



CONCEPTUAL FRAMEWORK OF TERM ACCUSED WITH REFERENCE RIGHTS TO ACCUSED UNDER DIFFERENT PERSPECTIVE

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Abstract

The Constitution of India says that “No person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the laws within the territory of India”. It also covers a just and fair trial without any arbitrary procedure, which confers that arrest should not only be legal but also justified. All legal systems provide certain standards for the rights of the accused. The idea has been developed in human rights law and adopted both on the national and international levels. Universal Declaration of Human Rights, 1948 has acknowledged the rights of an accused person. The International Covenant on Civil and Political Rights, 1966 has also accepted in its provisions the right of an accused. Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and on the other hand international criminal proceedings regulations in International Criminal Tribunal, and International Criminal Court and International Court of Justice Statutes.

The main aim of the present paper to know more about the rights of the accused under the different statutes and there are certain important case laws cited by Supreme Court regarding the rights of the accused.

Keywords: Constitution, Accused, Liberty, Freedom, Procedure.

I. INTROUCTION

The rights of the accused are the right to a fair trial due process to seek redress or a legal remedy and rights of participation in civil society and politics such as freedom of association, the right to assemble, the right to petition, the right of self-defense, and the right to vote. Civil and political rights form the original and main part of international human rights. They comprise the first portion of the 1948 Universal Declaration of Human Rights (with economic, social and cultural rights comprising the second portion). Currently, in many countries with a democratic system and the rule of law, criminal procedure puts the burden of proof on the prosecution – that is, it is up to the prosecution to prove that the defendant is guilty beyond any reasonable doubt.¹ The person under arrest must be produced before the appropriate court within 24 hours of the arrest²The person arrested should be permitted to meet his lawyer at any time during the interrogation. The interrogation should be conducted in a clearly identifiable place, which has been notified for this purpose by the Government. The place must be accessible and the relatives or friend of the person arrested must be informed of the place of interrogation taking place. The methods of interrogation must be consistent with the recognized rights to life, dignity and liberty and right against torture and degrading treatment.

II. MEANING & DEFINITION OF ACCUSED

The term "accused" has not been specifically defined in the code but what we generally understand is that the accused means the person charged with an infringement of the law for which he is liable and if convicted then to be punished. In other words, an accused is a person who is charged with the commission of offence.³

*The Oxford Dictionary defines accused as,*⁴ “a person or group of people who are charged with or on trial for a crime”. An offence is defined as an act or omission made punishable by any law for the time being in force. In any dispute in which justice is to be administered, two parties are involved which are as prosecutor or complainant and the accused in criminal proceedings and the court pronounces its judgement in favour of one or the other. Administration of criminal justice is concerned with a crime, which means an act deemed by law to be harmful to society in general even though its immediate victim happens to be an individual. Those who commit such acts (crime) are prosecuted by the State so that if found guilty and convicted by the court, they may be punished according to law of the State. As in every administration of criminal justice, a trial is conducted which revolves around the accused, an important question may be asked as to who can be called as an “accused”. The word accused has not been defined in the Code of Criminal Procedure which contains the procedure to be adopted in trial.⁵ Rights of accused, in law, the rights and privileges of a person accused of a crime, guaranteeing him a

¹ <https://www.boundless.com/political-science/textbooks/boundless-political-science-textbook/civil-liberties-4/the-rights-of-the-accused-37/the-rights-of-the-accused-207-8702/>, (Last visited on 13.07.2023).

² Sec 56 & 57 Cr. PC. also available at: <http://www.britannica>. (Last visited on 12.07.2023).

³ Legal protection available to an accused during a criminal trial. Available at: <https://blog.ipleaders.in/legal-protection-available-accused-criminal-trial/>. (Last visited on 23.07.2023).

⁴ Accused, available at: https://www.oxfordlearnersdictionaries.com/definition/american_english/accuse#:~:text=1%20to%20say%20that%20someone,She%20accused%20him%20of%20lying. (Last visited on 12.07.2023).

⁵ <http://www.britannica.com/topic/rights-of-accused>. (Last visited on 12.07.2023).

fair trial. These rights were initially (generally from the 18th century on) confined primarily to the actual trial itself, but in the second half of the 20th century many countries began to extend them to the periods before and after the trial. All legal systems provide, at least on paper, guarantees that insure certain basic rights of the accused. These include right to trial by jury (unless jury trial is waived), to representation by counsel (at least when he is accused of a serious crime), to present witnesses and evidence that will enable him to prove his innocence, and to confront (*i.e.*, cross-examine) his accusers, as well as freedom from unreasonable searches and seizures and freedom from double jeopardy.⁶ Certain very general rights are attached to the process.⁷

III. HUMAN RIGHTS

A large number of complaints pertaining to the Human Rights violations are in the area of abuse of police powers, particularly those of arrest and detention. It has, therefore, become necessary, with a view to narrowing the gap between the law and practice, to prescribe guidelines regarding arrest even while at the same time not unduly curtailing the power of the police to effectively maintain and enforce law and order and proper investigation. Some may suggest that the suspected person should be arrested after preliminary enquiry. A basic tenet of our criminal justice system is: "Let hundred guilty ones walk free but do not punish an innocent"⁸ The police, which is a part of the criminal justice system, functions exactly the other way round. The Police usually arrest as many suspects as it can.

The police invariably arrest the person with or without substantial evidence. After the case is registered, the police should investigate and ascertain the truth and collect evidence to identify the culprit. But in many cases, the course of action does not follow this logical sequence.⁹ The first step after registration of the case is an arrest, with or without evidence or even an investigation. The investigation invariably starts after the arrest; the collection of evidence at the later stage.

The three segments of Criminal Justice System viz., the police, the judiciary and the correctional institutions ought to function in harmonious and cohesive manner. But in practice, one often finds that it is not the case. The police, instead of protecting and promoting human rights, are often found to violate them. The National Human Rights Commission has been receiving reports of custodial deaths, non-registration of cases, arbitrary arrests, custodial violence etc.¹⁰ A person in custody of the police, an under-trial or a convicted individual does not lose his human and fundamental rights by virtue of incarceration. The two cardinal principles of criminal jurisprudence are that the prosecution must prove its charge against the accused beyond shadow of reasonable doubt and the onus to prove the guilt of the accused to the hilt is stationary on the prosecution and it never shifts. The prosecution has to stand on its own legs so as to bring home the guilt of the accused conclusively and affirmatively and it cannot take advantage of any weakness in the defence version.¹¹

⁶ Double Jeopardy. Also available at: <https://www.britannica.com/topic/double-jeopardy-law>. (Last visited on 23.06.2023).

⁷ *Ibid.*,

⁸ Dr. S.K. Kapoor, 'International Law and Human Rights' (19th Ed. Central Law Agency).

⁹ *Ibid.*,

¹⁰ NHRC issues fresh guidelines regarding intimation of Custodial Death, National Human Rights Commission India. Available at: <https://nhrc.nic.in/press-release/nhrc-issues-fresh-guidelines-regarding-intimation-custodial-death>.

¹¹ Analysis of Criminal Jurisprudence. Available at: <https://www.legalserviceindia.com/legal/article-8569-analysis-of-criminal->

IV. RIGHTS OF ACCUSED UNDER THE CONSTITUTION OF INDIA

The meaning of the term “accused” and the basis of the recognition of various human rights to an accused have been discussed. The Universal Declaration of Human Rights, 1948,¹² recognized certain human rights of an individual, including an accused. The Code of Criminal Procedure enacted in 1898 (as amended in 1973) also contained many provisions giving various rights to an accused. The Indian Constitution, in tune with the international endeavors, provided four basic principles to govern the criminal justice system, viz,

1. presumption of innocence,
2. prevention of ex-post facto operation of criminal law,
3. protection against double jeopardy and¹³
4. Due process concept. Over and above, the ‘right of equality and equal protection of laws’, has been guaranteed to every citizen as a fundamental right.¹⁴

The main rights of an accused which have been recognized and guaranteed by the Constitution may be stated as under:

1. Right of equality and equal protection of laws
2. Right against ex-post facto operation of law
3. Protection against double jeopardy
4. Protection against self-incrimination
5. Right to have freedom from unwanted arrest and matters incidental thereto
6. Right to legal defense
7. Right to have public and speedy trial;
8. Right relating to pre-trial detention and matters incidental there to
9. Right to approach higher judicial authority for filing appeal, etc.

V. RIGHTS OF ACCUSED UNDER THE CODE OF CRIMINAL PROCEDURE

The rights of accused are protected in various ways by criminal procedure and evidence codes. Following is a list of some of the rights of the accused. Because specific rights are the most important during specific phases of a criminal case, these rights are collected into subcategories. This is not to say that these rights are limited to these categories. Certain rights, such as the right to be free of torture, would apply during all phases of a criminal case.

[jurisprudence.html](#). (Last visited on 23.06.2023).

¹² The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations.

¹³ See Supra 6

¹⁴ M.P Jain, ‘Indian Constitutional Law’, (5th Ed., 2014, Central Law Publication).

(i) Rights/ Protections from Police

(ii) Rights during Detention

(iii) Rights at Trial

(iv) Sentencing

(v) Rights in Prison¹⁵

V.1. RIGHTS OF THE ACCUSED IN INDIAN CRIMINAL TRIAL

Right to a copy of police report and other documents: As per¹⁶, accused has the right to be furnished with the following in case the proceeding has been initiated on a police report: the police report; the first information report recorded under¹⁷ the statements recorded under sub-section (3) of¹⁸, the confessions and statements, if any, recorded under¹⁹; any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of²⁰ and as per²¹ of CrPC, when a case not instituted by a police report but when the offence is triable exclusively by the Court of Sessions. The statements recorded under²², or all persons examined by the Magistrate; the statements and confessions, if any, recorded under section 161²³ or section 164²⁴ any documents produced before the Magistrate on which the prosecution proposes to rely.

¹⁵ Freedom from torture and inhuman or degrading treatment, Equality and Human Right Commission. Available at: <https://www.equalityhumanrights.com/en/human-rights-act/article-3-freedom-torture-and-inhuman-or-degrading-treatment>. (Last visited on 23.06.2023).

¹⁶ section 207 of CrPC.

¹⁷ section 154.

¹⁸ section 161.

¹⁹ section 164.

²⁰ section 173

²¹ section 208

²² Sec 161 of Cr. PC

²³ *Ibid.*, Examination of witnesses by police.

(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records. section 200 or section 202

²⁴ Section 164. Recording of confessions and statements.

(1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial: Provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorize the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:-" I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

1. Right to be discharged when no sufficient ground: As per ²⁵of CrPC, when the judge is convinced that there is no sufficient ground for proceeding against the accused after duly considering the case, it is the right of the accused that he be discharged.
2. Right to present evidence: According to Cr. PC, the accused has the right to present his evidence and defend his case. The magistrate is duty bound to record written statements put by the accused.²⁶
3. Right to be present when evidence is taken & it obligatory on the part of the Magistrate to ensure that all evidence taken in the course of the other proceeding shall be taken in the presence of the accused or, when his personal attendance is dispensed with, in the presence of his pleader.²⁷
4. Right to be defended: The Criminal Procedure Code²⁸ and the Constitution of India²⁹ provides a right to all the accused persons, to be defended by a pleader of his choice.
5. Legal aid at State expense in certain cases: This is not a right available to all the accused but to certain category of accused as a privilege. So where, in a trial before the Court of Session, the accused is not represented by a pleader, and the court believes that he does not have sufficient means to engage a pleader, it shall assign a pleader for his defence at the expense of the State, under ³⁰of CrPC.
6. Right to cross-examination witnesses: The accused in order to test the veracity of the testimony of a prosecution witness has the right to cross-examine him. The Indian Evidence Act, 1872 gives accused has a right to confront only witnesses.³¹ This right ensures that the accused has the opportunity for cross-examination of the adverse witness & also tells when witness is unavailable at trial,³² a testimonial statement of the witness maybe dispensed by issuing commission. The testimony at a formal trial is one example of prior testimonial statements which can be used as documentary evidence in a subsequent trial.

The CrPC gives the accused³³ (and the prosecution) full right to cross examine a witness called by the Court. Under³⁴, if the accused applies to the Magistrate to issue any process for calling any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing. The Evidence Act says that the right of cross-examination available to opposite party is a distinct and independent right. When accused declined to cross-examine

(Signed) A. B. Magistrate".

(5) Any statement (other than a confession) made under sub- section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.

²⁵section 227

²⁶ section 243(1) of CrPC.

²⁷ Section 273 of CrPC

²⁸ Section 303 of CrPC.

²⁹ Article 22(1) of Constitution of India.

³⁰section 304.

³¹ Section 138 of Indian Evidence Act, 1872.

³² Section 33 of Indian Evidence Act.

³³ Section 311 of Cr. PC.

³⁴section 243(2) of CrPC.

witness and thereafter the said witness is not available for cross-examination, the evidence of such witness recorded is admissible in evidence but that will have to be true to that account.³⁵

1. No influence to be used to induce disclosure: As per³⁶, the accused shall not be subjected to any sort of influence by means of any promise or threat or otherwise, to induce him to disclose or withhold any matter within his knowledge. Natural Justice and the Rights of the accused: Some of the basic elements of Natural Justice are as follows:

1. No man shall be Judge in his own cause;
2. Both sides shall be heard, or *audi alteram partem*;
3. Right to cross-examine;
4. Right to legal representation;
5. The parties to a proceeding must have due notice of when the Court / Tribunal will proceed;
6. The Court / Tribunal must act honestly and impartially.³⁷

The above principles of Natural Justice³⁸ and the rights available to the accused during trial seem a striking resemblance and thus one cannot refute that natural Justice may have stirred the development of today's rights of the accused. The elementary principle of Natural Justice, *Audi alteram partem* or right to be heard which include right to cross-examine and right to legal representation form the fundamental structure of right available to the accused in the Indian criminal justice system.

Fair Trial & Public trial and speedy justice: Every accused is entitled to be informed by the court before taking the evidence that he is entitled to have his case tried by another court and if the accused subsequently moves such application for transfer of his case to another court the same must be transferred. However, the accused has no right to select or determine by which other court the case is to be tried. 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*³⁹. This judgment mandates that an investigation in trial should be held "as expeditiously as possible". In all summons trials (cases where the maximum punishment is two years imprisonment) once the accused has been arrested, the investigation for the trial must be completed within six months or stopped on an order of the Magistrate, unless the Magistrate receives and accepts, with his reasons in writing, that there is cause to extend the investigation.⁴⁰

VI. JUDICIAL APPROACH

The adversarial system (or adversary system) of law is the system of law that relies on the contest between each advocate representing his or her party's positions and involves an impartial person or group of people, usually a jury or judge, trying to determine the truth of the case. As opposed to that, the inquisitorial system has

³⁵Section 138 of Indian Evidence Act.

³⁶section 316.

³⁷ *Ibid.*,

³⁸ Principles of Natural Justice. Available at: <https://blog.ipleaders.in/natural-justice/>. (Last visited on 23.07.2023)

³⁹AIR 1369, 1979 SCR (3) 532

⁴⁰ *Ibid.*,

a judge (or a group of judges who work together) whose task is to investigate the case. The adversarial system is generally adopted in common law countries. An exception, for instance in the U.S., may be made for minor violations, such as traffic offences. On the continent of Europe among some civil law systems the inquisitorial system may be used for some types of cases. The adversarial system is the two-sided structure under which criminal trial courts operate that pits the prosecution against the defense. Justice is done when the most effective adversary is able to convince the judge or jury that his or her perspective on the case is the correct one.⁴¹

VI.1. ADVERSARIAL SYSTEM

The legal system practiced in India is known as an adversary system. In this system, the parties to a controversy develop and present their arguments, gather and submit evidence, call and question witnesses, and, within the confines of certain rules, control the process. The fact finder, usually a judge or jury, remains neutral and passive throughout the proceeding.

• Role of Judges in an Adversarial System

Judges in an adversarial system are impartial in ensuring the fair play of due process or fundamental justice. Such judges decide, often when called upon by counsel rather than of their own motion, what evidence is to be admitted when there is a dispute; though in some common law jurisdictions judges play more of a role in deciding what evidence to admit into the record or reject. At worst, abusing judicial discretion would actually pave the way to a biased decision rendering obsolete the judicial process in question—rule of law being illicitly subordinated by rule of man under such discriminating circumstances.⁴²

The basis of this approach is in the criminal matters in which two sides engage in debate and battle about the guilt or innocence of an accused and since each side wants to win, then the debate will foster a critical look at the issues and the calling of evidence to be examined by both parties. By engaging in this discourse, the truth should emerge as the judge watches on. This means that the roles played by the various court officers are very distinct. The evidence and witnesses that are called are left up to the two arguing parties, the defence counsel and the crown. The judge is not involved in what is presented to the court. If the crown wishes not to call certain evidence or individuals as witnesses even though it may help shed light on the case, the judge cannot intervene. This leaves the two parties in charge of the case and the direction it takes.⁴³

The advantages of the adversarial system include.

- The judges reserve their comments until all evidences from both parties are heard.
- This makes the judges appear more neutral since the judgement must be reserved until all the evidence is heard

The disadvantages of the adversarial system include

⁴¹ Inquisitorial and Accusatory System of Trial in India, England and France. Available at: <https://www.legalserviceindia.com/legal/article-5114-inquisitorial-and-accusatory-system-of-trial-in-india-england-and-france.html>. (Last visited on 12.07.2023).

⁴² Adversarial and Inquisitorial Legal Systems. Available at: [chatt.hdsb.ca/~mossutom/law/Handouts/Unit%203-Handout Adversarial%20and%20Inquisitorial%20Legal%20Systems.htm](http://chatt.hdsb.ca/~mossutom/law/Handouts/Unit%203-Handout%20Adversarial%20and%20Inquisitorial%20Legal%20Systems.htm). (last visited on 20.07.2023).

⁴³ *Ibid.*,

- The finding of evidence rests on the resources of the two parties which may be unequal
- Parties only provide evidence favorable to their arguments⁴⁴

Joginder Kumar v. State of U.P.⁴⁵

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 protection of human rights of citizens from oppression and injustice at the hands of law enforcing agencies. The existence of the power of arrest is one thing; the justification for the exercise of it is other thing. Further the Court held that a 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 affecting the arrest that such arrest was necessary and justified.⁴⁶

Ajit Kumar case⁴⁷

The Court pointed out that the obligation to inform of the grounds of arrest is so strict on the police officer that if the accused alleges on affidavit that he was not communicated with full particulars of the offence leading to his arrest, in the face of affidavit the police diary cannot be perused to verify the police officer's claim of oral intimation of such particulars, even if such oral communication was made, whether full particulars were communicated not being known, the arrest and detention will be illegal.⁴⁸

Hariharanand v. The Jailor I/C Dist. Jail, Banaras⁴⁹

The petitioners were arrested by a Magistrate acting under the Criminal Procedure Code, 1898,⁵⁰ for their obstructions to the Harijans entry into Vishwanth temple which amounted to an offence under the U.P. Removal of Social Disabilities Act, 1947.⁵¹ The arresting Magistrate on the same day remanded them to the judicial custody. It was held that they were not produced before a court-within 24 hours of the arrest, thus their detention beyond 24 hours was held illegal and unconstitutional. The reason given was that the Magistrate while acting in executive capacity had no opportunity of apply in his judicial mind. Further, since the same person cannot be a judge in his own cause, the Magistrate acting in executive capacity cannot be a court, as contemplated by of the Code.⁵²

Khatri Vs. State of Bihar⁵³ The Supreme Court has held that the State is under a constitutional mandate to provide free legal aid to an indigent accused person, and that their constitutional obligation to provide legal aid does not arise only when the trial commences but also when the accused is for the first time produced before the Magistrate as also when he is remanded from time to time. However, this constitutional right of an indigent accused to get free legal aid may prove to be illusory unless he is produced before promptly and duly informed

⁴⁴ Id.,

⁴⁵ (1994) 4 SCC 260

⁴⁶ *Ibid.*,

⁴⁷ (1966) 384 US 436

⁴⁸ *Ibid.*,

⁴⁹ AIR 1954 All. 601 at p. 605.

⁵⁰ Section 64 of Crpc.

⁵¹ Section 6 of the U.P. Removal of Social Disabilities Act, 1947

⁵² Section 167 of Cr. P C.

⁵³ AIR 1981 SC 928

about it by the court when he is produced before it. The Supreme Court has therefore cast a duty on all Magistrate and courts to inform the indigent accused about his right to get free legal aid.⁵⁴

Hussainara Khatoon Vs. State of Bihar⁵⁵

The Supreme Court considered the problem in all its seriousness and declared that speedy trial is an essential ingredient of ‘reasonable, fair and just’ procedure guaranteed⁵⁶ and that it is the constitutional obligation of the state to devise such a procedure as would ensure speedy trial to accused. The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this court, as the guardian of the fundamental rights of the people, as a sentinel on the qui vie, to enforce the fundamental right of the accused to speedy trial by issuing necessary directions to the State.⁵⁷

VII. SUPREME COURT DIRECTION ON ARREST

In view of the increasing incidence of violence and torture in custody, the Supreme Court of India in *D.K. Basu vs. State of West Bengal*⁵⁸ has laid down specific requirements and procedures that the police and other agencies have to follow for the arrest, detention and interrogation of any person. These are:

1. Police arresting and interrogating suspects should wear “accurate, visible and clear” identification and name tags, and details of interrogating police officers should be recorded in a register.
2. A memo of arrest must be prepared at the time of arrest. This should have the time and date of arrest be attested by at least one witness who may either be a family member of the person arrested or a respectable person of the locality where the arrest was made .be countersigned by the person arrested.
3. The person arrested, detained or being interrogated has a right to have a relative, friend or well-wisher informed as soon as practicable, of the arrest and the place of detention or custody. If the person to be informed has signed the arrest memo as a witness this is not required.
4. Where the friend or relative of the person arrested lives outside the district, the time and place of arrest and venue of custody must be notified by police within 8 to 12 hours after arrest. This should be done by a telegram through the District Legal Aid Authority and the concerned police station.
5. The person arrested should be told of the right to have someone informed of the arrest, as soon as the arrest or detention is made.
6. An entry must be made in the diary at the place of detention about the arrest, the name of the person informed and the name and particulars of the police officers in whose custody the person arrested is.

⁵⁴ Ibid.,

⁵⁵ AIR 1979 SC 1360

⁵⁶ Article 21 of Indian Constitution.

⁵⁷ Ibid.,

⁵⁸ AIR 1997 SC 610

7. The person being arrested can request a physical examination at the time of arrest. Minor and major injuries if any should be recorded. The "Inspection Memo" should be signed by the person arrested as well as the arresting police officer. A copy of this memo must be given to the person arrested.
8. The person arrested must have a medical examination by a qualified doctor every 48 hours during detention. This should be done by a doctor who is on the Panel, which must be constituted by the Director of Health Services of every State.
9. Copies of all documents including the arrest memo have to be sent to the Area Magistrate for his record.
10. The person arrested has a right to meet a lawyer during the interrogation, although not for the whole time.
11. There should be a police control room in every District and State headquarters where information regarding the arrest and the place of custody of the person arrested must be sent by the arresting officer. This must be done within 12 hours of the arrest.

VIII. RIGHTS OF ACCUSED IN PRACTICE: A CRITICAL APPRAISAL INDIAN SYSTEM INCLINED TOWARDS: ACCUSED

It is often argued that the Indian system of justice is inclined towards the accused as it is similar to the Reformatory Theory of Punishment. In India, the main aim of the legal system is not to remove the criminals, but to remove the crime. Severe penalty is something which comes into picture under rarest of the rare cases. In addition to this, due to a colossal number of cases in the various courts over the country, the cases keep lingering on and on for a lot of time. The inclination of the Indian legal system towards the accused can be rightly proved by having a look on the statistics of the conviction rate. *According to the National Crime Record Bureau (NCRB)*, the rate of conviction in the rape cases has dwindled drastically from 40.8% in 2001 to 24.2% in 2012. Similarly, the conviction rate in the crime of murder is around 38%. In case of the crimes against women, the rate is just 21.3%, which means out of every 5 accused, 4 walk out free. Moreover, the overall rate of conviction in India, for all the IPC crimes, is 38.5%. The above statistics clearly suggest that the Criminal Justice system in India is not free from flaws and needs serious reconstructions and developments for a better justice system.⁵⁹

IX. CONCLUSION

The present Code contains rules whose aim is that no innocent person is arrested and that perpetrator of criminal offences are sanctioned in accordance with requirements provided by the Criminal Code and based on the lawfully conducted proceedings. Prior to rendering a final judgment or ruling on punishment, the rights of the accused person and his freedom may be limited only under conditions stipulated by this Code. we may conclude that, to convict an accused, it is the duty of the prosecution to establish his guilt beyond all reasonable doubt. Such reasonable doubt is logically connected to the evidence or absence of evidence on the face of the record. Only reasonable doubt favours the accused but not all doubts. The burden of prosecution never shifts in a criminal case. I suggest that under the veil of reasonable doubt no one should be victimized. The concept of proof beyond a reasonable doubt is based on reason and common sense. It is never based upon sympathy or prejudice. The judiciary has to use and interpret the term 'reasonable doubt' very cautiously keeping in mind that the purpose of the law is to give justice not harm justice.

⁵⁹J. N. Pandey, Constitution Law of India 158 (27th ed. 1994, Central Law Agency).