

# **FOR THE PROTECTION OF HUMAN RIGHTS: ROLE OF INDIAN JUDICIARY**

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## **Abstract**

Judiciary in India has its responsibility and constitutional role to safeguard and promote the human rights of the individuals. According to the mandate of the constitution of India, this operate is allotted to the superior judiciary, in particular, the Supreme Court of India and high courts. The Supreme Court of India is probably one among the foremost active courts when it comes into the matter of assurance of Human Rights. It has an excellent name for independence and integrity. The free legal framework comes from the idea of the division of forces where the official, lawmaking body and legal executive shape three branches of the legislature. This division and subsequent independence are vital to the legal executive's powerful in maintaining the standard of law and human rights.

**Keywords:** *constitution of India, human rights, legal frame work, protection, and Supreme Court*

## **1. Introduction**

The degree to which human rights are regarded and secured with the setting of criminal procedures as imperative a surveying the genuine development of a country. The custodial law created in India does not make one feel pleased with its civilization. The police as a law enforcement organization as an explicit task to carry out in the criminal justice framework. The police have a basic duty to serve humankind, to shield lives and property, to ensure the honest against trickery, the feeble against mistreatment or terrorizing and the tranquil against violence and disorder, and to regard the constitutional rights of all people to freedom, fairness, and justice. However, lamentably, the police not just in India, all around, have picked up a picture contra and are reprimanded for committing acts, which are only in opposition to the appreciated goals expressed previously. The fundamental reason for such an awful circumstance is, to the point that the forces that are given to the police to do their legitimate and basic functions are many times manhandled and abused by them that in the long run outcome in encroachment of the essential privileges of honest fellow beings. Cases of illicit capture and commission of custodial violations, for example, custodial torment, custodial assault, and lock-up deaths influence one to lose confidence in the police administration and therefore the criminal justice system.

## **2. Arrest and human rights**

As functionaries and instruments for the anticipation and location of crime, the police have been enabled to arrest a person. Arrest may be stays as the best strategy for securing the attendance of the accused at his trial. The arrest is important conjointly as a pre-emptive measure to deny one meaning to carry out further crimes. The law identifying with arrest dealt beneath the arrangements of the Code of Criminal Procedure thinks about two sorts of arrest.

- (1) Made in compatibility of a warrant issued by a judge.
- (2) Without such a warrant to fulfil exigencies requiring prompt detainment of the accused.

The conditions when police may arrest without a warrant, the method of arrest and the post arrest strategy to be pursued are illuminated under the Criminal Procedure Code, 1973

Personal liberty remains the corner rock of our social structure. The privilege of personal liberty is a fundamental human right perceived by the general assembly of the unified countries in its universal affirmation of human rights. This is likewise ensured in the tradition of civil and political rights to which India is a party. Indian Constitution acknowledges it as an essential right. Article 21 that got another lease of life after Maneka Gandhi case gives 'no individual will be denied of his life or personal liberty with the exception of as indicated by the system set up by law. Personal liberty subsequently is a consecrated and appreciated directly under the Constitution. The right to be educated on the grounds of arrest is one more valuable right of the arrested individual. An equivalent is recognized not solely as a right below the procedural law however additionally presented a constitutionally recognized basic right standing to vide article 22(1). It ensures protection against arrest and confinement in specific cases and announces that 'no individual who is arrested will be kept in custody without being educated of the grounds of such arrest and he will not be denied the privilege to counsel and shield himself by a legitimate professional of his decision'. Clause (2) of article 22 coordinates that the individual arrested and confined in custody will be delivered before the closest Judicial Magistrate inside a time of 24 hours of such arrest, barring the time essential for the journey from the place of arrest to the court of the judge.

Article 20(3) of the Constitution sets out that an individual blamed for an offense will not be constrained to be a witness against himself. These are a number of the constitutional safeguards furnished to an individual with a view to securing is personal liberty against any unjustified attack by the State.

Tuned in to the constitutional guarantee, various statutory arrangements conjointly try to ensure personal liberty, dignity, and essential human rights of the national. Chapter V of the Criminal Procedure Code, 1973 all the more extravagantly manages the forces of an arrest of a man and the safeguards, which are required to be trained by the police to secure the enthusiasm of the arrested individual. Segment 41 of Criminal Procedure Code, presents controls on any police officer to arrest a man considering the present situation determined in that with none order or a warrant of arrest from a Magistrate... Section 46 gives the strategy and way of arrest and clause 4 of section 46 denies the arrest of women after sunset and before sunrise. Bombay High Court stated in a Writ Petition seeking a writ of mandamus, the Division Bench decided that non-adherence to the provisions of section 46(4) of the Code of Criminal Procedure would absolutely amount to illegal arrest. Under section 49 the police are not allowed to exercise more self-control that is important to keep the getaway of the individual. Segment 50 urges each police officer arresting any individual without a warrant to impart to him the total particulars of the offense for which he is arrested and the reason for such arrest.

The police officer is additionally urged to tell the individual arrested that he is qualified to be discharged on bail and he may orchestrate sureties in case of his arrest for a non-bailable offence. Section 54A requires the police to give data about the arrest of the individual and the place of his confinement to one who is selected by him. Section 56 contains a compulsory arrangement requiring the police making an arrest without a

warrant to deliver the arrested individual before a Magistrate immediately and Section 57 echoes clause (2) of Article 22 of the Constitution of India. There are some different arrangements additionally like Sections 53, 53A, 54 and 167, which are gone for managing procedural protections to a man arrested by the police. Section 53, 53A and 54 accommodate oppressing the accused of a medical check-up and outfitting a replica of the report is remitted under Section 54(2). Legal approval of detainment by police and the time of such remand are controlled under section 167. Whenever someone dies in custody of the police, section 176 needs the Magistrate to hold an investigation into the reason for death. The Code further commands intermittent suggestion of the phases of an analytical procedure to the higher authorities of the police and the cognizant magistrate.

The Criminal Procedure Code, besides the Constitution of India thus assures very many rights to ensure fair play during the investigation. The judiciary on its part has come to recognize many rights intending to protect the interest of the accused and has issued guidelines to be followed during the arrest. One may get a genuine doubt whether all of these rights are really extended to a person, during the time of his arrest. A perusal of the decisions rendered by the Supreme Court will go to show as to what extent the constitutional and legislative provisions are respected by the police and law enforcement machineries in India. The rights, in reality, remain only on paper.

### **3. Arrest – inconsistency of interest**

The Arrest of a person is vital to prevent his further commission of a crime and the possibility of his escape from the law. It serves also as a measure to comply the legislative mandate to secure his present during the trial. Further, it is essential to make his receive the sentence if found guilty after trial. On the other hand, arrest deprives the precious basic human right, the right to liberty and subjects him to many ordeals. Though legislative guidelines are there regulating the exercise of the power of arrest by police, not infrequently, a voice of cry is raised alleging misuse of this power coupled with the commission of gruesome custodial offences against persons detained. Potential hard offenders need to be repressed and arrested. But, when not necessary, the liberty of a person should not be taken away without just cause. If the presence of the accused could be procured without his detention, arrest becomes unnecessary. Arresting one when not required under the law is equally bad as leaving known offenders in the society. Either of them will do no good to the society. Protecting the interest of the society is equally important as that of protecting the interest of the individual. Any attempt to protect one should not hamper the interest of the other. Hence, there is a need to strike an even balance of this conflictive interest. This task, in a democracy governed by rule of law, is entrusted to the Judiciary. The Judiciary at the summit level with liberal interpretation has played a major role to draw a dividing line with a view to harmonise these conflictive interests.

### **4. Role of judiciary**

The Supreme Court of India, as the rescuer of human rights, has completed a yeoman service in the region of human rights law, all the more especially amid occasions of a violation of personal liberty by the method for arrest. At first, the court was reluctant dread in the unfortunate impact it might potentially bring against the social intrigue. However, from 1978 onwards the Apex court came to understand the need of defending the

privileges of people with a view to check the abuse and maltreatment of police powers. The Supreme Court came to voice its concern in the words 'the methods must be on a par with the closures and the pride of the individual and the opportunity for the person cannot be relinquished by falling back on ill-advised means, howsoever precious the ends'<sup>[1]</sup>

The traditional rule of locus standi reined this period and remained as an impediment to provide access of justice to the deprived and vulnerable sections of the community. The rule has been evolved on the notion that if a legal injury was caused to a person, he alone could be an action in a court of law for judicial redress and none else could do so on his behalf. The restrictive rule of locus standi thus closed the door of justice to large masses of population, who either by ignorance or due to lack of means could not seek relief on their own self. Public Interest Litigations widened the concept of locus standi with a view to provide access to justice to the deprived and underprivileged. By this when a legal injury is caused to a person or to a class of persons, who by reason of poverty or disability cannot approach the court of law for justice, any member of the public, as social action group acting bonafide can bring an action seeking judicial redress. The Court did not insist on formal petitions and in sensitive cases entertained even letters addressed to the court as petitions. This turn of the event lead to a major development in the human rights jurisprudence of India.

Supreme Court entertained a public Interest Litigation initiated by a freelance journalist addressing to the point of treatment of women in police lock-ups. While taking up this issue, the Court did also consider the reality of the working of the criminal justice system, more specifically during times of arrest and suggested ways and means to safeguard the interest of the accused arrested and to improve the condition of police lock-ups and custody<sup>[2]</sup>

Supreme Court ridiculed the mechanical way in which the Magistrates without application of their mind passed remand orders. The court went further to suggest a reform in the law relating to the burden of proof to tide over cases of human rights violation<sup>[3]</sup>. The serious consequences of arrest and the apathy innocent public suffer at the brutal hands of police was best realized by the Supreme Court<sup>[4]</sup> when a judicial magistrate himself suffered the vices of police. The Supreme Court by a suo moto contempt proceeding initiated action against the delinquent police officials and issued several guidelines to be followed during an arrest of judicial officers.

Exposed the dynamics of misuse of the police power of arrest when a practicing lawyer was unauthorisedly detained for 5 days. The Supreme Court<sup>[5]</sup> expressed its concern at the instances of violation of human rights through indiscriminate arrests. The Court pointed at the conflict of interest between the accused and the society and emphasised the need to strike a balance between the two. The Supreme Court deprecated the practice of police arresting one on mere suspicion. The Supreme Court taking note of the large number of arrests made unjustifiably resulting in a wasteful expenditure by the State emphasised the need to protect the inherent rights assured under Article 21 and 22(1) of the Indian Constitution. The Court suggested certain ideals that were followed in England to be imported into the criminal justice system of India towards preventing misuse of police powers.

Supreme Court awarded Rs.50,000/- as monetary compensation by a of exemplary cost for the illegal arrest and detention by police<sup>[6]</sup>. Supreme Court<sup>[7]</sup> did exhibit the humaneness towards instances of police atrocities and

extended relief by way of monetary compensation to the victims. Supreme Court<sup>[8]</sup> laid a new law for the provision of compensation for victims of human right violations. The Court said that the award of compensation in a proceeding under Article 32 or under Article 226 is a remedy available under public law based on strict liability for contravention of fundamental rights. The Supreme Court re-laid the proposition that sovereign immunity cannot be pleaded as a defence for established violations of rights guaranteed under Article 21 of the Indian Constitution.

The Supreme Court of India repeated its stand that<sup>[9]</sup> in case of violation of fundamental rights by state instrumentalities or servants, the court can guide the state to pay compensation to the victim or their beneficiary by the approach of financial amends and redressal. The Supreme Court re-emphasized the views on sovereign immunity and propounded that the same is inapplicable in such cases. In *Catena of decisions* that followed<sup>[10]</sup> the Supreme Court gave a new dimension to Article 14 of the Constitution reading the same along with Article 21 as one mandating the general requirement of non-arbitrariness or reasonableness of actions by state authorities and provided monetary compensation. The Supreme Court also evolved the principle of fixing 'personal liability' in some of their judgments. Much progressively, of late, the Supreme Court did prompt the victims of police atrocities to initiate criminal action as against the culprits.

## **5. Conclusion**

The connection between human rights and public interest is a standout amongst the most imperative issues in contemporary human rights jurisprudence. The law identifying with arrest is more extensive and parity agreeably the conflictive interests of the accused and that for the general public. In any case, commonly, the miscreant exercise of this power by police brings a contention, in the adjusting of the individual rights, freedoms, and benefits from one viewpoint and the individual duties, commitments, and responsibilities on the other. The law identifying with arrest attempts to gauge and equalization the enthusiasm of the single individual and those of the people on the whole.

Instances do not want wherein the individual's liberty is curtailed and the matter taken unto the level of Supreme Court. The Supreme Court as the custodian and protector of the fundamental and the basic human rights of the citizen has intervened and considered it a sacred duty to protect the rights of every human being. Sensitive to the issue starting from<sup>[11]</sup> the Supreme Court has specifically pointed the conflict of interest that arise during arrest and emphasized the need to balance the same, so that, neither of them suffers. With honest effort, the Supreme Court<sup>[12]</sup> has formulated several guidelines to prevent abuse of the power by police. Inconsonance with the adage 'old habits die hard' the ruling of the Supreme Court, though initially brought a check, has not changed the behavioural attitude of the police. The recurrence of such instances and the compelling circumstances which necessitated the Supreme Court to award compensation in several other cases, even after such an emphatic ruling in *D.K Basu*

The image of the police in India is not the same as that in the United Kingdom. Here, they are compelled to function in an environment of hostile public relation as also with undue political to function in an environment of hostile public relation as also with undue political interference. Many times, police for personal ends have misused the power devised towards carrying out the legitimate objective of enforcing the criminal

justice system. The power of arrest needs to be exercised and limited to serve the objective, namely to prevent the destruction of evidence, interference with the witness or to avert repetition of an offence. Every police officer has to have a reasonable satisfaction, after some preliminary investigation about the genuineness and bonafides of the information received and a reasonable belief as to the personal complicity and the need to effect an arrest. The importance of safeguarding the precious right of one's personal liberty must be emphasised. The misuse and abuse of the power of arrest not only results in the infringement of one's human right, many of times, but it also paves way for commission of other gruesome crimes, when the detainees are all alone in the custody and at the mercy of the police. It is a shame that the police machinery that is supposed to be the protectors of the citizen turns detractors and involves in the commission of crime themselves. The instances through stray have tarnished the image to such an extent that it would be a Herculean task to revive the same. Till a genuine attempt is made towards this end, the Government as an attempt to prevent instances of abuse and commission of heinous crimes at policed custody can think of extending the services of legal services authority in the form of legal aid at the police station itself. The presence of such state legal machinery can effectively check the behavioural attitude of police and will also provide an easy access for justice during instances of abuse.

The attitude of the public towards police also must change. Present non-cooperative and indifferent attitude on the part of public is mainly due to a tendency to avoid the ordeals that follow by assistance or antagonisation of police wing. The public must be made to realise that the entire police force is there for their welfare and safety. Imparting awareness about individual rights, duties and privileges through legal literacy can play a crucial role to bring the missing cordial relationship with the police for effective enforcement of the criminal justice system.

Judiciary in India as the one and the last resort for the common man. The criminal justice system followed in India, through of nature accusatorial, has in it certain elements reflective of the inquisitorial type. One such feature is the role assigned to the cognizant judicial magistrate. Located at accessible territorial limits, the judicial magistrates are required to play a crucial role during the stage prior to and after an investigation. Several instances have come to light where the lower judiciary has failed to perform the vital role it is expected to play. The proper exercise of this power will definitely contain the misuse of power by police. The lower judiciary must be made sensitive of this human rights issue. The power given to them if genuinely exercised can avert several instances of police abuse. Hence a transitional change in the police attitude towards the general public, the needed awareness amount the public about their own rights privileges and a constant vigil and timely magisterial cognizance of any instances of policed excess and abuse can see to the day of true realisation of such rights enshrined to protect one's life and personal liberty.

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