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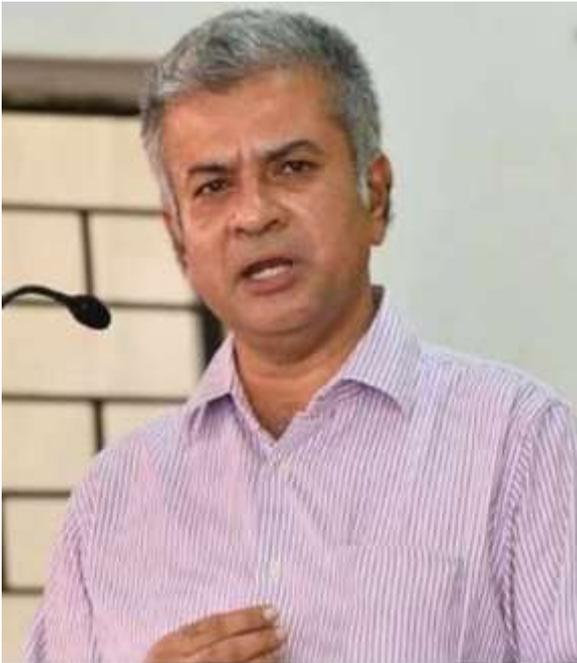
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

RIGHTS OF A PERSON ON ARREST UNDER INDIAN LEGALFRAMWORK

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Abstract

The most important principle that no person shall be deprived of his life and liberty except according to the procedure established by law has been enshrined in Article 21 of the Constitution, whose scope has been extended by judicial interpretation by the Supreme Court. It gives protection not only against executive action but also against legislation. This principle is also contained in Article 9 of the International Covenant on Civil and Political Rights 1966. The Bhartiya Nyaya Sanhita, 2023 and, The Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 define various offences and the procedure for their conviction. These Acts do not mention the rights of an arrested person in anyone particular section. It should interpret them through various sections. The Indian Constitution grants us various fundamental rights. The arrested persons are also the citizens of India, and they too should avail them.

Key Words: Right, Accused, Arrested Person, Law, Justice.

INTRODUCTION

With the rise of concerns for human rights, International Conventions have included the basic rights of an accused and have made it mandatory for signatory countries to follow them stringently. Any law interfering with the basic privileges would go against the notions of liberty and humanity. Some of these aspects have been included in the Universal Declaration of Human Rights, 1948 (UDHR). Article 3 of UDHR declares that “Everyone has the right to life, liberty and security of person” The same principle has been reiterated emphatically in Article 21 of the Constitution of India. It is matter of common knowledge and experience that the principle of liberty is being violated everywhere, and by those very people who are supposed to protect it. In order to fill the gap between theory and practice, the legislators have provided for legal provisions to secure the adequate implementation of the rights of accused. In this Unit

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we will discuss the Constitutional provisions regarding liberty and protection of human rights of the accused. These constitutional provisions have been given concrete shape by the Code of Criminal Procedure which confers a number of rights and liberties upon an accused, which implies corresponding duties on the arresting authorities. Apart from analyzing the constitutional provisions, this unit shall also cover the various rights awarded to the accused persons by the Code of Criminal Procedure, Indian Penal Code and Evidence Act under different heads dealing specifically with the rights at the time of arrest, the post arrest rights, and the right of legal aid and consultation.

RIGHTS TO REMAIN SILENT

The "right to silence" is a fundamental principle of the common law system that protects individuals from self-incrimination. It asserts that individuals should not be compelled to answer questions or provide evidence that may incriminate them in a criminal proceeding³. The right to remain silent during interrogation or in court is a fundamental right enshrined in Article 20(3) of the Indian Constitution. This right protects individuals from being compelled to be a witness against themselves. It ensures that no person accused of an offense can be forced to testify against themselves, whether during police questioning or in court⁴. The arrested person has the right to remain silent during interrogation He cannot be compelled to say anything in favour of or against himself. According to Article 20(3) "No man accused of any offence shall be compelled to be a witness against himself." As per Section 58 of the Bhartiya Nagarik Suraksha Sanhita 2023, any person who has been arrested without a warrant shall not be detained in police custody for over 24 hours excluding the time necessary for the journey from the place of arrest to the Magistrate's Court, unless special orders have been passed by Magistrate under Section 167. The arrested person is not the convicted person. Therefore, one should not construe his fundamental rights before his conviction⁵.

³ <https://www.defactolaw.in/post/right-to-silence-under-indian-constitution>

⁴ https://www.google.com/search?q=right+to+remain+silent+in+indian+constitution&oq=RIGHTS+TO+REMA IN+SILENT++Under+Cons&gs_lcrp=EgZjaHJvbWUqCAgCEAAAYFhgeMgYIABBFgDkyCAgBEAAAYFhge MggIAhAAGBYHjIICAMQABgWGB4yCAgEEAAAYFhgeMg0IBRAAGIYDGLAEGIoFMg0IBhAAGIYDGLAEGIoFMgoIBx AAGIAEGKIEMgoICBAAGIAEGKIEMgcICRAAGO8F0gEKMTgwNzdqMGoxNagCCLA CAfEFwr24zNbmFXs&sourceid=chrome&ie=UTF-8

⁵ [Advocate Tanwar](https://advocatanwar.com/rights-of-an-arrested-person-the-bhartiya-nyaya-sanhita-bns-and-the-bhartiya-nagarik-suraksha-sanhita-bnss/), available on: <https://advocatanwar.com/rights-of-an-arrested-person-the-bhartiya-nyaya-sanhita-bns-and-the-bhartiya-nagarik-suraksha-sanhita-bnss/>

RIGHT TO KNOW THE GROUNDS OF ARREST

The accused persons are also granted certain rights, the most basic of which are found in the Indian Constitution. The basic assumption behind these rights is that the government has enormous resources available to it for the prosecution of individuals, and individuals, therefore, are entitled to some protection from misuse of those powers by the government. An accused has certain rights during the course of any investigation; enquiry or trial of offence with which he is charged, and he should be protected against arbitrary or illegal arrest⁶. The right to get information is a fundamental right. The police should inform the arrested person about the grounds for detainment. As per Section 48 of the Bhartiya Nagarik Suraksha Sanhita 2023, any person who has been arrested without a warrant should know the full details for which he is being arrested or other grounds for such arrest. Any person has to be treated as a human being, irrespective of the fact that such person is a criminal.

RIGHT TO GET BAIL

Article 21 of the Constitution of India guarantees the '*right to life and personal liberty*' to every individual and no one should be deprived of it except according to the procedure established by law. It guarantees the fundamental right to live with human dignity and personal liberty. As per the fundamental principle of the Universal Declaration of Human Rights a person is assumed to be innocent unless proven guilty. Therefore, no one shall be deprived of personal liberty unless specified by a fair and just procedure. Bail is an essential element of any criminal justice system, as it guarantees the right to a fair trial for the accused. Bail is a mechanism that secures liberty to the accused without providing any unjustified benefit to them. According to the Supreme Court of India, Bail is a measure to balance the personal freedom of the accused and the public interest⁷. There are many types of categories of offences; one of them is bailable and non-bailable offences. The arrested person has the right to get bail in bailable offences. Moreover, As per Section 48 of the Bhartiya Nagarik Suraksha Sanhita 2023 if any person is arrested without a warrant in bailable offences, the police officer has the duty to inform the arrested person that he is entitled to be released on bail and that he may arrange for sureties on this behalf⁸. **Section 47 of BNSS Rights of Arrested Person** is a legal safeguard introduced under the Bharatiya Nagarik Suraksha Sanhita, 2023. It protects the rights

⁶ Dr. Kalpna Sharma, What Are the Rights of an Arrested Person?

⁷ **S. Prabhakar, Bail under the Code of Criminal Procedure – is it a Matter of Right**
<https://simplybiz.in/bail-under-the-code-of-criminal-procedure-is-it-a-matter-of-right/>

⁸ Id

of a person who is arrested **without a court warrant**. This law makes it **mandatory for police officers** or anyone making the arrest to **clearly inform the arrested person** about the **reason for arrest** and, in the case of **bail able offences**, also tell them about their **right to bail**⁹. NSS Section 47 is a provision in the Bharatiya Nagarik Suraksha Sanhita, 2023 that ensures the fundamental rights of a person who is arrested without a warrant. This section makes it mandatory for the arresting police officer or person to clearly inform the arrested person about the reason for the arrest or the offence committed and their right to be released on bail, if he has been arrested for a bail able offence. It promotes transparency in the arrest process and protects the rights of individuals from misuse of police powers¹⁰.

ARRESTED PERSON MUST BE TOLD THE REASON FOR ARREST

When a person is arrested without a warrant, it is the legal duty of the police officer to immediately inform the arrested person about the full reason for the arrest. This means they must clearly say what crime the person is accused of or the grounds on which the arrest is being made. This rule is important because every citizen has the right to know why they are being taken into custody and it helps prevent unlawful or blind arrests.

RIGHT TO KNOW THE OFFENCE IN DETAIL

The explanation given to the arrested person should not be vague or unclear. The police officer must communicate full particulars of the offence, which includes the nature of the offence, relevant sections of the law, and any important facts. This ensures that the person understands the seriousness of the charge and can prepare for legal defence or apply for bail if applicable. Human rights are basic fundamental rights which are integral part for the development of human being in the absence of which person cannot live life with dignity. Constitution of India protects the fundamental rights or human rights of the people, provisions for the same have been made not only in the Articles of the Constitution but in fact Preamble also talks about the fundamental freedoms and protection of the dignity of the individual. The Indian Judiciary had even relaxed the rule of locus standi for the protection of human rights which pave the way for the development of the concept of Public Interest Litigation. Through public interest litigation various incidents of violation of human rights had been put before the Courts. Courts protected the rights of women, workers, children, prisoners and so on. Thus judiciary is playing a role of

⁹ https://marriagesolution.in/bnss_section/section-47-of-bnss/

¹⁰ Id

savior of the human rights of the people so that each individual can live with dignity. Protection of human rights is important issue of concern throughout the world various international instruments have been incorporated for the protection of human rights and on the basis of the provisions of the international instruments, national endeavors have been made such as enacting the Protection of Human Rights Act 1993. Provisions have been made under the Act for the establishment of the National Human Rights Commission as well as State Human Rights Commission in various States and it also provide for the constitution of Human Rights Courts at the district level so that the justice can be provided to the victims of human rights violation at every level.

INFORMING THE PERSON ABOUT RIGHT TO BAIL

If the arrest is made for a bail able offence, the police must clearly inform the person that they are legally allowed to be released on bail. Many people in India are not aware of this right, and if they are not told, they may stay in custody unnecessarily. This provision ensures that individuals are not held for long without proper legal reason, and can take immediate steps to apply for bail.

RIGHT TO ARRANGE SURETIES

In case of bail able offences, the police officer must also tell the arrested person that they have the right to arrange for sureties people who can vouch or stand guarantee for them. This helps the arrested person to be released from police custody sooner and prevents unnecessary jail time while awaiting court proceedings. It ensures the arrest doesn't turn into punishment without a trial. This section is designed to protect the fundamental rights of arrested persons. It ensures that law enforcement remains transparent and accountable. By informing the person of the arrest reason and bail rights, the law guarantees fairness in the arrest process. This step is crucial in a democratic country to maintain a balance between police powers and individual freedoms¹¹.

LEGAL PROTECTION FOR THE ARRESTED PERSON

If someone is not informed about the reason for their arrest or their right to bail, they can challenge the arrest in court. Courts may treat such an arrest as illegal or wrongful, which means the person could be released and the officer might be questioned. BNSS Section 47

¹¹ Id

reflects the spirit of Article 22 of the Indian Constitution, which guarantees the right to know the grounds of arrest and to consult a legal advisor. This section ensures that the police act within constitutional limits when arresting someone. When police officers are legally required to inform arrested individuals about their charges and rights, it creates a system of accountability. It encourages law enforcement to be responsible, disciplined, and respectful of citizens' rights during arrests.

RIGHT TO GET SPEEDY AND FAIR TRIAL

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children¹². The golden rule that runs through the web of civilized criminal jurisprudence is that an accused is presumed innocent until proved guilty of the charged offence. Presumption of innocence is a human right recognized as such under Article 14(2) on the International Covenant on Civil and Political Rights 1966. Article 11(!) of the Universal Declaration of Human Rights 1948, also provides that any person charged with penal offences has a right to be presumed innocent until proved guilty according to law in public trial in which he has all the guarantees necessary for his defence¹³. Article 21 of the Constitution of India guarantees a right to personal liberty which includes the right to a speedy and fair trial. The state should not keep an arrested person in jail unnecessarily. The speedy trial is an essential feature of fair trial as adage; justice hurried is justice worried. Thus there is need to strike balance between right of the accused to have a speedy trial and right of the prosecution to fair opportunity to establish guilt of accused. The concept of right to speedy trial flows from Article 21 of the constitution of India. In *Husainera Khatoon and others v. Home Secretary, State of Bihar*, AIR 1979 SC 1369 “speedy trial is an essential ingredient of right to

¹² https://www.nja.gov.in/Concluded_Programmes/2019-20/P-1163_PPTs/1.Right%20to%20Fair%20Trial_Handout.pdf

¹³ Id

life and liberty guaranteed under Article 21 of the constitution and it is the constitutional duty of the state to set up procedure to ensure speedy trial¹⁴.

RIGHT TO CONSULT A LEGAL PRACTITIONER

In India right to consult a legal practitioner is given under Article 22 of the constitution of India. In country like Australia, there is no provision for legal representation since it does not have a common law right. In *Dietrich v. The Queen*, it was held that if the person alleged with a serious offence, then the proceedings will be delayed to the time a legal representation is available to the accused. In such case any application for the same should be accepted. Most commonly in the *Dietrich*, even if there is no existence of right to counsel, the judge out of his discretion stays the proceedings or in some other cases also grant adjournment when the accused doesn't have a counsel to represent him in the court of law. Similarly in Cambodia which is a country following International Covenant on Civil and Political Rights has provided to any accused with the right to counsel under Article 38 of its constitution, which states that the citizen shall have the right to be defended by a counsel in case of a judicial proceedings initiated against them. In United Kingdom, countries such as England, Wales, and Northern Ireland are provided under Article 58(1) of the Police and Criminal Evidence Act of 1984(PACE) that in any circumstances if a person who is accused of any crime and is held in police custody in station or any other premises can on his request, be represented by a solicitor of his own choice to provide him with legal consultation privately at any point of time. PACE is such a regulation which provides the right to consult a legal practitioner and of being informed about their legal rights too which is not provided under any common law. In United Kingdom around 2000, the honorable supreme court held in one of the leading case of *Cadder v. Her Majesty's Advocate* that no person who is accused of any alleged crime or even a suspect of a crime can't be questioned by the Scottish police Inspector about the crime in the absence of a legal representative or a legal counsel. Earlier the Scottish police had the luxury of interrogating the accused or the suspect to a maximum of 6 hours of his arrest in the absence of a legal practitioner. However the Supreme Court latter in several of its judgement found this right of a police to interrogate a person without his counsel was violative of Article 6 of its constitution and hence Article 6(c) was added to their constitution¹⁵. As per Section 340 of the *Bhartiya Nagarik Suraksha Sanhita 2023*, any person accused of an offence before a criminal

¹⁴ Id

¹⁵ Romi Kumari, Right to consult legal practitioner- A comparative overview.

court, has a right to be defended by a pleader of his choice. Moreover, As per Article 22(1) of the Constitution of India, an arrested person as the right to know the grounds for arrest and he shall not be denied the right to consult and to be defended by, a legal practitioner of his choice.

RIGHT TO BE EXAMINED BY MEDICAL PRACTITIONER

According to international human rights standards, the State has a duty to provide and ensure that all detained persons are able to undergo a medical examination. This applies in particular if the detainees have health problems, whether or not these are related to their detention. The United Nations Subcommittee on Prevention of Torture (SPT) has recommended that medical examinations should be routine for all detained persons in police custody when they arrive at the place of detention. Furthermore, the SPT has reiterated that detainee's right to be examined by a doctor upon request must be respected. The SPT has also recommended setting up a system of independent examinations in which qualified forensic doctors and psychologists carry out exhaustive investigations, if the doctor who has examined the detainee has reason to believe that the person has been subjected to torture and ill-treatment¹⁶. Being healthy is not a right in the Constitution of India but a requirement to encourage the livelihood of humans. Moreover, Section 53 of the Bhartiya Nagrik Suraksha Sanhita 2023, says that, when any person is arrested, he shall be examined by a medical officer in the service of Central or State Government and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made.

RIGHT TO INFORM A RELATIVE OR A FRIEND

Whenever any difficulty strikes us down, family and friends are the people whom we wish to contact. They are the people for the blessing in disguise. Similarly, an arrested person may inform his relative or friend about the fact, time, and place of the arrest. If the arrest is invalid on account of breach of procedure or violation of any other right or if the custody is not passed within the framework of the law by a competent magistrate who has jurisdiction over the issue, the person so detained can file a writ of (Habeas Corpus) under Article 32 or 226 of the Constitution of India. However, it must be noted that a writ does not lie against legal custody, no matter what rights may have been violated before the lawful custody. We all are social animals and citizens of Indian society whose protection is the responsibility of the police

¹⁶ Right to an independent medical examination upon request,
https://www.apt.ch/sites/default/files/publications/doc-3_right-to-a-medical-examination_en_final.pdf

authorities. Moreover, all these rights ensure the protections of accused or arrested ones. However, they may have done an evil deed is the later matter of concern but their safety is the initial one. Further, Any rule that violates these rights would likely be considered ultra-virus in the terminology of the constitution.

CONCLUSION

Human rights are sometimes called fundamental rights or basic rights or natural rights. As fundamental or basic rights they are the rights which cannot, rather must not, be taken away by any legislative or any act of the government and which are often set out in a Constitution. As natural rights they are seen as belonging to men and women by their very nature. They may also be described as “common rights” for they are rights which all men and women in the world would share, just as the common law in England, for example, was the body of rules and customs which, unlike local customs, governed the whole country.⁴⁵⁶ Since human rights are not created by any legislation, they resemble very much the natural rights. The legal duty to protect human rights includes the legal duty to respect them. Constitution of India reflects the quest and aspiration of the mankind for justice when its preamble speaks of justice in all its forms: social, economic and political. Those who have suffered physically, mentally or economically, approach the Courts, with great hope, for redressal of their grievances. Justice Delivery System is under an obligation to deliver prompt and inexpensive justice to its consumers, without compromising on the quality of justice in any manner or the elements of fairness, equality and impartiality. The success of the Indian Judiciary on the Constitutional front is unparalleled.

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