

**ELABORATE ON THE RIGHTS GIVEN TO
THE ACCUSED PERSON UNDER THE
INDIAN CONSTITUTION WITH SPECIAL
REFERENCE TO THE IMPACT OF
MANEKA GANDHI'S CASE IN PRISONERS
RIGHT**

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CHAPTER 1: - INTRODUCTION

According to Article 21 no person can be deprived of his life or personal liberty except according to procedure established by law. This means that a person can be deprived of his life or personal liberty provided his deprivation was brought about in accordance with the procedure established by law. Article 22 provides those procedural requirements which must be adopted and included in any procedure enacted by the Legislature. If these procedural requirements are not complied with, it would then be deprivation of personal liberty which is not in accordance with the procedure established by law. Thus Article 22 prescribes the minimum procedural requirements that must be included in any law enacted by the Legislature in accordance with which a person may be deprived of his life and personal liberty. Article 22 deals with two separate matters ; (1) person arrested under the ordinary law of crimes ; and (2) person detained under the law of 'preventive Detention'. The first two clauses of Article 22 deal with detention under the ordinary law of crimes and lay down the procedure which has to be followed when a man is arrested and the remaining clauses (3), (4), (5), (6) deal with persons detained under a preventive detention law and lay down the procedure which is to be followed when a person is detained under that law.

CHAPTER 2: - ARTICLE 21

Right to life and personal liberty has been guaranteed under the *ARTICLE 21* of the Indian Constitution. It's the most important right, hence it has guaranteed by all most all countries under the respective constitutions. Even the Right to life and personal liberty .One could deprive from his life and personal liberty.

Who is a prisoner?

A Person who is a convicted, detained under the trials, suspects, accused...Etc.

No doubt they can be deprived from their Freedom of Movement. Though they are still seems to be human beings.

Right to life and personal liberty has larger connotations. It is not merely freedom from physical torture and it's something more than that. Even a prisoner, which ever they are, even they are deprived from their certain rights and liberties they should have certain rights. Ultimately they are human beings. Prisoner's rights shall be taken care of by the jail authority.

Freedom of Residence can be limited. Because they have put in a jail, prison, in custody or arrested. Just due to that cannot deprive from all rights. Certain rights also require by such categories also.

"RIGHT TO SPEEDY TRIAL"

Under the Indian constitution it does not provided. But through judicial activism it has become a part and parcel of Article 21. When a prisoner kept for a long time there is a mental harm to him. It's a kind of torture. "Our Constitution does not expressly declare that right to speedy trial as a fundamental right. The right to a speedy trial was first recognised in the Hussainara Khatoon's case¹, wherein, the court held that a speedy trial is implicit in the broad sweep and content of Article 21 of the Constitution. Subsequently, in a series of judgments, this Court has held that 'reasonably' expeditious trial is an integral and essential part of the Fundamental Right to Life and Liberty enshrined in Article 21 of the Constitution of India."

Hussainara Khatoon (I) v. Home Secretary, State of Bihar² "No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

Maneka Gandhi vs Union of India³ A person can be deprived of life or liberty only in accordance with the procedures of Law and it has to be fair, just and reasonable. It should not be fanciful, oppressive or arbitrary. The principles of natural justice audi alteram partem should be followed.

1. AIR 1979 SC 1360.

2. AIR 1979 SC 137

3. SCC 248; AIR 1978 SC 597:

Maneka Gandhi's Case – New Dimension

In *Maneka Gandhi v. Union of India*, the meaning and content of the words 'personal liberty' again came up for the consideration of the Supreme Court. In that case the Court has given the widest possible interpretation to the words 'personal liberty'. In that case the petitioner's passport was impounded by the Central Government under Sec. 10(3)(c) of the Passport Act, 1967. The Act authorized the Government to do so if it was necessary 'in the interest of the general public'. The Government of India declined 'in the interest of the general public' to furnish the reasons for its decision. The petitioner challenged the validity of the said order on the following grounds that:

- 1) Section 10(3)(c) was violative of Art. 14 as conferring an arbitrary power since it did not provide for a hearing of the holder of the passport before the passport was impounded.
- 2) Section 10(3)(c) was violative of Art. 21.
- 3) Section 10(3)(c) was violative of Art. 19(1)(a) & (g) since it permitted imposition of restrictions not provided in clauses (2) or (6) of Art. 19.

The reasons for the order were, however, disclosed in the affidavit filed on behalf of the Government which stated that the petitioner's presence was likely to be required in connection with the proceedings before a Commission of inquiry. Regarding the opportunity to be heard the Attorney – General filed a statement that the petitioner could make a representation in respect of impounding passport that the representation would be dealt with expeditiously in accordance with law.

The Supreme Court held that the Government was not justified in withholding the reasons for impounding the passport from the petitioner.

CHAPTER 3: - ARTICLE 22 NOT A COMPLETE CODE

At one time it was thought that Art.22 was a complete Code in regard to laws providing for preventive detention and that the validity of an order of detention should be determined strictly according to terms within four corners of Art. 22. It was held in Gopalan's case that a detenu cannot claim the freedoms guaranteed by Art. 19(1)(d) if it was infringed by his detention, and that the validity of preventive detention law was not to be tested in the light of the reasonableness of the restrictions imposed thereby on the freedom of movement, nor on the ground that his right to personal liberty was infringed under Article 21 otherwise than according to the procedure established by law. This view has now been shown to be wrong in R.C. Cooper v. Union of India⁴. Although this case is concerned with Article 31(2) but in Maneka Gandhi's case the court has applied it in relation to Article 21 also. According to this view a law relating to preventive detention must now satisfy not only the requirements of Article 22 but also the requirements of Article 21 of the constitution. In other words, the procedure prescribed under the preventive detention law must be reasonable and just and fair under Articles 14, 19, and 21 of the constitution.

4. AIR 1978 SC 597.

A: - RIGHTS OF ARRESTED PERSONS

Clauses (1) and (2) of Article 22 guarantees four rights on a persons who is arrested for any offence under an ordinary law-

(A) The rights to be informed of grounds of arrest- This is necessary to enable the arrested person to know the grounds of his arrest and to prepare for his arrest and to prepare for his defence . Article 22 is in the nature of a directive to the arresting authorities to disclose the grounds of arrest of a person immediately. The words used in Article 22 (1) are ‘as soon as may be’ which .means as nearly as is reasonable in the circumstances of a particular case. If the grounds of arrest is not dispensed with by offering to make bail to the arrested person.

In a notable judgement in *Joginder Kumar v. State of U.P.*⁵ the Supreme Court has laid down guidelines governing arrest of a person during the investigation. This is intended to strike a balance between the needs of police on one hand and the protection of human rights of citizens from oppression and injustice at the hands of law enforcing agencies. The Court has held that person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the police officer effecting the arrest that such arrest was necessary and justified.

5. (1994) 4 SCC 260

The National Police Commission in its third report has pointed out that power of arrest is one of the chief source of corruption in the police. According to the report, nearly 60 per cent of the arrests are either unnecessary or unjustified.

The court has laid down the guidelines to be followed in making arrest of a person-

(1). An arrested person being held in custody is entitled, if he so request 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 is practicable that he has been arrested and where he is being detained.

(2). Police Officer shall inform the arrested person when he is brought to police station of his right.

(3). An entry shall be required to be made in the police diary as to who was informed of the arrest.

These protections form power flow from Articles 21 and 22(a) of the constitution and must be enforced strictly. The court directed that it shall be the duty of the magistrate, before whom the arrested person is produced to satisfy himself that these requirements have been complied with. The court said that these guidelines shall be followed in all cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the rights of arrested persons found in the various police manuals.

The Court made it clear that these requirements are not exhaustive. The Directors General of Police of all the states in the country shall issue necessary instructions requiring due observances of this requirement. In addition, departmental instructions shall also be issued that a police officer making an arrest should also record in the case diary the reasons for making the arrest. This judgement of the supreme court will protect innocent citizens from being arrested and harassed by the police merely on the suspicion of complicity in an offence.

(B) Right to be defended by a lawyer of his own choice- In America, if a person is arrested he must be afforded opportunity to consult lawyer of his own choice and if he is unable to employ a counsel it is the duty of the court to employ the lawyer for him. Prior to the Maneka Gandhi's case decision in India the view of the court was that it was not bound to provide the help of a lawyer unless a request was made by him. But as a result of the ruling of the Supreme Court in Maneka Gandhi's case and a series of cases following that case it is clear that the Courts will be bound to provide the assistance of a lawyer to a person arrested under an ordinary law also.

In *Hussainara Khatun v. Home Secretary, Bihar*, the Supreme Court has held that it is the constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or or incommunicado situation, to have free legal services provided to him by the State and the state is under

constitutional duty to provide a lawyer to such person if the needs of justice is so require. If free legal services are not provided the trial may be vitiated as contravening Article 21. The protection of this Article is also not available to a person who has been convicted by a competent court and detained.

(C) Right to be produced before a Magistrate- In addition to the furnishing of the grounds of arrest the arrested person must be produced before the magistrate within 24 hours of his arrest. It can be extended beyond 24 hours only under the judicial custody. It affords a possibility . if not opportunity, for immediate release in case the arrest is not justified.

(D) No detention beyond 24 hours except by order of the Magistrate – This means that if there is necessity of detention beyond 24 hours it is only possible under judicial custody. The expression ‘arrest and detention’ in Articles 22 (1) and (2) was held not to apply to a person arrested under a warrant issued by the court on a criminal or quasi-criminal complaint or under security proceedings. Article 22 is designed to give protection against the act of the Executive or order of non-judicial authorities and applies to a person who has been accused of a crime or of offence of criminal or quasi-criminal nature or some act prejudicial to the state or public interest. Thus under Article 22(1) and (2) the arrested person has a right to be produced before the nearest magistrate within a period of 24 hours. This would enable the arrested person to get a speedy trial. This means that if there is failure to

produce the arrested person before the nearest magistrate within a period of 24 hours it would make the arrest illegal.

In *State of Punjab v. Ajab Singh*⁶, the Supreme held valid the Abducted person (Recovery and Restoration) Act, 1949, under which an abducted person could be arrested and delivered to the office-in-charge of the nearest Camp. The arrest of an abducted person under the act was held not to constitute “arrest and detention” because the person was not accused of any offence of a criminal or quasi-criminal nature.

In a significant judgement in *C.B.I v. Anupam j. Kulkarni*⁷ the supreme court has laid down detailed guidelines governing arrest of an accused when investigations cannot be completed within 14 hours. The court has held that when a person is arrested under section 57 of Cr.P.C. he should be produced before the nearest magistrate within 24 hours. The judicial magistrate can authorise the detention of the accused in such custody, i.e., either police or judicial from time to time but the total period of detention cannot exceed 15 days in the whole. After the expiry of the first period of 15 days, the further remand can only be in judicial custody. There cannot be any detention in the police custody after the expiry of 15 days.

6. AIR 1953 SC 10

7. (1992) 3 SCC 141

B: - EXCEPTION

Clause (3) of Art. 22 provides two exceptions to the rule contained in clauses (1) and (2). It says that the rights given to arrested person under clauses (1) and (2) are not available to following persons: (1) an enemy alien, (2) a person arrested and detained under a Preventive Detention law. An enemy alien may, however, seek the protection under clauses (4) and (5) of Art. 22 if arrested under a law of Preventive Detention, but subject to the law passed by the parliament

**CHAPTER 4: - ARTICLE 20(3): - COMPULSION TO GIVE EVIDENCE AGAINST
HIMSELF**

The protection under Article 20(3) is available only against the compulsion of accused to give evidence against himself. But left to himself he may voluntarily waive his privilege by entering into the witness box or by giving evidence voluntarily on request. Request implies no compulsion; therefore, evidence given on request is admissible against the person giving it. To attract the protection of Article 20(3) it must be shown that the accused was compelled to make the statement likely to be incriminative of himself. Compulsion means duress which includes threatening, beating or imprisoning of the wife, parent or child of a person. Thus where the accused makes a confession without any inducement, threat or promise Article 20(3) does not apply.

In *Nandini Satpathy v. P.L. Dani*⁸, the Supreme Court has considerably widened the scope of clause (3) of Article 20. The court has held that the prohibitive scope of Article 20(3) goes back to stage of police interrogation not commencing in court only. It extends to and protects the accused in regard to other offences pending or imminent, which may differ from voluntary disclosure. The phrase compelled testimony must be read as evidence procured not merely by physical threats or violence but by psychic (mental) torture, atmospheric pressure, environmental coercion, tiring interrogatives, proximity, overbearing and intimidatory methods and the like. Thus compelled testimony is not limited to physical torture or coercion, but extends also to techniques of psychological interrogation which cause mental torture in a person subject to such interrogation.

8.AIR 1977 SC 1025

CHAPTER 5: - CONCLUSION

"They are good people-they are bad people-they are however the same people". Hence it's the duty of the society to protect their rights.

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