

# Provisions Relating to Arrest under Indian Law

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## A. Meaning of Arrest

An arrest is the act of depriving people of their liberty, usually in relation to an investigation or prevention of a crime, and thus detaining the arrested person in a procedure as part of the criminal justice system. In *State of Punjab vs. Ajaib Singh*<sup>1</sup>, arrest is defined as “Arrest means a physical restraint put on a person as a result of allegation of accusation that he has committed a crime or an offence of quasi criminal nature. The word arrest, when used in its ordinary and natural sense it means the apprehension or restraint or the deprivation of one’s personal liberty. The question whether the person is under arrest or not depends on the legality of the arrest, on whether he has been deprived of his personal liberty to go where he pleases. When used in the legal sense in the procedure connected with the criminal offences, an arrest consists in the taking into custody of another person under authority empowered by law for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of the criminal offence.

## B. Need for Arrest

Arrest of a person is necessary for the following reasons<sup>2</sup> ;

1. When a person is to be tried on the charge of some crime, his attendance at the time of trial becomes necessary. If his attendance is not likely to be ensured by issuing a notice or summons to him, probably his arrest and detention is the only effective method for securing his presence at the trial.
2. If there is imminent danger of the commission of a serious crime (conizable offence), arrest of the person intending to commit such a crime may become necessary as a preventive measure.
3. Where a person, on being asked by a police officer, refuses to give his name and address, then under certain circumstances, it would be proper on the part of police to arrest such a person with a view to ascertain his correct name and address.
4. Whoever obstructs a police officer in the execution of his duty would be and should be liable to be arrested then and there by such a police officer. This is essential for effective discharge of police duties.
5. A person who has escaped from lawful custody should be arrested forthwith by the police.

<sup>1</sup>AIR 1981 SC 625.

<sup>2</sup> www.legalservices.com visited on 24 Dec.,2017.

### C. Who can Arrest

Section 41 to 44 contain provisions that govern the arrest of a person by police and private citizens, while section 46 describes how an arrest is made. There are situations when a person may be arrested by a police officer, a magistrate or even private citizen without a warrant. These are described in Section 41, 42, 43, and 44 as follows: -

1. Arrest by Police - Section 41. When police may arrest without warrant<sup>3</sup>;  
(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person -

(a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or

(b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(I) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Any officer in charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of persons specified in section 109 or section 110.

<sup>3</sup> Ibid.

In the case of *Joginder Kumar v. State of UP*,<sup>4</sup> it was held that no arrest can be made merely because it is lawful to do so. There must be a justifiable reason to arrest. Further, in *State vs Bhera*,<sup>5</sup> it was held that the "reasonable suspicion" and "credible information" must relate to definite averments which must be considered by the Police Officer himself before he arrests the person.

## 2..Arrest by Private person

Even private persons are empowered to arrest a person for protection of peace in certain situations. This is important because police cannot be present at every nook and corner and it is up to private citizens to protect the society from disruptive elements or criminals. As per section 43(1), any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station. Thus, if a person is drunk and is committing assault on others, he may be rightly arrested by any citizen and taken to the nearest police station.

3. Arrest by Magistrate- As per Section 44(1), when any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody. Further, (2) Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant. Important thing to note here is that magistrates have wider power than private citizen. A magistrate can arrest on the ground of any offence and not only on cognizable offence. As held in the case of *Swami HariharanandSaraswati v. Jailer I/C Dist. Varanasi*,<sup>6</sup> the arrested person must be produced before another magistrate within 24 hours, otherwise his detention will be illegal.

D. Guidelines by Judiciary - The Supreme Court over the last more than two decades has been to circumscribe the vast discretionary power vested by law in Police by imposing several safeguards and to regulate it by laying down numerous guidelines and by subjecting the said power to several conditional ties. The effort throughout has been to prevent its abuse while leaving it free to discharge the functions entrusted to the Police. In order to have transparency in the accused- police relations the Supreme Court held that right of arrested person upon request, to have someone informed about his arrest and right to consult privately with lawyers are inherent in Articles 21 and 22 of the Constitution. The Supreme Court observed

<sup>4</sup>*JoginderKumar v. State of UP, 1994 SCC 746.*

<sup>5</sup>Cr.L.J, 1997

<sup>6</sup>*Swami HariharanandSaraswati v. Jailer I/C Dist. Varanasi, AIR 1954*

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 should be made by Police Officer without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest.<sup>7</sup>In the case of Joginderkumar v. State of U.P.<sup>8</sup>, the Supreme Court issued the following requirements:

1. An arrested person being held in custody is entitled, if he so requests, to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as practicable that he has been arrested and where is being detained.
2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.
3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22 (1) and enforced strictly.

The guidelines issued by the supreme court in the decisions of like Joginder Kumar, Nilabati Behera etc were not sufficient to stop the frequent instances of police atrocities and custodial deaths. Therefore, the Supreme Court in the case of D.K . Basu v. State of W.B.<sup>9</sup> issued in the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures.

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

<sup>7</sup> www.legalservices.com visited on 24 Dec.,2017.

<sup>8</sup>Supra n.5.

<sup>9</sup> D.K. Basu v. State of West Bengal,

3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody, by a doctor in the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

9. Copies of all the documents including the memo of arrest, referred to above, should be sent to illaqa Magistrate for his record.

10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

11. A police control room should be provided at all Districts and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the Officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a

conspicuous

notice

board.

lawyer

The Court emphasized that failure to comply with the said requirements shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of Court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter. The requirements flow from Article 21 and Article 22 (1) of the Constitution need to be strictly followed. The requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the Courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.<sup>10</sup>

#### E. Incorporation of Guidelines of Supreme Court in Cr.P.C. by Amendment

The legislature incorporated the guidelines issued by the Supreme Court by inserting Sections 41-A 41-B, 41-C, 41-D, 50-A etc.. Section 41-A provides that the police officer may, in all cases where the arrest of person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he committed a cognizable offence to appear before him.

Section 41-A Notice of appearance before police officer<sup>11</sup>:-

(1) The police officer may, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officers are of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent Court.

<sup>10</sup>Supra n.3.

<sup>11</sup>Section 41-A, Code of Criminal Procedure, 1973.

Section 41-B Procedure of Arrest and duties of officer making arrest<sup>12</sup>: Every police officer while making an arrest shall—

- (a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;
- (b) prepare a memorandum of arrest which shall be—
  - (i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;
  - (ii) countersigned by the person arrested; and
- (c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.

Section 41-C Control room at districts<sup>13</sup>

- (1) The State Government shall establish a police control room—(a) in every district and (b) at State level.
- (2) The State Government shall cause to be displayed on the notice board kept outside the control rooms at every district, the names and addresses of the persons arrested and the name and designation of the police officers who made the arrests.
- (3) The control room at the Police Headquarters at the State level shall collect from time to time, details about the persons arrested, nature of the offence with which they are charged and maintain a database for the information of the general public.

Section 41-D Rights of arrested person to meet an advocate of his choice during interrogation<sup>14</sup>

When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.

SECTION 50-A Section 50-A Obligation of person making arrest to inform about the arrest, etc., to a

<sup>12</sup> Section 41-B, Code of Criminal Procedure, 1973.

<sup>13</sup> Section 41-C, Code of Criminal Procedure, 1973.

<sup>15</sup> Section 41-D, Code of Criminal Procedure, 1973.

nominated

person-<sup>15</sup>

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

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.

(4) It shall be the duty of the magistrate before whom such arrested means apprehension of a person by legal authority so as to cause deprivation of his liberty. Thus, after arrest, a person's liberty is in control of the arrester. Arrest is an important tool for bringing an accused before the court as well as to prevent a crime or prevent a person suspected of doing crime from running away from the law. Cr P C contemplates two types of arrests - an arrest that is made for the execution of a warrant issued by a magistrate and an arrest that is made without any warrant b

F. Arrest how made - Section 46 describes the procedure to arrest a person. As per Section 46(1), unless the person being arrested consents to the submission to custody by words or actions, the arrester shall actually touch or confine the body of the person to be arrested. Since arrest is a restraint on the liberty of the person, it is necessary for the person being arrested to either submit to custody or the arrester must touch and confine his body. Mere oral declaration of arrest by the arrester without getting submission to custody or physical touching to confine the body will not amount to arrest. The submission to custody may be by express words or by action. For example, as held in the case of *BharosaRamdayal v. Emperor*<sup>16</sup>, if a person makes a statement to the police accusing himself of committing an offence, he would be considered to have submitted to the custody of the police officer. Similarly, if the accused proceeds towards the police station as directed by the police officer, he has submitted to the custody. In such cases, physical contact is not required. In case of *Birendra Kumar Rai v. Union of India*,<sup>17</sup> it was held that arrest need not be by handcuffing the person, and it can also be complete by spoken words if the person submits to custody.

Section 46(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest,

<sup>15</sup> Section 50-A, Code of Criminal Procedure, 1973

<sup>16</sup> *BharosaRamdayal v. Emperor*, AIR 1941.

<sup>17</sup> *Birendrakumarrai v. Union of India*, Cr.L.J.1992.



such police officer or other person may use all means necessary to effect the arrest. Thus, if the person tries to runaway, the police officer can take actions to prevent his escape and in doing so, he can use physical force to immobilize the accused. However, as per Section 46(3), there is no right to cause the death of the person who is not accused of an offence punishable with death or with imprisonment for life, while arresting that person. Further, as per Section 49, an arrested person must not be subjected to more restraint than is necessary to prevent him from escaping. Due to concerns of violation of the rights of women, a new provision was inserted in Section 46(4) that forbids the arrest of women after sunset and before sunrise, except in exceptional circumstances, in which case the arrest can be done by a woman police officer after making a written report and obtaining a prior permission from the concerned Judicial Magistrate of First class. In *Kultej Singh v. Circle Inspector of Police*,<sup>18</sup> it was held that keeping a person in the police station or confining the movement of the person in the precincts of the police station amounts to arrest of the person.

G. Rights of an Arrested person -Cr P C gives wide powers to the police for arresting a person. Such powers without appropriate safeguards for the arrested person will be harmful for the society. To ensure that this power is not used arbitrarily, several restraints have been put on it, which, indirectly, can be seen as recognition of the rights of a person being arrested. Further, once arrested, a person is already at a disadvantage because of his lack of freedom and so he cannot take appropriate steps to defend himself. Thus, to meet the needs of "fair trial", several provisions are given in CrPC, that give specific rights to an arrested person. These rights can be described follows:<sup>19</sup> -

1. Right to know the grounds of arrest - Section 50(1) - According this provision, 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. Similarly, when a subordinate officer is deputed by a senior police officer to arrest a person under Section 55, the subordinate officer must notify the person to be arrested of the substance of the written order given by the senior officer, which clearly specifies the offence for which he is being arrested. The police officer or any person making arrest under warrant in Section 75 must notify the substance of the warrant to the person being arrested and if required, must show the warrant. As held in *Satish Chandra Rai v. JoduNandan Singh*,<sup>20</sup> if the substance of the warrant is not notified, the arrest would be unlawful.

This right is also a fundamental right given by the Constitution in Art 22(1), which says, "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such

<sup>18</sup> *Kultej Singh v. Circle Inspector of Police*, Cr.L.J., 1992.

<sup>19</sup> www.legalsrvices.com visited on 25 Dec. 2017.

<sup>20</sup> ILR 26 Cal 748.

arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice." . It embodies two distinct rights - the right to be told of the grounds of arrest and the right to consult a legal practitioner of his choice. The second right of consulting a legal practitioner of his choice actually depends on the first right of being told about the grounds of arrest. If the person doesn't know why he is being arrested, he cannot consult a legal practitioner meaningfully. In *Harikishan v. State of Maharashtra*<sup>21</sup>, SC held that the grounds of arrest must be communicated to the person in the language that he understands otherwise it would not amount to sufficient compliance of the constitutional provisions.

2. Right to be informed of the provision for bail - Section 50(2) - Inbailable offences, Cr P C allows the offender to ask for bail as a matter of right. However, every person does not know about Cr P C and so they are not aware about their rights. Thus, Section 50(2) provides that where a police officer arrests any person other than a person accused of a non-bailable offence without warrant, 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. Right to be taken to magistrate without delay

Art 22(2) gives a fundamental right to the arrested person that he must be produced before a magistrate within 24 hours of arrest. It says, "Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."

Section 57 of CrPC also contains a similar provision for a person arrested without a warrant. It says, "No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under Section 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court." Section 76 contains a similar provision for a person arrested under a warrant. Thus, it can be seen that it is a very important right that is meant to prevent abuse of police power and to prevent the use of a police station as a prison. It prevents arrest merely for the purpose of extracting confessions. The arrested person gets to be heard by a judicial authority that is independent of the police. In *Khatri (II) v. State of Bihar*<sup>22</sup>, SC has strongly urged upon the State and its police to ensure that this constitutional and legal requirement of bringing an arrested person before a judicial magistrate within 24 hours be scrupulously met. This is a healthy provision that allows magistrates to keep a check on the police investigation. It is necessary that the magistrates should try to enforce this requirement and when they find it disobeyed, they should come heavily upon the police. Further, in *Sharifbai v. Abdul*

<sup>21</sup>*Harikishan v. State of Maharashtra*, AIR 1962 SC 911,914

<sup>22</sup>*Khatri (II) vs State of Bihar* 1981 SCC 627

Razak,<sup>23</sup> SC held that if a police officer fails to produce an arrested person before a magistrate within 24 hours, he shall be held guilty of wrongful detention.

4. Right to consult Legal Practitioner - Art 22 (1) - For conducting a fair trial it is absolutely necessary that the accused person is able to consult with a legal practitioner whom he trusts. It says that no person who is arrested shall be denied the right to consult, and to be defended by, a legal practitioner of his choice. The same right is also provide by CrPC under Section 303, which says, "Any person accused of offence before a Criminal Court or against whom proceedings are instituted under this Code, may have right be defended by a pleader of his choice."

5. Right to free legal aid - Art 21 and Section 304 - A person who does not have the means to appoint a legal practitioner is unable to defend himself appropriately. This affects the fairness of the trial. Therefore, Section 304 provides that where, in a trial before the Court of Session, the accused is not represented by a pleader, and where appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defense at the expense of the State. In Khatri (II) v. State of Bihar, Supreme Court has also held that access to a legal practitioner is implicit in Article 21, which gives fundamental right to life and liberty. The state is under constitutional mandate to provide free legal aid to an indigent accused person and this constitutional obligation arises not only when the trial is commenced but also when the person is first produced before a magistrate and also when he is remanded from time to time.

6. Right to be informed about the right to inform of his arrest to his relative or friend - In order to ensure a fair trial and to improve people-police relationship, the Supreme Court, in Joginder Kumar v State of UP,<sup>24</sup> formulated the rules that make it mandatory on the police officer to inform one friend, relative, or any other person of the accused person's choice, about his arrest. These rules were later incorporated in CrPC under section 50 A in 2005. Section 50 A (1) provides that once the arrested person is brought to the police station, the police officer must inform a relative or a friend, or any other person of the arrested person's choice, about his arrest. He must also tell the place where the arrested person has been kept. This is a very important step in ensuring justice with the arrested person because this allows the arrested person and his well wishers to take appropriate legal steps to secure his release. Thus, Section 50 A (2) provides that the police officer must inform the arrested person of this right. Further, as per Section 50 A (3) he must note down the name and address of the person who was informed about the arrest. To make sure that there is no violation of this right, section 50 A (4) makes it a duty of the magistrate to verify that the provisions of this section were complied with.

<sup>23</sup>Sharifbai v. Abdul Razak, AIR 1961 Bom 42.

<sup>24</sup>1994) 4 SCC 746.

7. Right to be examined by a medical practitioner - While Section 53 allows a police officer to get the accused examined by a registered medical practitioner, Section 54(1) gives the accused a right to get himself examined by a registered medical practitioner. Section 54 (1) says thus, "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 of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of Justice". While Section 53 is meant to aid the police in investigation, Section 54(1) is meant for the accused to prove his innocence. This right can also be used by the accused to prove that he was subjected to physical injury.

8. Right to Silence- In *Sheela Barse v State of Maharashtra*<sup>25</sup>, SC held that the arrested accused person must be informed by the magistrate about his right to be medically examined in terms of Section 54. The constitution of India guarantees every person right against self incrimination under Article 20 (3) "No person accused of any offense shall be compelled to be a witness against himself". It is well established that the Right to Silence has been granted to the accused by virtue of the pronouncement in the case of *Nandini Sathpathy v P.L. Dani*<sup>26</sup>, no one can forcibly extract statements from the accused, who has the right to keep silent during the course of interrogation (investigation). By the administration of these tests, forcible intrusion into one's mind is being restored to, thereby nullifying the validity and legitimacy of the Right to Silence. In 2010 The Supreme court made narco-analysis, brain mapping and lie detector test as a violation of Article 20(3).

9. Rights at Trial-The Constitution under Article 14 guarantee the right to equality before the law. The Code of Criminal Procedure also provides that for a trial to be fair, it must be an open court trial. The Constitution provides an accused the right to a speedy trial. Although this right is not explicitly stated in the constitution, it has been interpreted by the Hon'ble Supreme Court of India in the judgment of *Hussainara Khatoon*<sup>27</sup>. This judgment mandates that an investigation in trial should be held "as expeditiously as possible".

10. Right of The Accused To Produce An Evidence- The accused even has right to produce witness in his defence in case of police report or private defence.

<sup>25</sup>*Sheela Barse v State of Maharashtra*<sup>25</sup> 1983 SCC

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<sup>27</sup>*Hussainara Khatoon and Ors. v. Home Secretary, Bihar, Patna, (1980) 1 SCC 98.*

After the Examination and cross examination of all prosecution witness i.e. after the completion of the prosecution case the accused shall be called upon to enter upon his defence and any written statement put in shall be filled with the record. He may even call further for cross examination. The judge shall go on recording the evidence of prosecution witness till the prosecution closes its evidence.

H. Consequences of non-compliance with the provisions relating to arrest - In general, non-compliance does not void a trial. Just because any provision relating to arrest was not complied with does not affect whether the accused is guilty or not. However, the violation will be material in case the accused is prosecuted on the charge of resistance to or escape from lawful custody. Further, everybody has a right to defend himself against unlawful arrest and a person can exercise this right under Section 96 to 106 of IPC and he will not be liable for any injury caused due to it. Also, a person who is making an illegal arrest is guilty of wrongful confinement and also exposes himself to damages in a civil suit.

If a person who has an authority to arrest, arrests a person with full knowledge that the arrest is illegal, he will be liable to be prosecuted under Section 220 of IPC. Similarly, any private person who does not have an authority to arrest, arrests a person with full knowledge that the arrest is illegal, can be prosecuted under Section 342 of IPC for wrongful confinement. A person making illegal arrest also exposes himself to civil suit of false imprisonment.

It is important to note that the provisions regarding arrest cannot be by-passed by alleging that there was no arrest but only an informal detention. Informal detention or restraint of any

kind by the police is not authorized by law<sup>28</sup>.

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<sup>28</sup>Supra n.3.