LAW OF ARREST AND RIGHTS OFARRESTED PERSON- A CRITIQUE IN LIGHT OF JUDICIAL PRONOUNCEMENTS

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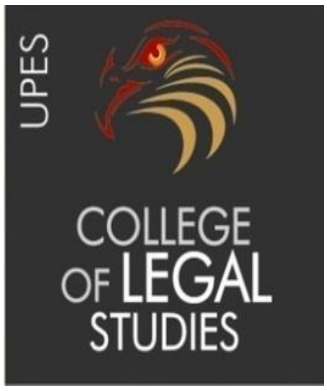
This dissertation is submitted in partial fulfillment of the degree of B.B.A., LL.B.



College of Legal Studies

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DECLARATION

I declare that the dissertation titled **"Law of Arrest and Rights of Arrested Person- a Critique in Light of Judicial Pronouncements"** is the outcome of my own work and research conducted under the supervision of, **Mr. Anubhav Kumar**, Faculty at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that this dissertation comprises only of my original work and due acknowledgement has been made with regard to any material which is used from any other source.

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CERTIFICATE

This is to certify that the research work titled **"Law of Arrest and Rights of Arrested Person- a Critique in Light of Judicial Pronouncements"** is the work done by **Shimona Singh Kulhara** under the guidance and supervision of Mr. Anubhav Kumar for the partial fulfillment of the requirement of B.B.A., LL.B. (Hons) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

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ABSTRACT

The project revolves around the vital and fundamental rule for safeguarding personal liberty in all legal systems where the rule of law prevails. Arrest in criminal jurisprudence means the confinement of a man under the power of law regarding an asserted or expected infringement of the law. Police officers are endowed with wide powers of arrest under various circumstances, so are a few different classes of officers who are depended with the implementation of penal enactments. Judges have powers of arrest in specific circumstances and even private persons have the ability to arrest in exceptional circumstances. In any case, the ability to arrest must be practiced with astute attentiveness and alert.

The primary responsibility of the State is to maintain law and order so that citizens can enjoy peace and security. Life and personal liberty being very precious rights, their protection is guaranteed to the citizens as a fundamental right under Article 21 of our constitution. Personal liberty is invaded by arrest and continues to be restrained during a period a person is on bail and it matters not whether there is or is not a possibility of imprisonment. Everyone has the right to liberty and security of person.

Practically speaking, there exists a conflict between societal interest in effecting such crime detection and constitutional rights which are made available to the accused individual. Depending on the circumstances, emphasis may shift on either side in balancing these interests. The law of arrest is one of balancing individual rights on one side, and individual duties and responsibilities on the other; of simply deciding which comes first the law violator or the law abider - the criminal or society. Since, denying a person of his liberty is a serious matter, it is the State's eternal problem to strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery on the other.

Key Words: Arrest, Fundamental Rights, Personal liberty, Constitutional rights, Society.

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Statement of the problem

The project revolves around the vital and fundamental rule for safeguarding personal liberty in all legal systems where the rule of law prevails. The primary responsibility of the State is to maintain law and order so that citizens can enjoy peace and security. Life and personal liberty being very precious rights, their protection is guaranteed to the citizens as a fundamental right under Article 21 of our constitution. Personal liberty is invaded by arrest and continues to be restrained during a period a person is on bail and it matters not whether there is or is not a possibility of imprisonment. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Article 21 and Article 22 of our Indian Constitution suggests that personal liberty cannot be cut out without fair procedure. Above mentioned articles secures for Indian citizens certain rights which also include the accused persons.

Practically speaking, there exists a conflict between societal interest in effecting such crime detection and constitutional rights which are made available to the accused individual. Depending on the circumstances, emphasis may shift on either side in balancing these interests. The law of arrest is one of balancing individual rights on one side, and individual duties and responsibilities on the other; of simply deciding which comes first the law violator or the law abider - the criminal or society. Since, denying a person of his liberty is a serious matter, it is the State's eternal problem to strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery on the other.

The basic principle of our legal system is benefit of presumption of innocence to the accused till he is found guilty. Since, India is a democratic country accused persons are

also provided with certain rights, because it is believed that though they are guilty of an offence, they do not become a non-person. The reason behind these rights is that the government has enormous resources and can misuse such powers at the time of prosecution of individuals. The rights given to accused basically stress out the difference between the existence of power to arrest and the justification for the exercise of such power.

Many rules emerging from judicial pronouncements such as, Joginder Kumar v. State of U.P, D.K. Basu v. State of W.B, Arnesh Kumar vs. State of Bihar and Ors., Delhi Judicial Service Association v. State of Gujarat; have been enacted in the provisions of CrPC and has further added up to the ambit of rights provided for arrested persons and such laws are also expressively present in Constitution of India but the major problem which still subsists is regarding its implementation.

Objective and Scope of research

The objective of this research is to critically analyse the rights of arrested persons in India and determine how far are they actually implemented? This dissertation will also throw some light on the laws of arrest of other nations and their comparison with Indian law along with International Human Rights Standards governing the rights of arrested persons.

Research Questions

1. Whether laws of arrest as incorporated in our Indian legislation and latest amendments are appropriate?
2. Whether rights of arrested person are actually implemented?
3. Whether the rights of arrested person under Indian law are satisfactory when compared to other nations?

Hypothesis

It has been found that though our Constitution and CrPC guarantee the safeguards to the accused, they are still been threatened by the police. Past years have witnessed numerous instances of custodial violence, which clearly lead us to the conclusion that accused persons are still deprived of their basic rights. In India, accused persons are given the right to know the rights available to them and how such rights are to be enforced and yet police fail to inform them about the same, and let the arrested persons flounder in custody, in complete ignorance of their alleged crimes. Thus, there is imminent need to bring in changes in Criminal Justice Administration so that State should realise that its primary duty is not to punish, but to socialize and reform the wrongdoer, and above all it should be clearly understood that socialization is not identical with punishment, for it comprises prevention, education, care and rehabilitation within the framework of social defence. It is the ultimate duty of the police to protect the society and its interests. And this should be done keeping in mind that this society includes both people as well as arrested persons. Thus, it is the police who is responsible for protecting the rights of arrested persons and they should see that the rights been available to the accused are implemented properly to the extent that the accused person knows of them.

Methodology

The methodology for research for the completion of the research paper would be doctrinal. The research methodology for this paper requires gathering relevant data from the specified documents and compiling databases in order to analyse the material and arrive at a more complete understanding of the concerned topic with the help of various statutes, norms, regulations, scholarly articles of different authors, journals and books. This project will utilize the deductive method of research as the general findings have in the end been concluded to lay about a result summing up the entire research.

Literature Review

Books

- ***Human Rights in Pre-trial Detention by Chandr Mohan Upadhyay***

This book talks about the well-established principle of the human rights law and the criminal jurisprudence that a person should not be deprived of his liberty without just cause in any circumstance. Therefore only such restraint on the personal liberty of the accused person would be justified which is absolutely necessary and essential for the purpose of crime prevention and criminal justice.

- ***Rights of Accused by Dr. Ashutosh***

The author of this book considers pre judicial and post judicial judgements of Indian legal history along with some legislation of countries like USA and UK as laws in India have been influenced by judicial pronouncements in these countries.

- ***Law of Bail, Bonds, Arrest and Custody by Ashok Dhamija***

This book deals with the law of bail, bonds, arrest and custody. Arrest and custody, as noted above, relate to deprivation of personal liberty of an individual. On the other hand, bail and bonds, relate to restoration of personal liberty to such individual, even if such restoration be only as a temporary measure. This book essentially deals only with the aforesaid limited aspect of personal liberty, viz, bail, bonds, arrest and custody, as the title of the book makes it amply clear.The book covers the relevant provisions existing in the Code of Criminal Procedure, as also in various other enactments dealing with criminal laws.

Articles

- ***International Journal of Applied Research- Rights of Arrested Persons in India |ISSN Print: 2394-7500 | 2015/Vol. 1 Issue5 PartE |112.***

Our Constitution provides its citizens with rights, which also contain provisions assuring the rights of accused individuals.Certain Articles such as Art.14 and Art. 21 which guarantee equality before the law and personal liberty, along with Article 22 of the Constitution guarantees protection against arrest and detention in certain cases. It states that the arrested person who is detained in custody has to be informed of the grounds for such arrest and should be given the right to consult and to be defended by, legal practitioner of his choice.

- ***Dr.AmitkumarParmar|M.S Bhagat& C.S Sonawala Law College|Global Journal of Advanced Research- Right of Arrested Person under the Indian Constitution |Vol-2, Issue-9 PP. 1425-1435 | ISSN: 2394-5788***

The significance and importance of human rights especially Right to life, liberty, equality and dignity, this article is devoted to enforcement of human rights and judicial trends and to study new tools forged by the judiciary in recent years which have given a new meaning to fundamental rights jurisprudence in India. Since the beginning of civilised society human race has always been conscious of justice and has frowned at efforts to interfere with individual Liberty and dignity. Indian has been fighting for basic human Right and civil liberties with Britishers during the struggle for freedom. Basic human rights were expressed in the Constitution of India Bill,1985 and Nehru report, 1928. Britishers used process of law and justice to suppress the Indian during freedom struggle.

CHAPTER 1- INTRODUCTION

1.1 MEANING OF ARREST:

Arrest in criminal jurisprudence means the confinement of a man under the power of law regarding an asserted or expected infringement of the law. Police officers area endowed with wide powers of arrest under various circumstances, so are a few different classes of officers who are depended with the implementation of penal enactments. Judges have powers of arrest in specific circumstances and even private persons have the ability to arrest in exceptional circumstances. In any case, the ability to arrest must be practiced with astute attentiveness and alert.

Besides, arrest is without doubt a grave intervention with fundamental right of the personal liberty of the citizen, which incorporates an arrestee or an accused, ensured under Articles 21 and 22 of the Constitution of India and it must be entirely as per the law, in order for arresting authority to be escaped from the punishment.

The term arrest is not characterized in any Statute. In any case, the Dictionary of Law of Lexicon has given a significance of the term arrest as 'an apprehension of a person by legal authority resulting in deprivation of his liberty '. In English law, Hals bury characterizes that-"Arrest comprises of real seizure or touching of individual's body for the purpose of confining him. The arrest is not an arrest unless the individual tried to be arrested submits to the procedure and runs with the arresting officer. Although, it is an arrest, if in the circumstances of the case, they are figured to convey to a man's notice that he is under constraint and from that point submits to the constraint."

Further, in ***State of Punjab Vs Ajaib Singh***[1], the Supreme Court has characterized the term arrest in Article 22 of the Constitution of India as 'demonstrating physical limitation of a man under the power of the law in respect of a charged allegation that he has carried out a wrongdoing or an offense of quasi criminal nature or default or infringement of the law.'

[1] AIR 1953 SC 10

On the off chance that the individual to be arrested submits to the custody of the police officer or other individual making the arrest, the word or action, his arrest is finished. In the event that, in any case, he doesn't so submit, the individual executing the arrest warrant can touch his body or restrict him and this will finish the arrest.

The word arrest, when utilized as a part of its conventional and normal sense it implies the apprehension or restriction or the seizure of one's personal liberty.

The inquiry whether the individual is under arrest or not relies on upon the lawfulness of the arrest, on whether he has been denied of his own freedom to go where he so desires. At the point when used as a legal sense in the method associated with the criminal offenses, an arrest comprises in the taking into custody of someone else under power enabled by law with the end goal of holding or keeping him to answer a criminal charge or of preventing the commission of the criminal offense.

Usually, the terms arrest and custody are used interchangeably. But they propose an alternate meaning. Arrest implies restriction of liberty of the individual. It is a method of taking a man into custody. Custody implies prompt charge and control practiced by person under power of law. Taking a man into custody is trailed arrest of the concerned individual. In, *Directorate of Enforcement Vs Deepak Mahajan*[2], the Supreme Court set out that taking of a man into judicial custody is followed after the arrest of the individual by the Magistrate on appearance or surrender. In each arrest there is custody yet not the other way around and custody and arrest are not synonymous terms.

1.2 PURPOSE OF ARREST:

Arrest of the guilty party particularly of the dangerous and vicious sort has an exceedingly useful impact on the assurance of the general public. Timely arrest of the accused in genuine cases is key stride in investigation; failure in such manner considerably debilitates the position of the prosecution.

[2] AIR 1994 SC 1775

It has following main purpose:

For securing attendance of an accused at trial- At the point when a man is to be tried on the charge of some wrongdoing, his attendance at the time of trial gets to be fundamental. On the off chance that his participation is not liable to be guaranteed by issuing a notification or summons to him, presumably his arrest and detainment is the main viable strategy for securing his vicinity at the trial.

As preventive or precautionary measure- On inevitable risk of the commission of an offence of serious kind (cognizable offense), arrest of the individual aiming to carry out such an offence might get to be vital as a preventive measure.

For obtaining correct name and address- Where a man, on being asked by a police officer, declines to give his name and address, then in specific situations, it would be appropriate with respect to police to arrest such a man with a view to determine his right name and address.

For removing obstruction to police- Whoever discourages a police officer in the execution of his duty would be and ought to be at risk to be arrested without even a moment's pause by such a police officer. This is crucial for successful discharge of police duties.

For retaking a person escaped from custody- A man who has gotten away from legal custody ought to be arrested forthwith by the police.

1.3 WHO CAN ARREST:

Arrest might be done either with warrant or without warrant. Arrest with warrant is given under Chapter –VI under Sections 70 to 81 of CrPC along these lines, the extent of the present chapter is comprehensively limited to arrest without warrant. The below mentioned officers/personnel are empowered to arrest without warrant Viz.(A) Any

Police officer , (B) The officer-in-Charge of a Police Station (C) Private person (D) Magistrate (E) Armed force Personnel.

1.(A) Any Police Officer, of whatever rank , may without an Order from a Magistrate and without a warrant, a person on fulfillment of the conditions laid down in section, 41,42, 123 (6), 151 and 432 (3) of Cr. P. C.

(1) Under Section 41 (1); "any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(a) Who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or

(b) Who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or

(c) Who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) In whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) Who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) Who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) Who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India

which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) Who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(i) For whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition."

(2) Under section 42, "(1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained."

(3) Under section 123 (6), "When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police officer without warrant, and shall thereupon be produced before the [District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case]."

(4) Under section 151, "A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented."

(5) Under section 432 (3), "If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favor the sentence has been suspended or remitted may, if at large, be arrested by any

police officer, without warrant and remanded to undergo the unexpired portion of the sentence."

(6) Under the Local and Special Laws which authorize the arrest without warrant, e.g. U/s 34 of the police Act 1861, U/S 64 of the Forest Act 1927, U/S 20 of the Arms Act 1959, U/S 30 of the Explosive Act 1884, U/S 59 (2) and 3 of the Delhi Police Act 1978, U/S 14 of the Foreigners Act, 1946 and U/S 128 of the Motor Vehicles Act 1939.

(B) The Officer-in-Charge of Police Station

Can arrest or cause to be arrested without warrant under the following circumstance:-

(1) Any habitual offender or any person who is taking precaution to conceal himself with a view to commit cognizable offence (Sec. 41 (2))

(2) To disperse any member of unlawful assembly (Sec. 129 (2)),

(3) In the interest of Investigation of a cognizable offence (Sec. 157)

(4) When witnesses refuse to attend court or execute a bond (Sec. 171)

(5) In exercise of the powers as mentioned at "A".

(C) Private Person:-

Under section 43, "Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station."

(D) Magistrate:-

Under Section 44, "(1) When any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

(2) Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant."

I.e. any Executive Magistrate or Judicial Magistrate can arrest or cause to be arrested a person without warrant on fulfillment of the following conditions-

(1) Offence (any) must be committed in his presence;

(2) It must be within his local Jurisdiction;

(3) The Magistrate is competent to issue warrant of arrest for the arrest of such person.

(E) Armed Force Officers

In the absence of Executive Magistrate any Commissioned officer or Gazetted officer of the Armed Forces can arrest any person in order to disperse any unlawful assembly for public security (Secs. 130(2) & 131)

S.130 (2), "Such Magistrate may require any officer in command of any group of persons belonging to the armed forces to disperse the assembly with the help of the armed forces under his command, and to arrest and confine such persons forming part of it as the Magistrate may, direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law"

S. 131, "When the public security is manifestly endangered by any such assembly and no Executive Magistrate can be communicated with, any commissioned or gazetted officer of the armed forces may disperse such assembly with the help of the armed forces under his command, and may arrest and confine any persons forming part of it, in order to

disperse such assembly or that they may be punished according to law, but if, while he is acting under this section, it becomes practicable for him to communicate with an Executive Magistrate, he shall do so, and shall thenceforward obey the Magistrate as to whether he shall or shall not continue such action."

1.4 POWERS OF THE POLICE TO ARREST:

Sections 41, 42, 151 Cr. P.C. and a Police officer may arrest without warrant u/s 41 CrPC in the following conditions:

"S. 41(1) any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(a) Who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or

(b) Who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or

(c) Who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) In whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) Who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) Who is reasonable suspected of being a deserter from any of the Armed Forces of the Union; or

(g) Who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) Who, being a released convict, commits a breach of any rule made under subsection (5) of section 356; or

(i) For whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition."

1.5 THE RIGHTS OF ARRESTED PERSONS:

The following are the rights of an arrested person guaranteed under the Indian Constitution as well as under the Criminal Procedure Code, 1973,

(1) Right To Be Informed Of The Grounds For Arrest:-

In every case of arrest with or without a warrant the person arresting shall communicate to the arrested person, without delay, the grounds for his arrest (Art, 22 (1) of the Constitution of India, Secs. 50 (1), 55, 75 of CrPC).

(2) Right To Be Informed Of Right To Bail:-

The arrested person must be informed of his right to be released on bail when he is arrested without warrant in a bailable offence (Sec. 50 (2) & (436)).

(3) Right Of Not Being Detained For More Than 24 Hours Without Judicial Scrutiny:-

In case of every arrest the person making the arrests required to produce the arrested person before the Magistrate within 24 hours from the time of arrest. The time required for journey from the place of arrest to the court of magistrate will be excluded in computation of the duration of 24 hours (Art. 22 (2) of the Constitution and section 57),

(4) Right To Consult A Legal Practitioner:-

Both the Constitution and the provisions of CrPC recognize the right of every arrested person to consult a legal practitioner of his choice (Art. 22 (1) and Sec. 303)

(5) Right Of An Arrested Indigent Person To Free Legal Aid And To Be Informed About It

In, *Khatri (II) Vs, State of Bihar*[3], the Supreme Court has held that the State is under a constitutional mandate (implicit in Article 21) to provide fee legal aid to an indigent accused person, and that this 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. The Supreme Court has gone a step further in, *Suk Das Vs Union Territory of Arunachala Pradesh*[4], where in it has been categorically laid down that unless refused, failure to provide free legal aid to an indigent accused would vitiate the trial, entailing setting aside of the conviction and sentence.

(6) Right to Be Examined By A Medical Practitioner

The Magistrate can direct for medical examination of the arrested person on fulfillment of the following conditions; (a) the medical examination will disprove the commission of any offence by him or (b) establish the commission of any other offence against his body (Sec. 54)

[3] (1981) I S.C.C. 627
[4] (1986)2 S.C.C 401

CHAPTER 2: EVOLUTION OF LAW OF ARREST IN INDIA

Like in each civilized society, in India too a criminal justice framework advanced. Socio-economic and political conditions existing amid various periods of the historical backdrop of India affected its advancement. In like manner, the goals of the criminal justice and techniques for its administration changed every now and then and starting with one period of history then onto the next. To suit the changing circumstances the rulers introduced new strategies and procedures with enforce law and regulate justice.

In ahead of schedule society the victim had himself (as there was no State or other power) to punish the wrongdoer through retaliatory and vindictive techniques; this was, naturally, governed by chance and personal passion.[5] Even in the Rig-Vedic period there is a notice that punishment of a criminal rested with the very individual wronged.[6] Gradually, individual vengeance offered approach to gathering revenge as the man couldn't have developed and survived in complete detachment and for his survival it was important to live in groups. Group life required agreement on ideals and the detailing of principles of conduct to be trailed by its individuals.

These guidelines characterized the fitting conduct and the activity that was to be taken when individuals did not comply with the rules.[7] These implicit rules, which governed the issues of the general population, came to be known as Dharma or law. In course of advancement man felt that it was more helpful to live in the public eye as opposed to in little gatherings. Associations based upon the standard of blood relationship yielded, to some degree, to bigger associations—the societies.

In the early time of the Indian civilization great significance was attached to Dharma. Everybody was acting as indicated by Dharma and there was no need of any power to propel dutifulness to the law. The general public was free from the shades of malice arising from narrow-mindedness and exploitation by the person.[8] Every individual from

[5] Choudhuri, Dr. Mrinmaya, Languishing for Justice, p. 4.
[6] Ibid, (quoting Keith, A. Berriedale: "The Age of the Rig Veda" in The Cambridge History of India, edited by J. Rapson, Vol. I, p. 87).
[7] Ibid, pp. 4-5.
[8] Jois, M. Rama., Legal and Constitutional History of India, Vol.I, pp. 575-76

the general public carefully regarded the privileges of his kindred individuals and infraction of such rights once in a while or never occurred.[9]

Be that as it may, the perfect stateless society did not keep going long. While the confidence in the viability and utility of Dharma, faith in God and the God dreading mentality of individuals kept on dominating the general public, the actual situation step by step crumbled. A situation emerged when a few persons started to torment the weaker areas of society for their childish and selfish ends. Oppression of the strong over the powerless ruled unabated. This circumstance constrained the honest individuals to hunt down a cure. This brought about the disclosure of the organization of King and foundation of his power over the general public, which came to be referred to as the State. [10]

As the very reason for establishing the State and the authority of the King was the security of individual and property of the general population, the King composed a framework to uphold the law and punish those individuals who disregarded it. This framework later came to be known as criminal justice framework. In spite of the fact that the Indus-valley progress recommends that a composed society existed amid pre-Vedic period in India, hints of the criminal justice framework must be found amid the Vedic period when too much defined laws had appeared.

The most established literature accessible to clarify the code of conduct of the general population and the principles to be trailed by the King are Vedas. Hence, while talking about the advancement of the criminal justice framework the historical backdrop of India is secured from the Vedic period onwards partitioning it into three periods—Ancient India (c. 1000 B.C. to A.D. 1000), Medieval India (A.D. 1000 to 1757) and Modern India (A.D. 1757 to 1947)

[9] Choudhuri, op. cit., p. 5 (quoting Alfred Russel Wallace as quoted by Durant, Will: The Story of Civilization (Part I) Our Oriental Heritage, p. 27.)
[10] Ibid.

2.1 ANCIENT INDIA

2.1.1 Introduction

Human rights[11] are standards that shield all individuals all over the place from serious political, legitimate, and social misuse. Human rights will be rights characteristic to every single person, whatever our nationality, spot of living arrangement, sex, national or ethnic starting point, skin colour, religion, dialect, or some other status. We are all just as qualified for our human rights[12] without separation. Since the advancement of an edified society a man has gone for making compassionate society and this is an age old yearning implanted in its exceptionally nature. The idea kept on growing even with the advancement of society and development of State. Most likely, the idea of government had changed from antiquated period to current condition of progress steering through numerous channels.

A basic role of any administration was to authorize lawfulness all through ages and it continues in cutting edge connection moreover. The Center and the State administrations of India, for instance, allow certain powers to government authorities so they can keep up a deliberate society and secure the lives, property and rights of the general population. These legislative organizations have the obligation of keeping a few people from hurting others through a few acts assigned as wrongdoing. There are, nonetheless, protected points of confinement on the power of government authorities keeping in mind the end goal to keep them from mishandling the rights of people, including those accused of criminal conduct. Here an inquiry emerges that whether accused or arrested persons have any rights or not? The answer lies in the assumption that "It is better for 99 blameworthy persons to go free than for one guiltless person to be rebuffed."

2.1.2 Laws in Ancient India

[11] Human Rights, Stanford Encyclopedia of Philosophy
[12] The United Nations, Office of the High Commissioner of Human Rights, What are human rights?, Retrieved from http://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx

Like in each cultivated society, financial and political conditions winning amid various periods of the historical backdrop of India affected its advancement of law. In like manner, the targets of the criminal justice and techniques for its organization changed every once in a while and starting with one time of history then onto the next. The rulers at various times had distinctive setup of organization of justice. At first, the Law or Dharma, as propounded in the Vedas was viewed as incomparable in antiquated India for the King had no administrative power. However, step by step, this circumstance changed and the King began making laws and regulations keeping in perspective the traditions and nearby utilizations. There is doubtlessly in right on time history of antiquated India Hindu law overwhelmed which depended on Hinduism. Hinduism was a lifestyle with extensive opportunity of conviction.[13]

It was a group of four Vedas, eighteen Puranas, one hundred and eight Upnishads, two stories (Mahabharata and Ramayana), different Neetis, Bhagavad Gita , Manu Samhita (or Smiriti); nearly late Kautilya‟s Arthshastra and other of all shapes and sizes writings with local kinds of the same fantastic portrayal to which the idea of dharma stayed focal. The idea of Dharma or law in old India was enlivened by the Vedas which contained principles of behavior and ceremonies arranged in Dharma Sutras, which were being practiced in various branches of the Vedic schools. The most punctual record tossing light on the hypothesis of law, which frames a portion of practical administration, is the Arthashastra of Kautilya going back to 300 B.C. Subsequent to appearing of Christian period, there developed various Dharamshaastra which managed widely with Dharma such as, Manu, Yajnavalkya, Narda and Parashara smiritis and so on.

The power of dharma, which was moral and not legitimate, was kept alive by Indian researchers and legal advisers called Brahmins, nonetheless, the King through royal announcement could make an interpretation of dharma into law.[14]

The Vedas were an act of uncovering or conveying divine truth or uncovered writings assembled specifically by enlivened academics or rishis. Diverse schools have translated

[13] Dalbir Bharti, the Constitution and Criminal Justice Administration, 42(APH Pub. Delhi, 2002)
[14] Alakh Niranjan Singh and Prabhakar Singh, "What Can International Law Learn from Indian Mythology, Hinduism and History?" 2 JEAIL 246 (2009)

the theory of Vedas yet the Vedas themselves did not contain any prescriptive standards of conduct, but rather just "references to usage" which constituted dharma, discourses and treatises contained various statutes, which recommended rules for representing conduct.[15] For the most part Dharma should override the every single other wellspring of law yet Kautilya‟s Arthshastra notice Royal orders were incomparable and of most importance. Consequently the state performed its obligation of assurance of society and the person through coercive requirement of the models of justice, which are decreased for the reason into the ins and outs of constructive law known as conduct. Early codes of law, covering each part of life, are protected in the voluminous Dharmashastras writing, of which maybe the Laws of Manu is the most well-known.

2.1.3 Administration of Justice

Insofar as the domain was little, the type of organization was pretty much popularity based; however as the extent of the region developed and expanded, it was realized that it is important to receive a framework in which political powers were amassed in the hands of the Head of the State helped by a Council of Ministers and a prepared administration. In numerous antiquated Countries the State, in the prior phases of its improvement, was religious; however in India, in spite of the fact that the social association contained inside of its chest the Brahmanic religious government and was to an expansive degree overwhelmed by it, the State itself never turned into a religious government in the correct feeling of the term.[16] This gets to be apparent when we consider a couple of expansive facts. In the first place, the ruler was never viewed as the head of religion.

Also, the essential object of the State was not profound salvation, but rather social prosperity. Thirdly, law, blended as it was with religion and ethical quality, was the boss wellspring of the power of the State. Furthermore, finally, the political status of people was free of their religious convictions and feelings. The circle of State-action was in the

[15] S. Radhakrishnan, The Heart of Hindustan, 24 (Natesan& Co. Madras, 1932)
[16] Robert Lingat, The Classical Law of India, 8 (The Thompson Press (India) Ltd., 1975)

most punctual period extremely restricted. The State was then, in fact, what political scientists' term a Police-State. In this way in nutshell it can be attested that in antiquated India the King was the law provider and as result of battle for political power in the middle of ruler and individuals the imperial power was exposed of its powers of law giving.

From the Vedic period ahead, the lasting nature of Indian society has been that justice and righteousness among men are microcosmic impressions of the characteristic request and concordance of the macrocosmic universe. The universe is sense with a natural structure and utilitarian example in which men getting it done energetically take an interest. Justice, then, in the Indian setting, is a human articulation of a more extensive general standard of nature and if man was completely consistent with nature; his actions would be suddenly just. Justice, in the feeling of a distributive value, was experienced by men in three noteworthy pretenses: as good justice, social justice and legitimate justice.[17]

The individual required upkeep, assurance and notwithstanding for profound acknowledgment consequently, the financial, political and legitimate associations of society are esteemed fundamental. It is the obligation of the perfect state to make conditions and opportunities that will bit by bit help man to conquer his lack of awareness, childishness, and indecent inclinations, so that an agreeable group might advance in which each individual can progress toward the preeminent objective of otherworldly freedom from obliviousness and narrow-mindedness and every one of the indecencies that take after there from.

Organization of justice did not shape the piece of state's obligation in ancient times. The abused party needed to take plan of action to get his wrongful act rectified. In India we additionally observe that powers like Manusmriti, perceiving the utilization of power, stratagem, dharna by the offended party as a typical method of redressal notwithstanding when the law courts had been built up. For quite a while even murders were not viewed as offense against state but rather as straightforward torts, where negligible pay must be given to the relative of the perished party. Manu, as a realist, demands in his dialog of the

[17] L. Basham, The Wonder that was India, 114 (Rupa& Co., New Delhi, Third Revised Edition)

part of the ruler that in the event that he doesn't deliver discipline on those qualified to be rebuffed, the more grounded would cook the weaker like fish on a spit.[18] Having completely considered the time and the spot (of the offense), the quality and learning (of the offender), let him fairly deliver that discipline on men who act unjustifiably. The activity of the coercive power of danda as to law-requirement is viewed as just in the most astounding sense, subsequent to particularistic legitimate codes are thought to be concrete and nitty gritty encapsulations of the more abstract and renowned standards of justice which are fundamental to the universe.[19]

The laws governing punishments were not uniform as it shifted by with respect to the specific case and casualties. It was simply because of these reasons that the state later on chose to shape laws to rebuff lawbreakers and criminal settling began with the appointment of power to a commission to attempt criminal case in old Roman civilization. It was just in 149 BC that genuine criminal law appeared with the arrangement of changeless commission to hear or attempt criminal cases. The prior criminal tribunals were only committees of lawmaking body. The persons did whatever it takes, not to be attempted before other commission for the same offenses. This practice proceeded for long till Emperor gave over the criminal organization to the magistrates selected straightforwardly and the spot of senate was taken by Imperial Privy council which later on got to be court of Appeal. This Roman perspective was embraced by numerous civilizations.

2.1.4 Crimes and Punishment in Ancient India:

In ancient India offences against persons were settled with reference to the class-status of the victim. The punishment for a wrongdoing was progressively extreme the higher the varna of the victim.[20] The same hidden thought is reflected all the more emphatically in the legal administration of Indian justice through the idea that the more hoisted a man is as far as varna, the more responsibility he ought to bear for his wrongdoings. Along these

[18] Pramathanath Banerjea, Public Administration in Ancient India, 31 (Mcmillan& Co. 1916)
[19] Satya Prakash Dash,, Constitutional and Political Dynamics of India, 140 (Sarup and Sons Delhi, 2004)
[20] Frederic B. Underwood, Aspects of Justice in Ancient India, 5 JCP 271 (1978)

lines Manu says: When another normal man would be fined one kaarshaapana, the ruler might be fined one thousand; that is the settled guideline. For (a situation of) robbery the blame of a `Suudra should. be eight-crease, that of a Vaisya sixteen overlap, that of a Kshatriya two-and thirty fold, that of a Braahm.na sixty-four fold, or a significant hundred overlay, or (even) twice four-and-sixtyfold; (each of them) knowing the way of the offense. The arrangement of honoring disciplines on the premise of varna negated the idea of balance of every single person as propounded by the Vedas.[21] The biased arrangement of inflicting punishments and contradictory provisions in various lawful literatures made the criminal justice framework damaged.

To depress crimes and to punish the criminals, Indians from early times gave exceptionally unique powers to leaders of the state.[22] Be that as it may, it is difficult to check such inclinations completely and for different reasons social, monetary and political, individuals tested the norms of the society. The old Hindu Law suppliers set out that discipline must be directed by thought of the intention and nature of the offense, the time and place, the strength, age, behavior, learning and financial position of the guilty party or more all, by the truth whether the offense was repeated. Dharamshaastra and Arthshastra show to us an all the more undeniable judiciary. Dharamshaastra and Nitishastra discover the King as a wellspring of justice. He needed to save a certain time to settle the cases.

The fundamental obligation of government was the preservation of peace in the society by maintaining. Law and order in the society. This was extensively characterized to incorporate the maintenance of social order and also counteracting and punishing criminal action. A basic part of the Arthashastra was the dandaniti, the requirement of laws through authorizations or disciplines, which were an essential obligation of the state while this might appear to mirror the standards of the present day positivist state, different references of Kautilya to the legitimate process affirm his connections to the customary legal system. Any matter in question was to be judged by four bases of justice.

[21] S. Altekar, State and Government in Ancient India, 245-246 (Motilal Banarsi Dass Delhi, 2001)
[22] Manu, VII. 20. George Buhler (trans.) The Laws of Manu 219 (Dover Press Publications, Inc., New York, 1969)

These, all together of expanding significance, were Dharma, Evidence, Custom, Royal edicts or promulgations.[23]

In the case of any difference between custom and the Dharmashastras, or between the proof and the Shastras, the matter, as per Kautilya, was to be chosen as per Dharma. At whatever point there was a contention between the Shastras and the written law in light of Dharma, then the written law was to win.

Verse 3.1.38 of Kautilya‟s Arthashastra likewise set out that Judges were called "Dharmastha" upholder of Dharma, showing that source of all law is Dharma.[24] Kautilya likewise perceived that the customary law of an individuals or a district was also important, notwithstanding which was law as proclaimed by the king. When every conventional code of conduct cease to work because of defiance, the king can proclaim written laws through his decrees, since only he is the watchman of the right conduct of this world‟.

In this way, it can be summarized that the establishments of the criminal justice organization had taken their roots amid the Vedic period in India.[25] The framework bit by bit created and amid the Mauryan period a well-defined criminal justice framework had appeared as portrayed in the Arthashashtra. The punishments back then were unfeeling, uncouth and brutal. As respects the methodology and quantum of the disciplines there were disagreements between different Smritis and in specific cases even among the procurements found in one Smriti itself. Later on it was the institution of state which took control of organization and as a guardian of the general public took upon itself the privilege to punish the guilty party. Crimes started to be arranged and corrective laws were ordered to manage criminals.

2.1.5 Rights of Arrested Persons in Ancient India:

[23] P. K. Sen, Penology Old and New, 112 (London : Longmans, Green, 1943)
[24] L. N. Rangarajan (ed), Kautilya, The Arthashastra, 14 (Penguin Books India, Pvt. Ltd. 1992)
[25] Ashish Kumar Das and Prasant Kumar Mohanty, Human Rights in India, 4 (Sarup and Sons New Delhi, 2007)

In any case, there are relatively few direct confirmations of the laws with respect to the privileges of the arrested persons in old India yet the investigation of the ideas of state, organization of justice, law and police organization demonstrates a few indications of humanistic methodology towards the arrested persons or detainees. The society or a person has as of now been talked about were more disposed towards the uprightness than conferring any off-base. The hypothesis of resurrection posed a potential threat in the psyches of the general population as they trust that every one of the wrongdoings done in this conception will must be punished in next conception in any capacity. In this way they liked to live good life as Atharva Veda additionally portrays, Man is not a person. He is a social living being. God adores him just who serves others being: men, cows and different animals. His radiance lies in being an individual from a major gang.[26]

Indeed, even ancient criminal jurisprudence perceived that criminals were not born but rather made. These variables may relate to the advanced time, for example, social and economic, might be because of disintegration of good values by parental disregard, anxiety of circumstances or doing a criminal action in spur of heat of a minute. The reason for penology appeared to make a wrongdoer a non-guilty party.[27] Old Smiritis authors visualized these thoughts. The old Smritis scholars properly paid thought to distinction of the wrongdoer. The Smritis authors in their works had alluded the arrival of wrongdoers because of good direct and honesty of character, which appears to support the late idea of Probation.

2.1.6 Rights of an Accused in Ancient Times:

Ancient Hindu Legal System has the oldest lineage of any known system of jurisprudence. In old times the ‘Rules of Dharma’ were present in India.[28] Indian idea of "Dharma" was more extensive than the idea of 'Rule of Law' of England and even more

[26] Ashish Kumar Das and Prasant Kumar Mohanty, Human Rights in India, 4 (Sarup and Sons New Delhi, 2007)
[27] W. Mabbett, The Date of the Arthshastra, 84 (Journal of American Oriental Society), 162-169 April-June (1964)
[28] D. Mayne, A Treatise on Hindu Law and Usage. iii (Preface to First edition, Higginbotham Madras 11th edition, 1950)

extensive than American 'Due process clause'. Since it didn't just requires what is just and legitimate yet it additionally requires what is moral and natural according to dicta laid in 'Neetisashtras'. Our ancient writers had likewise essentially perceived the ideal of flawless advancement of the person to the full improvement of the general public when they set out that it was the matter of the state to advance Dharma, Artha, Karma and Moksha. Should there be no ruler to wield discipline on earth, says the Mahabharata (c. B. C. 6oo-A. D. 200), "the more grounded would eat up the feeble like that of fishes in water. It is connected that in days of yore individuals were destroyed through sovereignlessness, eating up each other such as the more grounded fishes going after the feebler." In the Manu Samhita in like manner we are informed that "the solid would eat up the frail such as fishes. The Ramayana additionally depicts the non-state area as one in which "individuals ever eat up each other such as fishes. ‘‘And a couple insights about the conditions in this non state are outfitted in the Matsya-Purana.[29]

Arrest is a judicial procedure of a court wherein a charged is taken into custody. In ancient India the arrest were of various types. There are references of Local arrest, Temporary arrest and arrest adding up to restraint from setting out and arrest identifying with his work. However there appeared to be humanistic methodology in arrest additionally as certain classification of persons were allowed insusceptibility from being arrested. Brihaspati said some as:- 1) Engaged in study, 2) going to wed, 3) debilitated, 4) one harassed by distresses, 5) crazy, 6) newborn child, 7) inebriated, 8) exceptionally old man, 9) woman, and so forth.

Indeed, even Narada has said that the accompanying persons ought not to be arrested: (1) About to wed, 2) tormented by disease, 3) going to offer penance, 4) one beset by calamities and 5) minor. And still, at the end of the day here and there the policemen however were extremely heartless in their dealings with persons with suspicious developments and attempted to coerce admission by indicating gigantic mercilessness which in some cases coming about death of criminals. Torture was additionally a technique for punishment. Keeping in mind the end goal to concentrate truth from the gatherings the court embraced the approach of influence, yet in the event that they

[29] Benoy Kumar Sarkar, The Hindu Theory of the State, 36 Pol. Science Quarterly 80 (1921)

fizzled, the denounced was beaten with harsh canes. Be that as it may, humanistic approach towards guilty parties appeared to be alive as the hints of police officers being punished for disregarding their obligations are found and it included likewise arresting a wrong individual who generally ought not to have been arrested.[30] Offenses and wrongdoing conferred by police officers, Jail Superintendent and other public servant were considered important and extreme disciplines were recommended. It was given that the judges who passed vile request, or took influences, or deceived the certainty rested in them, ought to be expelled.

Kautilya who was having direct knowledge in regards to working and sorry state of affairs has specified that the officers of the lock-ups where under trails and indicted persons were kept, who brought on pointless inconvenience to the detainees, behaved mercilessly and inconsiderately with them and extorted cash from them or attacked woman prisoners were at risk to different sorts of punishments. Denying him of nourishment and water with ninety six panas and for death creating by torment, one thousands panas. Kautilya recommended fines for getting into mischief with women in prison houses too. The punishment was recommended by status of woman attacked.[31]

Immunity from punishment in light of humanitarian grounds was pertinent regardless of caste consideration. Yajnavalkya has specified that an old man more than eighty, a kid beneath sixteen, lady and persons experiencing illness were given half prayaschita. In like manner a child beneath five commits no wrongdoing. Kautilya was supportive of conceding immunity from punishment to a minor.[32]

Ashoka underlined the human part of the judicial administration. He called upon the NagaraVyavaharakas (city Judges to see that the torture or detainment ought not to prompt unintentional death of the accused. Likewise, he was also of the opinion that natives were not detained or tortured without adequate reasons. Even self defence was predominant as securing himself, woman and Brahman was not an offense. Brihaspati specifies especially that on the off chance that anybody murders aggressor to spare his

[30] Julius Jolly, The Minor Law Books Trans., Part I, Narada. Brihaspati, 188 (Oxford The Clarendon Press, 1889, reprinted in 2008 by Forgotten Books).
[31] R. K. Mukherjee, Ancient Indian Education, 135 (Delhi: MotilalBanarsiDas, Delhi, 1969)
[32] Sunil. K, Bhattacharya, Juvenile Justice-An Indian Scenario, 56 (Regency Publication, New Delhi, 2000)

life, confers no wrongdoing. Notwithstanding executing in response to incitement was not regarded as offense. Right of self-protection existed amid ancient India. The law says: "A man can kill without a second thought an assassin who approaches him with the purpose of killing him. By murdering an assassin the slayer confers no offense. A man has a privilege to restrict and slaughter another in self-defence as well as with regards to ladies and weak persons who are not in a position to protect them against dangerous or violent assault. Notwithstanding killing a Brahman in activity of such a right is no offense." According to Katyayana no fault is attached to one who murders men who is about to slaughter a man.[33]

Manu in Manusmriti and Brahaspati in his Dandabheda Vyavastha alluded that a tender reprimand ought to be administered to a man for light offense. P. K. Sen has called attention to in his Tagore Law Lectures on "Penology Old and New" that the bearings given by the ancient law-providers in the matter of punishment compare positively with the advanced modern system as regards the significance of the circumstances attendant on the commission of the wrongdoing and the subjective constraints of guilty parties.

Yajnavalkya, set out that having found out the blame, the spot and time, as additionally the capacity, the age and means of the guilty party, the punishment ought to be determined and if probable the man ought to be discharged if in the wake of putting into perception keeps up great character and conduct. Kautilya, in his Arthashastra prompted the King to give punishment which ought not to be mild or extreme. Indeed, even Maurya rulers were agreeable to mellow punishment. One of the claims of the ruler Ashoka contains procurement for reduction of punishment. He prompted his officers to look at and diminish punishment awarded to detainees after due thought of circumstances which generously corresponds with those specified by Smriti authors.

By and large experiencing the strategy existing in ancient India it can be said that the below mentioned rights were accessible for individual offenders[34]-

1. Right to engage counsel

[33] David G. Mandelbaum, Society in India, 221 (Popular Prakashan Ltd, Bombay, 1998).
[34] JaishreeJaiswal, Human Rights of Accused and Juveniles: Delinquent in Conflict with Law, 50-51 (Eastern Books Corporation, 2005)

2. Right to appeal

3. Right to examine witnesses

It was recommended that the examination of witnesses ought not be postponed. A genuine imperfection, specifically, miscarriage of justice, would result owing to postponement in examination of witnesses. Witnesses were under legal compulsion to give proof before the court. Inability to show up in court involved substantial punishment. Inability to give evidence amounted to giving false evidence. Perjury, i.e. giving false evidence, was viewed as a genuine offense and punishment was recommended for it. The whole wealth of a man, who refered to false witnesses out of greed, would be confiscated by the King, and likewise he would be externed. The party whose witnesses ousted against him could analyze further and better witnesses to demonstrate his case and in addition to demonstrate that the witnesses inspected before were liable of perjury.[35]

If any person was dissatisfied with the judgment, and thought that the case had been decided in a way contrary to justice, he might have it re-tried on payment of a fine. Narada says, “when a lawsuit has been judged without any previous examination of witnesses (or other evidence), or when it has been decided in an improper manner, or when it has been judged by unauthorised persons, the trial has to be renewed." An appeal also lay from the decision of an inferior court to a higher tribunal, where the whole case was re- tried.

In the event that any individual was disappointed with the judgment, and believed that the case had been decided in a route as opposed to justice, he may have it re-tried on installment of a fine. Narada says, "when a claim has been judged with no previous examination of witnesses (or other proof), or when it has been decided in an improper way, or when it has been judged by unapproved persons, the trial must be restored."[36] An appeal lay from the judgement of a subordinate court to a higher tribunal, where the entire case was re-tried.

[35] Surender Singh, Rural Development and Human Rights in India: A Critique, in P. M. Katare and B. C. Barik, Development Deprivation and Human Rights Violation, 109 (Rawat Publication Jaipur, 2002).
[36] S. K. Ghosh, The Outcry of Police Brutality, 34 (Aashish Pub. Delhi,1983)

2.1.7 Penology and Humanistic Approach in Ancient India:

The great downside of the State in Ancient India was that the privileges of man as man were not completely recognised. People had rights and obligations not as components parts of the body politic but rather as individuals from classes in society; and subsequently, the rights and obligations changed by class to which the people belonged. The act of bad conduct with arrested or suspected persons by law enforcement organizations is an age old phenomenon and has been there somehow. Maharishi Ved Vyas's paropkaraya punyam papam parpidanam, which means in this way promotion of well-being of other, is temperance and infliction of pain is sin, laid the acid test for clarifying punya and paap. [37]

These high beliefs of life and logic of holy people and sages were followed in instances of detainees and charged in ancient India. However in second period of the ancient Hindu period torture was normal and discipline for that was additionally endorsed in different Hindu sacred texts. Truth be told the penology had its roots in ancient India. It can be followed in the soonest Vedic time of Indian History. It created under the implication of Dandaniti which actually implies standards of discipline. The idea of principle of law and the organization of equity had been known not in India following the time when the Vedas come to be perceived on the insane encapsulation of Dharma. Police brutalities or torture was basic in this period and was drilled by police on detainees and torture under the request of the King was not extraordinary. Next was the period of law and theory (800-320 BC) amid which Manu, Yajnavalkvya, Kautiliya, Gautam were some vital law suppliers.

In the Manusmriti there were sufficient occurrences where unforgiving discipline was recommended for the violators of law. The ancient writing however additionally alludes to some humanistic methodology towards guilty party as Manu held that in the wake of considering the slant in the wrongdoers, his forerunners and limit discipline ought to be given. Kautilya in his Arthashastra has additionally expressed that a suspect ought not be put nabbed following a slip of three days from the commission of wrongdoing when no

[37] Nitai Ray Chaudhary, Indian Prison Law and Correction of Prisoners, 23 (Deep & Deep Pub. Delhi, 2002)

immediate confirmation was found against him. The suspects were kept under vigil as the privilege was to keep the wrongdoing. [38]

King Ashoka, in his Edicts has plainly said that "In undertakings of organization there may be a few persons who might get detainment and intimidation, there additionally may happen coincidental demise in jail and numerous detained persons may suffer long. All things considered you should endeavor to manage every one of them fair-mindedly; the qualities which are not helpful for unprejudiced dealings are harm, touchiness, brutality and quickness, absence of practice, sluggishness and exhaustion. All of you should endeavor, so that these characteristics may not be there in you. The legal officer of the capital must endeavor at all times for this; and they ought to cause sudden detainment or sudden compulsion on individuals. For this reason I would be sending on quinquennial visits the Mahamatras who might not be brutal and irascible and would be soft in dealings." Mahamatras were imperative clergymen and were filling in as edits of open ethics. These officers were enabled to diminish punishments and reexamine the sentences of detainments or even give discharge on compassionate grounds.

The ancient India saw traditions of experiences additionally that a few times were extremely in execution. In any case, it was polished just where the blamed individual is not distinguished or there were no confirmation against that individual. Accordingly the difficulties were performed to demonstrate their selves honest. This conventional trial jurisprudence stayed in presence for long time at remote ranges however with the advancement of idea of administration through King as head and help by his pastors and police capacities, it was diminished to nullity. In any case, for the most part there is an idea that the primitive man had not known anything like human rights.[39] With the coming of progress one may have sought that some appreciation after human rights would rise which appeared to be have created with or relates its advancement with the Industrial Revolution. A hypothesis won that man is supplied by conception with certain unavoidable privileges of which right to life, freedom and property are hallowed and after

[38] Ven. S. Dhammika, ,The Edicts of King Ashoka, An English Rendering Wheel Publication Sri Lanka 1993. Retrieved from http://www.accesstoinsight.org/lib/authors/dhammika/wheel386.html (visited on 23rd Oct. 2010)

[39] Paras Diwan and Peeyushi Diwan, Human Rights and the Law, Universal and Indian, 1 (Deep & Deep Publication Delhi, 1996)

the finish of the Second World War development for securing human rights to all picked up quality."

2.2 PRESENT CRIMINAL JUSTICE SYSTEM OF INDIA

'Criminal justice system' alludes to the structure, functions, and decision processes of agencies that deal with the crime avoidance, examination, arraignment, discipline and rectification. Some trust that it is not absolutely precise to discuss a criminal equity framework. A system, they contend, is an intelligent, interrelated, associated gathering of components performing related capacities that make up a mind boggling entirety. The criminal equity framework is a free confederation of offices that perform diverse capacities and are autonomously financed, oversaw and operated.[40] However, in spite of their autonomy, these organizations of criminal justice framework are interrelated on the grounds that what one office does influences all others. That is the reason they are known as a 'system'.

The present criminal justice system of India is the result of a nonstop exertion with respect to rulers who controlled the undertakings of the nation every now and then. In each period of Indian history the rulers added to the improvement of the criminal justice system. Nonetheless, the majority of them treated the criminal justice system more as an instrument to oppress the masses as opposed to ensure their rights. The British rulers who endeavored well-thoroughly considered endeavors for the foundation of a sound and all around characterized criminal justice system in India were likewise not free from this shortcoming. They excessively took a gander at the criminal equity framework was more an instrument to uphold the colonial rule in India and less for the administration of fair criminal justice to the people.

The principle goal of the criminal justice system is to make social agreement and maintain order by enforcing the laws and controlling their infringement. For achievement of this goal, a system comprising of the police, bar, legal and correctional services

[40] Samaha, Joel, Criminal Justice, p. 6.

constitute the criminal justice system. Since the criminal law gives the essential structure to the entire criminal justice system, it is likewise considered as a segment of the entire system.

Before 1882, there was no uniform law of criminal strategy for the entire India. There were separate Acts, for the most part simple in their character, to control the methodology of the courts in the past provinces and the presidency towns. Those applying to the presidency towns were initially combined by the Criminal Procedure Supreme Courts Act, 1852, which over the span of time offered spot to the High Court Criminal Procedure Act, 1865. The Acts of technique applying to the regions were supplanted by the general Criminal Procedure Code, 1861. This Code was supplanted by the Code of 1872. It was the Criminal Procedure Code of 1882, which gave interestingly a uniform law of system for the entire of India.

The Act of 1882 was supplanted by the Code of Criminal Procedure, 1898. The Code of 1898 was revised commonly, the most critical being those gone in 1923 and 1955. The Code of 1898 stayed in power till 1973 when another Code of Criminal Procedure of 1973 supplanted it. The new Code has isolated the legal from the official and in this manner, actualized Article 50 of the Constitution of India. Abrogation of jury framework for trials is another huge component of the new Code.

The Code of Criminal Procedure, 1973, is today the fundamental law of criminal procedure in India. It is separated into 37 Chapters comprising of 484 segments. Two Schedules—the to start with, ordering the offenses under the I.P.C. and against different laws, and the second, containing forms—have likewise been annexed to it.

The Code of Criminal Procedure inter alia manages the constitution of courts, powers of courts, different procedures to compel appearance of persons and creation of things, powers of police, upkeep of request, arrest, safeguard, trials, claims, and so on. The criminal technique is a subject of simultaneous purview empowering Parliament and the State Legislatures to correct it. Parliament has acquired numerous alterations it amid the most recent 27 years to meet the prerequisites of evolving circumstances.

CHAPTER 3: STATUTORY PROVISIONS WITH RESPECT TO ARREST-

3.1 LAWS REGARDING ARREST OF A PERSON:

Chapter five of the Code of Criminal Procedure, 1973 manages the arrest of persons. Circumstances when a man might be arrested by a police officer, a judge or even private citizen without a warrant, are depicted in Section 41, 42, 43, and 44 as follows-

Section 41 is the main section providing for situations when Police may arrest without warrant. It reads as follows:

"S. 41: When police may arrest without warrant.-

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person

a) Who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or

b) Who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or

c) Who has been proclaimed as an offender either under this Code or by order of the State Government; or

d) In whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

e) Who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

f) Who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

g) Who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

h) Who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

i) For whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specified the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition."

Section 42 indicates yet another circumstance where a police officer can arrest anyone. This section provides that, if any person who is accused of doing an act punishable under law and is in vicinity of a police officer or if he is accused of doing a non-cognizable offence and on being asked by the police officer to provide him with his name and address to his residence, gives false name and address, then such accused person can be arrested by the police officer, but such arrest is made only to get his correct name and address.

After such discovering, he might be released on executing a bond with or without sureties, to show up before an officer if so required. On the off chance that the name and habitation of such person can't be found out inside of 24 hours from the date of arrest or if such person neglects to execute a security as required, he should be sent to the closest magistrate having jurisdiction.

Section 43 discusses a circumstance where an arrest can be made by a private person and the procedure to be taken after on such arrest. Indeed, even private persons are enabled to arrest a person for assurance of peace in specific circumstances. This is imperative since police can't be available at each niche and corner and it is up to private citizens to shield

the general public from troublesome components or offenders. According to section 43(1), any private person might arrest or cause to be arrested any person who in his vicinity commits a non-bailable and cognizable offense, or any proclaimed offender, and, immediately, should make over or cause to be made over any person so arrested to a police officer, or, without a police officer, take such person or cause him to be taken in custody to the closest police station. Therefore, if a person is intoxicated and is committing assault on others, he might be rightly arrested by any citizen and taken to the closest police-station.

In any case, take note of this power can be practiced just when the person making an arrest is under a bona fide impression that a non-bailable and cognizable office is being committed in his vicinity. One does not have a privilege to arrest on suspicion.

As said over, the private person must take the arrested person to the police officer or police station immediately. On keeping the person in his own custody, he will be liable for wrongful confinement as given in Section 342 of IPC. According to section 43(2), If there is a reason to trust that such person comes under the provisions of section 41, a police officer might re-arrest him. Further, according to section 43(3), if it is sufficient to believe that he has committed a non-cognizable offense, and he denies to give his name and home to police officer, or gives a name or habitation which such officer has reason to believe to be false, then section 42 will apply; yet in the event that there is no reason to trust that he has committed any offense, he might be without a moment's delay discharged.

Another new provision has been formed as Section 50A, which makes it compulsory for the police officer or other person making an arrest to give the information in regards to such arrest and place where the arrested person is being held to any of his companions, relatives or such different persons as might be assigned by the arrested person with the end goal of giving such data. Further, the police officer might advise the arrested person of his rights under subsection when he is brought to the police station. He should make a section of the certainty with reference to who has been told of the arrest of such person in a book to be kept in the police station in such frame as might be recommended in this behalf by the State Government. It is the obligation of the Magistrate before whom such

arrested person is brought, to satisfy himself that the prerequisites of this section has been met in respect of such arrested person.

Section 44 talks about arrest by a magistrate. According to Section 44(1), "When any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

(2) Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant."

Imperative thing to note here is that magistrates have more extensive power than private citizen. A magistrate can arrest on the ground of any offense and not just on cognizable offense. As held on account of *Swami Hariharanand Saraswati versus Jailer I/C Dist. Varanasi*,[41] the arrested person must be delivered before another magistrate inside of 24 hours, otherwise his detainment will be unlawful.

Section 45 ensures the individuals from the Armed Forces from being arrested under sections 41 to 44.

"Notwithstanding anything contained in sections 41 to 44 (both inclusive), no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government."

Section 46 sets out the way in which the arrest ought to be made. Section 46 depicts the path in which an arrest is actually made. According to Section 46(1), unless the person being arrested agrees to be held in custody by words or activities, the arrester might really touch or restrict the body of the person to be arrested. Since arrest is a restriction on the

[41] AIR 1954

freedom of the person, it is essential for the person being arrested to either submit to custody or the arrester must touch and confine his body. Only oral declaration of arrest by the arrester without getting accommodation to custody or physical touching to restrict the body won't sum to arrest. The accommodation to custody might be by express words or by action.

For instance, as held on account of *Bharosa Ramdayal versus Emperor*[42], if a person creates an impression to the police blaming himself for committing an offense, he would be considered to have submitted to the custody of the police officer. Essentially, if the accused proceeds towards the police station as asked by the police officer, he has submitted to the custody. In such cases, physical contact is not required. In the event of *Birendra Kumar Rai versus Union of India*[43], it was held that arrest need not be by binding the person, and it can likewise be finished by talked words if the person submits to custody.

Section 46(2) if such person coercively opposes the endeavor to arrest him, or endeavors to avoid the arrest, such police officer or other person might utilize all methods important to impact the arrest. And, if the person tries to flee, the police officer can take actions to stop his escape and in doing as such, he can utilize physical force to immobilize the accused. Be that as it may, according to Section 46(3), there is no right to bring about the demise of the person who is not accused of an offense culpable with death or with detainment forever, while arresting that person. Further, according to Section 49, an arrested person must not be subjected to more restriction than is important to keep him from getting away.

Because of concern of infringement of the rights of ladies, another provision was embedded in Section 46(4) that precludes the arrest of ladies after dusk and before dawn, with the exception of in remarkable circumstances, in which case the arrest should be possible by a lady police officer in the wake of making a written report and acquiring a former authorization from the concerned Judicial Magistrate of First class.

[42] AIR 1941
[43] AIR 1992 All 151

In *Kultej Singh versus Circle Inspector of Police*,[44] it was held that keeping a person in the police station or restricting the development of the person in the areas of the police station amounts to arrest of the person.

Section 47 says that, any police officer is allowed to enter any area if there is sufficient reason for him to know that the arrested person is to be found into that place or is inside of that place. Section 48 empowers the police officers to follow the persons accused of an offence anywhere in India beyond their jurisdiction. Section49 although provides that "the person arrested might not be subjected to more restraint than is necessary to keep him from escaping".

Section 50 (which corresponds to clause (1) of Article 22 of the Constitution) says that it is mandatory for the police officer to provide the arrested person with full particulars of the grounds of arrest and also for the offence for which his arrest is made. It further provides that if a person is arrested for commission of any bailable offence without a warrant, the police officer who is making the arrest should provide the person so arrested with the knowledge that he is liable to get discharged if he can furnish his bail and can give sureties for affecting his bail.

Section 51 empowers police officers to search arrested persons whereas Section 52 allows seizure of dangerous weapons in possession of the arrested person. Section 53 and Section 54 provides that either on the direction by police officers or on the request of arrested person himself, they can be medically examined. Section 55 enumerates the process to be adopted at the time when police officer deputes his subordinate to make an arrest without warrant.

Section 56 (which relates to clause (2) of Article 22)provides that: "A police officer making an arrest without 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."

[44] ILR 1991 KAR 3198

Section 58 provides for a duty upon police officers to report to the authorities of arrests made without warrant inside of their jurisdiction and of the actuality whether such persons have been admitted to bail or not. Section 59 says that no person arrested by a police officer might be released aside from on his own bond or bail or under the order of the magistrate. Section 60, which is the last section in the chapter, empowers the person having the legal custody to seek after and retake the arrested person on the off chance that he escapes or is saved from his custody.

3.2 WIDER POWERS OF ARREST UNDER SECTION 151, CRPC-

Added to these provisions are the preventive provisions in the Code of Criminal Procedure which empower the police to arrest persons. Section 151 says that a police officer could arrest any person, without requests from a Magistrate and without warrant, "on the possibility that it appears to such officer" that such person can possibly commit a cognizable offence and there is no other possible way to prevent the commission of that offence. The facts may confirm that the fulfillment of the police officer considered by the expression "in the event that it appears to such officer" is not subjective but rather is objective yet in India, police officers making a wrongful arrest whether under section 41 or 151, are at times continued against – considerably less punished. There is too much of danger included in doing as such.

3.3 LARGE NUMBER OF PERSONS ARRESTED UNDER SECTIONS 107 TO 110, CRPC-

There is yet another class viz., sections 107 to 110 of the Code of Criminal Procedure. These sections empower the Magistrate to call upon a person, in circumstances/circumstances expressed in that, to execute a bond to keep peace or to be on great conduct. These provisions don't provide for a police officer to arrest such persons. Yet, the certainty remains (a reality borne out by the statistical data points

alluded to hereinafter) that huge number of persons are arrested under these provisions too.

'Criminal justice system' alludes to the structure, functions, and decision processes of agencies that deal with the crime avoidance, examination, arraignment, discipline and rectification. Some trust that it is not absolutely precise to discuss a criminal equity framework. A system, they contend, is an intelligent, interrelated, associated gathering of components performing related capacities that make up a mind boggling entirety. The criminal equity framework is a free confederation of offices that perform diverse capacities and are autonomously financed, oversaw and operated.[45] However, in spite of their autonomy, these organizations of criminal justice framework are interrelated on the grounds that what one office does influences all others. That is the reason they are known as a 'system'.

The present criminal justice system of India is the result of a nonstop exertion with respect to rulers who controlled the undertakings of the nation every now and then. In each period of Indian history the rulers added to the improvement of the criminal justice system. Nonetheless, the majority of them treated the criminal justice system more as an instrument to oppress the masses as opposed to ensure their rights. The British rulers who endeavored well-thoroughly considered endeavors for the foundation of a sound and all around characterized criminal justice system in India were likewise not free from this shortcoming. They excessively took a gander at the criminal equity framework was more an instrument to uphold the colonial rule in India and less for the administration of fair criminal justice to the people.

[45] Samaha, Joel, Criminal Justice, p. 6.

CHAPTER 4: PROTECTION OF RIGHTS OF ARRESTED PERSON UNDER CONSTITUTION OF INDIA-

A person who is presently under the custody of police, or is under-trial or an arrested person doesn't stop being a human just so that he is being detained by the authorities, and similarly it does not mean that fundamental rights are not applicable to him now. The dual principle of criminal system provides that it is mandatory for the prosecution side to prove the charge against the accused beyond reasonable doubt and also that the burden to prove the charge against accused is always on the prosecution. The legislature aims to allow certain blameworthy persons to be free but not even one such person to be wrongfully punished of something which he didn't do. Constitution of India is such that it provides certain immunities to the accused persons, so that their interest is protected and so they are not wrongfully arrested.

One of the fundamental principles of our legitimate framework is the advantage of the assumption of guiltlessness of the accused till he is discovered liable toward the end of a trial on lawful proof. In a democratic society even the rights of the accused are consecrated, however accused of an offense, he doesn't turn into a non-person. Rights of the accused incorporate the rights of the accused on arrest, at the time of search and seizure, amid the procedure of trial and so forth.

The accused in India are given some rights, the most essential of which are found in the Indian Constitution. The general hypothesis behind these rights is that the legislature has tremendous assets accessible to it for the prosecution of people, and people along these lines are qualified for some safety from abuse of those powers by the administration. An accused has certain rights over the span of any examination; enquiry or trial of an offense with which he is charged and he ought to be secured against discretionary or illicit arrest. Police have wide powers given on them to arrest any person under Cognizable offense without going to magistrate, so Court ought to be cautious to see that propositions powers are not manhandled for softly utilized for personal advantages. No arrest can be made on insignificant suspicion. Indeed, even private person can't take after and arrest a person on someone else's statement, however impeachable it is.

Despite the fact that the police have been given different powers for encouraging the making of arrests, the powers are liable to specific limitations. These restrictions are basically accommodated the security of persons who are to be arrested, furthermore of the general public. The impositions of the restrictions can be considered, on some level, as the acknowledgment of the rights of the arrested person. There are some different provisions which have rather all the more explicitly and specifically created essential rights for the arrested person.

4.1 PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES

Beneath said focuses are some imperative provisions specifying rights for the accused/arrested persons- Regarding security in adoration of conviction for offense, Article 20 of the Constitution, these a percentage of the provision making right in favour of the accused/arrested person.

1.No person should be sentenced for doing any offense excepts for infringement of a law in force during commission of the act charged as an offense, nor be subjected to a punishment more noteworthy the that which may have been incurred under the law in power at the time of the commission of the offense.

2. Punishment for the same offense cannot be given to any wrong doer more than once.

3. No person accused of any offense might be asked to be a witness against himself".

The Article 20 of the Constitution of India gives three sorts of shield to the person accused of offences in particular –

I) Insurance against ex-post facto Law,

II) Guarantee against double Jeopardy, and

III) Privilege against self-implication.

Protection against Ex Post Fact Law Article 20 [1]

Article 20[1] of the constitution contains two heads:

"1) No person should be indicted any offense aside from infringement of the law in power at the time of the commission of the demonstration charged as an offense;

2) No person might be liable to punishment more prominent than that which may have been exacted under the law in power at the season of the commission of the offense."

This first part of the provision provides protection to an accused person. Under this an ex-post facto law is a law which protects accused from being punished for the commission of any offence which was not punishable at the time of its commission and so the accused persons cannot later be made liable for that act post commission.

The second part of the provision provides protection to an accused from facing punishment which is more than what he would be subjected to at the time when the offence was actually committed.

" In *Kedar Nath v. State of West Bengal*, the Supreme Court held that "the improved punishment couldn't be relevant to the act committed by the accused in 1947 and consequently, put aside the extra fine forced by the altered Act. In the criminal trial, the accused can exploit the advantageous provisions of the ex-post facto law. The tenet of valuable development requires that ex post facto law ought to be connected to alleviate the thorough (decreasing the sentence) of the past law on the same subject. Such a law is not influenced by Article 20(1) of the Constitution."[46]

Doctrine of "Guarantee Against Double Jeopardy" Article 20[2]

'Double Jeopardy', the word is expressed in American law and not in Indian Constitution, the term implies confession to misfortune or damage for double time. The English basic law guideline is that "nemo debut bi's punibi prouno delicto"which implies that nobody ought to be punished twice for one issue.

[46] Kedar Nath Bajoria v.State of West Bengal, 1953 AIR 404

As indicated by this regulation, if a person is sentenced for the commission of any offense, then this provision bars him to be tried again for the same offence or on any other offence for the same facts. Article 20(2) of the Constitution provides the similar principle and Section 300 of the Criminal Procedure Code, 1973 provides the same thing.

S. 300, "(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof."

Prohibition against Self-Incrimination, Article 20[3]

Article 20[3] provides that,

"No person accused of any offence shall be compelled to be a witness against himself."

That is, no accused person can ever be forced to be a witness in the case for which he is arrested. The burden lies on the prosecution to prove that the offence was committed by him. The accused is under no obligation to confirm or express his opinion on the prosecution's comments.

This is protection from self-implication and acts as a fundamental principle in criminal matters and is protected under Article 20(3). Clarifying the extent of this clause in *M.P. Sharma v. Satish Chandra*[47], "the Supreme Court watched this right exemplifies the following essentials:

(a) It is a right pertaining to a person who is accused of an offence.

(b) It is a protection against compulsion to be a witness.

[47] 1954 AIR 300

(c) It is a protection against such compulsion relating to his giving evidence against himself."

In *Nandini Satpathy v. P.L. Dani*, the Supreme Court has impressively extended the extent of clause (3) of Article 20. The Court has held that,

> *"The restrictive extent of Article 20(3) does a reversal to the phase of police cross examination not starting in court as it were. It stretches out to, and secures the accused with respect to different offenses-pending or approaching, which might prevent him from willful exposure. The expression "compelled testimony" must be perused as proof acquired not just by physical danger or brutality but rather by psychic (mental) torment, climatic pressure, natural coercion, tiring interrogatives, nearness, domineering and intimidatory strategies and so forth. That is, compelled testimony is not restricted to physical torment or pressure, but rather stretch out additionally to methods of mental cross examination which cause mental torment in a person subject to such cross examination."*[48]

4.2 PROTECTION OR SAFEGUARD OR REMEDIES

4.2.1 Right to Silence

The 'right to silence is a guideline of regular law and it implies that ordinarily courts or tribunals of fact ought not be welcomed or urged to close, by gatherings or prosecutors, that a suspect or an accused is liable just on the grounds that he has declined to react to inquiries put to him by the police or by the Court. The Justice Malimath Committee expounds on the source of the right to silence that "it was basically the right to decline to answer and implicate oneself without an appropriate charge. Not at first, the right to decline to answer to an appropriate charge." The Justice Malimath Committee's

[48] Nandini Satpathy v. P.L. Dani, 1978 AIR 1025

supposition is that the right to silence is just required in societies, where anybody can be self-assertively charged. It accept that at whatever point a charge is "appropriate", there is no requirement for assurance of the accused. In this scenery it gets to be important to inspect the right to silence and its companion right against self-incrimination. These are the two parts of reasonable trial and subsequently can't be made a topic of enactment. Right to reasonable trial is the essential reason of every single procedural law.

The extremely remedy of procedure and the development of procedural law must be comprehended in the recorded setting of the nervousness to substitute standard of men by principle of law. In law any announcement or admission made to a police officer is not permissible. Right to silence is principally worried about admission. Ending of quiet by the accused can be before a magistrate yet ought to be willful and with no coercion or instigation. To guarantee the honesty and dependability of the facts he expressed the magistrate is required to take a few safety measures. Right to hush and the right against self-incrimination has been diluted impressively by understanding than by enactment. The respondent on the off chance that he so yearnings can be a witness in his trial. His admission outside the court either to the police officer or to the magistrate is permissible. He is urged to sell out his partners in wrongdoing on guarantee of absolution. He is relied upon to disclose each unfriendly situation to the court at the finish of confirmation with the court having jurisdiction to draw antagonistic induction while welcoming the proof against him.

The constitution of India ensures each person right against self-implication under Article 20 (3) "No person accused of any offense should be forced to be a witness against himself". It is settled that the Right to Silence has been conceded to the accused by virtue of the proclamation in the case of *Nandini Sathpathy versus P.L.Dani*;[49] nobody can persuasively extract statements from the accused, which has the right to remain silent over the span of cross (examination). By the organization of these tests, coercive interruption into one's brain is being restored to, in this way invalidating the legitimacy and authenticity of the Right to Silence. In 2010 The Supreme court made narco-examination, cerebrum mapping and lie detector test as an infringement of Article 20(3).

[49] Supra fn-47

4.2.2 Right to Know the Grounds of Arrest

Firstly, as indicated by Section 50(1) CrPC "each police officer or other person arresting any person without warrant might forthwith impart to him full particulars of the offense for which he is arrested or other justification for such arrest."

Furthermore, when a subordinate officer is directed by a senior police officer to arrest a person under Section 55 CrPC, such subordinate officer should, before making the arrest, inform to the person to be arrested the substance of the order given by the senior police officer determining the offense or other reason for which the arrest is to be made. Non-consistence with this provision will render the arrest illicit.

Thirdly, if there should arise an occurrence of arrest to be made under a warrant, Section 75 CrPC gives that "the police officer or other person executing a warrant of arrest should tell the substance thereof to the person to be arrested, and if so required, might make available to him the warrant." If the substance of the warrant is not shown, the arrest would be unlawful.

The constitution of India guarantees every person right against self-implication under Article 20 (3) "No person accused of any offense ought to be compelled to be a witness against himself". It is settled that the Right to Silence has been permitted to the accused by standards of the decree because of *Nandini Sathpathy versus P.L.Dani*;[50] no one can coercively extract statements from the accused, who has the right to stay silent over the range of cross (examination). By the association of these tests, persuasive interference into one's brain is being restored to, in this way refuting the authenticity and legitimacy of the Right to Silence. In 2010 The Supreme court made narco-examination, cerebrum mapping and lie locator test as an encroachment of Article 20(3).

Indian constitution has likewise given on this right the status of the fundamental right. Article 22(2) of the constitution gives that "no person who is arrested should be kept in custody without being made known to him, of the grounds of such arrest nor should he be denied the right to counsel, and to be protected by a legal practitioner of his choice."

[50] Supra fn-46

The right to be notified of the grounds of arrest is a valuable right of the arrested person. Timely particulars of the grounds of arrest serve him in various ways. It empowers him to move the court for bail, or in fitting circumstances for a writ of habeas corpus, or to make speedy course of action for his protection.

In Re, Madhu Limaye[51] the facts were: Madhu Limaye, Member of the Lok Sabha and a few different persons were arrested. Madhu Limaye tended to an appeal as a letter to the Supreme Court under Article 32 saying that he alongside his allies had been arrested yet had not been imparted the reasons or the justification for arrest. One of the disputes raised by Madhu Limaye was that there was an infringement of the obligatory provisions of Article 22 (1) of the Constitution. The Supreme Court watched that Article 22 (1) exemplifies a standard which has dependably been viewed as essential and fundamental for shielding personal freedom in every single lawful framework where the Rule of Law wins. The court further watched that the two prerequisites of Clause (1) of Article 22 are intended to bear the cost of the most punctual chance to the arrested person to evacuate any oversight, confusion or misconception in the brains of the arresting power and, additionally to know exactly what the allegation against him is with the goal that he can practice the second right, in particular of counseling a legitimate practitioner of his decision and to be safeguarded by him.

At whatever point that is not done, the applicant would be qualified for a writ of Habeas Corpus coordinating his discharge. Consequently, the Court held that Madhu Limaye and others were qualified to be discharged on this ground alone.

It seems sensible to acknowledge that grounds of the arrest ought to be conveyed to the arrested individual in the dialect comprehended by him; else it would not sum to adequate consistence with the constitutional prerequisite. The words " as soon as may be" in Article 22(1) would implies as ahead of schedule as is sensible in the condition of the case, notwithstanding, the words "forthwith" in Section 50(1) of the code makes a stricter obligation with respect to the police officer who is responsible for arrest and would signify "instantly".

[51] 1971 AIR 2486

In the event that the arrest under Section 44 is made by the magistrate without a warrant, the case is secured neither by any of the Section 50, 55 and 75 nor by whatever other procurement in the code requiring the magistrate to convey the grounds of arrest to the arrested individual. The lacuna in the code, in any case, won't make any trouble practically speaking as the magistrate would in any case will undoubtedly express the grounds under Article 22(1) of the Constitution.

The principles rising up out of, for example, *Joginder Kumar v. State of U.P.*[52] also, *D.K. Basu v. State of West Bengal,*[53] have been authorized in Section 50-A making it required with respect to the police officer not just to advise the companion or relative of the arrested individual about his arrest and so forth additionally to make passage in a register kept up by the police. The magistrate is likewise under a commitment to satisfy himself about the consistency of the police in this manner.

4.2.3 Information Regarding the Right To Be Released On Bail

Section 50(2) CrPC gives that "where a police officer arrests without warrant any individual other than a man blamed for a non-bailable offense, he should advise the individual arrested that he is qualified to be discharged in bail that he might bring sureties on his." This will positively be of assistance to persons who may not think about their rights to be discharged on bail in the event of bailable offenses. As a result, this might in some little measures, enhance the relations of the general population with the police and decrease discontent against them.

4.2.4 Right to Be Taken Before A Magistrate Without Delay

Whether the arrest is made under a warrant by any individual or the arrest is made without warrant by a police officer, the individual making the arrest must bring the arrested individual before a legal officer immediately. It is likewise given that the

[52] (AIR 1994 SC 1349)
[53] (1997) 1 SCC 416

arrested individual ought not be kept in wherever other than a police station before taking him to the magistrate. These matters have been given in CrPC under section 56 and 76 which are as given underneath:

56. “Person arrested to be taken before Magistrate or officer in charge of police station- A police officer making an arrest without 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”.

76. “Person arrested to be brought before Court without delay- The police officer or other person executing a warrant of arrest shall (subject to the provisions 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”.

Given that such defer might not, regardless, surpass 24 hours excluding the time essential for the transfer from the spot of arrest to the Magistrate's Court

4.2.5 Right Of Not Being Detained For More Than 24 Hours Without Judicial Scrutiny

Whether the arrest is without warrant or under a warrant, the arrested individual must be brought in the front of the magistrate or court before 24 hours. Section 57 as given below:

57. “Person arrested not to be detained more than twenty-four hours- No police officer shall detain in custody a person arrested without 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 privilege has been further fortified by its joining in the Constitution as a fundamental right. Article 22(2) of the Constitution demonstrates that "Each individual who is arrested and confined in guardianship might be procured before the closest

magistrate before completion of twenty-four hours of such arrest barring the time vital for the trip from the spot of arrest to the court of the magistrate and no such individual should be kept in care past the said period without the power of a magistrate." if there should be an occurrence of arrest under a warrant the stipulation to Section 76 gives a comparable guideline in substance.

The privilege to be brought before a magistrate inside of a time of not over 24 hours of arrest has been made with a perspective

i. To avoid arrest and detainment with the end goal of getting admissions, or as a method for convincing individuals to give data;

ii. To avoid police stations being utilized just as they were detainment facilities- a reason for which they are unsatisfactory;

iii. To stand to an early plan of recourse to a judicial officer free of the police on all inquiries of bail or release.

For instance, in *Khatri(II) v. State of Bihar*,[54] the Supreme Court has unequivocally encouraged upon the state and its police powers to guarantee that this constitutional and lawful necessity to deliver an arrested individual before a Judicial Magistrate inside of 24 hours of the arrest be circumspectly observed. This section empowers the magistrate to keep check over the police examination and it is essential that the magistrates ought to attempt to uphold this prerequisite and where it is discovered defied, come vigorously upon the police.

In the event that police officer neglects to create an arrested individual before a magistrate inside of 24 hours of the arrest, he might be held liable of wrongful detainment.

For a situation of *Poonam v. Sub-Inspector of Police*,[55] it was said that at whatever point a dissension is gotten by a magistrate that a man is arrested inside of his locale however has not been delivered before him inside of 24 hours or an objection has made to him that

[54] (1981) 1 SCC 623
[55] 1993 Cri.L.J 2183 (Ker.) 81

a man is being confined inside of his area past 24 hours of his arrest, he can and ought to call upon such police officer; to state whether the charges are genuine and provided that this is true; on what and under whose guardianship; he is by and large so made a difference. In the event that officer denies the arrest, the magistrate can make an investigation into the issue and pass required orders.

4.2.6 Rights at Trial

i.) Right To A Fair Trial-

The Constitution under Article 14 ensures the right to equality in the witness of the law. The Code of Criminal Procedure additionally gives that to a trial to be reasonable and just, it must be an open court trial. This procurement is intended to guarantee that feelings are not acquired in mystery. In some outstanding cases the trial might be held in camera. Each and every person blamed is qualified for be educated by the court before taking the proof that he is qualified to have his case attempted by another court and if he thusly moves such application for exchange of his case to another court the same must be exchanged. Be that as it may, the blamed has no privilege to choose or decide by which other court the case is to be attempted.

ii.) Right To A Speedy Trial-

The Constitution gives a accused the privilege to a rapid trial. In spite of the fact that this privilege is not expressly expressed in the constitution, it has been translated by the Hon'ble Supreme Court of India in the judgment of *Hussainara Khatoon*.[56] This judgment commands that an examination in trial ought to be held "as quickly as could be allowed". In all summons trials (situations where the greatest punishment that can be inflicted is two years detainment) once the charged has been arrested, the examination for the trial must be finished inside of six months or halted on a request of the Magistrate, unless the Magistrate gets and acknowledges, with his reasons in written form, that there is cause to amplify the examination.

[56] 1995 SCC (5) 326

4.2.7 Right to Consult a Legal Practitioner

Article 22(1) of the Constitution gives that no individual who is arrested might be denied the privilege to counsel a lawful practitioner of his decision. Further, as has been held by the Supreme Court that state is under a constitutional order (understood in Article 21) to give free lawful guide to a penniless charged individual, and the constitutional commitment to give free legitimate guide does not emerge just when the trial initiates but rather likewise appends when the denounced is interestingly delivered before the magistrate, as additionally when remanded every once in a while. It has been held by the Supreme Court that resistance with this prerequisite and inability to advise the blamed for this privilege would vitiate the trial. Section 50(3) likewise gives that any individual against whom procedures are initiated under the Code might of right be guarded by a pleader of his decision. The privilege of an arrested individual to counsel his legal advisor starts from the moment he is arrested. The counsel with the legal advisor might be in the vicinity of police officer however not inside of his hearing.

4.2.8 Rights of Free Legal Aid

In *Khatri (II) v. State of Bihar*,[57] the Supreme Court has held that the state is under a constitutional order (certain in Article 21) to give free legitimate guide to a poor denounced individual, and the constitutional commitment to give free lawful guide does not emerge just when the trial begins but rather likewise connects when the charged is surprisingly delivered before the magistrate, as additionally when remanded every once in a while. But this constitutional right of a poverty stricken accused to get free lawful assistance might turn out to be deceptive unless he is immediately and properly educated about it by the court when he is brought before it. The Supreme Court has in this manner thrown an obligation on all magistrates and courts to educate the destitute denounced about his entitlement to get free lawful assistance. The Supreme Court has gone above and beyond in *Suk Das v. Union Territory of Arunachal Pradesh*,[58] wherein it has been

[57] Supra fn-51
[58] 1986 Cri LJ 1084

completely set out that this constitutional right can't be denied if the person charged fails to apply for it. It's clear that unless he does not apply to it intentionally, inability to give free legitimate guide to a destitute charged would vitiate the trial involving putting aside of the conviction and sentence.

4.2.9 Right To Be Examined By A Medical Practitioner

Section 54 now renumbered as Section 54(1) provides:

54. "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 the purpose of vexation or delay or for defeating the ends of justice.".

4.2.10 Right of the Accused To Produce An Evidence

The charged even has right to bring any witness from his side if there should arise an occurrence of police report or private defence. After the Examination and round of questioning of all indictment witness i.e. after the culmination of the prosecution case the charged should be called upon to enter upon his guard and any composed proclamation put in might be loaded with the record. He might even call further for round of cross questioning. The judge might continue recording the proof of indictment witness till the prosecution shuts its confirmation.

The charged with a specific end goal to test the veracity of the affirmation of an arraignment witness has the privilege to interrogate him. Section 138 of Indian Evidence Act, 1872 gives accused person has a privilege to stand up to just witnesses. This

privilege guarantees that the denounced has the open door for interrogation of the unfriendly witness. Section 33 of Indian Evidence Act tells when witness is occupied at trial, a testimonial articulation of the witness possibly administered by issuing commission. The confirmation at a formal trial is one illustration of earlier testimonial explanations which can be utilized as written proof in other next trial.

At the point when over the span of investigation a charged or whoever coveting to put forth any expression is presented to a magistrate so that any admission or declaration that he may be testifying is made of his own will is record. Admission or confession made by charged to the police is totally excluded under Section 25, Evidence Act.

CHAPTER 5: RIGHTS OF ARRESTED PERSON: HOW FAR IMPLEMENTED

5.1 Misuse of power of arrest.-

Despite the provisions contained in the Code of Criminal Procedure and the Constitution alluded to over which are for the benefit of the accused, the fact remains that sometimes arrest is wrongly and illicitly practiced in countless instances everywhere throughout the nation. Almost every day this power is used to blackmail monies and other important property or at the occurrence of a foe of the individual arrested. Indeed, even if there should arise an occurrence of any civil matter, this power is being turned to on the premise of a false assertion against a gathering to a civil dispute at the instance of his adversary.

The limitless tact given by the CrPC to arrest a man even on account of a bailable offense (where the bailable offense is cognizable as well as where it is non-cognizable) and the further authority to make preventive arrests (e.g. under section 151 of the CrPC and the few city police enactments), shows the police with remarkable force which can without much of a stretch be manhandled. Neither there is any in-house component in the police division to check such abuse or manhandle nor does the protestation of such abuse or mishandle to higher police officers prove to be fruitful with the exception of in some uncommon cases.

We should realize that we are not facing the discretionary powers of an individual of just a civil service organization, we are facing the immense powers of the individuals from an administration which is furnished with guns, which are turning out to be more complex with every passing day (which is in fact called a common administration for the reasons of Service Jurisprudence) and whose demonstrations touch upon the freedom and flexibility of the citizens of this nation and not only their qualifications and properties. This is a civil service which is in effect progressively mobilized, most likely, to meet the developing exigencies.

5.2 Balancing of societal interests and protection of rights of the accused.-

We are not uninformed that wrongdoing rate is going up in our nation for different reasons which require not be related here. Terrorism, drugs misuse and organized crime have turned out to be acute to the point that extraordinary measures have gotten to be important to battle them at the national level as well as at the universal level. We additionally observe the way that a significant number of policemen danger their lives in release of their obligations and that they are exceptionally focused by the criminal and terrorist packs. We perceive that in specific circumstances e.g., like the one acquiring in Kashmir today, an exact compliance with a few legitimate and constitutional safeguards may not be practicable but rather we should likewise observe and accommodate the all-inclusive statement of the circumstance everywhere throughout the nation and not be redirected by certain particular, temporary circumstances.

We should likewise observe the way that all the time the poor endure most on account of Police. Their neediness itself makes them suspects. This was said, however from an alternate point, by George Bernard Shaw. He said "destitution is wrongdoing". Be that as it may, these days, even white collar classes and other well-to-do individuals, who don't have entry to political power-wielders, too are getting to be focuses of Police overabundances. We perceive that guaranteeing a harmony between societal enthusiasm for peace and assurance of the rights of the charged is a troublesome one yet it must be finished. We additionally perceive the fundamental meaning of the Human Rights, which are certain in Part III of our Constitution and of the need to save, secure and advance the Rule of Law which constitutes the bedrock of our constitutional framework

5.3 Guidelines lay down by the Supreme Court.-

The workings of the courts, and specifically of the Supreme Court in the course of the last over two decades has been to delineate the incomprehensible discretionary power vested by law in Police by forcing a few protections and to manage it by subjecting so as to set out various rules and the said power to a few conditionalities. The exertion all through has been to reduce its misuse while leaving it free to liberate the functions given

to the Police. While it is not important to allude to every one of them with the end goal of this working paper, it would be adequate on the off chance that we allude to a couple of them (which without a doubt reaffirm and restate the bearings and rules contained in before choices). In *Joginder Kumar v. State of U.P*[59], the power of arrest and its activity has been managed finally. It is suitable to allude to certain insightful perceptions in the judgment:

> *"The skyline of human rights is extending. In the meantime, the wrongdoing rate is additionally expanding. Generally, this court has been getting protestations about infringement of human rights due to indiscriminate arrests. How are we to strike a harmony between the two?"*

The court in *Smt. Nandini Satpathy v. P.L. Dani*[60], expressed: "To strike the harmony between the necessities of law implementation from one perspective and the insurance of the citizen from abuse and injustice on account of the law-requirement apparatus on the other is a perpetual issue of statecraft." The pendulum throughout the years has swung to the right. Again in para 21, at page 1033, it has been watched:

> *"We have earlier spoken of the conflicting claims requiring reconciliation. Speaking pragmatically, there exists a rivalry between societal interest in effecting crime detection and constitutional rights which accused individuals possess. Emphasis may shift, depending on circumstances, in balancing these interests as has been happening in America. Since Miranda ((1966) 334 US 436) there has been retreat from stress on protection of the accused and gravitation towards society's interest in convicting law-breakers. Currently, the trend in the American jurisdiction according to legal journals is that 'respect for (constitutional) principles is eroded when they leap their proper bounds to interfere with the legitimate interests of society in enforcement of its laws…. (Couch v.*

[59] (AIR 1994 SC 1349)
[60] AIR 1978 SC 1025 at page 1032, citing Lewis Myers

United States[61]). Our constitutional perspective has, therefore, to be relative and cannot afford to be absolutist, especially when torture technology, crime escalation and other social variables affect the application of principles in producing humane justice."

The National Police Commission in its Third Report alluding to the nature of arrests by the Police in India said power of arrest as one of the important factor of debasement in the police. The report proposed that, all around, almost 60% of the arrests were either superfluous or unjustified and that such unjustified police action represented 43.2% of the consumption of the prisons. The said Commission in its Third Report at page 31[62] watched in this way:

"It is obvious that a major portion of the arrests were connected with very minor prosecutions and cannot, therefore, be regarded as quite necessary from the point of view of crime prevention. Continued detention in jail of the persons so arrested has also meant avoidable expenditure on their maintenance. In the above period it was estimated that 43.2 per cent of the expenditure in the connected jails was over such prisoners only who in the ultimate analysis need not have been arrested at all."

The Royal Commission recommended limitations on the power of arrest on the premise of the 'need of guideline'. The two fundamental goals of this standard are that police can practice powers just in those cases in which it was really important to empower them to execute their obligation to keep the Commission of offenses, to examine wrongdoing. The Royal Commission was of the perspective that such limitations would reduce the utilization of arrest and deliver more uniform utilization of powers. The Royal Commission Report on Criminal Procedure – Sir Cyril Philips, at page 45 said:

"…. We recommend that detention upon arrest for an offence should continue only on one or more of the following criteria;

[61] (1972) 409 US 322, 336
[62] National Police Commission, Third Report at page 31

a) the person's unwillingness to identify himself so that a summons may be served upon him;

b) the need to prevent the continuation or repetition of that offence;

c) the need to protect the arrested person himself or other persons or property;

d) the need to secure or preserve evidence of or relating to that offence or to obtain such evidence from the suspect by questioning him; and e) the likelihood of the person failing to appear at court to answer any charge made against him."[63] The Royal Commission in the above-said Report at page 46 also suggested:

"To help to reduce the use of arrest we would also propose the introduction here of a scheme that is used in Ontario enabling a police officer to issue what is called an 'appearance notice'. That procedure can be used to obtain attendance at the police station without resorting to arrest provided a power to arrest exists, for example to be finger-printed or to participate in an identification parade. It could also be extended to attendance for interview at a time convenient both to the suspect and to the police officer investigating the case…."[64]

[63] The Royal Commission Report on Criminal Procedure – Sir Cyril Philips, at page 45
[64] The Royal Commission Report on Criminal Procedure – Sir Cyril Philips, at page 45

CHAPTER 6: JUDICIAL PRONOUNCEMENTS ON RIGHTS OF ARRESTED PERSON-

6.1 RIGHT TO BE INFORMED OF THE GROUNDS OF ARREST:

The item basic the provision that the ground for arrest ought to be conveyed to the person arrested has all the earmarks of being this. On finding out about the ground for arrest, the man can move an application to the suitable court for bail or move the High Court for a writ of habeas corpus. Further, the data will empower the arrested person to set up his side of the case in time for purposes of his trial. Consequently, it has been given in clause (1) of Article 22 that the ground for the arrest must be conveyed to the person arrested as quickly as time allows.

In Re, Madhu Limaye[65],

The Supreme Court said that "Article 22 (1) exemplifies a principle which has dependably been viewed as essential and fundamental for protecting personal liberty in every single legitimate framework where the Rule of Law wins. For instance, the Sixth Amendment to the Constitution of the United States of America contains comparable provisions same as Articles XXXIV of the Japanese Constitution of 1946. In England, at whatever point an arrest is made without a warrant, the arrested person has a right to be educated that he is being arrested as well as of the reasons or justification for the arrest."

The court further watched that, "the two necessities of Clause (1) of Article 22 are intended to manage the cost of the most punctual chance to the arrested person to uproot any mix-up, confusion or misconception in the psyches of the arresting power and, additionally to know exactly what the allegation against him is so he can practice the second right, to be specific of counseling a lawful practitioner of his decision and to be guarded by him. The individuals who feel called upon to deny different persons of freedom in the release of what they imagine to be their obligation must, entirely and circumspectly, watch the structures and standards of law. At whatever point that is not

[65] A.I.R. 1969 S.C. 1014

done, the solicitor would be qualified for a writ of Habeas Corpus coordinating his discharge"[66].

In the present case, the arrival did not contain any data in respect to when and by whom Madhu Limaye and other arrested persons were educated of the reason for their arrest. It had not been fought in the interest of the state that the circumstances were such that the arrested persons probably known the general way of the claimed offenses for which they had been arrested. Subsequently, the Court held that Madhu Limaye and others were qualified for be discharged on this ground alone.

6.2 RIGHT TO CONSULT AND TO BE DEFENDED BY LEGAL PRACTITIONER:

In Article 22 (1) the open door for securing administrations of legal counselor is distant from everyone else ensured. The Article does not require the state to broaden lawful guide in that capacity yet just requires permitting every single sensible facilities to connect with a legal advisor to the person arrested and confined in custody. The decision of insight is altogether left to the arrested person. The right to counsel emerges not long after arrest.

In *Janardhan Reddy v. State of Hyderabad*[67] one of the primary focuses encouraged in the interest of the petitioners was that in criminal cases Nos. 17 and 18 of 1949, there was no reasonable trial, in as much as the persons charged in those cases didn't manage any chance to instruct counsel and they had stayed undefended all through the trial. So it was fought that the entire trial in these cases was terrible, in light of the fact that the accused were prevented the right from claiming being protected by a pleader. Fourth para of the oath documented for the benefit of the solicitors read as takes after :

[66] A.I.R. 1969 S.C. 1014
[67] A.I.R 1951 S.C. 217.

"The Court never offered to facilitate my communication with my relations and friends or to adjourn the case or to appoint counsel at state expense for my defence. In fact they said they would not adjourn the case under any circumstances. Being ignorant, I did not know that I had any right to ask for any of these things."

As to the circumstances under which the accused were not constituted by a legal advisor a counter-affidavit documented by Mr. Hanumantha Naidu, a senior inspector, who examined the case expressed:

"Facilities were given to the accused to engage lawyers for their defence. In case in which the accused had no means to engage pleaders for their defence and applied to the Tribunal for appointment of pleaders at Government cost, this was done. In some cases, the accused declined to accept the pleaders appointed by the Tribunal for their defence. Some engaged pleaders of their choice at their cost. Some accused stated that they did not want any lawyer to defend them."

Judges of the High Court had communicated the perspective that the argument that the Tribunal did not give the accused a sufficient chance to draw in legal counselors was not very much established. The Supreme Court saw in this association that recommendation of the High Court that the inquisitive state of mind received by the accused, to whatever cause it might have been expected, to some degree represents their not being spoken to by a legal counselor can't be precluded. In any case, the Supreme Court further included that the Special Tribunal ought to have found a way to dole out a legal advisor to help the accused with all due respect.

Advocate of the solicitors depended on *Powell v. Alabama*[68] , in which the Supreme Court of America saw as:

> *"In a capital case where the defendant is unable to employ counsel and is incapable of adequately making his own defence because of ignorance, feeblemindedness, illiteracy or the like, it is the duty of the Court whether requested or not, to assign a counsel for him as a necessary requisite of due process of law."*

The Supreme Court while watching that the task of an advocate in the circumstances said in the section was exceedingly attractive, held that the judgment can't lay completely on American points of reference, which depend on the teaching of due procedure of law, which is impossible to miss to the American Constitution furthermore on certain particular provisions bearing on the right of representation in a criminal continuing. The provision which was material to the argument raised was S. 271 of the Hyderabad Cr. P.C., which compared to S. 340 Cr. P.C., 1898, which kept running as takes after:

"Any person accused of an offence before a criminal court or against whom proceedings are instituted under this code in any such Court may of right be defended by a pleader."

The Supreme Court said that this provision must be translated generously for the accused and should be perused alongside the standards made by the High Courts and the round requests issued by them ordering that where in capital cases the accused has no way to protect himself, a direction ought to be given to safeguard him. The court set down below mentioned two standards in such manner:

(1) That it can't be set down generally speaking of law that in each capital situation where the accused is unrepresented, the trial ought to be held to be vitiated.

[68] 287 U.S. 45.

(2) That a court of appeal or revision is not powerless to meddle in the event that it is found that the accused was so impeded for need of legitimate guide that the procedures against him might be said to amount to nullification of a reasonable trial.

By setting out the main standard the Court, at the end of the day, acknowledged the position that even in some capital cases the trial would be legitimate regardless of the possibility that the accused is not represented by an attorney. This is a strict perspective of Article 22 (1). The Court couldn't demonstrate the mettle to acknowledge the standard of Powell v. Alabama. In any case, by setting down second standard, the Supreme Court in any event sowed a seed for further improvement of law in such manner in future.

Another vital provision in this association is S. 303 (prior stated as S. 340) of Criminal Procedure Code, 1973. The Section states that:

"303. 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."

Prior to the Constitution, this was most likely the main provision from which the right of the accused to have counsel in the middle of him and his lawful counselor seems to have been determined and supported.

In *Ram Sarup v. Union of India*,[69] the facts were: Ram Sarup, solicitor was a sepoy and subject to the Army Act. He shot dead two sepoys. He was charged on three numbers under S. 69 of the Army Act read with S. 302 of I.P.C. what's more, was attempted by the General Court-Martial. He was discovered liable of the three charges and sentenced to death. One of the conflicts raised by the solicitor was that he was not permitted to be shielded at the General Court Martial by a lawful practitioner of his decision and accordingly, there had been an infringement of the provisions of Article 22 (1) of the

[69] A.I.R.1965 S.C. 247.

Constitution. Solicitor charged that he had communicated his craving, on numerous events, for consent to draw in a practicing common legal counselor to speak to him at the trial yet the powers turned down those solicitations and let him know that it was not passable under the Military guidelines to permit the administrations of a regular citizen legal counselor and that he would need to protect his case with the insight he would be given by the Military Authorities.

In answer it was expressed that this claim about the candidate's solicitations and their being turned down was not right, that it was not made in the appeal but rather was made in the answer after the State had documented its counter affidavits in which it was expressed that no such demand for his representation by a lawful practitioner had been made and that there had been no disavowal of his fundamental rights.

The Supreme Court was of the conclusion that the applicant made no solicitation for his being spoken to at the Court-Martial by a guidance of his decision, that thusly no such demand was rejected and that he can't be said to have been precluded his fundamental right from securing being safeguarded by advice of his decision. The Court brought up that the candidate did not state in his appeal to that he had made a solicitation for his being spoken to by an advice of his decision. He had just expressed that sure of his relatives who looked for meeting with him ensuing to his arrest were rejected consent to see him and that this procedure which brought about dissent of chance to him to safeguard himself appropriately by drawing in an equipped non-military personnel legal counselor through the assets and help of his relatives had encroached his fundamental right under Article 22 of the Constitution.

On the off chance that the solicitor had made any express demand for being shielded by an insight of his decision, he ought to have expressed so direct in his appeal. His included dialect must be that he couldn't contact his relations for their orchestrating a regular citizen legal counselor for his safeguard. This negatived any recommendation of a solicitation to the Military Authorities for consent to permit him representation by a practicing legal counselor and its refusal. The Court hung on the facts that there had been

no infringement of the fundamental right of the candidate to be protected by a guidance of his decision presented under Article 22 (1) of the Constitution.

For this situation as well, the Court took a specialized perspective of the matter by watching that the candidate did not state in his appeal to that he had made a solicitation for his being represented by an advocate of his decision. The Court was very little inspired by the announcement of the candidate, that he couldn't contact his relations for their orchestrating a regular legal advisor for his case. Since, person who is arrested and detained needs to take the assistance of another person such as relatives to make provision for drawing in a legal counselor. However, the Court was slanted to take hyper-specialized way to deal with hold that Article 22(1) is not disregarded.

In *Nandini Satpathy v. P.L. Dani*,[70] the Supreme Court watched that Article 22 (1) guides that his preferred right to counsel an advocate should not be denied to any person who is arrested. This does not imply that persons who are not under detainment can be denied that right. The soul of Article 22 (1) is that it is fundamental to the standard of law that the administrations of a legal counselor should be accessible for meeting to any accused person under circumstances of close custodial cross examination. Also, the recognition of the right against self-implication is best elevated by surrendering to the accused the right to counsel a lawful practitioner of his decision. Legal counselor's vicinity is a sacred case in a few circumstances in our nation likewise, and in the setting of Article 20(3) is a certification of mindfulness and recognition of the right to silence. The Court alluded to Miranda decision[71] which had demanded that if an accused person requests legal counselor's help, at the phase of cross examination, it might be conceded before starting or proceeding with the scrutinizing.

The Court further watched that Article 20 (3) and Article 22 (1) might, as it were, be extended by making it judicious for the police to allow the counsel of the accused, if there be one, to be available at the time he is inspected. Over-achieving Article 20(3) and Section 161(2) Cr. P.C. will be forestalled by this prerequisite. A principle is not set out

[70] A.I.R. 1978 S.C. 1025.
[71] (1966) 384 U.S. 436.

that the Police must secure the administrations of a legal counselor. That will prompt 'police station lawyer' framework, a misuse which breeds over vices. In any case, if an accused person communicates the wish to have his attorney close by when his examination goes on, this office might not be denied, without being presented to the genuine reprimand that automatic self-implication secured in mystery and by constraining the will, was the task. The Court watched that vicinity of a legal advisor is expecting too much as a rule until an open guard framework gets to be universal. The police need not sit tight more than for a sensible time for a counsel's landing.

Nandini Satpathy's Case makes an unmistakable takeoff from the exacting understanding position of the Supreme Court in prior cases. The case added an extra fortress to the right to counsel. The Supreme Court went a stage forward in holding that Article 22(1) does not imply that persons who are not entirely apprehended or under custody can be denied the right to counsel. The Court expanded this right to incorporate right to insight to any accused person under circumstances of close custodial examination. Be that as it may, the Court took the assistance of Article 20 (3) and Miranda decision for this liberal elucidation.

In *Joginder Kumar v. State of U.P.*,[72] the Supreme Court held that right of arrested person upon solicitation, to have somebody educated about his arrest and right to counsel secretly with legal advisors are intrinsic in Articles 21 and 22 of the Constitution. The Supreme Court watched that no arrest can be made on the grounds that it is legal for the Police officer to do as such. The presence of the power to arrest is one thing. The avocation for the activity of it is entirely another. The Police Officer must have the capacity to legitimize the arrest separated from his power to do as such. Arrest and confinement in police lock-up of a person can bring about inestimable mischief to the notoriety and self-regard of a person. No arrest ought to be made by Police Officer without a sensible satisfaction came to after some examination as to the validity of a

[72] A.I.R. 1994 S.C. 1349.

sensible conviction both as to the person's complicity and even in order to the need to impact arrest. The Supreme Court issued the accompanying prerequisites:

(1) An arrested person under custody is entitled, on the off chance that he so demands, to have one companion, relative or other person who is known to him or liable to take an enthusiasm for his welfare told similarly as practicable that he has been arrested and where is being kept under custody.

(2) The Police Officer might advise the arrested person when he is presented to the police station of this right.

(3) A note might be required to be made in the Diary with reference to who was made known of the arrest.

These assurances from power must be held to spill out of Articles 21 and 22 (1) and implemented entirely. The above prerequisites might be followed in all instances of arrest till lawful provisions are made for this sake.

Section 56 (1) of the Police and Criminal Evidence Act, 1984 in England provides:

> *"These protections from power must be held to flow from Articles 21 and 22 (1) and enforced strictly. The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf."*

Custodial demise is maybe one of the most exceedingly terrible violations in a socialized society represented by the Rules of Law. The rights given under Article 21 and 22 (1) of the Constitution require to be enviously and carefully ensured. Any type of torment or brutal, barbaric or debasing treatment would fall inside of the hindrance of Article 21 of the Constitution, whether it happens amid examination, investigation or something else. The valuable right ensured by Article 21 of the Constitution can't be denied to convicts, under-trials, and different detainees in custody, with the exception of as per procedure set

up by law by putting such sensible limitations as are allowed by law. In this way, the Supreme Court issued in *D.K.Basu v. State of W.B.*[73] the accompanying prerequisites to be followed in all instances of arrest or confinement till lawful provisions are made for that sake as preventive measures:

"(1) The police personnel completing the arrest and taking care of the examination of the arrestee ought to tolerate precise, unmistakable and demonstrate ID and their designations. The particulars of all such police personnel who handle investigation of the arrestee must be recorded in a register.

(2) That the police officer completing the arrest of the arrestee might set up a reminder of arrest at the time of arrest and such notice should be authenticated by no less than one witness, who might be either an individual from the group of the arrestee or a respectable person of the area from where the arrest is made of the accused. It should likewise be countersigned by the one who is making an arrest and might contain the time and date of arrest.

(3) A person who has been arrested or confined and is being held in custody in a police station or cross examination focus or other lock-up should be qualified for have one companion or relative or other person known not or having enthusiasm for his welfare being educated, when practicable, that he has been arrested and is being kept at the specific spot, unless the confirming witness of the notice of arrest is himself such a companion or a relative of the arrestee.

(4) The time, spot of arrest and venue of custody of an arrestee must be informed by the police where the following companion or relative of the arrestee lives outside the locale or town through the Legal Aid Organization in the District and the police station of the zone concerned telegraphically inside of a time of 8 to 12 hours after the arrest.

(5) The person arrested must be made mindful of this right to have somebody educated of his arrest or confinement when he is put nabbed or is kept.

[73] A.I.R. 1997 S.C. 610.

(6) A section must be made in the journal at the spot of detainment with respect to the arrest of the person which should likewise unveil the name of the following companion of the person who has been educated of the arrest and the names and particulars of the police authorities in whose custody the arrestee is.

(7) The arrestee ought to, where he so demands, be additionally analyzed at the time of his arrest and major and minor wounds, if any, present on his/her body, must be recorded at that time. The "Assessment Memo" must be marked both by the arrestee and the police officer affecting the arrest and its duplicate gave to the arrestee.

(8) The arrestee ought to be subjected to therapeutic examination by a prepared specialist like clockwork amid his detainment in custody, by a specialist in the board of endorsed specialists delegated by Director, Health Services of the concerned State or Union Territory. Executive, Health Services ought to plan such a board for all Tehsils and Districts too.

(9) Copies of the considerable number of archives including the reminder of arrest, alluded to above, ought to be sent to illaqa Magistrate for his record.

(10) The arrestee might be allowed to meet his legal advisor amid cross examination, however not all through the cross examination.

(11) A police control room ought to be given at all Districts and State central command, where data in regards to the arrest and the spot of custody of the arrestee might be conveyed by the Officer bringing about the arrest, inside of 12 hours of affecting the arrest and at the police control room it ought to be shown on a prominent notification board."

D.K. Basu's Case[74] not just ventures a way of few stages in front of Joginder Kumar but additionally takes a major jump forward. In its uneasiness to ensure the hobbies of the arrested person, the Court has shown a case of legal over activism rather legal

[74] Supra fn-50

waywardness. The case sounds demise toll to Montesquieu's hypothesis of division of powers amongst three organs of the State.

In spite of the fact that these eleven necessities involve human rights statute and it would be in the wellness of the things, if these were law, the above mentioned eleven prerequisites set around the Supreme Court, it is submitted, can't have the status of law as its source is not law but rather judiciary. It might be noticed that these necessities were held to spill out of Article 21 and 22 (1) mutually.

6.3 RIGHT TO BE PROVIDED WITH A LAWYER BY THE STATE

In *M.H. Hoskot v. State of Maharashtra*,[75] it was seen by the Supreme Court that as a rule and subject to only exceptions, no less than a solitary right of appeal on facts, where criminal conviction is laden with long loss of liberty, is fundamental to jurisprudence. Each stride that makes the right of appeal productive is compulsory and each action or inaction which stifles it is out of line and unlawful. Appropriate to the fact are two necessities : (i) service of a duplicate of the judgment to the detainee to give sufficient time for an appeal and (ii) provision of free lawful administrations to a detainee who is destitute or generally crippled from securing legitimate help where the justice call for such service. Both these are State obligations under Article 21.

One of the elements of fair procedure to a detainee, who needs to look for his freedom through the court procedure, is legal advisor's services. Legal justice, with procedural intricacies, lawful entries and basic examination of confirmation, inclines upon expert aptitude and a disappointment of equivalent justice under the law is on the cards where such strong ability is truant for one side. The Indian socio-legitimate milieu makes free lawful administration at trial and other succeeding levels, a basic processual bit of criminal justice where hardship of life or personal liberty hangs in the legal equalization.

[75] A.I.R. 1978 S.C. 1548

Fractional statutory usage of the command is found in S. 304 Cr. P.C., and in different circumstances courts can't be dormant even with Article 21 and 39-A.

Maneka Gandhi's Case[76] has set out that personal liberty can't be removed or chop down without reasonable legitimate procedure. Enough has been embarked to set up that a detainee, denied of his opportunity by court sentence however qualified for appeal against such decision, can assert, as a major aspect of his insurance under Article 21 and as suggested in his statutory right to appeal, the essential associative of right to advice to get ready and contend his allure. In the event that a detainee sentenced to detainment, is practically not able to practice his sacred or statutory right of appeal, comprehensive of unique leave to claim for need of legitimate help, it is verifiable in the Court under Article 142 read with Articles 21 and 39-A of the Constitution, power to dole out guidance for such detained individual 'for doing complete justice'. The induction is unavoidable this is a State's obligation and not Government's philanthropy. Just as confirmed is the suggestion that while lawful administrations must be allowed to the recipient the legal counselor himself must be sensibly compensated for his administrations. Actually, the State concerned must pay a sensible entirety that the court might alter when appointing direction to the detainee. Obviously, the court might judge the circumstance and consider from all edges whether it is essential for the finishes of justice to make accessible lawful guide in the specific case. That caution dwells in the Court.

Under this case, the party to the case, however offered legitimate aid by the Court, wanted to contend himself. The Court watched that even so it maintained the right to direct not in the tolerant feeling of Article 22(1) and its more extensive plentifulness however in the authoritative feeling of Article 21 kept to jail circumstances. The Court condensed the legitimate position as takes after:

i) Where the detainee is crippled from drawing in a legal counselor, on sensible grounds, for example, poverty or incommunicado circumstance, the

[76] 1978 AIR 597

Court might, if the circumstances of the case, the gravity of the sentence and the closures of justice so require, allocate skillful advocates for the detainee's case, but party should not object to that legal counselor.

ii) The State might pay to such advocate such amount as the court might impartially settle.

iii) These amiable prescriptions work by power of Article 21 [strengthened by Article 19 (1) (d) read with Sub-Art. (5)] from the least to the most elevated court where hardship of life and personal liberty is in considerable risk.

Article 22 (1) does not give to arrested person, right to be furnished with a legal advisor by the State. Notwithstanding, in *M.H. Hoskot's Case*[77] the Supreme Court did not dither to infer this right in Article 22 (1) and 21 together while squeezing into administration utilization of a Directive Principle of State Policy under Article 39 An of Equal Justice and free lawful guide. To take further backing for this suggestion it took help of Article 142 for doing complete justice. This is a sample of liberal interpretation of Article 22 (1) and different Articles of the Constitution which cuts out a right for the poor detainee or a detainee in incommunicado circumstance to be given advice by the Court at the State's expense. It appears that after the choice of Maneka Gandhi giving another view to the Article 21, the Supreme Court's legal activism began blooming in such manner.

Hussainara Khatoon v. State of Bihar[78] emphasizes the right of each accused person who can't hire an attorney because of reasons, for example, destitution, poverty or incommunicado circumstance, to have free legitimate administrations given to him by the State. The Court added a further security to this right by holding that if free lawful administrations are not given to such person, the trial itself might run the danger of being vitiated as repudiating Article 21

[77] Supra fn-71
[78] A.I.R. 1979 S.C. 1377.

The Case of *Ranjan Dwivedi v. Union of India*,[79]brought up an issue whether the "right to be protected by a legitimate practitioner of his choice" under Article 22 (1) of the Constitution includes the right of an accused to be supplied with a legal counselor by the State. The Supreme Court held that the accused applicant who is being striven for homicide under the watchful eye of the Sessions Court is not qualified for the gift of a writ of mandamus for the implementation of the Directive Principle cherished in Article 39 A by appointing the Union of India to give budgetary help to him to connect with a guidance of his decision on a scale identical to, or proportionate with, the charges that are being paid to the insight showing up for the State. As is clear from the terms of Article 39 A, the social target of equivalent justice and free legitimate guide must be actualized by suitable enactment. The cure of the petitioners, if any, lies by method for making an application in the witness of the Trial Court under sub-section (1) of S. 304 of the Cr. P.C, not by a request under Article 32 of the Constitution.

The Court further noticed that in spite of the fact that in the prior choices the Court paid insufficient regard to the Directives on the ground that the Courts had little to do with them since they were not justiciable or enforceable, similar to the Fundamental Rights, the obligation of the Court in connection to the Directives came to be underlined in the later choices setting out certain expansive recommendations. One of these is that there is no disharmony between the Directives and the Fundamental Rights since they supplement each other in going for the same objective of achieving a social insurgency and the foundation of a Welfare State, which is imagined in the Preamble.

The Courts along these lines have an obligation in so deciphering the Constitution as to guarantee usage of the Directives and to blend the social goal basic the Directives with the individual rights. Basically, the order in Article 39 An is tended to the Legislature and the Executive, however seeing that the Courts of Justice can enjoy some legal law making inside of the interstices of the Constitution, the courts too are bound by this command. Numerous times, it might be troublesome for the accused to discover adequate intends to draw in a legal advisor who is competent to deal with his case. In such cases, the Court has the power to allow free legitimate guide if the justice so require. The cure

[79] A.I.R. 1983 S.C. 624.

of the candidate in this way, is to make an application under the watchful eye of the Sessions Court presenting out a defense for the award of free legitimate guide and if the Court is fulfilled that the prerequisites of Sub-sec. (1) of Section 304 of the Code are satisfied, he might make vital bearings for that sake.

S. 304 (1) of Criminal Procedure Code reads:

> *"304. (1) where, in a trial before the Court of Session, the accused is not represented by a pleader and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State."*

6.4 RIGHT TO BE PRODUCED BEFORE A MAGISTRATE:

Whether the Abducted Persons (Recovery and Restoration) Act 65 of 1949 abuses Article 22 and whether the recuperation of a person as an abducted person and the conveyance of such person to the closest camp can be said to be arrest and confinement inside of the significance of Article 22 (1) and (2) was the inquiry intricately managed by the Supreme Court in *State of Punjab v. Ajaib Singh*[80].

This appeal emerged out of a habeas corpus request recorded by one Ajaib Singh in the High Court of Punjab for the creation and arrival of one Sardaran assumed name Mukhtiar Kaur, a young lady of around 12 years old. The material facts were: The candidate Ajaib Singh had three abducted persons with him. The police of Ferozpore, on 22-6-1951 assaulted his home and took the young lady into custody and conveyed her to the custody of the Officer accountable for the Muslim Transit Camp at Ferozpore from whence she was later exchanged to and held up in the Recovered Muslim Women's Camp in Jullundhur City. The young lady was a Muslim abducted by the applicant amid the uproars of 1947 and was, consequently, a abducted person as characterized in S. 2 (1) (an), Abducted Persons (Recovery and Restoration) Act 65 of 1949. The Police Officers

[80] Supra fn-1

suggested in their report that she ought to be sent to Pakistan for reclamation to her closest relative.

Riots which took place in India and Pakistan at the time of partition of August 1947 bringing about an epic mass migration of Muslims from India to Pakistan and of Hindu and Sikhs from Pakistan to India. There were deplorable stories of abduction of ladies and kids on both sides of the frontier. On 11-11-1948 an Inter-Dominion Agreement in the middle of India and Pakistan was landed at for the recuperation of abducted persons on both sides of the frontier. To actualize that agreement Act 65 of 1949 was passed.

The expression "abducted person" is defined by S. 2 (1) (a) as meaning:

> *"A male child under the age of sixteen years or a female of whatever age who is or immediately born before 1-3-1947, was a Muslim and who, on or after that day and before 1-1-1949 has become separated from his or her family, and in the latter case includes a child born to any such female after the said date."*

Section 4 of the Act, which is critical, gives that if any police officer, not underneath the rank of an Assistant Sub-Inspector or whatever other police officer exceptionally approved by the state Government for that benefit, has motivation to trust that an abducted person lives or is to be found in wherever, he might, record the purposes behind his reason to do so, without warrant, enter and take into custody any person discovered in that who, as he would see it, is an abducted person, and convey or cause such person to be conveyed to the custody of the officer responsible for the closest camp without any unnecessary deferral.

The Supreme Court held that the Act did not violate the provisions of Article 22 of the Indian Constitution.

The Constitution charges that each person arrested and confined in custody should be delivered before the closest Magistrate inside of 24 hours barring the time imperative for

the transfer from the spot of arrest to the Court of the Magistrate, yet S. 4 of the Act requires the police officer who takes the abducted person into custody to convey such person to the custody of the officer responsible for the closest camp for the gathering and confinement of such persons. The nonattendance from the Act of the healthy provisions to be found in Article 22 (1) and (2) as to the right of the arrested person to be educated of the grounds of such arrest and to counsel and to be protected by a lawful practitioner of his decision is additionally noteworthy.

The sole point for the thought of the Court was whether the taking into custody of an abducted person by a police officer under S. 4 of the Act and the conveyance of such person by him into the custody of the officer responsible for the closest camp can be viewed as arrest and confinement inside of the significance of Article 22(1) and (2).

The Court watched that the aftereffect of putting such a wide definition on the expression "arrest" happening in Article 22 (1) and (2) will render numerous enactments illegal, for instance the arrest of a respondent before judgment under the provisions of O. 38, R. 1, C.P.C. on the other hand the arrest of a judgment account holder in execution of an announcement under S. 55 of the Code will, on this speculation, be illegal because of the fact that the Code accommodates the creation of the arrested person, not before a Magistrate but rather under the watchful eye of the Civil Court which made the request. On the off chance that two developments are conceivable, then the Court must embrace what will guarantee smooth and agreeable working of the Constitution and shun the other which will prompt ludicrousness or offer ascent to practical drawback or make entrenched provisions of existing law useless.

The Court further watched that extensively talking, arrests might be grouped into two classes, to be specific, arrests under warrants issued by a Court and arrests generally than under such warrants. The warrant obviously needs to express that the person to be arrested stands accused of a specific offense. The warrant ex facie sets out the explanation behind the arrest, specifically, that the person to be arrested has committed or is suspected to have committed or is liable to commit some offense. So, the warrant

contains a reasonable allegation against the person to be arrested. Section 80 (now S.75) of CrPC, requires that the police officer or other person executing a warrant must tell the substance thereof to the person to be arrested, and, if so required, should demonstrate to him the warrant. It is in this way plentifully clear that the person to be arrested is educated of the justification for his arrest before he is actually arrested.

Aside from the Code of Criminal Procedure, there are different statutes which accommodate arrest in execution of a warrant issued by a Court. For instance O. 38, R. 1, C.P.C. approves the court to issue a warrant for the arrest of a litigant before judgment in specific circumstances. The Court might under S. 55 read with O. 21, R 38 issue a warrant for the arrest of the judgment-indebted person in execution of the pronouncement. The point to be noted is that, as on account of warrant of arrest issued by a Court under the Code of Criminal Procedure, a warrant of arrest issued by a Court under the Code of Civil Procedure doubtlessly reveals the explanation behind the arrest and the person to be arrested is made familiar with the purposes behind his arrest before he is actually arrested.

In *Arnesh Kumar vs. State of Bihar*[81], the Supreme Court has delivered the verdict which has effectively established the relationship between the police and public. This judgement was from an appeal preferred by a person apprehending his arrest in a case under Section 498-A of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961.

Keeping in mind the end goal to anticipate pointless arrest and causal and mechanical confinement, the Court has issued these requirements:

a) All the State Governments to order its police officers not to instantly arrest someone when a case under Section 498-A of the IPC is enrolled however to fulfill themselves about the need for arrest under the parameters set down above spilling out of Section 41, CrPC;

[81] (2014) 8 SCC 273

b) All police officers to be given a check list containing specified sub- clauses under Section 41(1)(b)(ii), which would facilitate them in the process of arrest;

c) The police officer should forward the check list properly documented and outfit the reasons and materials which required the arrest, while sending/creating the accused before the Magistrate for further confinement;

d) The Magistrate while approving confinement of the accused might scrutinize the report filled by the police officer in format which is previously stated and after realizing that the report is satisfactory, the Magistrate will approve detainment;

e) The choice not to arrest an accused, be sent to the Magistrate inside of two weeks from the date of the institution of the case with a duplicate to the Magistrate be sent which might be stretched out by the Superintendent of police of the area for the reasons to be recorded in written form;

f) Notification of appearance as far as Section 41A of Cr.PC be served on the accused inside of two weeks from the date of establishment of the case, which might be stretched out by the Superintendent of Police of the District for the reasons to be recorded in written form;

g) Inability to follow the points aforementioned might render the police officers concerned at risk for departmental action, they should likewise be obligated to be rebuffed for contempt of court to be organized in the witness of High Court having territorial jurisdiction.

h) Approving confinement without recording reasons as aforementioned by the judicial Magistrate concerned might be subject to departmental action by the proper High Court.

6.5 GUIDELINES OF THE SUPREME COURT ON HAND CUFFINGS:

The Hon'ble Supreme Court has given its Judgments in the accompanying cases on the matter of hand cuffings with reference to when they are to be needed and not to be needed.

(i) When to use the hand cuffings

In *Prem Shankar Shukla Vs Delhi Administration*[82], the Supreme Court held that the cuffs can be utilized by the escorting police party if the detainee is perilous and edgy, or if the detainee is liable to break out of custody or play the vanishing traps and if not then there is no need to make use of those handcuffs while transferring the accused from one place to another. The escorting party must from the assessment on the premise of predecessors of the detainee.

Further, in *Sunil Gupta Vs State of M.P.*[83], the Supreme Court held that the escorting power ought to record contemporaneously the explanations behind using handcuffs for under trial detainee even in compelling cases and inform the court, so that the court might consider the circumstances and issue vital bearing to the escort party.

(ii) No hand cuff in general –

In *Sunil Batra Vs Delhi Administration*[84], the Supreme Court kept up that the cuffs ought not to be utilized as a part of standard way. The base flexibility of development which even on under trail detainee is qualified for under Article 19 of the constitution, cannot be chopped down remorselessly by use of bind or different bands.

Further, in *Prem Shankar Shukla Vs Delhi Administration*[85], Apex Court held that the person can't be cuffed simply because he is accused of grave offense not just as to make work of the escort party simpler. The standards, regulation and manuals of different statutes approving the Police to utilize cuff have been struck down as violated of Article 14 of the Indian Constitution.

In the same above mentioned case (Prem Shankar Shukla) the Supreme Court has laid down certain alternatives of handcuffs so as to abolish the practice of use of handcuffs: "The alternatives are;

i) Increase in the number of escorts;

ii) Arm the escort party, if necessary;

[82] AIR 1980 SC.1535
[83] 1990 SCC (Cr.) 440
[84] AIR 1978 SC 1675
[85] Supra fn- 82

iii) Give special Training to escort party;

iv) Transport of prisoners in protected vehicle."

By adopting the above methods, the handcuffing is virtually brought to negligible use in the State of Tamil Nadu.

6.6 INTERNATIONAL HUMAN RIGHTS STANDARDS GOVERNING THE RIGHTS OF ARRESTED PERSONS-

6.6.1 Concept and Philosophy of Human Rights

Universal Declaration of Human Rights by the U.N. on tenth December, 1948 connects significance to the assurance of life and liberty of the individual and put accentuation on admiration for human respect. It is currently an International Law and Constitutional provision of ensuring common, political, cultural and social rights of the individual and group without separation of race, shading, religion and standing under the umbrella of the U.N. furthermore, the Indian constitution.

According to the provisions of human rights, life and pride of the individual cannot be infringed to taken away by the Government or by its hardware or by any overwhelming gathering with the exception of by the due procedure built up by law. All are equivalent in the witness of law. Nobody will be subjected to discretionary arrest or confinement. No accused or person ought to be subjected to brutal and unfeeling treatment in the hands of police, Magistrate and Jail organization. Subsequently, provisions of human rights are worried with the rightful mentalities in the organization of criminal justice and additionally helpful methodology in the organization of the Criminal law.

There are up to 30 articles in the Universal Declaration of Human Rights by the U.N. Articles 3-21 manage the social and political rights of the individual, Articles 22-27 manage monetary, social and cultural rights of the individual and gatherings of the people.

Article 3 says "everyone has the right to life, liberty and security of person".

Article 5 says “no one shall be subjected to torture or to a cruel in human or degrading treatment or punishment”.

Article 9 lays down, that “no one shall be subjected to arbitrary arrest, detention or exile”.

6.6.2 Universal legal responsibility: All States are bound by the law

Article 9(1) of the International Covenant on Civil and Political Rights, Article 6 of the African Charter of Human and Peoples' Rights, Article 7(1) of the American Convention on Human Rights and Article 5(1) of the European Convention on Human Rights ensure a person's right to "liberty" and "security". Besides, as expressed by the International Court of Justice in its decree in the Hostages in Tehran case, "wrongfully to deny individuals of their independence and to subject them to physical imperative in states of hardship is in itself contrary with the standards of the Charter of the United Nations, and with the fundamental standards articulated in the Universal Declaration of Human Rights", Article 3 of which ensures "the right to life, liberty and security of person". It takes after that, despite that a State might not have confirmed or generally stuck to any of the former human rights settlements, it is nonetheless bound by other lawful sources to guarantee a person's right to regard for his or her liberty and security.

The Human Rights Committee has along these lines held that article 9(1) of the Covenant "ensures the right to security of person likewise outside the setting of formal hardship of liberty", and that an elucidation of Article 9 "which would permit a State gathering to overlook dangers to the personal security of non-kept persons subject to its jurisdiction would render absolutely ineffectual the insurances of the Covenant". In the perspective of the Committee, "the facts cannot confirm that, as an issue of law, States can disregard known dangers to the life of persons under their jurisdiction, since he or she is not arrested or generally kept"; unexpectedly, "States gatherings are under a commitment to take sensible and suitable measures to secure them".

Article 9(1) of the International Covenant on Civil and Political Rights reads as follows: "1. everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

Article 6 of the African Charter on Human and Peoples' Rights provides that: "Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."

Article 7 of the American Convention on Human Rights provides, inter alia, that:

"1. Every person has the right to personal liberty and security.

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

3. No one shall be subject to arbitrary arrest or imprisonment."

The European Convention on Human Rights is the only treaty that specifically enumerates the grounds which can lawfully justify a deprivation of liberty in the Contracting States. This list is exhaustive and "must be interpreted strictly". The first paragraph of its Article 5 reads: "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an

offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) The detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) The lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

CONCLUSION

Early India had seen an intense change of laws as at first, the Law or Dharma, as propounded in the Vedas was viewed as preeminent in old India for the King had no authoritative power. Be that as it may, step by step, this circumstance changed and the King began making laws and regulations keeping in perspective the traditions and neighborhood utilizations. Insofar as the region was little, the type of organization was pretty much law based; however as the measure of the domain developed extensive, it was discovered important to embrace a framework in which political powers were moved in the hands of the Head of the State helped by a Council of Ministers and a prepared administration. Indeed, even old criminal statute perceived that lawbreakers were not conceived but rather made. The motivation behind penology appeared to make an offender a non-offender. Antiquated Smriti essayists conceived these thoughts. The antiquated Smriti authors fittingly paid thought to uniqueness of the offender. The Smriti journalists in their works had alluded the arrival of offenders by virtue of good lead and respectability of character, which appears to maintain the late idea of Probation.

However there are proofs of torture against the arrested persons or accused persons yet the rights of arrested persons as reasonable trial, right of appeal, right to analyze witnesses and right of being represented by an advocate, right against torture, are found in numerous scripts amid early India. Brihaspati and Narda had specified certain grounds where there was exemption from being arrested. Insusceptibility from punishment taking into account humanitarian grounds was material regardless of caste system. Along these lines, in the midst of every single other irregularities or cruelty of administration of justice, doubtlessly the compassionate laws existed since old time and created with the advancement of the general public.

Police Officers are depended with more extensive powers of arresting a person without warrant. Yet, this power of arrest must be as per Law not something else. Arrest is without a doubt a genuine impedance with the fundamental right of the personal liberty of the citizen, which incorporates an arrestee or an accused, ensured under Articles 21 and

22 of the Constitution of India and it must be entirely as per the Law to be gotten away from, the arresting power, from punishment. So as to practice successfully the power of arrest by a police officer, he should be knowledgeable with legitimate provisions regarding arrest, Supreme Courts rules regarding arrest breakthrough, especially, while arresting ladies, youngsters, legal officers, M.L.A's and M.Ps and open workers and so on. In addition, the police ought to implement the provisions identifying with arrest honestly and fairly without trepidation of support, malignance or perniciousness. Furthermore the police ought to extend their picture as the defender of Human Rights.

It is by and large trusted that disregarding the different protections in the CrPC. and the ones in the Constitution, the power of arrest given to the police is being abused till this day. It is additionally trusted that the police frequently utilize their position of power to undermine the arrested persons and exploit their office to blackmail cash. There have likewise been endless reports on custodial roughness that persuade that hardship of fundamental rights of the arrested persons has gotten to be typical these days.

The Mallimath Committee in its Report on the changes in the Criminal Justice System has expressed that the accused has the right to know the rights given to him under law and how to utilize such rights. There have additionally been instances that the police neglect to advise the persons arrested of the charge against them and consequently, let the arrested persons wallow in custody, in complete lack of awareness of their asserted wrongdoings. This has been credited to the Colonial way of our Criminal Justice System where the obligation of arrest was pushed onto the Indian officers while the Britishers drew up the charge against the accused. Accordingly, it is altogether conceivable that the English starting points of the Indian Criminal Justice framework might have come about unwittingly in the rights of the arrested persons getting lost in an outright flood.

There is approaching need to get changes in Criminal Justice Administration so State ought to perceive that its essential obligation is not to rebuff, but rather to mingle and change the wrongdoer or above all it ought to be obviously comprehended that socialization is not indistinguishable with discipline, for its involves avoidance, training, consideration and restoration inside of the system of social barrier. Along these lines, at

last we find that Rule of law manages the functionary of each organ of the state apparatus, including the system in charge of directing prosecution and examination which should restrict themselves to the four corners of the law.

It is the obligation of the police to secure the rights of society. It must be recollected that this general public incorporates all individuals, including the arrested. Subsequently, it is still the police's obligation to ensure the rights of the arrested person. Subsequently, in light of the before mentioned provisions, a police officer must ensure that handcuffs are not utilized pointlessly, that the accused is not hassled unnecessarily, that the arrested person is made mindful of the grounds of his arrest, educated whether he is qualified for bail and obviously, delivered before a Magistrate inside of twenty-four hours of his arrest.

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