



PROTECTION AGAINST ARREST AND DETENTION UNDER ARTICLE 22

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Abstract-- Criminal Justice system in India arrests is basically a police activity. Arrest comprises of real seizure or touching of an individual's body with a scrutiny to his detention. The simple pronouncement of the expression "arrest" is not an arrest unless the individual sought to be arrested submit to the processes and goes with the arresting officers. Though, it might make an arrest, if in the situations of the cases, they are calculated to bring to an individual's notice that he is in pressure and thereafter submit to the compulsions.

In *State of Punjab v. Ajaib Singh*, arrests are denoted 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."

This study tried to understand the basics and constitutional provisions of Article 22 of Indian Constitution. This research paper covers opinions of judiciary and the guideline provided by Supreme Court in different judgments with revisions done in arrests and detention laws and integration of some of the provisions of arrest laws. This study also examines the violations of this basic right and the response of the judiciary towards the same before concluding with a simple conclusion. The study thereby aimed to offer the basic knowledge of one of the most significant basic rights of the public of India, as it reads into article 21 that manages Right to life and individual liberty.

Key words: Criminal Justice System, Arrest, Detention, Article 22.

INTRODUCTION

Arrest involves constraint of liberty of an individual arrested and thus, breaks the basic human right of freedom. However the Indian Constitution and human rights law recognises the supremacy of the States to arrest any individual as parts of their main responsibility of keeping law and orders. The Indian Constitution needs a just, fair and practical method set up by laws under which alone such deprivations of freedom is allowable¹.

Even though Article 22(1) gives that all individuals placed under arrests will be inform immediately might be the ground of arrests and will not be denied the right to consults and be defended by a lawyer of his choice and Section 50 of the Cr.PC needs police officers arresting any person to "forthwith communicate to him entire specifications of the crime for which he is arrested or other grounds for such arrests".

Art. 22 provide the procedural protection against subjective arrest and detentions. The arrests have stern ramifications and therefore can only be made under the authority of laws and consistent with these laws. In a liberal community personal need to be safeguarded from the police atrocity and abuses in order to guarantee the effectual governance of criminal justice system. Every human being has the rights to freedom and safety and it is the responsibility of the government to make sure the safeguard of this right in order to make any other right significant. Infringement of these rights is thus usual, and arrest and detentions on unreasonable ground is prevalent. So as to ensure the rights to safety and freedom, different procedural protections have been integrated in the CrPC, and for providing this right a statutory status, Art.22 embodies different other incidental safeguards to make these fundamental right an authenticity².

¹ Tanya Singh, Pramod Kumar Singh, Rajeev Kumar Singh, Arrest and detention laws in India: An overview, International Journal of Applied Research 2015; 1(7)

² Chakraborti, H. (2014): Criminal Justice in Ancient India. South Asia Books, New Delhi.



Many instances have taken place in India in which an individual has been illogically arrested, in violations of Art 21. Arbitrary arrests or detentions violate an individual's basic rights as per Art 21, hence the constitution authors covered Art 22 to safeguard the rights to life and individual freedom by safeguarding the citizen from arbitrary arrests and detentions. As per the provision of Art 22, an individual can be arrested and detained if the appropriate legitimate procedures or procedures established by laws are pursued. Consequently, Art 21 is consigned to as the constitution's base, and it serve as groundwork for different other articles, like Art 22.

OBJECTIVES OF RESEARCH

- To analyze the Constitutional Provisions regarding arrest and detention
- To analyze the protection against arrest and detention under article 22
- To suggest various reforms for solving the issues and challenges

LITERATURE REVIEW

Neha and Shivam (2018)³ in their study tried to investigate the causes which are accountable for these discrepancies, and the way in which the gradual attempt has been put to rub out it chronologically. "This will elucidate a trend in which the law developed and its better implementation. Expansion of the studied area is then extended to make a comparative analysis of the police system of India with Japan, United Kingdom, and Italy to extract a missing point of balance in the laws, functions and its implementation. Further, cognizance is taken about the gap between the framed law and its non-biased implementation and suggestions have been provided which are directed towards the subject and the object of laws and could be adopted at the basic level. The conclusion sums up the discussion that the need for reforms to implement police accountability is too important to be neglected and too urgent to be delayed."

Kelkar (2014)⁴ tried to explore topical areas like interstate arrest, juvenile crimes, remand and detainee right. This book points out the notorious power of arrests and detentions, arguing for strict laws regarding the global, constitutional and human right mandate. It also tried to examine public safety and whether it can be executed via legal standard that compromise individual freedom.

Sekhri (2019)⁵ conducted a paper to examine the aspects of Article 22 and argues that the minimum threshold it sets for laws is painfully insufficient. More willingly than protect personal freedom against legislative tyranny, this study argued that Art 22 is suborning these ideals instead.

In a research paper Gopal Krishan (2019)⁶ examines the issues of preventive detention in India. Many statutory provisions associated to preventive detention have been critically analyzed. After that the different Acts passed by Indian Parliament and different state government has been studied related to arrest and detention. This research paper examine the different issues of arrest and detention has been examined in the context of democratic states and democratic principles vis-a-vis arrest and detention.

³ Rani, Neha and Sharan, Shivam, Lacunae in Provision of Arrest: Need for Police Accountability and Reformation, SSRN, (September 14, 2018)

⁴ RV Kelkar, Criminal Procedure, Eastern Book Co., Lucknow, 2014.

⁵ Sekhri, Abhinav, Article 22 — Calling Time on Preventive Detention (September 17, 2019)

⁶ Gopal Krishan, Preventive Detention in India: A Legal Perspective, International Journal of Reviews and Research in Social Sciences, 2019



Sidheswar and Bandna (2015)⁷ carried out a study to explore that one of the fundamental tenet of Indian legal system is the advantage of the presumption of innocences of the accused till he is found culpable at the end of trials on legal evidences in a democratic community even the right of accused are sacrosanct, the accused in India are afforded certain right, the most fundamental of which are found in the Indian constitution. This study provides an advanced on right of arrested person.

In Subhash Popatlal Dave v. UOI⁸, the Supreme Court counselled the State that such restrictive powers under preventive detention laws that restrict individual freedoms should be exercised with extra caution and not as a matter of course. They must not be exercised as an alternative to ordinary laws, it warned.

HYPOTHESIS

1. Article 22 is not sufficient enough to protect the rights of arrested persons
2. The arrested persons are subject to serious human rights violations.

RESEARCH QUESTIONS

1. What are the legal provisions of arrest and detention?
2. Whether mere registration of FIR in cognizable offences will lead to arrest?
3. Are laws in India are not sufficient/ capable to protect against arrest and detention under article 22?

RESEARCH METHODOLOGY

The research design for proposed research work will be doctrinal. In doctrinal research there will be a comprehensive study which would be done through implications of International and Statutes, instrument, judicial pronouncements whereas in exploratory there will be comparative study of articles case comments, reports. For secondary data various sources will also be used like books, magazines, articles and analysis of cases, judgement, legal journals and websites.

CONSTITUTIONAL PROVISIONS OF PROTECTION AGAINST ARREST AND DETENTION

Clause 22(1) reads “No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice”.

The clause 22(2) of Article 22 reads, “Every person who is arrested and detained in custody should be produced before the nearest magistrates within a period of 24 hours of such arrest excluding the time essential for the journey from the place of arrests to the court of the magistrates and no such person shall be detained in custody beyond the period without the authority of magistrates”⁹

Clause 22(3)(a) to every person who for the time being is a rival unknown or

Clause 22(3)(a) (b) to every person who is arrested under any laws giving for preventive detentions.

⁷ Patra, Sidheswar & Shekhar, Bandna, An exploration of the legal provisions to safeguard the victims against the preventive detention in India. Indian Journal of Legal Philosophy. 3. 2015

⁸ Subhash Popatlal Dave v. UOI, (2014) 1 SCC 280

⁹ Nirmal Singh Heera, N Prabhavathi, “Power of arrest is under arrest”: “A critical analysis in light of code of criminal procedure, 1973, International Journal of Law”, Vol 3; Issue 1; Jan 2017



Clause 22(4) - No laws offering for preventive detentions should authorize the detention of an individual for a longer period than 3 months unless—[44th Amendments 1978]

Clause 22 (4)(a) - Advisory Boards consist of individual who is qualified to be appointed as, a Judge of a High Court of the time of 3 months that there is in its judgment enough reason for the detention or arrest:

Given that nothing in this sub clauses will authorize the detention of all persons beyond the maximum time described by any legislation prepared by Parliament in sub clause 24(7)(b)

Art 22 (4)(b) - these persons are arrested according to the provision of all laws prepared by Parliament under sub clauses (a) &(b).

Art 22(5) - The arrested person must be conscious of the ground for his arrest. Moreover be provided a chance of making a representation against their cases.

Not anything in clause (5) will need the authorities making any such orders as is denote to in that article to disclose fact which these authorities consider to be against the public interests to unveil.”

Art 22(6) Exception to this rule is enemies and Alien.

Art 22(6) (7) Parliament might by law prescribes

a) the conditions under which, and the classes of cases in which, an individual might be detained for a period longer than 90 days in any law giving for preventive detentions without getting the argument of Advisory Boards in relation to the provision of sub-clauses a) of clause (4);

b) the maximum time for which every individual might in all classes of cases be detained under any law giving for preventive detentions; and

c) the procedures to be followed by Advisory Boards in inquiries under sub-clauses (a) of clauses (4) Rights against Exploitations”

Art 22(7) clause has sub-clauses where Parliament has an exclusive power to increases or decreases the detained period above 3 months. Moreover decide the procedures for arrests provided by Advisory Boards¹⁰.

Preventive Detention Laws: The law of “Preventive Detention” means detaining a person without any trial. It is different from punitive detention. “The object of punitive detention is to punish an individual for what he has committed and after he is tried by the courts for the illegal acts committed by him. Preventive detention, on the other hand, prevents the person from doing something and the detention in such cases takes place due to the apprehension of the fact that he is going to do something wrong. However such detention must come within the ambit of the grounds for detention as laid down by the Constitution of India that includes acts prejudicial to the security of the State, public order, maintenance of supplies and services essential to the community, defence and foreign affairs. The Justification for preventive detention is based on suspicion or reasonable apprehension, and the probability of an act being committed to cause prejudicial to the State.”

LANDMARK CASES

In *Hussainara Khatoon vs. Bihar*¹¹ the Court has opined that it is the statutory rights of all accused persons who is incapable to appoint lawyers and safe legal services due to causes like poverty, deprivation or incommunicado condition, to have free legal service given to him by the states and the

¹⁰ Jyoti Dogra Sood, Rights of the Accused and Constitutional Protection in Case of Arrest in India, Asia Law Review, 2008

¹¹ *Hussainara Khatoon v. Home Secretary of Bihar* (AIR 1979 SC 1377)



states are under statutory duties to give lawyers to such persons if the requirements of justice so need. If free legal service is not 'given the trial itself might be vitiate as contravene Art 21.

Art 22 was described in *DK Basu vs State of WestBengal*¹², and reiterated the significance of the right provided to arrested persons. The court viewed that often the powers of arrest anybody and therefore detaining them, is misused a large number and consequently, laid an inclusive list of direction during arrests and detentions to be pursued by the related authorities and in case of afflict against the arrestee would be permitted to reimbursement.

In *Arnesh Kumar vs. State of Bihar*¹³, the SCI whereas managing the concept of arrest forced to view as follows:

Arrest brings humiliations, restrain liberty and transmit scar forever. Policy-makers know it so also the police. There is a clash among the law-maker and the police official and it seem that police hasn't learnt its lesson; the lesson implied and embodied in the CrPC. It hasn't appeared of its colonial image despite six decades of independence, it is largely considered as an instrument of harassments, oppressions and surely not considered a friend of public. The requirement for cautions in exercising the drastic power of arrests has been emphasized time and again by judiciary but hasn't yielded needed outcome. Powers to arrests very much contribute to its superiority so also the failure of the Magistracy to verify it. Not only this, the power of arrests is one of the lucrative sources of police corruptions. The approach to arrests first and then carry on with the rest is despicable. It has become an important instrument to the police officials who need sensitivity or act with leaning purpose.

CONCLUSION

Article 22 protects the right of the individual who is arrested. It is necessary to see that all arrests are depended on reasonable grounds and not upon the urge and fancies of the authority. Even in cases of preventive detentions, stringent law has to be followed in order to avoid even slight possibilities of violation of the basic rights of the individual.

All persons must get the rights to defend themselves and get free trials. It is significant because once an individual gets accused of some crimes, the community perceives him as a menace and his public images and status gets tarnished. Consequently only fair trials can reinstate his self-assurance and status back, if he isn't found blameworthy. On the other hand preventive detentions as provisions lack balance, clarity and are full of contradiction. Key issues of preventive detentions are that it has broad provision, without any specification and limitation, which cause it to have an extensive context of interpretations. Also Art 7 has vested too much power in the Parliament which can be utilized for individual gain.

This law is mainly utilized by the ruling political parties to control the activities of anyone who are speaking against the government. There is a requirement to instantly withdraw all these Preventive Detention law and give some better method which can be utilized to preserve the integrity of India.

¹² AIR 1997 SC 610.

¹³ (2014) 8 SCC 273.



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