

# Judicial Approach Towards Rights of Accused in India

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## Abstract

The main purpose of Criminal Law is to provide safety of the society from the offenders. For approving this purpose court make some laws regarding the ending of crime from the society, there are several punishment also given. This abstract is mainly just for the based on the right of accused under Criminal Law. With the help of this paper, I want to show the rights of accused and presumption of innocent until he or she found guilty. At the end of trial on proper evidence, rights of accused are secured, that is laid down under constitutional law or criminal law or secured under many laws. For imposing the legal or Fundamental Right, basically should know the statutes where they are prescribed. The criminal procedures have to inspired by ideals relating security or social bond, if there is not Social Solidatory. Under criminal law to be a fair trial is a back bone of criminal justice system. The objective of criminal justice system is to do justice with public.

## Introduction

There are so many legal experts who explain the high percentage of India's Under Trial Prisoners, many of them being indiscriminate arrests by the police without an application. Due to noticing it, the Supreme Court said in July 2022 that, arrest of prisoners should be based on the presumption of innocence. Supreme Court rebuke for unnecessary arrest, there should be a mind set on the part of investigation agencies. Inability of Under Trial Prisoners especially on the basis of economically weaker section, to access legal support- free legal aid being provided as a constitutional right. This issue is the fact, that under trial, they lose their ability for earning, thus they create high financial pressure and face families poverty<sup>1</sup>. Bail in itself will not help the under trial from reducing the under trial population, so it's necessary to stop Arbitrary Arrest by Police Officers. On 20th July 2022 Supreme Court granted bail to Journalist Mohammad Zubair who was arrested indiscriminately by Delhi Police on 27 June 2022 by Hurting religious sentiments. The Supreme Court criticizes indiscriminate arrest that was done by Authorized police. Court said, Arrest does not mean used as a Punitive tool, it is the loss of personal liberty. In January 2021, Allahabad High Court rebuked the police officer's indiscriminate arrest which is the cross violation of Human Right.

India has 371,848 prisoners in pre-trial detention, known locally as under trial. If we see The percentage of under trial, India has second next to Bangladesh in 54 Common Wealth Countries. Many legal systems reflect a colonial legacy on the basis of June 2022 Common Wealth Human Right initiative report on

<sup>1</sup>[https://www.the hindu.com](https://www.thehindu.com)>

Pretrial Detention. On 30 July 2022 Prime Minister Narendra Modi need district level Under Trial Review Committee to immediately release the Under Trial Prisoners. The Indian Socio Legal System was born with Liberty, Dignity, and Freedom and without violence. When a person in society commits any Act which is unlawful and prohibited in society by law then that person will not be rejected as human being and he can be deprived of those aspects of life which are essential for maintaining his human dignity. For living in a civilized society there is necessary to Law and proper system that is necessary for every citizen having human rights. If a person has been detained for his crime, he has a Right to be Uncharged by the wrong punishment, because if a person becomes Under Trial, his Right cannot be fully discarded. It is a system in which Prisoners go to Prison for punishment of their Crime, not to get subjected to Physical and Mental Abuse.

### Meaning of Accused

If any dispute for administration there are two parties that are the Prosecutor and the other is the Complainant. At the time of Justice, Judgment has been given to the favor of one or the other. Administration of the Criminal Justice System concerned with Crime, means an Act which has been done by someone to make a role as a Crime that is harmful in society even though the victim happens to be an individual. Those who did such Acts are Prosecuted by the State and if they are found guilty in the Eyes of Law, then they will be punished according to the Law of the State. In every State, Trials are conducted around the Accused. The word 'Accused' has not been defined in Criminal Penal Code, on behalf of this, 'Prisoners awaiting for Trial' 'Under Trial Prisoners' and 'Untried Prisoners' have been used. In the D.K.Basu case "Arrestee" has been used. Thus the use of various expressions compels a person to think about the proper meaning of the word "Accused".

According to "Black Law Dictionary" the word "Accused" has been defined as "The generic name of the defendant in a criminal case." According to the Law Lexicon's Dictionary, 'the term accused is used as a person against whom the allegation has been made or who is charged with an offense'. Thus we can say as soon as a person is formally alleged to commit a crime, he comes in the category of "Accused".

### Case- Maqbool Hussain V State of Bombay<sup>2</sup>

Supreme Court held that Accused is the person on whom allegation has been made he had committed any offense and the Court confined such allegations up to the F.I.R.

### Case- M.P. Sharma V Satish<sup>3</sup>

A person accused of an offense means a person against whom a F.I.R.(First Information Report) is lodged and who is included in the category of accused. The person are no longer held a Slave of the nation, whom law would leave at the prison door and who would be convicted to 'Civil Death<sup>4</sup>'. It is established that a person will not be rejected as a person just because he did an Illegal Act or Crime and was put behind bars.

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<sup>2</sup> AIR 1953 SC 325.

<sup>3</sup> AIR 1954 SC 300.

<sup>4</sup> Dr Kurt Neudek, The United Nations in imprisonment today and tomorrow international perspective on prisoners right and prisoners condition.

**In the case of Charles Shobraj V Superintendent<sup>5</sup>**

Tihar jail and Apex Court held it clear that except for the fact that the compulsion to live in a prison requires by its own force the lack of certain rights as Right to more freely or a person is otherwise eligible to the basic freedoms guaranteed by the Constitution<sup>6</sup>.

The Constitutional Fundamental Rights under the Indian Constitution are not absolute. There are some reasonable restrictions that have been imposed. When a person is convicted and put behind bars then he has a different status from free men. A prisoner does not have all Fundamental Rights compared to free men.

**Legal Aid**

The expression Legal Aid means Legal Assistance which is provided to people who have any disability for affording it that's why legal aid has existed, so that they do not suffer injustice. According to Justice P.N.Bhagwati," Legal Aid means providing an arrangement for society so that the mission of clear justice becomes easily accessible and they do not out of reach of those who need to take justice like- the Poor, Illiterate Person, Prisoners also should be able to reach the bar and their poverty should not be reason from taking justice. Legal aid is available for all those people, who do not have access to the court. Providing legal aid there are Legal Service Authorities, who after examining the applicant and the existence of the Prima Facie case in his favor provide him council, pay the required court fee in the matter with the case. The person who has legal aid supported by the Legal Service Authority, no need to spend anything

Although legal aid is Fundamental Right and it is provided to all people, prisoners are deprived from it when they are behind bars because of unavailability of the legal assistance. The legal service is provided to the legal service authorities free of cost, but it happens then only when criteria is satisfied. Section 12 and Section 13 of Legal Service Authority Act,1987 obligate Legal Service Authority to provide legal service at the time of trial.

Free legal aid is not dependent on the accused for the application but the court has an obligation to inform the accused of his right to take free legal aid. Even Sec. 303, Sec. 304 of Criminal Procedure Code, 1973 discusses the provision of the legal aid to the accused person. Sec. 303 gives the right to the accused to be Defendant by the Pleader of his own choice in cases. And Sec. 304 says that in trial before the court, the accused is not represented by the pleader, it is a duty of court to assign the accused a pleader for his defense at the state expense.

**Rights of Accused Person under the provision of Criminal Procedure Code-****1. F.I.R(First Information Report)-**

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<sup>5</sup> Jon Veg prison system- A comparative study of Accountability in England,France,Germany and the Neetherlands,Clarendon Press,Oxford(1<sup>st</sup> Edition 1994).

<sup>6</sup> AIR 1978 S.C. 1514.

Under Section 154 of Criminal Procedure Code, 1973 F.I.R. has been defined. F.I.R. means First Information Report. First Information of a Cognizable Offense to the police. It has not been defined under code but it means information related to cognizable offence given to the police first in point of time. This information can be given orally or written to the police in charge in the police station. It will be read over to the informant and signed by the person given it. It shall be entered in a book to be kept by such officers in such form as the State Government may prescribe on this behalf<sup>7</sup>. Under Section 154(1) a copy of information shall be given to the informant free of cost. F.I.R. has been done in cognizable offenses. Under Section 154(3)<sup>8</sup> if an aggrieved party is not satisfied with police means if police in charge refuse to write F.I.R. of the aggrieved party then that person can go to S.P. Office for their problem or direct an investigation to be made by any police officer subordinate to him, by this Code. And such police in charge have the power to do investigation in that offense.

F.I.R can be filed by any person, not necessarily by the victim or injured or eye-witness. It may be hearsay not necessarily given by that person who has firsthand knowledge of that fact. It can be filed in a police station who has jurisdiction over the offense that has occurred, first has to obtain information about criminal activity so that it can be taken for a guilty person. In Cr.P.C.(Criminal Procedure Code) it has been mentioned that F.I.R. has been filed without waste any time, this is a Golden Principle of Law. This report has taken maximum credibility and is always welcome and appreciated by the Courts.

## 2. Right to Bail-

Bail has been derived from the word 'Bailier'<sup>9</sup>. It means 'Give or Deliver'. Bail has not been defined in Criminal Penal Code. This word has been used in Code Stroud's Judicial Dictionary defined Bail, the setting free of the defendant by releasing him from the custody of Law and entrusting him to the custody of the sureties who are liable to produce him to appear for his trial at the specific date or time.

The literal meaning of Bail is 'Surety'. Bail refers to release from custody either on personal bond or with surety<sup>10</sup>. The concept of Bail has two meanings: that an individual has a Right to Liberty and his right to be presumed innocent until proven guilty against the society interest to maintain Law and Order. Pending trial in the custody of a person may cause hardships to that person who includes loss or liberty, livelihood during that period. Section 50(2) Cr.P.C.(Criminal Procedure Code) held that whenever without warrant in non cognizable offence police officers arrest a person, he shall inform him about his Right to Bail and make arrangements for sureties on his behalf<sup>11</sup>.

## 3. Protection against arbitrary arrest-

Every F.I.R. does not need to arrest that person named therein. Courts have time and again emphasized the significance of the delay process to ensure Justice<sup>12</sup>. Each and every person assumes innocence unless proven guilty in front of the court of law. Even F.I.R. does not show truth. A person who has done cognizable offense doesn't necessarily have to be arrested. In the case of-Case- Arnesh Kumar V State of

<sup>7</sup> <https://india.kanoon.org>

<sup>8</sup> <https://www.legalserviceindia.com>

<sup>9</sup> 4<sup>th</sup> edition,1971

<sup>10</sup> Shil Fulchand Shah V/S Union Of India,AIR 2000SC 1023

<sup>11</sup> Sec.50(2) Cr.P.C. 1973

<sup>12</sup> <https://www.jstor.org>

Bihar AIR 2014 In this case the Supreme Court called for a change in the police practice under Section 41 Criminal Penal Code. Arrest have humiliation and ban freedom, the court issued directions to the state government to instruct police that not to arrest people in those cases which are under Section 498 Indian Penal Code or Section 4 of Dowry Prohibition Act,1961 and in those cases which are punishable with 7 year imprisonment without necessity of arrest in Section 41. Thus, it can say arrest is only for when it is necessary to prevent that person from committing further that offense, or it can be for investigation or for tampering with the evidence. In spite of arrest, a Police officer may send notice to such person to present in court under Section 41(A) or maybe it can be that place where presence is necessary, place may be specified in the notice. Bail means temporary release of an accused person who has been imprisoned when satisfactory money has been deposited or any property is pledged which has been security in court then that person will be released. In the case of Indigent, a person can be released on bail with or without surety. A person's fundamental right of personal liberty is secured without trial. If the charge which has been proven false, then in that case scrutiny of trial will not stand and fair trial has taken a lot of time while the accused suffers intense humiliation. In this Case police conduct arrest indiscriminately and court denies bail which is violation of accused basic right. In Sexual Offences law does not open the name of women but no protection is extended who's named has publicity. Media puts her on a public trial by releasing his picture. After that her family member who are shunned by the society, which cause embarrassment.

#### **4. Protection against Arbitrary Searches of an Accused Person Premises-**

In the case of any crime, for the effective investigation, the code shows huge powers to the police officers to search for the collecting evidence, such that the owner tends to make proper influence of the fundamental right of the person. After that there is a conflict between Right to Life and Liberty and Social Interest Detention of Crime and Punishment of Offenders. But in the country every act has been done by law and no act is lawful which has not been sanctioned by the law. Under section 51 Criminal Penal Code a person is arrested by the law with or without warrant. Police officers arresting a person will take all articles in possession of the person. The purpose for arresting a person is to keep his belongings in safe custody Section 51(2) Criminal Penal Code provides that a female is to be searched only by another female with strict regard to decency.

A search without a person being arrested is illegal<sup>13</sup>. Search may prove useful for proper investigation. If stolen things have been found in some search then police officers can seize them under Section 102 and present them before the Court. In Ramani Rai's case<sup>14</sup>, Supreme Court was doing searching other accused was having a bag in it there was such papers connected with congress forcibly snatched the bag and when accused resisted the search was laid on railway platform, this action of Sub Inspector was illegal. Section 51 does not hold that searches should be taken with the presence of witness but Allahabad high court held that such a course is advisable and under Police Act it is said that the search should be done in the presence of the witness. The witness should be independent. Section 165 Criminal Penal Code said that to conduct a search for things by police officers for investigation them which can found at any place in his jurisdiction he can conduct such search.

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<sup>13</sup> R.K.Dolansona V/S R.K. Narjitsma,A.I.R. 1971

<sup>14</sup> A.I.R. 1942 All 424.



### 5. Rights to be Produced before the Magistrate and effect of Non-Production of Accused-

Article 22(2) of our Indian Constitution provides the procedural safeguard to an accused that a person who is arrested and detained shall be produced before the Magistrate, who is nearest within a period of 24 hours of arrest to the court of Magistrate. Thus we can say that the maximum period for which police can detain a person is 24 hours at his own authority. And if the arrest and detention is Malafide then the arresting officer may not be liable to be sued for false imprisonment. After 24 hours of detention if the accused will not be produced and authorized by a Magistrate shall be illegal.

This right has been recognised with three objectives-

1. To prevent arrest and detention for the purpose of confession or as a measure of compelling people to give information.
2. To early recourse to a judicial officer independent of the police on all questions of bail or discharge.
3. To prevent police stations if they were prisons.

In criminal jurisprudence law does not allow the detention of any person if there is not legal sanction for it. According to section 56 of Criminal Penal Code a police officer making an arrest without warrant and subject to the provisions herein contained as to bail, take and send the person arrested before the magistrate having jurisdiction in the case or before the officer in charge of a police station. Section 57 restricts police officers from detaining the arrested person for more than 24 hours. so Section 56 and 57 will apply when a person is arrested without a warrant. If a person is arrested with a warrant then section 76 Criminal Penal Code will apply, it requires the police officer to bring that person arrested without delay before the court or which he is required by law to produce such person. It can say that although time is not mentioned in this section but unnecessary delay has been used but it is provided that such delay shall not exceed 24 hours from the time of arrest to the Magistrate' court.

### Case: Hariharanand V The Jailor in District Jail, Banaras<sup>15</sup>

The Petitioners were arrested by a Magistrate under Section 64 of Criminal Procedure Code, 1898 for their obstructions to the Harijans entry into Vishwanath Temple which amounted to an offense under Section 6 of U.P. Removal of Social Disabilities Act 1947. Magistrate remanded them on the same day to judicial custody. It was held that they were not produced before the court within 24 hour of arrest, thus beyond 24 hours detention was held illegal. Section 57 of Criminal Penal Code says that detention in custody of a person arrested without warrant under all circumstances of the case is reasonable and in such time will not exceed 24 hours of the time necessary for the journey from the place of arrest to the Magistrate's court. The production of the accused after arrest ensures the legal authority of irregularity of the procedure adopted by him<sup>16</sup>. The Supreme Court strictly urged the State and its Police Officers that the legal requirements for presenting within 24 hours before Magistrate is necessary and enforce this requirement and when it is not followed, come heavily upon the Police<sup>17</sup>. The effect of non-production under 24 hours before the Magistrate is illegal where custom authority arrested a person involved in a Smuggling case, kept the person in custody for 27 hours without present before the Magistrate, and was held to be illegal<sup>18</sup>.

<sup>15</sup> A.I.R. 1954 All.601 at P. 605

<sup>16</sup> State of Punjab V/S Ajaib Singh, A.I.R 1953 SC 10.

<sup>17</sup> Khatri V/S State Of Bihar, 1981 SCC 228

<sup>18</sup> Kaiser Otmar V/S State ,1981

**Case: Saptawna V State Of Assam<sup>19</sup>**

Detention beyond 24 hours without production before a Magistrate is illegal. In this case there is neither any information regarding cognizable offense against a person had been received, nor any evidence that he did such offense, nor any case registered against that person, detention of that person to custody was held illegal. In this case it was argued that the accused was produced before the Magistrate within 24 hours of arrest. This detention was negative and it was held that petitioner had been under illegal detention, his detention becomes lawful when he has been produced before the Magistrate and remanded him further custody.

According to section 167 Criminal Procedure Code there are two types of Custodies, that is-

1. Detention of the accused in Police Custody.
2. Detention of the accused in Judicial Custody.

If investigation has not been completed in time and this period can become more than 24 hours for present before Magistrate then this period for custody can be increased only on behalf of Magistrate who is competent to authorize, detention in police custody but this period only for a first fifteen days in whole. If police have not filed a final report against the accused then he is entitled to be released on bail.

**6. Right to Speedy Trial-**

The right to Speedy Trial is contained under Section 309 of Criminal Procedure Code. If cognizance of the accused is taken by the Court then a trial has to be conducted soon to punish the guilty and to free the innocent. Everyone presumed innocent until the guilty is proved. The innocence of the accused has to be proved as soon as possible. It is the burden on the Court that no innocent person shall escape and justice will not be delayed. It is said that “Justice Delayed is Justice Denied”. It is compulsory that the offense of the accused person shall be speedy trial so that accused have not to remain in jail longer. Speedy trial is a human right of accused person. The procedure regarding speedy trial has mentioned in Criminal Procedure Code.

**Conclusion**

A criminal is not criminal by birth. With the help of law an offender can rehabilitation in the society peacefully. Many criminals commit an offence due to the circumstances. Many criminals are not criminals outside, by the behavior of prison they treating like that. A women who is living in the society, never do crime, she is not criminal else a jail punishment shows the personality of crime in the society when women come out from the jail society, neighbors feel shy from her. On this situation the changes may increase for doing offence again because of society behaviors.

It is noted that after rehabilitation family suffer a very serious impact in the society. This condition held the very deep impact on the children of the offender to put the bad changes in the behavior of the person. When a person commits any offence, he has to be punished. The children or other family members of the offender has not involve for suffering it. This is an important thing that should be pointed out. Family is very affected by the punishment held on his member. This should be acknowledging. It is an important line that has to be determined.

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<sup>19</sup> A.I.R. 1971 SC 813