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An Overview on the Rights of Arrested Persons under Indian Law

VASUNDRA V.¹ AND DR. HINA KAUSAR²

ABSTRACT

Human rights and violation to it as the never-ending problem in a society like India, where everything is diverse in culture and more traditional. Since the time, the society started evolving, the need human rights have also started evolving. Still, being in the country where there is a Case and Religion system, patriarchal mindset and lack of education, most of the people does not even know their basic human rights. This leads to the question of awareness in them about the rights of begging an arrested person. Though all the person arrested are not a actual accused, they are mostly targeted from the rural areas, uneducated, minority communities, marginalized communities, women, and etc. This is because, the Indian society still sticks back into the certain behaviours as the culture in which even the violation of human rights has changed into a culture. To prevent the rights from any kind of violation, we must know the rights first apart from being a Peron who is in conflict with law or not. Thus, the study on the rights of arrested person in India is an indispensable one for promoting a fair justice, protecting the human dignity and ensuring the effective functioning of the Indian criminal justice system. This paper provides a detailed study on the rights of arrested persons in India, by examining the legal protections given by The Indian Constitution, The statutory provisions and the judicial interpretations. The study, by scrutinizing the landmark judgments, relevant case laws and provisions, it focuses on each right of an arrested person separately in detail under an umbrella of rights before trial and rights at the time of trial. The paper concludes with analysing the effectiveness in implementing the rights and related laws of arrested person in India, today, and with the need to uphold the human dignity within the criminal justice system.

Keywords: *arrested person, Human rights, types, violation, fair justice.*

I. INTRODUCTION

The Indian criminal justice system is extensively a product of British rule. Thus, the major components or pillars in the Indian criminal justice system are the police force, the prosecutor, the defence, the judiciary and the prisons. The main objective of these organs is to work towards the protection of life and personal liberty of its each individual. Individuals including the

¹ Author is an LL.M. student at School of Legal Studies, REVA University, India.

² Author is an Assistant Professor at School of Legal Studies, REVA University, India.

persons who are in conflict with law, who may be arrested or accused, who may be convicted or acquitted. Arrested persons are those who are suspected or identified in the commission of an offence. The arrest will basically be made by the police officers or any other person as authorized by law, who will again produce such arrested person in the hands of police authorities only. The law provides certain legal and fundamental rights to the persons who are found to be in contradictory with law, in the process of their arrest, detention, interrogation, trial and the punishment.

It is mandatory in India that to treat every person as a human being first, irrespective of their status in the society. As this rule applies to every human being in India, the arrested persons are also a human being irrespective of the fact that they are a criminal or an innocent. Thus, in any democratic country like India, where the Criminal Judiciary system runs as in considering the accused as “an innocent person” until his guilt is proven by the prosecution. The rights of an individual who is in conflict with law are as much as considered even though the restrictions to it exists, the law never fails in providing such a basic human right and the rights which the person himself as an arrested person or an accused has.

But, to prevent those rights from any kind of violation, misuse or abuse from the authorities incharge, it is difficult, as such violations happens targeting an individual from rural areas, uneducated, minority communities, marginalized communities, women, and etc. Those people falling under any of this community, if arrested, being unaware about their rights, are exploited. It can be said that the lack of awareness and knowledge in the society about their rights, if they are arrested for any unlawful act raises the simultaneous act of violation by the authorities. It is clear that those authorities who are responsible for law enforcement in the society, who are responsible to inform the arrested person about their rights and who should protect such rights, are those who are violating the same rights as large. Thus, to prevent the violation of the arrested person’s human rights by law enforcing authorities or by anyone who is responsible for such person, it is mandatory to know who falls under the term “arrested persons” and to make them aware about the rights that they are given with in India.

(A) Arrest

An arrest is the tool of lawfully taking a person into the custody as they may be suspected of an offence because he is comprehended for doing wrongful act. An arrest is basically an important procedure of any criminal justice system which is done mostly without warrant and sometimes after a court warrant by the law enforcing authorities. It constitutes the further procedures like interrogation and investigation which may result in detaining.

(B) Who is an arrested person?

An “Arrested person” is who has been apprehended or detained by the law enforcing authorities on the suspicion or observance of committing a crime. It is basically when a police officer or the persons prescribed by under law³ takes an individual who is suspected or observed of committing an offence into the custody by an arrest, then such person will become an “arrested person”. It is not mandatory that, all the arrested person are the accused or convicts but they are also not the innocents. Once an individual is taken into the custody by the police through an arrest by themselves with or without warrant or by any person, such individual becomes an arrested person. Typically, the term applies to those who has been taken into the custody formally and being held by the police authorities or any other law enforcing agencies, pending further legal proceedings where such person’s individual freedom will be taken down temporarily and they will be subjected to the legal processes including booking, detention and potential charges where he will be deprived of his freedom of movement and that he will be held to answer for an offence he committed or charged with.

II. DETENTION OF AN ARRESTED PERSON

Detention generally means keeping a move of an individual in restrictions may be within the four walls. In law, it is basically depriving an individual’s freedom and detained by law enforcement authorities. Detention in the subject matter of an arrest, it refers to the time period during which an individual arrested is held in the custody of the law enforcement authorities which occurs immediately after an arrest and lasts until the individual is either released or presented before the Magistrate office or the court.

After an arrest, this detention period includes the various key processes which typically occurs in accordance with law,

1. Interrogation

It is the process where the police authorities to gather more information for example the intention, plan, people and other facts behind the alleged offence will question the arrested person.

2. Booking of an accused

The personal information of an arrested person including the name, address and other details to be recorded in an official register will be collected by the police officers. Fingerprints and the photographs of that person may also be taken after an arrest is made. In case of the false

³ The Criminal Procedure Code, 1973, § 41, 42, 43, 44, No. 2, Act of Parliament, 1973 (India).

information the police officers will proceed further in accordance with law.

3. Search

For the purpose of any evidence related to the alleged offence, the person may be searched. If such evidence is found then the police officers will collect it and make a proper document of such discovery. This kind of evidence can include any weapons, stolen property, drugs, or documents relevant to the case.

4. Rights notification

It is obligated to the police authorities under law to inform an arrested persons about the rights they have being charged with an offence.

5. Investigation

Investigation is also done by police officers or any other law enforcing agencies during the detention period to gather more evidences against the person arrested.

6. Bail consideration

There are certain cases where the bail will be considered even during the period of detention and that police officer incharge should inform and can release the arrested person from the custody of police, if such bail is granted with pending further legal proceedings, it can be done through any surety as provided.

7. Charge sheet preparation

This is the significant role played by a police authority in any criminal cases where if there is sufficient evidence, then they may prepare a charge sheet outlining the details of the charges against the person arrested.

8. Trial consideration

Though the police authorities work for the state and prosecution, they are also obligated to inform about the proceedings of the court to the person arrested.

Person being in the status of arrested person, may in further have various legal implications and actions, in which he/she can be charged with crime or released on bail or if there is no enough evidence from the prosecution side to proceed with, then he/she will be released from the charges. The time duration of the detention may vary depending on the various factors such as jurisdiction, nature of an offence alleged and procedures of law in place. But throughout this period of detention, the arrested individual's rights must be informed, respected and protected by the officers incharge which includes the right to protection against the physical or

psychological abuses.

III. NEED FOR THE RIGHTS OF ARRESTED PERSON

Rights in various forms can be shed under the umbrella terms of the fundamental Rights, the human rights and the constitutional rights. Human rights are the basic, fundamental and legal rights and freedoms that every individual have regardless of their nationality, ethnicity, gender, religion or any other societal status, which are inherent to all the human beings, where they have it simply by the virtue of being human. Thus, these rights are typically classified into various categories as civil rights and political rights, cultural rights, economic rights and social rights. India being a democratic country, has its characteristics of treating every person as a human being irrespective of any of their social status in the society. This is applicable to each human being and thus it is applicable even to the arrested persons irrespective of them being charged with or without the offence.

Also, the Criminal Justice system in India, depends on treating a person in conflict with law as an “innocent until his guilt is proved”. Article 21⁴ of the Indian Constitution⁵ may get violated by the process of an arrest, which states that “no person shall need his right to life and the personal liberty except the procedure established by law” and it states that the procedure must be fair, transparent and not repressive.

It is always an argument, if the topic arises on the need for rights of an accused to prevent from the violation of their rights. Though some say that it is mandatory to restrict the rights of the arrested persons or an accused, in the evolution of this society, the rights evolve and disappear. In continuing the argument, the basic rights such as right to family, property, food, shelter cannot be taken away from the arrested person, thought he is charged with an offense and punished with an imprisonment. Law may penalize the accused with the maximum punishments but it cannot penalize the same person by taking away his whole rights, instead, it can only restrict on such rights from the person to enjoy it as the normal person in the society. The best example for it would be the restrictions in the right to movement or right to privacy of an arrested person or an accused person at the police or judicial custody, where they cannot move or have a private life as the other normal people do.

Thus, it is the state’s duty, as given under the constitution of India to provide certain rights to the person in conflict with law mandatorily as he falls into the simple category of being a human. Thus, the rights of person in conflict with law as an arrested person or accused person is

⁴ INDIA CONST. art. 21

⁵ INDIA CONST.

provided in the Indian constitution⁶, as well as here and there in the Criminal procedure Code, 1973⁷ and The Indian Penal Code 1860.⁸

Rights of an arrest persons are much needed for several reasons including

1. To protect them from abuse and violence by anyone involved in the process of justice.
2. Presuming them as an innocent person until their guilt is proven by the prosecution side as burden of proof is on them.
3. Provide them with fair legal processes as given in the Indian Constitution to have a fair and equal trial with transparency including having a legal counsel and etc.
4. Preventing the coerced confessions which is basically a forceful confession by the prosecution.
5. To maintain the dignity as a human being that he had in the society.
6. So, make sure the authorities accountable for their illegal or violation in any of their duties towards the arrested or accused person.
7. This may increase the level of trust on the legal system by the public and which will make them to approach the legal system and that may prevent the wrongful convictions.
8. Rights also contributes the stability of the society through its framework check.

It is clear that the rights for an arrested persons are much needed and a cornerstone of just and a democratic society. By balancing the need for law and the individual freedom protection, it will ensure that justice is served fairly and without partially and that the rights of an arrested persons can be prevented from any kind of violation.

IV. RIGHTS OF AN ARRESTED PERSONS IN INDIA

Rights are given to each individual in this society just because they being a human being itself. In India. The person in conflict with law are also afforded with certain legal rights and the most basic rights which be found in the provisions of the Indian constitution⁹ and the Code of Criminal Procedure¹⁰ including the status of them, being an arrested person who may be an acquittal person or a convicted person later at the end of the trial.

Indian criminal laws are quite careful towards the rights of its citizens and without a proper

⁶ *Id.*

⁷ The Criminal Procedure Code, 1973, No.2, Act of Parliament, 1973 (India).

⁸ The Indian Penal Code, 1860, No.45, Act of Parliament, 1973 (India).

⁹ INDIA CONST.

¹⁰ The Criminal Procedure Code, 1973, Act of Parliament, 1973 (India).

legal sanction, it does not permit the detention of any person arrested. Indian Constitution's Article 21¹¹ provides a hope of rays to the lives of the arrested persons, under trials and the convicts and as to ensure their rights, they should be treated humane and, in a manner, prescribed by the law which is provided under the Article 21 of the Indian Constitution that "there will be no person who shall be deprived of his life or personal liberty except according to the procedure".

It is the misuse of power which is the most dangerous corruption in a country like India that arises out a power given to any official or person. Likewise, the power of arrest is one of such most corrupted and extorted source by the law enforcing authorities especially police authorities. Starting from the registration of case, taking a call to make an arrest or to not make an arrest or for any other purpose or for producing evidences the corruption starts. Police gets the power to make an arrest of any person concerned in cognizable offences, from the time, they register a case on a complaint of cognizable offence, on the basis of either by the complaint given itself or on the credible information received.

Thus, the procedures laid down by the Article 21 of the Constitution of India must be followed by them, which says that the arrest should be "right, just and fair" and should not be in arbitrary, fanciful or oppressive manner. The arrest in India is expected not only to be legal but also justified. So, to prevent such violations in the process of arrest, the arrested persons are given with the certain rights which is recognized as the rights of arrested Person under the Fundamental Rights in the Indian Constitution.

The rights of arrested persons include the rights of accused person as a part, as the arrested persons may also be an accused at the end of a trial. Hence, the arrested persons including the accused and acquittal person are been provided with the certain rights under law, which can be understood under the two umbrella terms and under which the arrested person gets his particular rights separately,

Rights at the time of an arrest

- Right to be informed with grounds of an arrest
- Right to know the substance or to see the warrant
- Right to inform the other persons
- Right to Silence

¹¹ INDIA CONST. art.21.

- Right to be presented before Magistrate
- Right with respect to detention
- Right information and released on Bail

Arrested person's Rights at the time of trial

- Right to fair trial
- Right to speedy trial
- Right to have a Legal Counsel
- Right to have a legal aid
- Right to be medically examined
- Right to produce evidence and other rights

In brief the above-mentioned rights are discussed below with the procedures and provisions prescribed under law.

(A) Arrested person's right at the time of an arrest

i. Right to be informed with the grounds of an arrest

Indian Constitution itself recognizes the right to have a protection against arrest and detention in certain cases as the fundamental right under the Article 22¹² which is one of the rights at the stage of arrest itself. Article 22(1) of the Indian Constitution states that "no person arrested shall be detained in custody without being informed as soon as may be, of the grounds of such arrest nor shall he be denied the right to consult, and to be defended by a legal practitioner of his/her choice."

As the person arrested may also be an innocent person, so, this right to inform him about his arrest and giving him the other rights with regard to such an arrest is very much important. The Code of Criminal Procedure leaves the duty on every police officer or on other persons who are capable of arresting any person without a warrant as prescribed by law, to communicate to the arrested person the full particulars of an offence for which he/she is arrested or other grounds for such arrest.¹³

Thus, right to information is not only amounts to the right to inform with the charges but also with the various other procedures and rights that law permits the arrested person to acquire. So,

¹² INDIA CONST. art.22.

¹³ The Criminal Procedure Code, 1973, § 50(1), No.2, Act of Parliament, 1973 (India)

if the arrested person gets to know about his grounds of arrest, then that enables him to get a right to apply for bail or writ of habeas corpus (in appropriate circumstances) or to make and arrange a suitable defence for himself. This will also give the arrested person, the right to inform about his arrest immediately to any person close to him (family, friends or any other person who is close to him).

Hence the further rights that an arrested person gets through Article 22(1)¹⁴ as right to be informed with the grounds of an arrest are being discussed below.

The Madhu Limaye case¹⁵ is an important precedent in India where it is remembered for its significance in shaping the understanding of freedom of speech and expression legally and for its important implications in concerning the arrest and detention procedures in India. The case arises from the arrest of the Madhu Limaye in the year 1966 under the charges of sedition. The question arises in his arrest about the legality and Constitutionality of Madhu Limaye's detention. He challenged his arrest, stating that it was a violation of his fundamental rights guaranteed under the Constitution of India. Thus, the key aspects related to arrest in this case can be discussed as

- Limaye brought the attention to the Article 21 of Indian Constitution.¹⁶
- This case raised the concerns about the law enforcing authority's procedures in making arrest through Limaye's argument on his arrest that it was arbitrary and politically motivated and lacked proper legal grounds.
- He challenged the lawfulness of his detention, asserting that it was a violation of his fundamental rights. He also argued that the sedition charges on his were baseless and that it was an attempt to stifle dissent through detention.
- This case ensures the importance of checking the legality of an arrest when Limaye approached the judiciary to challenge the validity of his arrest and seeking the protection for his Constitutional rights.

The judgment was in the favour of Madhu Limaye in the Court, emphasizing the protection of his fundamental rights of personal liberty and speech & expression. Court further declared the sedition charges against him as unconstitutional and released him. This case highlights the need for adherence to the legal procedures and protection of an individual rights during the activities of law enforcement authorities.

¹⁴ INDIA CONST. art.22. cl.2.

¹⁵ Madhu Limaye, re, (1969) I SCC 292 .

¹⁶ INDIA CONST. art.21.

ii. Right to know the substances or to see the warrant

Under the Code of the Criminal procedure¹⁷ the right of an arrested to know about the substance are given under two instances. One is when a “police officer deposes a subordinate to arrest the accused without a warrant”¹⁸. A police officer basically being in charge of a police station or if officer making an investigation under Cr.P.C. Chapter XII, then he requires a subordinate to him. So, any police officer directed by his senior officer, can make an arrest of any person without a warrant lawfully, but if it not in the presence of such senior officer, then before making an arrest, such subordinate officer should notify the person arrested about the substance and charges of the written arrest order, should specify the person to be controlled and then only the offence or other causes for which the arrest is to be completed. The officer so required, before making the arrest, should notify the person to be arrested about the substances, charges and details of the arrest order and also if it is asked or requires so, he should show the person to be arrested, the order as well. It says that if this Section is not complied with then the arrest would be considered illegal. The sub-Section 2 assures that the sub-Section shall not affect the powers given to police officers under Section 41¹⁹ of this Code.

Secondly, the “notification of substance of warrant” is directly given as a right of an arrested person under Section 75²⁰, which states that any person authorized to make an arrest by law (Police officer, private person or others), while executing an arrest warrant should notify the substance of such warrant to the person to be arrested and also if that person requires so, then he can be shown with the warrant.

iii. Right to inform the other persons

It is an obligation of the police officer or any other person who is making an arrest of any person for his offence, to inform about such an arrest to the persons nominated by the arrested person as prescribed by law. Section 50-A²¹ of the Code of talks about the “obligation of person making arrest to inform about the arrest etc., to a nominated person”. The provision says that,

- Any person having a power to make any arrest as prescribed under the Code of Criminal Procedure, shall give the information about an arrest made and the place where the person arrested is being held to any of person disclosed or nominated by the person arrested for this purpose of such information giving. It also states that the person

¹⁷ The Criminal Procedure Code, 1973, No.2, Act of Parliament, 1973 (India).

¹⁸ The Criminal Procedure Code, 1973, § 55, No.2, Act of Parliament, 1973 (India).

¹⁹ The Criminal Procedure Code, 1973, § 41, No.2, Act of Parliament, 1973 (India).

²⁰ The Criminal Procedure Code, 1973, § 75, No.2, Act of Parliament, 1973 (India).

²¹ The Criminal Procedure Code, 1973, § 50-A, No.2, Act of Parliament, 1973 (India).

disclosed or nominated by the arrested person can be any one of his parents, relatives, friends and others.²²

- As soon as the arrested person is brought to the police station, the police officer should inform the person arrested by them about their right to nominate a person to inform about their arrest under sub-Section 1 of Section 50-A.²³
- The details of the person nominated by the arrested to inform about his/her arrest should be entered in a register book kept for it in the police station in such a form that may be prescribed in this behalf by the particular State Government.²⁴
- This provision also provides the duty to a Magistrate on before whom such arrested person is produced to check whether the requirements under sub-Section (2) and sub-Section (3) have been fulfilled by the police officer within the respect of arrested person during the course of an arrest.

It was stated that the Articles 21²⁵ and 22(1)²⁶ of the Indian constitution are necessary in the case of *Joginder Singh Vs. State of Punjab*²⁷. It further stated that it is the right of an accused to inform his relatives, friends or any other person to whom he wants to inform about his arrest and so that such person may bring the surety amount and help in other legal proceedings. It also leaves an obligation to the police officer to inform about this ground as well as the grounds of arrest for which it is made and for the entry in the book.

Section 50-A²⁸ has been enacted with the rules originated from the decisions of the case of *Joginder Kumar Vs. State of Uttar Pradesh*²⁹ and *D.K. Basu Vs. State of West Bengal*³⁰. Through these cases the said provision makes it obligatory to the police officer not only to inform the nominated person by the arrested person about his arrest but also to enter the details of such nominated person in the book maintained in the police station. And the Magistrate observing that arrest is also obligated to satisfy himself about the compliance of procedures of such police with this regard.

iv. **Right to Silence**

The concept of “right to silence” has been derived from the principles of common law. It means

²² The Criminal Procedure Code, 1973, § 50-A (1), No.2, Act of Parliament, 1973 (India).

²³ The Criminal Procedure Code, 1973, § 50-A (2), No.2, Act of Parliament, 1973 (India).

²⁴ The Criminal Procedure Code, 1973, § 50-A (3), No.2, Act of Parliament, 1973 (India).

²⁵ INDIA CONST. art. 21.

²⁶ INDIA CONST. art 22. cl.1.

²⁷ *Joginder Singh v. State of Punjab*, 1985 Cri Lj 440 (P&H).

²⁸ The Criminal Procedure Code, 1973, § 50-A (1), No.2, Act of Parliament, 1973 (India).

²⁹ *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260:1994 SCC (Cri)1172.

³⁰ *D.K. Basu v. State of West Bengal*, (1997) (1) SCC 416: 1997 SCC (Cri) 92.

that any judicial system (courts or tribunals) should not be concluded with the guilt of an accused for any conduct merely because he is not responded to the questions asked by the police officers or the court.

No one can be compelled by anyone to speak in the court so that the Magistrate must determine whether the confession and statement made in court or voluntarily or through compulsion. Though the right to fair trial is an important concept mentioned in the Indian Constitution, the right to remain silent is nowhere recognized in law. But on the basis of the provisions of Constitution³¹ and Indian Evidence Act³², right to be silent can be taken into the right of an accused to ensure the fair trial.

Just because of the arrested or accused person chooses to be silent under interrogation it does not mean that he is guilty or innocent. If this Right is to be exercised in the modern times, there is much speculations as it mentioned in the report of Justice Malimath Committee³³. The opinion in the report of Justice Malimath Committee³⁴ was that the right to be silent is very much needed in society, where anyone can be held guilty of any charge arbitrarily. In the court of Law, as per the Indian Evidence Law³⁵, any confession or statement is not admissible if it is made to a police officer. So, this right to be silent is mostly interconnected with the concept of confession. Any accused breaking their silence can only be before the Magistrate and that should not be voluntarily and without duress or inducement.

Article 20(3)³⁶ of the Indian Constitution reiterates that person (accused of any offence or not) shall not be compelled to be a witness against himself. Thus, it guarantees every person a right against self-incrimination.

In the landmark judgment of *Nandini Sathpathy Vs. P.L.Dani & others*³⁷, the same was again reiterated by the decision of Supreme Court. It was mentioned in this case that no one can actually be forced to extract the statements from the arrested and accused person who has the right to keep Silent if he chooses so during the course of investigation/interrogation. The court states that the Article 20(3)³⁸ exists in the form of a general fundamental right and is protects and available to every accused person in India though its working was not very particular about

³¹ INDIA CONST.

³² The Indian Evidence Act, 1872, No.1, Act of Parliament, 1872 (India).

³³ J.V.S. Malimath, Report of the committee on reforms of criminal justice system 39 (Indian Ministry of home affairs 2003)

³⁴ *Id.* at 50.

³⁵ India, *supra note* 54.

³⁶ INDIA CONST. art. 20, cl.3.

³⁷ *Nandini Sathpathy v. P.L.Dani & others*, (1978) 2 SCC 424:1978 SCC (Cri) 236:1978 Cri.

³⁸ INDIA CONST. art. 20, cl.3.

the situations it applies to.

In the year 2010, the Apex Court of India again held that the Narco-analysis, brain mapping and the lie detector tests are violation to the Article 20(3)³⁹ of the Constitution.

v. **Right of an arrested to be taken before Magistrate.**

The person once arrested, he/she irrespective of the fact that it is made with or without warrant, the person making an arrest is duty bound to produce the arrested person before the judicial officer/Magistrate without any unnecessary delay.

These procedures as a right of an arrested, have been given under the Constitution of India⁴⁰ and in the other provisions of the Code of Criminal Procedure⁴¹ as follows,

Every person arrested and detained in a police custody has to be presented before the nearby Magistrate without any delay and this process has to be done within the 24 hours from the time of an arrest excluding the time taken for traveling from the place of the arrest to the Magistrate's court or place. The arrested person further can only be confined in the police station and nowhere else before taking such person in front of the Magistrate. Also, no person shall be detained in the custody by the police beyond the period said without an authority of a Magistrate. This is exception to those people who are an enemy alien for a time being and to the person arrested or detained by any law providing for a preventive detention.⁴²

Person arrested to be taken before Magistrate or officer incharge of police station has been given under the provision Section 56⁴³ of Cr.P.C. It states that an officer of police arresting a person without a warrant, should take or send the arrested person before the Magistrate having the local jurisdiction of such offence or before the officer who is an incharge of police station. This has to be done without an unnecessary delay and subject to the provisions contained as to bail.

Section 57⁴⁴ of the code provides the time limit of for presenting the person arrested before the Magistrate or the officer in charge of police station by the police officer arrested as 24 hours from the time of an arrest made. This excludes the time taken for the travel from the place to arrest to the place of Magistrate or the court. It says that no police officer shall detain a person arrested in a custody without a warrant for a longer period of time than under all the reasonable circumstances of the matter and such period should not also be in the absence of a special order

³⁹ INDIA CONST. art. 20, cl. 3.

⁴⁰Consti, *supra* note 53.

⁴¹ Code, *supra* note 39.

⁴² Code, *supra* note 45.

⁴³ The Criminal Procedure Code, 1973, § 56, No.2, Act of Parliament, 1973 (India).

⁴⁴ The Criminal Procedure Code, 1973, § 57, No.2, Act of Parliament, 1973 (India).

of a Magistrate⁴⁵ (the procedures when investigation cannot be completed in 24 hours).

The person arrested is to be brought before Court without delay has been dealt under the Section 76⁴⁶. The provision states that an officer of police or any other person making an arrest by executing a warrant shall not delay unnecessarily the process of bringing the arrested person before the Magistrate's court falling under the jurisdiction by law. This provision is applicable subject to the provisions of Section 71⁴⁷ where power to direct security to be taken is discussed.

Section 76⁴⁸ further provides that delay will be excluded in a case if the twenty-four hours exceeds including the time taken for the journey. As a Fundamental Right under the Indian Constitution the same concept has been enumerated under Article 22(2)⁴⁹. This is the right of an arrested person which has been created with a view of eliminating the possibility of police officials from making an arrest person to confess and forcing them for an information

In the case of *State of Punjab Vs. Ajaib Singh*⁵⁰, the court said that, the detention order was not there according with the Indian Defence Act of 1962⁵¹ and set aside as he was not the District Magistrate then but only an Additional District Magistrate.

vi. **Right with respect to detention**

If in case the police officer fails to person his duty to produce an arrested person before the Magistrate of the officer incharge of police station before the said period of 24 hours from the time of arrest, such police officer should be held liable and guilty for wrongful detention by law.

Article 22⁵² of the Indian Constitution outlines a several rights available for an arrested and accused persons in its sub-Sections. Article 22(2)⁵³ provides the time of 24 hours to produce the person arrested before the Magistrate and it restricts the detention of arrested person beyond the said time.

Article 22(4)⁵⁴ states that no person shall be detained for more than the period of three months in the case of preventive detention, except on the recommendation of an Advisory Board consisting of the persons who are or have been or qualified for the appointment as a Judge of

⁴⁵ The Criminal Procedure Code, 1973, § 167, No.2, Act of Parliament, 1973 (India).

⁴⁶ The Criminal Procedure Code, 1973, § 76, No.2, Act of Parliament, 1973 (India).

⁴⁷ The Criminal Procedure Code, 1973, § 71, No.2, Act of Parliament, 1973 (India).

⁴⁸ The Criminal Procedure Code, 1973, § 70, No.2, Act of Parliament, 1973 (India).

⁴⁹ INDIA CONST. art.22, cl 2.

⁵⁰ *State of Punjab Vs. Ajaib Singh*, (1953) Cri LJ 180: AIR 1953 SC 10.

⁵¹ The Indian Defence Act, 1962, No.2, Act of Parliament, 1962 (India).

⁵² INDIA CONST. art. 22.

⁵³ INDIA CONST. art. 22, cl.2.

⁵⁴ INDIA CONST. art. 22, cl.4.

High Courts. And also, the person detained should be communicates with the reason of such detention by the authorities as soon as possible and give that person arrested an earliest opportunity to make a representation against such an order.⁵⁵

Thus, the right of an arrested person against the detention has been created with a view that

- (i) To ensure the person arrested is not compelled to give his statement or confessions or any information with respect of the case.
- (ii) So that to ensure the police station not to act like a prison which they are unsuitable.

The other legal provision for the same can be found in the Section 57⁵⁶ of the Code of Criminal Procedure, 1973⁵⁷ where it provides the time limit for presenting the arrested person before the Magistrate or the officer in charge of police station by the police officer arrested as 24 hours from the time of an arrest made, which excludes traveling time from the place to arrest to the place of Magistrate or the court. It says that no police officer shall detain a person arrested in a custody without a warrant for a longer period of time than under all the circumstances of the case is reasonable and such period shall also not be in the absence of a special order of a Magistrate under Section 167⁵⁸ of the code which deals with the procedures when investigation cannot be completed in 24 hours.

In the case of *Gunapati Keshavram Reddy Vs. Nafisul Hasan, 2004*⁵⁹, *Gunapati Keshavram Reddy*, a resident of the State Andhra Pradesh, under the Prevention of Terrorism Act was detained in connection with the alleged terrorist activities. He was detained by the State of Uttar Pradesh, the jurisdiction where the detention took place. The Supreme Court of India examined the Reddy's legality and held the jurisdiction issue, procedural issue and the fair trial. Detention is the procedural compliance and the court further examined that whether the detention order is complied with the procedures. The court found that the detention order here lacked the proper application of mind by the detained authority as he must apply his mind independently and satisfy itself of the necessities which was lagging here. Thus, this lack of the proper application of mind amounts the detention order or Reddy invalid. Hence the Supreme Court quashed the detention order of Reddy on the grounds of procedural irregularities and the violation of his fundamental rights. This case is the more important precedent in case of preventive detention.

⁵⁵ INDIA CONST. art. 22, cl.5.

⁵⁶ The Criminal Procedure Code, 1973, § 57, No.2, Act of Parliament, 1973 (India).

⁵⁷ Code, *supra note* 39.

⁵⁸ The Criminal Procedure Code, 1973, § 167, No.2, Act of Parliament, 1973 (India).

⁵⁹ *Gunapati Keshavram Reddy v. Nafisul Hasan*

In this case of *Hoskot Vs. State of Maharashtra*,⁶⁰ M.H.Hoskot a journalist and editor of a magazine “Blitz” challenged the constitutionality of the certain provision of the Bombay Public Security Measures Act, 1947⁶¹ and its rules which empowers the state government to detain any individuals if it found that their activities were prejudicial to the public safety it maintenance of order. As he was detained under the provisions of such Act, he challenged his detention through the writ petition asserting that his fundamental rights under Article 19⁶² and 22⁶³ were being violated. The Supreme court of India examined the provisions of the said Act and its rules and scrutinized the ground on which Hoskote was detained. Court further held the importance of safeguarding the fundamental rights and the need for strict compliance with procedural laws in matters of preventive detention. Further it stated that the provision of the Act of Bombay and rules are unconstitutional as they are violative to the fundamental rights guaranteed under the Indian Constitution⁶⁴.

vii. **Right to be informed and released on Bail**

Every individual shall have a right to liberty as per the procedures established by law (Article 21 of the Indian Constitution). However, to treat an accused with all these liberties cannot to be possible till he is proven innocent. But then, treating them with some of the liberty to prove themselves an innocent is important. So, he needs to be informed with his right to apply for a bail in the bailable offences and even in the non-bailable offences where there are exceptional factors and that the bail may be granted by the court after taking into such factors as nature or seriousness of the offence, the characteristics of the evidences etc.

It is the right of an arrested person to know the grounds of an arrest and his right to bail as stated in the Section 50 of the Cr.P.C⁶⁵. Section 50(2)⁶⁶ states that the law enforcing authorities (police officers) should inform the person they arrested without warrant for an offence he is committed or suspected, that, he/she is entitled to be released on bail. They shall further inform that the bail may be granted by arranging the sureties in his behalf. This is not applicable to those persons arrested and charged with the cognizable and non-bailable offences. This includes the right to be bailed even after the conviction as an accused.

Basically, under Section 71⁶⁷ of the Code, arrested person can be granted a bail by fulfilling the

⁶⁰ *Hoskot v. State of Maharashtra*, (1978) 3 SCC 544: 1978 SCC (Cri) 468: 1978 Cri LJ 1678.

⁶¹ Bombay Public Security Measures Act, 1947, No.6, Act of Parliament, 1947 (India).

⁶² INDIA CONST. art. 19.

⁶³ INDIA CONST. art. 22.

⁶⁴ Consti, *supra note* 53.

⁶⁵ The Criminal Procedure Code, 1973, § 50, No.2, Act of Parliament, 1973 (India).

⁶⁶ The Criminal Procedure Code, 1973, § 50(2), No.2, Act of Parliament, 1973 (India).

⁶⁷ The Criminal Procedure Code, 1973, § 71, No.2, Act of Parliament, 1973 (India).

conditions endorsed in warrant and by executing a surety bond, if such arrest is made with the warrant. If a person arrested without the warrant by the police officer, then he can immediately get released from the custody of a police if the charges of his offence is bailable, he can ask the police officer who is in charge of the police station to grant him bail after executing a surety bond as the officer has discretion to release an arrested person on his own by executing a bond with any surety as per Section 436⁶⁸ of Cr.P.C. If the Bail is not granted immediately by the police officer, then the arrested person has the other rights of calling an advocate or a friend or relative to inform the name and time of court where he will be appearing and request those persons to stand surety, to contact an advocate, if possible, which may help an arrested person from the unnecessary remand in the custody.

In such cases, the accused person shall present a written application to the court to get a bail granted, and the court is obligated to grant him a bail unless he is charged with an offence punishable with a life imprisonment or death sentence. Also, only the Sessions Court or the High Court is obligated to grant bail in such cases. Thus, this is a right of an accused at both the stages of before and after the trial.

The other legal provision where this right can be found are in the Sections 42⁶⁹, 43⁷⁰, 56⁷¹, 59⁷², 169⁷³, 170⁷⁴, 437⁷⁵, 448⁷⁶ of Cr.P.C. and Schedule I, Column 5 of Cr.P.C. also confers the right to grant bail to the accused person but by the police under certain rules.

In the case of *Uday Mohanlal Acharya Vs. State of Maharashtra*⁷⁷, which arisen on the fact that Uday Mohanlal Acharya's conviction for the murder of his wife and a daughter. The Hon'ble Supreme Court decision in this case is more significant as it addressed the several legal issues, which includes the admissibility of confessions made to the police officers, the burden of proof in the criminal matters and the use of circumstantial evidence in establishing the guilt. In the context of this dissertation, the issue of admissibility is in the need to look upon in this case that is whether the confession made by Acharya to the police officer is admissible or not.

The Supreme Court held that the confession made to a police officer cannot be considered as reliable evidence unless it is proved to be a voluntary and truthful one. And further that court

⁶⁸ The Criminal Procedure Code, 1973, § 436, No.2, Act of Parliament, 1973 (India).

⁶⁹ The Criminal Procedure Code, 1973, § 42, No.2, Act of Parliament, 1973 (India).

⁷⁰ The Criminal Procedure Code, 1973, § 43, No.2, Act of Parliament, 1973 (India).

⁷¹ The Criminal Procedure Code, 1973, § 56, No.2, Act of Parliament, 1973 (India).

⁷² The Criminal Procedure Code, 1973, § 59, No.2, Act of Parliament, 1973 (India).

⁷³ The Criminal Procedure Code, 1973, § 169, No.2, Act of Parliament, 1973 (India).

⁷⁴ The Criminal Procedure Code, 1973, § 170, No.2, Act of Parliament, 1973 (India).

⁷⁵ The Criminal Procedure Code, 1973, § 437, No.2, Act of Parliament, 1973 (India).

⁷⁶ The Criminal Procedure Code, 1973, § 448, No.2, Act of Parliament, 1973 (India).

⁷⁷ *Uday Mohanlal Acharya v. State of Maharashtra*, (2001) 5 SCC 453.

found that accused's confession was not voluntary and could not be used as evidence against him. It stated that, when circumstantial evidence is used to prove guilt, it must be strong and consistent, which was not sufficient in this case to establish the guilt of Acharya beyond a reasonable doubt. So, the Apex court acquitted him of all the charges. And thus, the case was put to be an important judgment in the Indian Criminal law regarding the standards of admitting the confession.

(B) Arrested person's rights at trial

i. Right to Fair Trial

Right to a fair trial explicitly as a term nowhere given in the Indian law but, under the Article 14⁷⁸ of the Indian Constitution it is given as the fundamental right as the right to equality before law. The Article states that every person is equal before the law in India which means that every person in dispute with law shall also have the equal treatment. It is also stated that, within the territory of India, the state shall not deny any person from treating equally before the law or equal protection of laws. In coordination with this Article the Criminal Procedure Code⁷⁹ also provides the trial process to be fair in the open trial courts. To ensure the convictions not to be obtained in secret, and to be obtained impartially before law, this right has been given. But, in some cases there are exceptions to be held in open court and it happens in the in-camera proceedings as prescribed by law.

Thus, Fair trial is necessary for one in conflict with law to protect his basic rights from an unlawful and arbitrary deprivation. Fair trial is also based on the principles of natural justice

The concept of fair trial can be well understood in the other cases such as Rattiram v. Territory of Madhya Pradesh⁸⁰, the appellant Rattiram, who was convicted for murder by the High Court of Nagpur, appealed to the Supreme Court of India challenging his conviction by the High Court on the various grounds including the denial for his right to have a fair trial which particularly focusing on the right to have a legal counsel and an effective defence in the criminal proceedings. As supreme court already stated that the right to fair trial includes the right to have a legal representation, in this case court observed that Rattiram was not represented by a legal practitioner during his trial which is a violation to his fundamental right. It further stated that, right to have a legal counsel is just not for a formal thing but it is for an effective defense, and the appellant here is deprived of his effective defence and thus the conviction of him was

⁷⁸ INDIA CONST. art.14.

⁷⁹ The Criminal Procedure Code, 1973, No.2, Act of Parliament, 1973 (India).

⁸⁰ Rattiram v. Territory of Madhya Pradesh, (2012) 4 SCC 516: (2012) 2 SCC (Cri) 481: 2012 Cri LJ 1769.

unsustainable. The principle of the due process of law was been reiterated by the court, so, denying the legal representation violates the right to have a fair trial and the due process of law. This case signifies the interconnection of right to have a legal counsel with the concept of right to have a fair trial where both of them are the fundamental rights and denial of any one is the violation of both. Thus, judiciary should ensure that the accused persons are afforded with the fair trial by protecting their other rights in the whole criminal justice process.

The Supreme Court of India, in its landmark judgment in the year 2004, in the case of *Zahira Habibullah Sheik and Ors. v. Province of Gujarat and Ors*⁸¹, fair trial, witness protection, and the judiciary's role in ensuring the Justice specially in the cases involving the communal violence were been addressed. The facts of this case arise with the key witness Zahira Habibullah Sheik in the Best Bakery Case where the killing of 14 people involved during the time of Gujarat riots of 2002. She was first identified as the perpetrators but late her statements were retracted, alleging the coercion and threats. The court addressed the need for witness protection to ensure that they testify without any fear of intimidation or reprisals. The main issue that the court addressed is that the importance of fair trial, it stated that the "Justice should not be only done but also be seen to be done". Ensuring fair trial is crucial in upholding the rule of law and trust in the judiciary by the people. Role of judiciary and the witness rights were also been addressed and emphasized by the court in this case.

The significance of this case can be listed as follows for several reasons to it,

- The case underlined the challenges of protecting the witness and also the needs for the robust mechanisms for safeguarding the witnesses, particularly in cases of communal violence.
- The court in this case addressed the role of judiciary in ensuring the fair trial and upholding the rule of law in the cases which are more sensitive.
- This case is considered as an important legal precedents and guidelines in India for the witness protection and the procedure for fair trial.
- The commitment of the judiciary to uphold the Justice and protecting the rights of every individual particularly in the cases of vulnerable groups including the witnesses in communal violence was been also given under this case.

ii. Right to Speedy Trial

⁸¹ *Zahira Habibullah Sheik and Ors. v. Province of Gujarat and Ors*, (2004) 5 SCC 353; 2004 SCC (Cri) 1613; 2004 Cri LJ 2855.

Though the right to a speedy trial as a term and a right not specifically mentioned in the Indian Constitution, it has been discussed in the many cases held by the Supreme Court of India. Supreme court in its several judgments stated that the speedy trial is guaranteed under the Article 21⁸² of Indian Constitution which deals with the protection of life and personal liberty of a person.

The Hon'ble Supreme Court rules the case of Sheela Barse Vs. union of India⁸³ and stated that it is a fundamental right of a person to have speedy trial as contained in the Article 21⁸⁴.

Supreme Court in the landmark case of Huissainara Khatoon vs. Home Secretary, State of Bihar⁸⁵, mentioned about the right to speedy trial for the first time. It was a document of English law, the Magna Carta. The court held in this case that the State should not avoid its obligations from constitution to provide a speedy trial to an accused by pleading an administrative or financial inability. Through this case, it has made mandatory that the investigation process in trial, must to be conducted as expeditiously as possible. Thus, the state is under the Constitutional mandate to provide a right to speedy trial and the necessities for it must be done by the state.

In the cases, where the imposition of maximum punishment is two years the investigation for the trial of such cases had to be completed within the period of 6 months, once the accused is arrested. Unless an order from the Magistrate with his reasons in writing the duration cannot be extended for investigation.

In the case of Ashim vs. National investigation agency⁸⁶, the Supreme Court of India held that, without ensuring the speedy trial, the deprecation of one's personal liberty of inconsistent with the Article 21⁸⁷ of the Constitution.

iii. Right to have a Legal Counsel

In any justice system, it is a right of an individual involved in the matters to have a legal counsel to represent and stand by themselves to input the legal knowledge and prove his innocence and get the remedy or to punish. The right of an accused to address himself before the Magistrate through his legal counsel or an advisor is upheld as a constitutional right under an article 21⁸⁸

⁸² INDIA CONST. art. 21.

⁸³ Sheela Barse Vs. union of India, JT (1986) 136, 1986 SCALE (2) 230.

⁸⁴ INDIA, *supra* note 104.

⁸⁵ Huissainara Khatoon vs. Home Secretary, State of Bihar

⁸⁶ **Ashim vs. National investigation agency**

⁸⁷ INDIA, *supra* note 104.

⁸⁸ INDIA, *supra* note 104.

and 22(1)⁸⁹ by the Supreme Court. Under the Article 22(1)⁹⁰ of the Indian Constitution, an accused gets the right to consult a legal practitioner and to represent on his behalf before the Magistrate which is actually a fundamental right. The provision states that once the person is kept under the custody is the police, he gets the right to have a legal practitioner to guide him regarding the lawful procedures for his offence he committed and also the legal practitioner helps with the knowledge of grounds and remedies for an accused. If the offence committed is bailable then the legal practitioner can help the arrested person to be released on bail petition with or without the surety. Thus, no person shall be denied to consult and have a legal practitioner of his own choice.

Through the Article 39A⁹¹, a person gets an opportunity to have a legal counsel based on the equal opportunities towards the obtaining of justice under the operation of the Indian legal system. For this, it provides an accused with the free legal aid by the suitable legislation or schemes or by any other way to ensure the equal opportunities are not denied from getting the justice just because of the reasons of economy of any other disabilities.

Arrested person's right to meet an advocate of his choice during interrogation is been given under the Section 41D⁹² of the Cr.P.C. It states that any person who is arrested and interrogated by the police officer is entitled to meet an advocate of his own choice during the course of interrogation though not at the full course of it. Right to be defended by a pleader of his own choice is been given to the person against whom the proceedings are been initiated.⁹³ The consultation may be with the presence of a police officer but it will not be within his hearing.

Section 303⁹⁴ of the Code deals with the "Rights of person against whom proceedings are instituted to be defended. A person accused of an offence before any criminal court within the territory of India or the person against whom the criminal proceedings are instituted may have a pleader of his own choice to defend him.

Legal Aid to an accused person at the state expenses for certain cases has been given under the Section 304⁹⁵ provides that, before the sessions court, in a trial if an accused is not represented by a legal counsel/pleader and it is observed by the Court that he doesn't have sufficient means to appoint and engage a pleader then the court itself shall assign a pleader for the defense of an

⁸⁹INDIA CONST. art. 22, cl. 1.

⁹⁰ *Id.*

⁹¹ INDIA CONST. art 39A.

⁹² The Criminal Procedure Code, 1973, § 41 D, No.2, Act of Parliament, 1973 (India)

⁹³ The Criminal Procedure Code, 1973, § 50(3), No.2, Act of Parliament, 1973 (India)

⁹⁴ The Criminal Procedure Code, 1973, § 303, No.2, Act of Parliament, 1973 (India)

⁹⁵ The Criminal Procedure Code, 1973, § 304, No.2, Act of Parliament, 1973 (India)

accused at the expense of the State. And such pleader selection, fees and facilities will be riling BH the High Court of the Concerned State.

The cases with regard to have a clear idea about this right to have a legal counsel are several in which the most important cases like Janardhan Reddy v State of Hyderabad⁹⁶ are discussed.

Hon'ble Justice P.N.Bhagwati in the case of **Suk Das v. Union Territory of Arunachal Pradesh**⁹⁷, states that India has many illiterate people who are unaware of their rights. He further stated that, as a result, it is critical to development legal literacy and the awareness among general public which is also an essential component of the legal aid service.

Khatri Vs. The State or Bihar⁹⁸ is the Landmark case, where the Justice Bhagwati made it mandatory for the Session Judges to inform about the rights to free legal aid and to have a legal counsel to the accused persons if they couldn't afford for it due to their poverty of destitution. In this case, the petitioner Khatri had his lease for a stone quarry which was cancelled by the State where the one grounds of challenge was the violation of the principles of natural justice including the right to legal counsel. Thus, the court held that, it is a violation of the principles of natural justice if his lease is cancelled without affording him an opportunity to present his case including the right to have a legal representation. Thus, the judgment was reinforced the right to have a legal counsel under the issues of principles of natural justice, right to a fair hearing, the presumption of legal representation and the fair opportunity to present the case as follows,

- The court emphasized that the principles of natural justice include the right to be heard and the right to a fair trial which are fundamentals to the administration of justice. Thus, Legal representation is an integral part of these principles
- The court recognized that the right to a fair hearing implies the right to legal counsel. Legal representation ensures that the individual is able to effectively present their case, understand legal procedures, and protect their rights.
- In cases where an individual is facing significant legal consequences, there is a presumption that they require legal representation. This presumption is based on the complexity of legal procedures and the potential impact on the individual's rights and interests.

⁹⁶ Janardhan Reddy v State of Hyderabad, (1951) 52 Cri LJ 736: AIR 1951 SC 217.

⁹⁷ **Suk Das v. Union Territory of Arunachal Pradesh**, (1986) 2 SCC 401: 1986 SCC (Cri) 166: 1986 Cri LJ 1084.

⁹⁸ Khatri v. The State or Bihar,

- The court held that denying the petitioner, his opportunity to have a legal representation infringed upon his right to present the case effectively. Legal counsel would have assisted him in understanding the legal aspects of the case and presenting his arguments before the authorities.

Thus, in this case the Supreme court of India in its judgment reaffirmed an importance of the rights of an accused to have a legal representation as a fundamental aspect of the fair hearing, especially in the cases where their rights or interests are at the stake. It states that the individuals must be afforded with the equal opportunity to have a legal counsel particularly in the cases involving the significant legal issues and consequences.

iv. Right towards free legal aid

One of the much-needed rights available to the arrested and accused persons in India is the Right to free legal aid. In India, this facility is mostly provided to the accused person who are poor and can't afford for their counsel expenses in spite of the nature of crime they committed or charged for. This service is provided by the state at both the trial and appeal level as neither the Constitution of India nor does the Legal Services Authorities Act makes any distinction between them. Thus, this right to have a free legal aid is provided by the legal service authority to the accused person if his income is less than one lakh and fifty thousand rupees per annum (Rs.1,50,000/-). This can be proved by him by the way of an affidavit and income certificate and thus, he will be entitled to give a free legal aid service through which he gets a legal practitioner/an advocate for himself on his behalf to address the court processing by representing.

This right is expressed in the legal provisions of Section 304 Cr.P.C.⁹⁹ and Articles 21¹⁰⁰ and 39(A)¹⁰¹ of the Indian Constitution. As we know that Article 21¹⁰² of an Indian Constitution deal with the right to protection of life and personal liberty. Article 39(A)¹⁰³ has been enacted by the 42nd Amendment to the Constitution of India which provides the equal justice and free legal aid to all its citizens and ensures the obligation of the state to provide a free legal aid to the accused person in order to ensure the equal opportunities towards justice. It states that the state shall secure the legal system by ensuring the equal opportunities for obtaining justice which should not be denied to any citizen by any reason of economic or other disabilities and that it states one of such opportunity would be the free legal aid provided by suitable legislation

⁹⁹ The Criminal Procedure Code, 1973, § 304, No.2, Act of Parliament, 1973 (India)

¹⁰⁰ INDIA, *supra note* 104.

¹⁰¹ INDIA CONST. art. 39, cl. A.

¹⁰² INDIA, *supra note* 104.

¹⁰³ INDIA CONSTI. art. 30(A), *amended by* The Constitution (forty second Amendment) Act, 1976.

or the schemes or in any other way.

If an accused is not represented by a pleader during the trial proceeding, and if the court observed that he/she is not economically capable of appointing such legal counsel then his defence should be at the expense of the state and he will be entitled to have a right to free legal aid service and thus an advocate will be appointed on his behalf.¹⁰⁴

The Hon'ble Supreme Court in the case of *Khatri Vs. State of Bihar*¹⁰⁵ held that the state is under an obligation implicated in Article 21¹⁰⁶ the Constitution to provide with the free legal aid service to an accused who are weak in their economy level to protect their life and personal liberty. It further states that this right is not only applicable at the time of a trial but it is applicable since the time the person arrested is produced before the Magistrate as also when he remanded from time to time. The Apex Court further states that, if the state and its authorities fail to inform an accused person or an arrested person about this right will vitiate the whole process of the trial. Hence, it is an obligation imposed on the Magistrates and courts to inform such indigent accused about his rights to get a free legal aid service.

In this case of *Suk Das v. Union Territory of Arunachal Pradesh*¹⁰⁷, the Supreme Court went ahead and states that if the accused failed to apply for this Constitutional right, he cannot be denied for it. Thus, it is clear that failure to provide a free legal aid service to an accused who is an indigent would vitiate the trial entailing to set aside of the conviction and sentence as well.

This right can be further understood through the case of *Hussainara Khatoon vs State of Bihar*¹⁰⁸ which is a landmark case in the legal history of India concerning the rights of prisoners. It was a series of case starting from the year 1979 to 1980. It was about the prolonged incarcerated under trial prisoners in Bihar who are languishing in in the prisons for years without trial. When Hussainara Khatoon, a women filed a petition on behalf of her 4 sons imprisoned for several years trial who were among many other similar prisoners detained for long time, one reason being inability to afford for bail and legal counsel. The Supreme court held that it was a violation of right to speedy trial and the right to legal aid and in its judgment, it recognized the gross injustice being done to them. Through this vase the court laid down the important guidelines where it leaved the duty on the Magistrates to disclose the rights to the accused person and to

¹⁰⁴ The Code, *supra note* 121.

¹⁰⁵ *Khatri v. State of Bihar*, (1981) 2 SCC 493: 1981 SCC (Cri) 503:1981 Cri LJ 597.

¹⁰⁶ INDIA, *supra note* 104.

¹⁰⁷ **Suk Das**, *supra note* 119.

¹⁰⁸ *Hussainara Khatoon (1) v. State of Bihar*, (1980) 1 SCC 81: 1980 SCC (Cri) 23: 1979 Cri LJ 1036; *Hussainara Khatoon (4) v. State of Bihar*, (1980) 1 SCC 98: 1980 SCC (Cri) 40: 1979 Cri LJ 1045; *Hussainara Khatoon (5) v. State of Bihar*, (1980) 1 SCC108: 1980 SCC (Cri)50: 1979 Cri LJ 102.

provide them the service of legal aid, the separate provision was been inserted after this case for the free legal aid.

v. Right to have a medical examination

It is an absolute necessity that to record the physical identification of the arrested person including the identification marks and injuries and also to check the health condition of the arrested and accused when taking into the custody. It is also mandatory to maintain the medical records of an accused. This examination may help in ensuring the fundamental rights of the person arrested without any violation by the police authorities through any torture by the misuse of powers given during the interrogation or custody.

Accused person can be medically examined by the registered medical officer on the request of the police officer not below the rank of sub-inspector. This examination can to done if the police officer thinks that it is need as evidence for the nature of crime that the accused had committed. This can happen only if it is considered as reasonable necessity as per Section 53¹⁰⁹ of the Code of Criminal Procedure, 1973. Sub-Section 2¹¹⁰ of this Section states that if the person to be examined is a female, then the examination can be done or at least under the supervision of the female registered medical officer only.

An examination of an arrested person by the medical practitioner on the request of an accused himself was discussed under the Section 54 of Cr.P.C.¹¹¹ If the arrested person himself request the Magistrate at the time he presented before the Magistrate for his medical examination or alleges that before he was produced in front of the Magistrate or at the time of his detention then the Magistrate after agreeing to his statement can assign a medical practitioner to collect the evidence for reaching the justice at the end. It happens if the statement of the arrested person justifies that the examination of him will disprove his involvement in the offence he charged with or it will suspect the other person who actually have committed the offence.

Thus, the Magistrate shall on the request of the arrest person can send him to the medical examination on the above ground by the registered medical practitioner, unless the Magistrate considers that the request made is for the vexation or delay or for defeating the ends of the justice.

Section 54¹¹² of the Code was substituted with the examination of arrested person by the medical

¹⁰⁹ The Criminal Procedure Code, 1973, § 53, No.2, Act of Parliament, 1973 (India)

¹¹⁰ The Criminal Procedure Code, 1973, § 53(2), No.2, Act of Parliament, 1973 (India)

¹¹¹ The Criminal Procedure Code, 1973, § 54, No.2, Act of Parliament, 1973 (India)

¹¹² *Id.*

practitioner with the following conditions for the medical examination,

1. Any person arrested shall be examined medically under this Section only by the medical officer who is in the Central or State Government Service. In case of the absence of such medical officer, the registered medical practitioner can do it soon after an arrest is made. It provides that for the female arrested person that her body shall be examined only by or under the supervision of the registered female medical officer or the registered female medical practitioner in case of the absence of female medical officer.
2. Record of such medical examination should be prepared by the medical officer or by the registered medical practitioner doing such examination of the arrested person. The record should mention the marks and injuries if any, the marks could be the marks of any violence upon the person arrester and the inflicted injuries and marks approximate time.
3. The copy of report made by the medical officer or the registered medical practitioner shall be given to the arrested person or to the person nomination by time for the examination made under the sub-Section 1.¹¹³

In the case of *Anil Lohande v State of Maharashtra*¹¹⁴, the issue of a medical examination under certain circumstances was be addressed by the Supreme Court of India which particularly concerned the confessions made to the police officers. Anil Lohande challenges the provision of Maharashtra Control of Organised Crime Act, 1999¹¹⁵ (MCOCA) that allows the confessions made to a police officer to be admitted as evidence in the court of law. The apex court stated that under Article 20(3)¹¹⁶ of the Constitution, while the confessions made to the police officers are not admissible as evidence, there are also an exception which includes the confessions made to a medical officer. Thus, the court held that the confessions made to police office are admissible if it is recorded by a medical officer who is acting independently, examines an accused and certifies that he is fit enough to give confession in his state of mind. But such confession is very difficult to obtain whether it is made voluntarily or under any force by the police officer.

It states the purpose of the medical examination, which is to safeguard the rights of an accused person and to prevent any abuse or violation by the law enforcing authorities, which may ensure

¹¹³ The Criminal Procedure Code, 1973, § 54(1), No.2, Act of Parliament, 1973 (India)

¹¹⁴ *Anil Lohande v. State of Maharashtra*, 1981 Cri LJ 125 (Bom)

¹¹⁵ The Maharashtra Control of Organised Crime Act, 1999, No. 30, Act of Maharashtra Legislative Assembly, 1999 (India)

¹¹⁶ INDIA CONSTI, art. 20, cl. 3.

that the confession made is freely and voluntarily by the accused person without any pressure and force. This case also provides the certain guidelines with regard to the confession made to the police officer and its admissibility as evidence in the court of law. It needs the certificate from the medical officer to do so and that it serves as a significant protection for the rights of an accused person to endure his fair and just judicial process.

vi. Right to evidences and cross-examination

To proceed with the fair trial, like the right to legal counsel, right to produce evidence is one of such important right to have a fair trial which is a fundamental aspect of due process as well in several legal systems which includes the rights to public trial, confront witnesses and competent and impartial tribunal. In most of the legal systems the burden of proof lies on the prosecution side to prove the guilty of an accused person beyond any reasonable doubt. But the arrested person also has the right to produce their evidences in their defence, which includes the documents, physical evidence, witness testimony or any other that supports the innocence of an accused or that undermines the prosecution's case. The right to legal representation plays a crucial role in presenting the evidence, where a lawyer helps the accused person in gathering evidence, prepare a case and present it in the court. So, for this process, Courts are obligated with the rules for the admissibility of such evidences which must be reliable, relevant and legally obtained, forced confessions or unlawful searches as evidence are inadmissible typically as they obtained through illegal means. Disclosure of the evidence by the prosecution rely on the trial and the defence have the right to respond and prepare its case for such evidences and also if the person arrested wants to possess evidence favouring their case, then they are obligated to disclose it to the prosecution as exculpatory evidence, failing which is a violation of fair trial rights. It is the discretion of the court to exclude the evidence if it is unfairly prejudicial, if the probative value is substantially outweighed by its effect or if it violates other rules of the evidence. Thus, the right of an arrested person to produce evidence is a critical one in not only ensuring fair trial but also in upholding the principle of "innocent until proven guilty" by allowing the accused to present the evidence by challenging the prosecution's case to support his innocence. This is the concept of "Evidence for defence".¹¹⁷

All the evidences that are taken during the trial or other proceedings should be taken in the presence of an accused or his pleader except in the situation where the evidence of a below 18 years women alleged to be subjected to rape or sexual offence is being recorded by the court, to ensure that she is not confronted by the accused and to ensure the right to cross-examination

¹¹⁷ The Criminal Procedure Code, 1973, § 243, No.2, Act of Parliament, 1973 (India).

of the accused (Section 273 of The Code of Criminal Procedure, 1973).

As discussed earlier the landmark case of Joginder Kumar Vs. State of Uttar Pradesh¹¹⁸ is significant in the context of arrest and the rights of an arrested person. The Supreme Court of India in this case dealt with the right of an accused person to produce evidence in their defence, granting the opportunity to explain any circumstances or evidence appearing against him as mentioned in Section 313 of the Cr.P.C¹¹⁹. The Joginder Kumar, an appellant in this case was charged with Section 302 of IPC for his involvement in the offence of murder, and during his trial he sought to produce certain evidence to establish his innocence, which he claimed that it would exonerate him. As the trial court rejected his request for such evidences, he approached the Apex Court against his conviction by the trial court. The Apex Court held that, the right to produce evidence is crucial for having a fair trial under Section 313¹²⁰. and it is a facet of the accused person's right to defence. The court also drew the attention to the refusal by trial court to produce evidence by the accused without a proper reason as it is a serious infringement to a fair trial, thus, it states that to establish the innocence, an accused person must be given with the fair trial chance and denial to this opportunity is a miscarriage of justice. The court further set asides the conviction of an accused by the trial court and ordered the trial court to retrial his case by considering Joginder Kumar's documentary evidence. Thus, this case not only deals with the justification and necessity of an arrest of person but also reaffirms the significance of an accused person to have a right to produce an evidence and have a fair trial in their defence in the Indian Criminal legal System.

(C) Additional Rights available to the arrested persons in India

Other than the rights discussed above there are several other rights which may be minor in nature but violation or misuse of it in any ways may amounts to a violation of the rights of arrested persons which includes as follows,

i. Health care and safety

The arrested persons have the rights to have a medical checkup under Section 55-A¹²¹ of Cr.P.C. which states that it shall be the duty of the person who is having the custody to take a reasonable Care of the health and safety of a person arrested or accused.

ii. Right to Compensation

¹¹⁸ Joginder Kumar, *supra note* 51.

¹¹⁹ The Criminal Procedure Code, 1973, § 313, No.2, Act of Parliament, 1973 (India).

¹²⁰ *Id.*

¹²¹ The Criminal Procedure Code, 1973, § 55-A, No.2, Act of Parliament, 1973 (India).

If a person arrested by any person as prescribed under law or by the police officers has the right to get a compensation if the arrest is made groundlessly as provided under Section 358¹²² Cr.P.C. The provision states that

- The person arrested by the police officer by the complaint of another person, such arrested person when presented before the court, the Magistrate finds that there are no sufficient grounds for causing such an arrest, then the person arrested may be awarded with compensation up to rupees one thousand to be paid by the person who caused the arrest for the loss of time and expenses as the court thinks fit.
- If there are two persons arrested groundlessly, then each of them may be awarded with the compensation of an amount not exceeding the above said amount.
- Non recovery of such compensation from the person by whom it is payable, may lead to the simple imprisonment of such person for the duration not exceeding 30 days as the court directs unless such amount is paid soon.

iii. Rights regarding Search

If a person is arrested by the police office under a warrant which the arrest person has no right to bail or which the police office cannot make a bail of that person or if a person is arrested without a warrant or with warrant by a private person and cannot be bailed out legally or if he is unable to furnish bail, the police officer making an arrest or the police officer to whom the arrested person is handed over may search the person and after that can keep him and all his articles in a safe custody except the clothing found upon him and the receipt for the same should be given to him showing such articles seized and marked. If such arrest has to be done to a female person, then it must be done strictly with the decency by the female officer or private person only.¹²³

iv. Right with regard to handcuffing

If there are no necessity then unnecessary restraints are not permissible under law. Section 47¹²⁴ of the Code deals with the search of a place entered by a person sought to be arrested. It compels all the person who make an arrest to search a person to be arrested entering in any place if it believes to be reasonable to search in. It gives the police officers, the power to break open any door or window to carry out an arrest of the person detained himself inside.

Arrest is not a punishment. Thus, until and unless there is a necessary of all these to arrest a

¹²² The Criminal Procedure Code, 1973, § 358, No.2, Act of Parliament, 1973 (India).

¹²³ The Criminal Procedure Code, 1973, § 51, No.2, Act of Parliament, 1973 (India).

¹²⁴ The Criminal Procedure Code, 1973, § 47, No.2, Act of Parliament, 1973 (India).

person nothing shall be executed by the police officer in charge of such an arrest. Similarly, a person should not be handcuffed until and unless the person to be arrested is violent or his character is desperate or he is likely to attempt an escape or if he tries to commit suicide.

v. Right to not been arrested

In any case, if a police officer received a reasonable complaint or any credible information or a suspicion against the involvement of any person in any cognizable offence and if the officer thinks that the arrest is not required under Section 41(1)¹²⁵ of Cr.P.C. in such case, may notice such suspect to appear before him in the police station or any other place as mentioned in the notice as per Section 41A(1)¹²⁶ of the Code of Criminal Procedure which provides the notice of appearance of an arrested person before the police officer.

Sub Section 2¹²⁷ of this Section states that it is the duty of the person to whom such notice is issued to comply with the terms and conditions of the notice issued. If such person complies and continues his duties in accordance with the notice issued, he will not be arrested for the offence charged on him in the notice unless the police officer believes that he should be arrested¹²⁸. Police may arrest him with the orders passed by the court having jurisdiction over the matter, if such person fails to comply with the terms and conditions of the notice or of, he is not willing to identify himself under sub-Section 4¹²⁹.

The Supreme Court in the case of *Arnesh Kumar Vs. State of Bihar and Anr*¹³⁰, held that before making an arrest the notice under Section 41A¹³¹ of the Criminal Procedure Code should be served to the person accused by an officer in charge. The intention of the court in this case was to ensure that no police officer is arresting an accused person unnecessarily and also the Magistrate do not authorize the detention mechanically and casually. With this regard the Supreme Court issued certain direction to prevent an unnecessary arrest. The Supreme Court directs,

- The State, that when a case is registered under the Section 498-A¹³² of the Indian Penal Code¹³³, it is an obligation of the state to inform its police authorities to not arrest such person automatically, but the officers to satisfy them self the necessity of an arrest, the

¹²⁵ The Criminal Procedure Code, 1973, § 41(1), No.2, Act of Parliament, 1973 (India).

¹²⁶ The Criminal Procedure Code, 1973, § 41A(1), No.2, Act of Parliament, 1973 (India).

¹²⁷ The Criminal Procedure Code, 1973, § 41A (2), No.2, Act of Parliament, 1973 (India).

¹²⁸ The Criminal Procedure Code, 1973, § 41A (3), No.2, Act of Parliament, 1973 (India).

¹²⁹ The Criminal Procedure Code, 1973, § 41A (4), No.2, Act of Parliament, 1973 (India).

¹³⁰ *Arnesh Kumar v. State of Bihar and Anr*

¹³¹ The Criminal Procedure Code, 1973, § 41A, No.2, Act of Parliament, 1973 (India).

¹³² The Indian Penal Code, 1860, § 498 A, No.45, Acts of Parliament, 1860 (India).

¹³³ The Indian Penal Code, 1860, No.45, Acts of Parliament, 1860 (India).

parameters under Section 41¹³⁴ of the Code should be considered.

- A check list having specified clauses under the Section 41(1)(b)(ii)¹³⁵ of Cr.P.C. should be provided to all the police officers.
- While producing the person arrested before the Magistrate for further detention proceeding, the police officer should also forward the check list provided and finish it with the reasons and materials that made the arrest necessary.
- The Magistrate should peruse such furnished report of the police office with the mentioned terms and will record its satisfaction. Only after this, the accused will be authorized detention by the Magistrate.
- It should be forwarded to the Magistrate with the copy, within 2 weeks from that date of the case which may be extended by the police Superintendent of the District with the reasons in record, if the decision is to not arrest an accused.
- Same within two weeks the notice of appearance should also be served to the accused which may also be extended by the police Superintendent of the District with the reasons in record, if the decision is to not arrest an accused.
- Failure to adhere with any of the above directions, the officer in charge will be liable for departmental actions and the punishment for Contempt of court to be instituted before the High Court having the territorial jurisdiction of the case.
- Without recording the reasons, if the Magistrate authorizes the detention, then he shall also be liable for department actions by the appropriate High Court.

The applicants are straightaway can admit to the interim bail if the police officer had failed to issue a notice under Section 41A¹³⁶ of The Code of Criminal Procedure as directed by the Supreme Court in the case of Arnesh Kumar Vs. the state or Bihar¹³⁷. This was applied in the judgment of Supreme Court itself in the Case of Munawar Vs. The state of Madhya Pradesh¹³⁸.

vi. Right against physical violence

Until and unless the person arrested is charged for an offence punishable with life imprisonment or the death penalty or if the arrested person resists himself in arrest by violent and aggressive behavior or if he tries to flee away, the police officer must not touch the body or cause death to

¹³⁴ The Criminal Procedure Code, 1973, § 41, No.2, Act of Parliament, 1973 (India).

¹³⁵ The Criminal Procedure Code, 1973, § 41(1)(b)(ii), No.2, Act of Parliament, 1973 (India).

¹³⁶ The Code, *supra note 153*.

¹³⁷ Arnesh Kumar, *supra note 152*.

¹³⁸ Munawar v. The state of Madhya Pradesh,

a person who is trying to be arrested.

vii. Right with regard to restraint

To prevent an escape of arrested person, he will not be subjected to more restraint than the necessity¹³⁹. The Supreme Court of India, in the case of D.K.Basu Vs. State of West Bengal¹⁴⁰, held that police are not granted with the permission to use more restraint than it is necessary to prevent the arrested person's escape under Section 49¹⁴¹. The Apex Court further stated that the officer may be held in contempt of court and may be inquired by the department if they are not carrying their duties correctly. Such a dispute can be entertained by any High Court having jurisdiction over the case.

viii. Right to have a copies of documents

The right to have copies of documents during arrest is crucial in ensuring that the arrested person is aware of the reasons for their detention and can prepare their defence effectively. In India, this right is enshrined in Article 22(1)¹⁴² of the Constitution, which states that every person who is arrested and detained in custody must be informed, as soon as possible, of the grounds of arrest and allowed to consult and be defended by a legal practitioner of their choice.

In practice, these provisions mean that the arrested person has the right to receive copies of relevant documents, such as the arrest memo, FIR (First Information Report), and any other papers related to their detention. This allows the arrested person to understand the charges against them and seek legal advice accordingly. Failure to provide copies of these documents can be a violation of the arrested person's rights and may result in legal remedies.

ix. Right to appeal

One of the fundamental aspects of the due process of law is the right to appeal. Every accused person has the right to appeal challenging his conviction or the decision by the lower court or any tribunal to a higher court or any appellate body. The Constitution of India and the Code of Criminal Procedure enriches the process of appeal in the Indian Criminal Justice System. Article 21¹⁴³ of the Indian Constitution along with the right to life and personal liberty it includes the right to legal remedy and Article 22¹⁴⁴ also safeguards the arrested person. In the criminal cases, the right to appeal can be enjoyed through the procedures provided under the

¹³⁹ The Criminal Procedure Code, 1973, § 49, No.2, Act of Parliament, 1973 (India).

¹⁴⁰ D.K.Basu, *supra note 52*.

¹⁴¹ The Code, *supra note 161*.

¹⁴² INDIA CONST. art. 22, cl. 1.

¹⁴³ INDIA CONST. art. 21.

¹⁴⁴ INDIA CONST. art. 22.

Code of Criminal Procedure where Section 374¹⁴⁵ of it allows the convicts on the trial by Sessions Court or an Additional Sessions Court to appeal his case in the High Court and Section 377¹⁴⁶ allows the State to appeal against an acquittal order. Cases where it involves a substantial question of law or where the High Court has reversed an order of acquittal and sentenced the accused person to death, the code provides a provision for an appeal to the Supreme Court. In India the process of an appeal is provided with certain limitations in filing an appeal within a specified time limit and the need for sufficient grounds for the same. Hence, appeal is the right given to have a fairness and justice in a legal system through the reviews by higher authorities

x. Rights as an accused person

As discussed earlier all the accused person are the arrested person but all the arrested person cannot be the accused persons. Though, all the person arrested are not an accused, once a person is arrested by the police or any other prescribed by law for his involvement in an offence of criminal nature, mostly such person will be considered as an accused person only. Thus, the rights that are discussed above as rights of an arrested person are also the rights of an accused person. Specifically talking the rights with regard to the protection in respect of conviction for crime are discussed under Article 20¹⁴⁷ of the Indian Constitution which says that

1. No person shall be prosecuted and punishable for his offence by the law which was not existing or valid at the time of an offense.
2. Prosecution and punishment of a person cannot be done twice for his one offence.
3. A person accused can't be a witness for his own offence (Self-incrimination).

Thus, these are the expressed rights provided under the Indian Constitution to the accused person whereas there are several other rights of an accused which includes the rights of an arrested person as well.

V. RESTRICTIONS IN THE RIGHTS OF ARRESTED PERSONS AS TO ENJOY THE RIGHTS AS THE NORMAL PERSON

Rights in India are equal to all its citizens but certainly there are differences if it comes to the comparison between the rights of a normal person and the person in conflict with law. Though, law provides with certain rights to the arrested and accused persons it is not as same as the rights given to the normal person and there exists the restrictions for his involvement in the unlawful

¹⁴⁵ The Criminal Procedure Code, 1973, § 374, No.2, Act of Parliament, 1973 (India).

¹⁴⁶ The Criminal Procedure Code, 1973, § 377, No.2, Act of Parliament, 1973 (India).

¹⁴⁷ INDIA CONST. art. 20.

activities. The notable difference can be found in each for the rights given in the Constitution as well as the Criminal Procedure Code of India.

Personal liberty and movement are unrestricted to the normal person, which is restricted to the person in his arrest and during his custody at the time of investigation or trial. Privacy of a normal person including the protection against the unreasonable searches and seizures are not the right of a person arrested as it only may be compromised to a certain extent, the process of his search and seizure operations as authorized by the law. Though the arrested persons are given with the right to be silent they may face pressure during the time of interrogation by police to provide the statements and information. Access to have a legal counsel will also be restricted with time especially at the beginning of interrogation whereas the normal person can have a right to legal representation at any time. The right to be bailed may also be rejected to the arrested person in certain circumstances. Self-incriminating is unlawful, but the arrested persons may sometimes be forced to give a statement at the time of their interrogation. Right to information is not a restricted one in general to seek an information about the legal or any matters to any person in India, but the access to information is restricted to the arrested person specially during the stages if arrest and investigation. The most needed and fundamental right to all the citizen is to have a family and friends and to lead a life with them happily, but the person getting arrested will be restricted with their rights to meet and live with their family and friends during the initial stage if custody to prevent any interference in the investigation process. Thus, it is evident that the legal status and treatment of the arrested person is different from those who are not arrested. But then it is necessary to protect and respect the rights of an arrested person as equal to that of the normal person's right to prevent any violation to them.

VI. CONCLUSION

The modern Criminal justice system with the Constitution and the Procedural law has come a long way in terms of protecting and safeguarding the rights of the person engaging in the criminal matters be it an accused or a victim. Police officers who work for public scrutiny, in order to achieve the speedy results or in some cases to be the favour of one person the rights of the other person are being misused in our society. This is not only by the law enforcement authorities but also by the judicial authorities if it comes to the most heinous offences. Thus, it is clear that the Code of Criminal Procedure¹⁴⁸ is providing the clear-cut idea of the procedures of an arrest and also the Code along with the Constitution, safeguards the rights of an arrested person expressly from any violation. Though, the laws are not enough to be held the problems

¹⁴⁸ The Criminal Procedure Code, 1973, No.2, Act of Parliament, 1973 (India).

of today, it is important to uphold the existing law in order to render a justice in any criminal cases.

Police authorities are obligated to protect the rights of all the individuals in the society including the individuals being arrested. Thus, it is the duty of them to protect the rights of an arrested and accused person in all the means to make sure the fair and equal treatment according to the law and without unnecessary harassments. Police and the judiciary are obligated in informing the rights of an arrested person to the one arrested with the grounds he is charged for and about all other rights discussed.

Though these rights are expressly given in the code, the rights are violated by the police themselves through their misuse to the powers given are still existing. It is believed that the people are threatened with the terms of police and courts by the authorities themselves or by the people of high status in the society in order to extort money from such instances or to favour anyone influential. Knowing the given rights is much needed to reform the system of justice and to mark the primary duty to seize and reform and not only to punish the person arrested. Without the slip in accordance with the rule of law and due process through which all the organs are regulated and functions, the people and enforcement agencies must also be adhered in its prosecution and investigation of criminal trial in order to ensure the fair and just system.

Hence, the protection of the rights of an arrested individuals is very much important for maintaining justice fair and the legal system integral. Ensuring these rights requires robust legal framework which is found, an effective oversight mechanism and accountability along with the awareness which are lagging behind. It is very important for rule of law, to respect and uphold the rights of arrested persons at all the times, fostering the system where the justice prevails and human dignity is honoured.
