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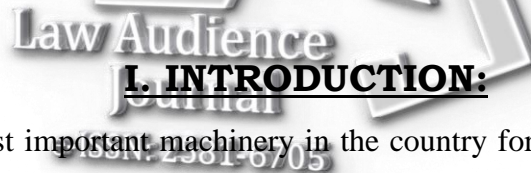
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ABSTRACT:

“This article conducts a thorough analysis of the various rights of the arrested persons as against the police officials. The flow of the article is thematic. Firstly, we have a brief introduction that introduces us to the concepts of arrest and a brief glimpse of the historical development of the police authorities. Following that, we delve into the various Rights, which are the Right to know the grounds of arrest, information regarding the Right to be released on bail, to be taken before a Magistrate or Officer-in-Charge of a Police Station without undue delay, not to be detained for more than 24 hours, protection against arrest in certain cases, consult a legal practitioner of one’s choice, free legal aid to arrested indigent and to be informed about it, be examined by a medical practitioner and finally, we conclude with a very famous saying of Benjamin Franklin”.

Keywords: Arrest, Rights of Arrested, Police, Justice.



I. INTRODUCTION:

The police are the most important machinery in the country for the maintenance of law and order. We need to realise that this agency of the State has, since time immemorial, been instrumental in the process of administering justice, catching convicts, killing them if required (encounter), protecting the meek (thus overturning the Jungle Law or *Matsya Nyaya*) and ensuring that the law is respected. From the sepoy of the monarchical regimes to the officers of the States in modern times, police have been very dominant throughout the ages.

One thing that everyone fears, if ever encountered by a police officer, is that of the arrest. It is this one term that generates a ‘respected fear’ in the minds of the thinker towards the police officer. Arrest procedures have seen many changes. However, one thing that many people forget to understand is the Rights that are available to the arrested persons. Police officers many-a-times don't reveal them to the arrested persons, especially in case they are poor or

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illiterate. Through this paper, we shall have a thorough look at the various Rights available to the arrested persons.

My Kingdom is not of this world. If it were, my servants would fight to prevent my arrest by the Jews. But now my Kingdom is from another place.

-Jesus Christ.

With this very old quote mentioning the act of arrest, let us begin with our detailed discussion, which shall surely arrest your attention.

II. RIGHTS OF ARRESTED PERSONS:

II.I Right to Know the Grounds of Arrest:

*“You are under arrest
For multiple counts of murder.
You have to come with us”.*

While we are watching any particular legal crime drama, either a web series or a Bollywood film, normally we encounter a scene where the felon is being arrested by the police. It also happens that the police come and arrest the individual uninformed. And then starts a fight between the police and the accused on the grounds of the validity of the arrest. In the same way, in our real-life too, we, the citizens of the nation have certain rights to defend ourselves themselves as the police have the power to arrest someone. And these Rights have been envisaged in our Constitution and Cr.P.C.

One of the main reasons the makers of the Constitution of India included these Rights in the Constitution was because the entire criminal legal system in India was based on the principle of *“innocent till proven guilty”*.

So, an unlawful arrest of an individual can be a violation of Article 21 of the Indian Constitution which states that,

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“No person shall be denied or deprived of his right to life and personal liberty except if established by law”¹

And that is why it is separately mentioned in Article 22(1) of the Constitution of India. **Article-22(1) is as follows:**

“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 defended by, a legal practitioner of his choice”.

Now, if we look into the Criminal Procedure Code (Cr.P.C.), the related Section of this Right is Section 50. The section is stated as follows:

“50. Person arrested to be informed of grounds of arrest and of right to bail. - Every police officer or other person arresting any person without a warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

Therefore, we can say that the Right to Know the ground of arrest is the most important among the Rights of the arrested person. It is not only the Right of the arrested person but moreover, it is a duty of a police officer to tell the arrested person, as there is no warrant of arrest. **Because information of the reason of the arrest can save the person in many ways like:**

- ✓ It helps him to move to the proper Court for bail; or
- ✓ Under appropriate circumstances for a writ of habeas corpus. This may be understood on the terms that in case the person feels that he is being arrested for something which is either out of the authority of the police official arresting, or the arrest is arbitrary, malicious, or in case the ground of arrest is unconstitutional, then the arrested person may file a writ before the High Court to get liberation;
- ✓ Or to make immediate arrangements for his defence.

¹ Constitution of India, Article 21.

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And also the information about the ground of the arrest shall be communicated in the language of the arrested person only. Otherwise, it would not be considered as appropriate consent within the Constitutional requirements.²

Section 50(1) of Cr.P.C. is the Right to be informed of the ground of arrest is linked with Sections 55 and 75 also in case an arrest is made by a police officer without a warrant.

Now, *Section 55 of the Cr.P.C* simply defines that it may happen, sometimes any officer in charge of a police station or any police officer if directs his subordinate to arrest any person without a warrant, such subordinate officer shall inform or notify the grounds or reason of the arrest specifying the offences committed, which is written in the order by senior police-officer to the person who is to be arrested. This is the Right of the person who is to be arrested.

Again one more important Section is coming in this context. *Right to know about the contents of the warrant of arrest*, that is Section 75 of Cr.P.C., reads as follows:

"75. Notification of substances of the warrant- The police officer or other person executing the warrant of arrest shall notify the substance thereof to the person to be arrested and, if so required, shall show him the warrant".

Thus, *prima facie* it wants to clarify that when a warrant of arrest is being issued against someone and any person who is going to execute that warrant, it is his utmost duty to notify or inform about the content of the warrant, or if it is necessary then he shall show the warrant to the person who is to be arrested. Because it is the Right of the arrested person. But in a case under any circumstances the substance of the warrant is not informed by the police or any person (executor of the arrest warrant), the arrest would be unlawful.

Concerning Section 50(1) of Cr.P.C., there is one more important Section, Section 50A which is included in the Cr.P.C which talks about the Right of the arrested person after bringing him to the police station.

² *Harikisan vs. State of Maharashtra*, 1962 I Cri LJ 797: AIR 1962 SC 911, 914.

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"50A. The obligation of the Person arresting to inform about the arrest, etc., to a nominated person- Every police officer or other person making any arrest 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, relative or such persons as may be disclosed or nominated by the arrested person to give such information".

So we can see that here, the Criminal Procedure Code gives another Right to the arrested person. It simply stated that if any police-officer or any legally authorised person arrests someone, it is also a basic and important duty of him to inform the arrested person about all the rights of the arrested person as soon as he is brought to the police station. It is saying that the arrested person will nominate one of his relatives or close friends to inform that he is arrested and when the arrested person nominates someone, the police-officer must inform that nominated person mentioning the reason for the arrest (why he is arresting?); and also, the place where the arrested person is kept. Any police-officer can't refuse this or can't keep away the arrested person from claiming his Right.

(3) In this sub-clause, it is pointed out that, not only to inform the nominated person but also the person who is nominated and informed about the arrest, there shall be a record as an entry of all the facts of that nominated person or who is that nominated person in the General Diary or the register maintained by the police.

Now let's discuss a landmark case based on the above discussion-

D.K. Basu vs. State of West Bengal³:

In this case, the Supreme Court provided some notable guidelines which are necessary to be followed in all cases of arrest or detention-

- ✓ Firstly, when any police-officer or any legally authorised person will go for an arrest he should provide his proper identification with the name tags and designation.

³ 1997 1 SCC 416: 1997 SCC (Cri) 92.

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- ✓ Secondly, the police officer who is making the arrest must prepare an arrest-memo which shall be signed either by any of the family members of the arrested person or if in case no family member is there then it will be signed by any of the people in that locality. And the arrest-memo shall be containing the date and time of arrest, to be countersigned by the arrested person.
- ✓ Thirdly, the arrested person has the right to nominate a person of his choice for informing about the arrest and that information shall be transmitted by a police officer, mentioning the reason for the arrest.
- ✓ Lastly, there must be a record in the General Diary maintained by the police-officer of the names of the nominee and also the name and particulars of the police officer in whose custody the arrested person is.

II.II Information Regarding the Right to Be Released on Bail:

Section 50(2) of Cr.P.C., Now this section also provides the Right to an arrested person for release on bail. It states that in case of only bailable offence, when a police-officer arrests without warrant any person, it is the utmost duty and responsibility of the police-officer to make him aware or inform the arrested person that he is allowed to be released on bail or that he may arrange for sureties on behalf of his behalf.

II.III Right to Be Taken Before A Magistrate or The In-Charge of A Police Station Without Any Delay:

Article 22(2) of the Constitution of India has given this Right. The Article reads as follow:

“Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hrs. of such arrest excluding the time necessary for the journey from the place of the 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”.

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It does not matter whether the arrest is conducted with or without a warrant by a police officer, but the person making the arrest must remember that the arrested person must be brought before the Judicial Magistrate within 24 hours, which excludes the travelling time. The unnecessary delay should not take place. Also, the police must remember that the person who has been arrested should not be confined in any place, other than a police station, before taking him to the nearest Magistrate. These matters are well explained under Sections 56 and 76 of Cr.P.C.

The explanations are as follows:⁴

"S.56- Person arrested to be taken before Magistrate or officer in charge of a police station-

A police officer arresting without a 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".

"S.76- Person arrested to be brought before the court without delay- *The police officer or other person executing a warrant of arrest shall (subject to the prov. Of section 71 as to security) without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person: Provided that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.*

II.IV Right of Not to Be Detained for More Than 24 Hours:

The police officer who has arrested must make a note of whether the arrest has been conducted with or without a warrant, and the person arrested must be presented before the nearest Magistrate within 24 hours. Section 57 mentions as follows:⁵

⁴ PREETI SINGH, *Rights of Arrested Persons*, (Mar. 20, 2021, 13:11), <http://www.legalservicesindia.com/article/1635/Rights-of-Arrested-Person.html#:~:text=Person%20arrested%20to%20be%20brought,law%20to%20produce%20such%20person.>

⁵ *supra* note 4.

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“Section 57: Person arrested not to be detained more than twenty-four-hours- No police officer shall detain in custody a person arrested without a 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”.

This has also been incorporated in the Constitution under Article 22(2) in Part III which mentions that,

“Every person who is arrested and detained in custody shall be produced before the 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.”

The reasons behind not exceeding twenty-four hours’ time limit are as follows:

- (a) To prevent the arrest and detention to extract confessions, or as a means of compelling people to give information;
- (b) To prevent the use of police stations as prisons- a purpose for which they are unsuitable
- (c) To afford an early recourse to a judicial officer independent of the police on all questions of bail or discharge.

In **Khatri (II) vs. State of Bihar**⁶,

the Apex Court had strongly urged that it's the duty of the state and its authorities to make sure that the accused is brought before the nearest Magistrate within 24 hours and is not delayed unnecessarily, and the arrest must be scrupulously observed. This healthy provision enables the Magistrate to keep a check over the police investigation and the Magistrates must try to enforce this requirement and where it is found disobeyed, come heavily upon the police.

⁶ 1981 SCR (2) 408, 1981 SCC (1) 627.

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One must make sure that, if the police are unable to produce the accused or the arrest before the Magistrate within the period of 24 hours, then he shall be held guilty of wrongful detention.

In the case of Poovan vs. Sub-Inspector of Police⁷,

It was held by the Court that when a complaint is received by the police, the police have to present the arrested before the Magistrate within the period of 24 hours, and if it is not fulfilled, then he can and should call upon the police officer concerned; to state the reasons as to whether the allegations are true. If those are found to be true; on what and whose custody; he is being so helped. If the officer denies the arrest, the magistrate can inquire into the issue and pass appropriate orders.

II.V Protection Against Arrest in Certain Cases:

Article-22 of The Constitution of India-

Article 22(1) of the Constitution mentions that the Indian Constitution stipulates that no police officer can arrest any individual without informing the accused of the reason/ ground of his detention/arrest.⁸

(a) **Rights of arrested persons under ordinary laws:** In the case of **D.K. Basu vs. State of West Bengal⁹**, the authorities had enumerated the guidelines and requirements for arrests and detentions as mentioned by the Apex Court of the country. It consists of 11 guidelines that are non-contradictory in nature. The "Inspection Memo" mentions maintaining proper and authenticated records. It throws a repetitive glance upon all the rights that are guaranteed to a person who has been held in custody and is bound to adhere to these. Section 50 of Cr.P.C. mentions that it is a legal obligation on the police to furnish the information regarding the arrest and the place where the person has been arrested which can be to any of his friends or relatives who are known as the nominees of the arrested to let them know the reason.

⁷ 1993 Cr LJ 2183.

⁸ MUSKAAN GARG, *Safeguards Against Arbitrary Arrest and Detention: Article 22*, (Mar. 20, 2021, 13:11), <https://blog.ipleaders.in/safeguards-against-arbitrary-arrest-and-detention-article-22/>.

⁹ *supra* note 3.

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- (b) **Right to be informed of the grounds of arrest:** Article 22(1) mentions that any person who has been arrested, cannot be detained in custody without being informed on the grounds of any such arrest as soon as possible. Also, Section 50 of Cr.P.C mentions that it lies as a duty of every police officer or any person who has been authorised to arrest any person without a warrant and let the person know the reasons or the grounds of arrest as soon as possible. If the reason is not specified by the person, then the arrest will be termed illegal. Therefore, it specifies that every arrest requires a proper justification apart from the power to arrest. In the case **Joginder Kumar vs. State of Uttar Pradesh¹⁰**, it was held that it falls as a right of the arrested to know the reasons clearly for the arrest and a nominee must know the place of the detention.
- (c) **Right to be defended by a lawyer of his own choice:** Article 22(1) of the Constitution mentions that a person who has been arrested has the right to consult at all times and be defended by a lawyer of his own choice. This right is expanded and initiates from the moment the person is arrested. In the case of **Hussainara Khatoon and Ors. V. Home Secretary, State of Bihar¹¹**, the Court had stated that many are eagerly waiting for their trial in the court of law. The arrests were made irrespective of the charges and graveness. The accused were arrested and were deprived of their freedom to conduct their trial and the charges that were made were regarded as unreasonable. Later, the Supreme Court had taken over the matter and had conducted a speedy trial where it was held that an investigation should be conducted so that no case in the state is denied speedy trials on any grounds. The Apex Court had also mentioned that in case of arrests with trivial charges, the court trials must be completed within six months. Also, the Court had mentioned that free legal aid is considered as a Fundamental Right which was later expressly mentioned through amendments.
- (d) **Right to be produced before a Magistrate:** Article 22(2) of the Constitution ensures the right of the accused to be produced before a Magistrate. Without any sort of unnecessary delays, the police officer must take note of producing the arrested before the nearest

¹⁰ 1994 AIR 1349, 1994 SCC (4) 260.

¹¹ 1979 AIR 1369, 1979 SCR (3) 532.

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Magistrate 24 hours. This has also been supported by Section 56 of Cr.P.C. Section 167 of Cr.P.C mentions that no Magistrate can authorise the detention of the accused in police custody unless the accused is produced in person before the Magistrate. This protects the arrested from any illegal arrests.

- (e) **No detention beyond 24 hours except by order of the Magistrate:** Article 22(2) of the Constitution mentions that no person should be arrested beyond 24 hours without being produced before the nearest Magistrate. The time limit of 24 hours excludes the travelling time. This protects the arrested from any sort of wrongful detention. In the case of **State of Punjab vs. Ajaib Singh**¹², it was held that this right was infringed and the arrested was provided with compensation a Constitutional remedy. The Court had held that those cases which do not require any warrants, are to be looked at with greater protection and non-compliance will determine the arrest as unlawful.¹³

II.VI Right to Consult A Legal Practitioner of One's Choice:

'You have the right to remain silent. Anything you say can and will be used against you. You have the right to consult a legal practitioner of your choice. In case you don't have one, then you shall be provided with one. Do you understand your Rights?'

This is one of the most common dialogue that we seem to hear while watching any typical Hollywood police film or T.V. show when the characters playing the role of officers arrest a person. It is true. In India even, we have the same rights given to the people being arrested. This Right of being able to consult a legal practitioner of one's choice is so important that this has even received Constitutional recognition.

One of the major reasons why the makers of the Constitution included this Right specifically in the Constitution was because of the atrocities that they had to face before the Independence from the British Indian police. The arrests were made very improperly and in case women were

¹² 1953 AIR 10, 1953 SCR 254.

¹³ *supra* note 8.

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to be arrested, then they faced additional crimes committed by the police officers. This might be one of the major reasons why they included this Right in a separate Article, viz., Article 22 clause 1. Article 22 (1) reads as follows-

'(1) 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.'

It must be noted that the Supreme Court of India has held in several cases that in case a person is unable to get a legal practitioner, then free legal aid has to be provided to the person. Now, interesting is the fact that this free legal aid is not only limited to being represented at the trial. This includes all the various stages, from being presented before the Magistrate within 24 hours of the arrest for the first time, to being remanded from time-to-time.¹⁴

If we look into the Cr.P.C., then the concerned Section to be quoted is Section 303. The Section reads as-

'303. Right of person against whom proceedings are instituted to be defended-
Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.'

Thus, we may see that Section 303 has enforced the Constitutional mandate upon the State to provide the accused the Right to choose a legal practitioner of his choice. Now, sometimes people get confused that when exactly does the Right to consult a legal practitioner begin. Well, it had been held in several cases that this Right begins as soon as the arrest is made.¹⁵ This consultation may be conducted within the presence of the police officer making the arrest. But, it should never be done within a range so that he may hear the conversation. This ensures a free trial and also upholds the Right to Privacy of the individual.¹⁶

¹⁴ *Khatri vs. State of Bihar*, (1981) 1 SCC 627.

¹⁵ *Llewelyn Evans, re* (1926) 27 CriLJ 1169; *Moti Bai vs. State*, (1954) 55 CriLJ 1591; *Sudhanshu De vs. Emperor*, ILR (1934) 62 Cal 384.

¹⁶ *Sundar Singh vs. Emperor*, (1931) 32 CriLJ 339; *Justice K.S. Puttaswamy (Retd.) and Anr. vs. Union of India*, (2017) 10 SCC 1.

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II.VII Right of An Arrested Indigent to Free Legal Aid and To Be Informed About It:

This is indeed a very interesting part of the Cr.P.C., as this Right has also been recognised as a Fundamental Right within the Right to Life under Article 21 of the Constitution.¹⁷ We may see that there is even a Directive Principle of State Policy in our Constitution that talks about this aspect. The concerned Article is Article 39A, which reads as follows-

'The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities.'

Thus, we may see that the Supreme Court, with its many judgements, has indeed enforced this Constitutional mandate upon the State machinery. This Article had been inserted by the 42nd (Amendment) Act, 1976 within the Constitution. The Supreme Court has even observed that in case this Right of being provided with free legal aid is not communicated to the person who has been arrested when produced before the Court, then it may be merely a theoretical Right. For it to have full enforcement, the same must be informed to the arrested person. Hence, the Supreme Court has held in the case of Mohd. Ajmal Ami Kasab vs. The State of Maharashtra¹⁸, that the Magistrates are duty-bound to tell the indigent people or the people who are not getting anyone to defend themselves, of their Right to get free legal aid. If the same is not done and the Magistrates don't provide them with the necessary information with regards to their Right, then it shall vitiate the trial and set aside the conviction and punishment. This Right is not something that, if not asked for, can be ignored. Unless the accused personally says that he rejects free legal aid, the State has to, under all circumstances, provide him with the same.¹⁹ Free legal aid begins from the point when the accused is presented before a Magistrate for the first time.

¹⁷ *supra* note 1.

¹⁸ (2012) 9 SCC 1.

¹⁹ *Suk Das vs. U.T. of Arunachal Pradesh*, (1986) 2 SCC 401.

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II.VIII Right to Be Examined by A Medical Practitioner:

This Right is of specific significance for the arrested person because this enables the person to collect necessary medical information to defend himself by showing that he has been charged for something which he hasn't committed or he has been subjected to physical injuries beyond the reasonability required.²⁰

This Section does not hold evidentiary value for the police or, to be precise, the prosecution. For the police or the prosecution, the relevant provisions have been made under Section 53 of the Code. Let's first have a look at the language of this Section-

'54. Examination of arrested person by medical practitioner at the request of the arrested person- 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 will establish the commission by any other person of any offence against his body, the 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 vexation or delay or for defeating the ends of justice.'

Thus, we may see that this Right may be vitiated by the Magistrates. Three grounds are there to do so-

1. Vexation.
2. Causing delay.
3. Defeating the ends of justice.

Now, it is upon the Magistrate to decide whether any of the above three grounds are applicable or not. If yes, then he may simply deny this Right to the arrested person. This Right too has to

²⁰ Joint Committee Report, P. IX.

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be informed by the Magistrate to the arrested person to ensure a free and fair trial.²¹ In a nutshell, we may see that the approach of the procedural criminal law has been towards informing the arrested people as much as is necessary about their Rights, such that it does not assist the defence, but also, does not deny it a fair representation and knowledge about the situation.

However, a very recent problem that has been noted is that of police brutality and maltreatment, custodial deaths, *etc.* To prevent this, the Delhi High Court has many times directed the Magistrates to inform the arrested of this Right immediately.²²

This examination may be done either when in the custody of the police or when the person requests the Magistrate. To have transparency in the process, the Supreme Court has laid down a few guidelines-²³

1. An arrested person who is in police custody, if he wants to, may ask the police officer concerned to inform a friend, relative or any other person about the place of his arrested and the reason, as much as is practicable.
2. When the arrested person is brought to the police station, the police officer shall inform him of this Right.
3. An entry regarding who was informed of the arrest has to be made in the General Diary.

In case there is a failure to comply with these procedures, then it shall cause departmental actions upon the police officer(s). These provisions are even applicable upon the other arresting authorities, like the B.S.F., the Coast Guard, the Customs Officers, *etc.*

III. CONCLUSION:

Thus, we saw that there are very many Rights that are available to the arrested people in India. However, the main problem, which we saw that the Supreme Court and other Courts addressed

²¹ *Sheela Barse vs. State of Maharashtra*, (1983) 2 SCC 96.

²² *Mukesh Kumar vs. State*, 1990 CriLJ 1923 (Del.).

²³ *Joginder Kumar vs. State of U.P.*, (1994) 4 SCC 260.

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in a variety of cases, was that these Rights aren't informed properly to the arrested person. This is a major problem and has been seen repeatedly. Even today if a poor person (especially) is arrested, he is hardly informed of any of these things.

These trends need to change, because if they don't, then it shall not ensure a free and fair trial, for which an entirely new Code had been made. And we should also remember that complying with these procedures would, in turn, uphold the maxim as quoted by Benjamin Franklin in 1726,

'That it is better 100 guilty persons should escape than that one innocent person should suffer.'

