

## THE RIGHT OF ACCUSED PERSON

### An Analysis into the System

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#### An Introduction in India

Right of Accused in law where the rights and privileges of a person accused of a crime, guaranteeing him of a fair trial. The question that arises is who is an accused person?? An accused is a person, who has been formally charged by the prosecutor with a crime within the jurisdiction of the tribunal is an accused person must not be allowed to languish indefinitely in jail but must be given a speedy trial.

An accused person who has certain rights during the period of any investigation, enquiry, or trial of offence with which he is charged, and he should be protected against illegal arrest. Following are the most important rights of an accused person:

#### RIGHT OF ACCUSED PERSON

##### (1) RIGHT TO CONSULT A LEGAL PRACTITIONER :

Every person who is arrested has a right to consult a lawyer or a legal practitioner of his own choice. As per this right that has been enshrined as a fundamental right in ARTICLE 22(1) OF THE CONSTITUTION OF INDIA and SECTION 50 (3) OF THE CODE also lays down that person against whom proceedings are initiated has a right to be defended by a pleader of his choice, and this right begins as soon as the person is arrested.

##### (1.1) RIGHT TO KNOW THE GROUNDS OF ARREST

As per SECTION 50(1) CODE OF CRIMINAL PROCEDURE provides that 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 .

##### (1.2) RIGHT TO BE TAKEN BEFORE A MAGISTRATE WITHOUT DELAY :

The arrested person has to be confined in police station only, before taking him to magistrate.

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These matters have been provided in CrPc under Section 56 and 76 which are as given below SECTION 56 OF CrPc states that " Person arrested to be taken before Magistrate or officer in charge of police station - A police officer making an arrest without warrant shall , without unnecessary delay and subject to the provisions herein contained as to bail , take or send the person arrested before a Magistrate having jurisdiction in the case , or before the officer in charge of a police station ".SECTION 76 OF Cr.P.C states that such delay shall not exceed 24 hours in any case , and the same has been enumerated in the Constitution as a Fundamental Right under Article 22(2) . If the Police officials fails to provide an arrested person before a Magistrate within 24 hours of the arrest, the police officials shall be held guilty of wrongful detention .

### **(3) RIGHT TO BE EXAMINED BY A MEDICAL PRACTITONER:**

SECTION 54 OF Cr.P.C states that " When a person who is arrested , whether on a charge or otherwise alleges , at the time when he is produced before a Magistrate or at any time during the period or his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence .

### **THE HUMBLEST OPINION**

I would like to conclude by saying that " The rights of accused in India are provided at different stages , which include right of an accused before his trail begins, right of accused during a court trial , and right of an accused after his trail is completed .Every person is entitled to the basic human rights , fundamental rights under the Indian constitution and certain legal rights under various laws ,so that these rights are provided to a person , irrespective of the fact that the person is accused of a crime and these rights are provided to accused in India by quoting the following lines : " LET HUNDREDS GO UNPUNISHED , BUT NEVER PUNISH AN INNOCENT PERSON "

### **IMPORTANT CASE: D.K. BASU VS STATE OF WEST BENGAL**

Primary rights of an accused person in a criminal trial: we all know that one of the cardinal principles of criminal justice system is that an accused is presumed to be innocent unless proven otherwise.

In the Indian Justice System, it is said if two views are possible one pointing towards the guilt of the accused and other towards his innocence, the view favorable to the accused should be accepted.

These are the basic rights of any accused in a criminal trial along with the section or article which protects them.

(1). Protection against arbitrary or unlawful arrest (article 22 of the Constitution and section 41 , 41 A , 55 and 151 of Cr.P.C )

- (2). Protection against arbitrary or unlawful searches (Section 93, 94, 95, 97, 100(4) to (8) and 165 of Cr.P.C)
- (3). Right to be informed of the grounds immediately after the arrest (Article 22(1) of the Constitution and Section 50 of Cr.P.C and also section 55 and 75 of Cr.P.C)
- (4). Right to be arrested person not to be subjected to unnecessary restrain (section 49 of Cr.P.C)
- (5). Right to consult a lawyer of his own choice (Article 22(1) of the constitution and section 303 of Cr.P.C)
- (6). Right to be produced before a Magistrate within 24 hours of his arrest (Article 22(1) of constitution and section 57 and 76 of Cr.P.C)

## CONCLUSION

At the end we all are social but human beings and citizens of Indian society whose protection is the responsibility of the police authorities even if a person is held against some of the most serious charges. Everyone is equal in the eye of the Constitution while serving for justice. Even the arrested person has his/her own rights to demand if not given. An accused should be protected against any of the illegal practices and anti-democratic acts during the beginning of time when he got arrested. I would like to conclude by saying that all primary rights and all other rules are made to protect these rights. Any rule that violates these rights would likely be considered as ultra vires in the terminology of Constitution of India, 1950.

**JUS IMPERATOR**