot claim it as a matter of right. Under this section, if a person is arrested without a warrant and produced before a court, any court other than the High Court or the Court of Sessions may grant him bail. However, the Court may not grant bail if it has sufficient grounds to believe that the person is guilty of an offence punishable with death or life imprisonment. The Court may also refuse bail if the offence is cognizable and the person has been previously convicted of an offence punishable with death or imprisonment for seven years or more or convicted in two or more than two occasions against an offence punishable with imprisonment for three or more years.

Further, the Court may also grant bail if the accused is a woman or a child, evidence of the crime is not strong enough and further enquiry is warranted, FIR has not been lodged promptly and the accused is seriously indisposed or infirm.

The mere reason that the examination of the accused needs the witness, will not be sufficient cause for refusing bail. At the same time for offences punishable with death or imprisonment for seven years or more, the Public Prosecutor will be given an opportunity of hearing and opposing bail, before the same is granted.

If the accused is suspected to have committed, abated, conspired or attempted to commit a crime punishable with imprisonment with seven or more years, he shall be released on bail on the imposition of the following conditions:

attendance as laid down in the bail bond;

The undertaking of not committing any similar offence; and

The undertaking of not making any direct or indirect inducement, threat or promise to any person acquainted with the facts of the case.

Conditions governing bail in anticipation of arrest:

Section 438 of the CRPC lays down the procedures for getting bail in anticipation of arrest for a non-bailable offence. The provision was incorporated as per the recommendation of the report of the 41st Law Commission¹⁵. There should be an element of apprehension, i.e. the person seeking bail feels that he will be framed or arrested in a false case or someone having enmity with him will try to get him arrested on the pretext on a fabricated charge. The applicant has to present before the Court certain special facts or circumstances which makes him believe would result in his arrest. This is however left to the satisfaction of the court, whether such facts would be considered good enough for granting bail.

Anticipatory bail can be granted only a High Court or a Court of Sessions.

Other conditions affecting grant of anticipatory bail

The person concerned will have to make himself available for interrogation by the police.¹⁶

He shall not make any direct or indirect inducement, threat or promise to any person acquainted with the facts of the case.

He will not leave the country without the prior permission of the court.

¹⁴ 1987 SCR (3) 34

¹⁵ law report of india

¹⁶ <https://www.helpline.law.com/>

II. Conclusion on Bail reforms of India

Detention of undertrials should be an exception and not a rule in law. The Indian Legal system relies on the presumption of innocence unless otherwise proven guilty. In practice, this is not true. The nature of the offence often weighs heavily on the mind of the judge or magistrate who grants or refuses bail. If the offence is grave enough, bail is often not granted and the cardinal principle that the offence is yet to be proved is often ignored. Thus, the importance of FIR is paramount in the Indian Legal system. I, therefore, feel that it is appropriate to carefully analyse this undue dependence on the seriousness of the offence as mentioned in the FIR. Grant of bail should not depend on the sections in which a person is charged, i.e. on the nature and gravity of the offence (which is yet to be proved), but it should be evidence-based and the careful understanding of the judge as to the probability of the accused committing the offence. If required thorough, but quick enquiry may be conducted to find out whether bail may be granted or not. Another important area, already recommended by the Law Commission is revamping the system of the arrest. The system should be made more rational, fair and transparent. For this, Section 41 of Cr.P.C. should be amended. This would go a long way in preventing arbitrary arrests and result in fewer people seeking bail before the police and the court. Most importantly, it would help the bail granting authority take a rational decision based on the merit of the case.

There are various statutes and sections in-laws which lay emphasis on the presumption of guilt which is contrary to principles of natural justice. For example, It is very hard to get bail for offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, The Scheduled Caste and Scheduled Tribes (Prevention of atrocities Act), 1989, as these laws emphasize the presumption of guilt. Similarly, Section 375 (Rape) and Section 498A (Cruelty against a married woman) of IPC also lay presumption on guilt. These sections were drafted to prevent people from committing atrocities against women and the traditionally oppressed classes, which is no doubt necessary to prevent crimes against them, but at the same time, the sections bypass the principle of innocence prior to being proved guilty. Thus, all statutes and laws should emphasize the principle of 'innocence unless proved guilty and should be amended to the extent required.