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## **From Colonial to Contemporary: A Critical Analysis of the Protection of Arrested Persons' Rights Under India's Reformed Criminal Laws**

Authors

Khushpreet Kaur

Prof. Dr. Cheena Abrol



# **From Colonial to Contemporary: A Critical Analysis of the Protection of Arrested Persons' Rights Under India's Reformed Criminal Laws**

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## **Preface**

The rights of the accused are fundamental pillars of a fair and just legal system, ensuring that individuals are treated with dignity, respect, and equality before the law. In India, these rights, enshrined in constitutional provisions, statutory laws, and judicial precedents, aim to balance the need for effective law enforcement with the preservation of individual liberties. The topic of "Rights of the Accused in Criminal Trial Before and After Arrest in India and Its Impact on Social Law" delves into this critical interplay between justice, human rights, and social welfare.

This study examines the evolution, scope, and implementation of the rights afforded to accused individuals during various stages of a criminal trial, including pre-arrest, arrest, and post-arrest scenarios. Key legal provisions such as Articles 20, 21, and 22 of the Indian Constitution, the Code of Criminal Procedure, 1973, and landmark judicial pronouncements form the foundation of this analysis. The research also explores the safeguards against arbitrary detention, the right to legal counsel, protection against self-incrimination, and access to a fair trial.

The impact of these rights extends beyond the courtroom, influencing the broader contours of social law in India. By safeguarding the accused, the legal framework also fosters societal trust in the justice system, promotes accountability in law enforcement, and protects against the misuse of power. This interplay between individual rights and social order forms a critical aspect of the study, particularly in the context of marginalized and vulnerable groups who often face systemic challenges.

This preface underscores the importance of examining the legal mechanisms and their implementation in practice to ensure justice for the accused without compromising public safety and social welfare. It is hoped that this research will contribute meaningfully to the discourse on criminal justice reform in India, advocating for a more inclusive and balanced legal framework.

## **Introduction**

Criminal law system seeks to balance the individual freedoms and interests with the social or collective interests and thereby strives to ensure peace and tranquility. Within the given theoretical and operational paradigm of criminal law system, criminal justice delivery system shows concern for freedom, liberty and life of those who violate criminal law as well as for the victims thereof. In all criminal prosecutions the accused shall have the right to defend in person and by counsel; to demand the nature and cause 'of the accusation against him; to have a copy thereof; to meet the witnesses against him face to face; to have compulsory process served for obtaining witnesses in his behalf, and to a speedy public trial by an impartial jury of the county or district in which the offence is alleged to have been committed etc. The Apex Court on more than one occasion has stressed the need to ensure fair trial and fair administration of justice.

“The mood and temper of the public with regard to the treatment of crime and criminals is one of the unfailing tests of the civilization of any country. A calm, dispassionate recognition of the rights of the accused - and even of the convicted criminal - against the State; a constant heart-searching by all charged with the duty of punishment; a desire and eagerness to rehabilitate in the world of industry those who have paid their due in the hard coinage of punishment; tireless efforts towards the discovery of curative and regenerative processes; unfailing faith that there is a treasure, if you can only find it, in the heart of every man; these are the symbols which in the treatment of crime and criminal, mark and measure the stored-up strength of a nation, and are sign and proof of the living virtue in it.”<sup>1</sup>

The rights to the accused have been granted through law world over. The adequate protection by the police pre- and post-trial, and by the judiciary during the trial is cardinal principle of every criminal system. At the time of the American Revolution, the concept of the rights of the accused had progressed much further than in Great Britain. The first state laws passed after the American Revolution of 1776, were modern list of rights, which included a right to reasonable bail, the exclusion of confessions made out of court, the right to know the charges, grand jury indictments in capital cases, trial by jury, and others, many of which would eventually be included in the Bill of Rights (1791). But the Bill of Rights applied only to the federal government until the 1920s, and criminal cases were for the most part tried in state courts under state law. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. No person shall be held to

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<sup>1</sup> Bodenhamer, David J. “Trial Rights of the Accused.” *OAH Magazine of History*, vol. 5, no. 1, 1990, pp. 13–19. JSTOR, <http://www.jstor.org/stable/25162710>. Accessed 18 Jan. 2025.

answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury...nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property, without due process of law. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury... and to be informed of the nature and cause of the accusation; to be confronted, with the witness against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence. Nor shall any state deprive any person of life, liberty, or property, without due process of law. However, where such protection is forthcoming it is at the discretion of one or more of agencies involved. The lack of guidelines, whether in statutory form or as a code of practice, leads to a variable and necessarily uncertain level of protection which is unsatisfactory<sup>2</sup>

### **1.1 Meaning of ‘Accused’**

The term ‘accused’ is the generic name for the defendant in a criminal case. A person becomes accused within the meaning of a guarantee of speedy trial only at the point at which either formal indictment or information has been returned against him or her, or more when he or she becomes subject to actual restraints on liberty imposed by arrest, whichever occurs first. It is common ground that mere suspicion that an individual has committed offences is insufficient to place him in the category of ‘accused’ persons. It is also common ground that it is not enough that he is in the traditional phrase “wanted by the police to help them with their enquiries.” Something more is required. What more is needed to make a suspect an ‘accused’ person? There is no statutory definition. Given the divergent systems of law involved, and notably the differences between criminal procedures in the United Kingdom and in civil law jurisdictions, it is not surprising that the legislature has not attempted a definition. Accused may refer to a person charged with a criminal offence, or the state of being so charged. In the common law legal system, an indictment is a formal charge of having committed a serious criminal offence. In those jurisdictions, which retain the concept of a felony, the serious crime offence would be a felony; those jurisdictions, which have abolished the concept of a felony often, substitute instead the concept of an indictable offence, i.e. an offence which requires an indictment. Traditionally an indictment was handed down by a grand jury, but most common law jurisdictions abolished grand juries. The role of the lawyer is considered central to protecting the rights of a person accused of a crime, but the lawyer standing alone would be of little use were it not for the bundle of codified rights that are there for the accused person's protection. What evidence may be used in a criminal case, for example, is

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<sup>2</sup> Malekian, Farhad. “RIGHTS OF THE ACCUSED.” *Principles of Islamic International Criminal Law: A Comparative Search*, Brill, 2011, pp. 375–84. JSTOR, <http://www.jstor.org/stable/10.1163/j.ctt1w8h3dt.36>. Accessed 18 Jan. 2025.

governed by the protections against unlawful search and seizure established in the Fourth Amendment. Here again the colonists' experience under British rule in the 18th century shaped the concerns of the Founding generation<sup>3</sup>. The term accused is not defined as such in our country. But generally, the term refers to the person who has been charged with any offence, or committed any offence against prevailing laws.

### **Rationale for Rights and Punishment**

Any system of public governance will have to address the question of the administrative relationship of the individual with the community. The community norms of behaviour may sometime come into conflict with the individual norms. In such a situation the individual may be pitted against the organized power of the society, which is represented by the state. In order to regulate the relationship between the state and the individual the society goes for a set of code of conduct in terms of law because what the society wants to achieve is not rule of men but rule of law. It is particularly so in the case of democracies. However, the unpredictable and uncertain perceptions of the individuals constituting the society may make some dominating groups in the society to impose their norms on the society in the name of law. In order to obviate this chance, they may enunciate fundamental principles in a document commonly referred to as Constitution. In the modern world almost all the societies have opted for framing constitutions incorporating the fundamental rules to govern the society -individual relationship<sup>4</sup>.

### **Rights Available to the Accused in India**

In our criminal justice system, the legal ethics is very clear, "let thousands of criminals be let out, but a single innocent should not be punished." Following this principle, the judiciary requires all cases to be proved beyond reasonable doubt. In our system while "onus of proof" lies on prosecution to prove the accused guilty, the benefit of doubt" is always given to the accused. Starting from first step of arrest till end of trial in every stage the accused is conferred with several rights by the supreme law of the land i.e., Constitution, the Criminal Procedure Code and also according to verdicts of the higher and apex judiciary of the country. Before the trying court, till his guilt is proved, the accused is also considered to be innocent and even as an undertrial prisoner any violation of his rights is considered as human rights violation. To protect human right of the accused, the apex court in *D. K. Basu v. State of West Bengal*<sup>5</sup> has held that transparency of action and accountability are perhaps the two possible safeguards

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<sup>3</sup> George, B. J. "Rights of the Criminally Accused." *Law and Contemporary Problems*, vol. 53, no. 2, 1990, pp. 71–107. JSTOR, <https://doi.org/10.2307/1191843>. Accessed 18 Jan. 2025.

<sup>4</sup> Noorani, A. G. "Rights of an Accused." *Economic and Political Weekly*, vol. 18, no. 25, 1983, pp. 1090–91. JSTOR, <http://www.jstor.org/stable/4372224>. Accessed 18 Jan. 2025.

<sup>5</sup> (1997) 1 CRICJ 165

which courts must insist upon. In this judgment more concrete and specific guidelines concerning arrest have been laid down by the Supreme Court.

### **Constitutional Rights**

The Constitution of India provides for the rights of an accused under articles 20, 21 and 22.

#### **Right against ex post facto laws**

Mens rea is an essential ingredient of crime and in order to determine mens rea it is important that a man should know as to what conduct of his is criminal and what is not. The morals and values of a particular society differ from time to time hence the attributes of crime also keep on changing. Hence there is a need for prohibition against retrospective laws. Edward Coke, the champion of civil liberties has said *nova constitutio futuris formam imponere debet, non praetendit* (a new law ought to impose form on what is to follow, not on the past).

Article 20 (1) of the Constitution embodies the principle of ex post facto laws and prevents a person from being punished for an act of commission or omission which was not a crime when done or omitted by subsequently became a crime.

The article states as follows: No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, not be subjected to any penalty greater than that which might have been inflicted under the law in force at the time of the commission of an offence.

#### **Double jeopardy**

Article 20 (2) of the Constitution embodies the fundamental principle of double jeopardy. The roots of this principle are found in the common law principle of England “that where a person has been convicted of an offence by a court of competent jurisdiction the conviction is a bar to all further criminal proceedings for the same offence”.

In order to invoke article 20 (2) of the Constitution there must have been a prosecution and punishment in respect of the same offence before a court of law or a judicial tribunal required by law to decide the matters in controversy judicially on evidence on oath which it must be authorized by law to administer and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute, but not required on legal evidence on oath. Hence, the proceedings contemplated by article 20(2) are of the nature of criminal proceedings before a court of law or judicial tribunal according to the procedure prescribed by the statute creating and regulating the offence by punishing and preventing the offender from further commission.

In *Maqbool Hussain v. State of Bombay*<sup>6</sup>, the appellant was found to have gold weight 1072 tolas by the customs authorities. This was in contravention of the government notification. The gold was confiscated by an order dated 19-12-1949 under section 167(8) of the Sea Customs Act, 1870. The appellant was given an option to pay in lieu of such confiscation a fine of Rs. 12,000 within a period of four months from the date of the order. The appellant did not exercise this option and hence the custom authorities filed a complaint against the appellant in the court of the Chief Presidency Magistrate, Bombay, charging him with having committed an offence under section 8, Foreign Exchange Regulation (Act No. 7). The appellant alleged violation of his fundamental right guaranteed by article 20(2) of the Constitution and filed a petition under 228 in the High Court of Bombay alleging the same.

The case came before the Apex Court which observed  
Even though the customs officers are invested with the power of adjudging confiscation, increased rates of duty or penalty, the highest penalty which can be inflicted is Rs. 1000/-. Confiscation is no doubt one of the penalties which the Customs Authorities can impose but that is more in the nature of proceedings in rem than proceedings in personam, the object being to confiscate the offending goods which have been dealt with contrary to the provisions of the law and in respect of the confiscation also an option is given to the owner of the good to pay in lieu of confiscation such fine as the officer thinks fit. All this is for the enforcement of the levy of and safeguarding the recovery of the sea customs duties .... We are of the opinion that the sea customs authorities are not a judicial tribunal, and the adjudging of confiscation, increased rate of duty or penalty under the provisions of the Sea Custom Act do not constitute a judgement or order of a court or judicial tribunal necessary for the purpose of supporting a plea of double jeopardy.

To invoke article 20(2) the accused must have been prosecuted and punished. The expression 'prosecuted and punished' in the context of article 20(2) means prosecuted before a criminal court or judicial tribunal on a criminal charge by a prosecutor between whom and the accused the court or tribunal has to decide. In *Narayanlal Bansilal v. M.P. Mistry*<sup>7</sup>, Gajendragadkar, J., held that a "prosecution" in article 20(2) meant a proceeding either by way of indictment or information in a criminal court so as to put an offender on his trial. The underlying idea is that the coercive power of the state may not be used against an individual for harassment through multiple prosecutions for a wrong which was committed only once. However, where the trial of the accused was found abortive because of certain irregularities or any other defect or incompetency of jurisdiction of the

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<sup>6</sup> 1953 AIR 325

<sup>7</sup> 1961 AIR 29

court of a retrial was ordered, such retrial does not come under the protection of article 20(2) as was held in *Upendra Chandra v. State*<sup>8</sup>. Similarly, it does not protect an accused from prosecution and punishment for an offence under which he was previously prosecuted and was acquitted since the expression used is “prosecuted and punished”. Moreover, the principle of double jeopardy has no application to an alternative punishment and is also not applicable to continuing offences.

### **Protection against self-incrimination**

In India we follow the adversarial system of investigation where a person is presumed to be innocent till found guilty. And the protection against self-incrimination is based on this presumption of innocence and so long as this presumption of innocence remains as one of the cardinal principles of criminal jurisprudence, evidence against the accused should come from sources other than the accused. The person accused of an offence has been conceded a privilege of keeping silent in so far as accusations against him are concerned Sir Stephen elaborates thus:

In the present day the rule that a man is presumed to be innocent till he is proved to be guilty is carried out in all its consequences. The plea of not guilty puts everything in issue, and the prosecutor has to prove everything that he alleges from the beginning. If it be asked why an accused person is presumed innocent... the true answer is, not that the presumption is probably true, but that society in the present day is so much stronger than the individual, and is capable of inflicting so very much more harm on the individual than the individual as a rule can inflict upon society, that it can afford to be generous.

The right against self-incrimination is embodied in article 20(3) of the Constitution of India which states that “no person accused of any offence shall be compelled to” be a witness against himself”. In order to avail this right, the person must be accused of any offence”. A person becomes accused as soon as a first information report is formally lodged with the concerned police station and in that report, he is described as an accused or any person against whom a private complaint naming him to be the accused is lodged in the court of competent jurisdiction with a view of taking action against such person. This protection is necessary in order to check third degree methods employed by the police to get to the truth. In *State of Bombay vs Kathi Kalu Oghad*<sup>9</sup> it was held that:

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<sup>8</sup> 1954CRILJ851

<sup>9</sup> 1961 AIR 1808

## **Expansion of Personal Liberty through Judicial Activism**

The judiciary has expanded these rights enormously. Personal liberty includes rights attached to the person and also includes right to live with human dignity and not mere animal existence. The accused has a right to privacy and any encroachment upon it without support of law is violative of article 21 likewise, he also has a right not to be compelled to be a witness against himself. Right to an appeal against conviction held to be a right flowing from article 21 and the practice of indiscriminate hand-cuffing and parading of prisoner held to be violative of it. Right to claim compensation for contravention of human rights and fundamental rights held flowing from this article. Right to free legal aid for poor or for indigent accused persons who are incapable of engaging lawyer. Detenu's right to consult with legal advisor and to meet his family members and friends is held to be within his rights in articles 14 and 21. Right to speedy trial is held to flow from article 21. The injured even if an accused has a right to be treated by the doctor immediately without waiting for police formalities and instant medical aid is held to be the right flowing again from article 21. Use of third-degree method by police and any form of torture or cruel inhuman or degrading treatment of accused by police. Police atrocities - illegal arrest and torture by police<sup>88</sup> are held to be violative of article 21.

## **Historical Perspective**

Human rights recognition has been linked to the growth and development of civilization. There must be a set of rules or regulations which were universally agreed and recognized that not only recognize but also develop a system to implement these rights in order to ensure their safety, as they relate to issues of fundamental human dignity, self-esteem, and access to effective means of survival. Treaties and conventions are the usual instruments through which such rights are accorded worldwide status.

The Petition of Right, compiled by the English Parliament, is the first international text that may be considered to be relevant to protection of human rights. The "Magna Carta"<sup>10</sup> was another document that acknowledged some of the Rights by requiring the safeguarding of rights for a select group of citizens known as feudal noblemen. However, it required the validation process of detainment or arrest and did not protect the individual from the abuses of his or her ruler.

The French Declaration of the Rights of Man and of the Citizen, released and put into effect in 1789, is another essential text with regards to the preservation of basic rights of humans since it guarantees individuals the rights to "liberty,

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<sup>10</sup> [Deepa Kaushik Sharma and Leena Chhabra. (2016); HUMAN RIGHTS OF AN ACCUSED PERSON UNDER CRIMINAL JUSTICE SYSTEM IN INDIA. *Int. J. of Adv. Res.* 4 (Jun). 1761-1766] (ISSN 2320-5407). [www.journalijar.com](http://www.journalijar.com)

property, security, and resistance to oppression." All of these protections are crucial to enforcing a humane system of rights. The other major event that greatly aided the emergence of the concept of recognising and protecting human rights was the passage of the US Bill of Rights, which was released in 1791. Amendments to the Constitution of United States marked the introduction of Bill of Rights.

## 2.1 India and Basic Rights of Humans

### ▪ Ancient India

The idea that people should have some rights is not a new one. This kind of thinking dates all the way back to old period. During the Vedic period, which began in the fifteenth century B.C., it was already in existence. There are a lot of different situations that have something to do with protecting human rights. The Vedas contain references to the principles of equality, which are summarised as follows: "No one is higher or inferior, and everyone should work for the welfare of all and should advance jointly."

In ancient India, "Dharma" principles served as the basis for the legal system. Both the "Ramayana" and the "Mahabharata" demonstrate that "Dharma" was the foundation for the rule by the King, as well as the behaviour of the King and the "Prajā." In "The Bhagwat Geeta," righteousness (Dharma) is said to revolve on morality as its centre. The Upanishads are the primary source of Dharma, which serves as the foundation of our cosmos. The Vedas and Smritis mention about "Vasudhaiv Kutumbakam" (the entire world as being one single family). Every single one of the Vedas makes the case that humans should be treated with respect and decency. It is clear from ancient historical documents that the society that existed during the Vedic period respected the inherent dignity of human beings and took measures to ensure their safety. Jainism, Buddhism, and other minority faith sects all acknowledged the centrality of human rights in a clear and consistent manner. King Ashoka is credited with being the first person to advocate the value of human rights.

As monarch, Ashoka believed that "all men were his children," and he wished for every one of his children that they would experience "every type of wealth and happiness inside this world and in the next," just as he wished for all mankind. The impact of Buddhism was extremely helpful in maintaining respect for human dignity and for peaceful coexistence. Ashoka was successful in establishing a welfare state and granting the people the freedoms and liberties to which they were entitled. Nevertheless, a decrease in human rights was observed concurrently with the fall of the Mauryan Empire.<sup>11</sup>

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<sup>11</sup> Bhagwati, P.N. "HUMAN RIGHTS IN THE CRIMINAL JUSTICE SYSTEM." *Journal of the Indian Law Institute* 27, no. 1 (1985): 1–22. <http://www.jstor.org/stable/43950897>.

Therefore, it becomes abundantly evident that ancient Indian writings include a sufficient amount of literature which indicates that human values and the dignity of human beings were safeguarded and treasured.

#### ▪ **Medieval India**

India was often attacked by foreign forces throughout the Middle Ages. Turks, Khilzis, and Mughals were the invaders. They came in with the intention of plundering the land, and they were particularly cruel to the populace while they were there. There were no human rights at that period. Humans were ruthlessly murdered, tortured, pillaged, and subjected to a forced conversion of religion. As a result, in terms of human rights, it was among the worst periods in history. Females were abducted and raped and were bound and sold as sex slaves. They either wiped out the male population or put them to work as slaves. The arrival of the Mughals in India also saw the decline of the idea of human rights there. The exception to this was the Akbar's time from 1526 to 1605, which indicated that the attention was given to the “social, religious and political rights”, but these rights were again suppressed by the other Mughal rulers like “Babar, Humayun, and Aurangzeb”.

#### ▪ **Modern India**

In contemporary India, the origin of which might be the British era, the earliest stages of the state of human rights was considerably worse since the British Government control was built on oppression of Indians. The Indian people were completely enslaved. They squandered India's wealth and shattered the country's culture and religion in the process. The British began their governance of India with the passing of the "Regulating Act of 1773," thereby ending Indian autonomy in all spheres of life. Compared to the British, Indians were viewed as lower class and treated accordingly. They were not given any consideration for civil liberties. However, slowly people started joining together to preserve themselves from the oppression at the hands of British rulers and the first liberation fight came in 1857 and subsequently the leaders started seeking some rights from the Britishers. The "Constitution of India Bill 1895" was a watershed moment in the history of rights movements. The Bill claimed that all Indians have the right to free speech, equal protection under the law, private property, personal freedom, access to education, and other basic human rights. But in reality, nothing happened as intended, and Indians continued to be denied these rights for a long time.<sup>12</sup>

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<sup>12</sup> Sahil, Mohd, The Principles of Fair Trial (August 11, 2021). Available at SSRN: <https://ssrn.com/abstract=3903240> or <http://dx.doi.org/10.2139/ssrn.3903240>

Meanwhile, in India, the effects of World War I had already begun to emerge. After "Mrs. Besant's Commonwealth of 1925," the next major campaign for fundamental human rights occurred. Rights such as "liberty," "freedom of conscience and free profession and practise of religion," "freedom of speech," "free primary education," "freedom to use public spaces," "equality before the law of nationality," and "equality of the sexes" were all included in the Bill. A resolution affirming these fundamental rights was finally adopted in 1927. In May of 1928, the resolution took effect. Commonly referred to as the "Nehru Report," its primary objective is guaranteeing Indians' basic freedoms and liberties. The "Karachi resolution," voted by Congress in March 1931, was the next step in the fight for Indians' basic civil liberties. But in terms of actual events, nothing noteworthy occurred. Extreme prejudice on the part of British citizens was evident. Many social problems afflicted the Indian social order as well, leading to the formation of distinct social strata according to factors like caste and religion; members of the lower castes, known as "Shudras," were subjected to particularly cruel treatment as a result. There was no sign of the Equality anywhere.

### **The Indian Constitution and Human Rights**

Human rights are guaranteed by several constitutional articles, some of which also serve to establish new rights and others of which serve to safeguard existing ones. Notable laws and treaties that guarantee and promote human rights are:

- The Preamble of the Constitution
- The Fundamental Rights that are mentioned in Part III of the Indian Constitution
- The Fundamental Duties that are mentioned in Part IV of the Indian Constitution

Altogether, they create a robust framework for securing and protecting human rights at the state level in the form of basic liberties and accountability. The primary goal of this comprehensive framework is to ensure the growth of human rights so that they can be created and protected.

### **Following is a breakdown of these fundamental features:**

#### **▪ The Preamble**

The Preamble outlines the Constitution and serves as a guiding light to the three branches of government outlined in the document: the Executive, the Legislature, and the Judiciary. To wit, it serves as:

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC & to secure to all its citizens –

JUSTICE, social, economic & political

LIBERTY of thought, expression, belief, faith & worship.

EQUALITY of status & of opportunity and to promote among them all FRATERNITY assuring the dignity of the individual & the unity & integrity of the Nation.

*IN OUR CONSTITUENT ASSEMBLY THIS TWENTY-SIXTH DAY OF NOVEMBER 1949, DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."*

Now we get to the part of the preamble that promises social, economic, and political fairness for its citizens. This implies that the constitution establishes citizen rights in regards to socioeconomic and political affairs and puts a responsibility on the state to provide the same for all citizens. After that, the preamble guarantees people the right to freely think, speak, believe, practise, and worship whatever they see fit. The Nehru Report, which was completed in 1927, also included this liberty<sup>13</sup>. These freedoms are fundamental to a flourishing society and to each person's growth as an individual. The preamble is what establishes these liberties and makes the state legally responsible for protecting them. The third component seeks to establish Equality for its citizens, both in terms of status and opportunity, guaranteeing the most fundamental of human rights; finally, it seeks to secure Fraternity, guaranteeing both the individual's dignity and the unity and integrity of the nation. That part of the Preamble is geared on preserving national unity and dignity via peaceful conflict resolution. As a result, the Preamble's entire purpose is to safeguard those characteristics of human existence that are foundational to respect for human dignity and the enjoyment of human rights.

#### ▪ **Fundamental Rights**

The Indian Constitution recognises the inherent value of human rights by including a bill of rights called the Fundamental Rights. These protections have not only been established, but a legal mechanism for enforcing them has been made available in the event of a violation. A few of these basic liberties are outlined below:

##### **i. Right to Equality**

The constitution's first and primary right is the "Right to Equality," and it's one of the most important fundamental human rights. The constitution contains five articles in total. Article 14 guarantees "Equality before the Law and Equal Protection of the Law" as the first provision. "protection against social discrimination on the grounds of caste, creed, place of birth, etc." is the subject of Article 15, which follows. Article 16 guarantees that public sector workers will not be subjected to bias on the basis of their "caste, creed, sex, or place of birth."

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<sup>13</sup> [Deepa Kaushik Sharma and Leena Chhabra. (2016); HUMAN RIGHTS OF AN ACCUSED PERSON UNDER CRIMINAL JUSTICE SYSTEM IN INDIA. *Int. J. of Adv. Res.* 4 (Jun). 1761-1766] (ISSN 2320-5407). [www.journalijar.com](http://www.journalijar.com)

It gives the government the authority to establish fair distinctions for the benefit of the disadvantaged group. Article 17 is about the "abolition of untouchability," which is an article that supports social equality. According to these Articles, the State shall guarantee the right to equality. In order to provide all citizens with a fair shot at improving themselves, it is vital to protect their right to equality.

## **ii. Right to Freedom**

These liberties are similarly fundamental, and are thus inalienable, provided certain conditions are met. The following liberties are guaranteed by Articles 19 through Article 22:

1. "Freedom of Speech and Expression" is one of six guarantees in Article 19 is paramount. All other liberties are meaningless if this one isn't available. But in the sake of society as a whole, appropriate limitations on this freedom are permissible. However, protecting human dignity is impossible if these rights are not respected.

2. Article 20 guarantees the right to life and protects citizens from receiving harsher sentences than those established by law. It also prohibits multiple convictions for the same offence.

3. the rights guaranteed by Articles 21 and 21A are among the most important and precious of all human rights since they are inalienable and there can be no other kind of human right or basic right without them. Article 21 states, "No citizen will be deprived of his life or liberty unless in accordance with procedure established by law and by due process of law," and Article 21A guarantees every child the right to a public, free, and obligatory education. Now more than ever, education is the path to a life of respect and the key to securing our other basic liberties. Consequently, they are some of the most important rights we have as humans.

Article 22 states that before someone is arrested, they must be informed of the charges against them and that anyone who is detained for more than 24 hours must be sent before the nearest magistrate. The value of this right as a basic human entitlement is unparalleled. It also protects the rights of those who have been falsely accused of committing a crime. These basic freedoms safeguard citizens from arbitrary action taken by law enforcement.

## **iii. Right against exploitation**

The rights which are related to the protection of human rights when it comes to the dignity of human beings are Article 23 and Article 24 of the Indian Constitution. Article 23 and Article 24 provides "protection against any kind of exploitation and provide for Abolition of trafficking in human beings and begar (forced labor) and Abolition of employment of children below the age of 14 years in dangerous jobs like factories, mines etc"

#### **iv. Right to Freedom of Religion**

Freedom of religion is essential to human flourishing since it concerns matters of personal choice, faith, and belief. Article 25 guarantees "Religious freedom to all people of India" and is thus the most crucial provision. Consequently, everyone in the country can openly and freely observe the religious tradition of his or her choosing.

#### **v. Cultural and educational rights**

Both Article 29, which states that "no citizen can be discriminated against for admission in state or state-aided institutions," and Article 30, which states that "all minorities, religions, or linguists can set up their own educational; institutions to preserve and develop their own culture," guarantee this. Equal opportunity and personal growth are furthered by these protections for citizens.

#### **vi. Constitutional remedies**

When used as a shield for other basic rights, the right to a constitutional remedy rank among the most important and fundamental protections against the state. In the event of a violation of their fundamental rights, "the citizens may petition a court of law," as stated in Article 32.

These constitutional articles constitute the strongest foundations preserving the framework of human rights in India, and hence they have been labelled as basic rights. This is because they are seen as essential to the life and existence of citizens and humans in a free democratic republic.

### **Event Chronology Relating to Human Rights in India**

Many human rights are safeguarded not just by the Constitution, but also by a variety of statutes designed expressly to do so. Some examples of can be found in the list of below.

“1829 - The practice of sati was formally abolished.

1923 – Workmen ‘s Compensation Act.

1926 – Trade Unions Act.

1929 – Child Marriage Restraint Act.

1933 – Children (Pledging of Labor) Act.

1936 – Payment of Wages Act.

1946 – Industrial Employment Standing Orders Act.

1947 – Industrial Disputes Act.

1948 – Minimum Wages Act.

1950 – Caste Disabilities Removal Act.

1955 – Protection of Civil Rights Act.

1956 – Immoral Traffic Act.

1961 – Maternity Benefit Act.

1976 – Equal Remuneration Act.

1986 – Environmental Protection Act.  
1986 – Juvenile Justice Act.  
1987 – Commission of Sati (prevention) Act.  
1990 – National Commission for Women Act.  
1993 – Establishment of Human Rights Commission.  
2005 – Right to Information Act passed.  
2010 – The Right of Children to Free and Compulsory Education Act came into force etc.”

### **Constitutional and Legislative Provisions Available for the Accused in India and Judicial Precedents**

A democracy is a form of government in which the people rule for the benefit of the people. As a result, the public, or its primary component, holds the highest authority in a democracy. Therefore, the goal of any democratic form of government should be to preserve and advance the civil and political liberties of the people it governs, or the public at large. "Respect for human rights sits at the core of effective governance, and in a democratic society, this is the primary responsibility of the state when it comes to promoting as well as preserving human rights." Protecting human rights, discouraging violations of human rights, and advancing the cause of human rights are all duties that fall under the purview of all branches of state government, including the judicial system, the military, the police, and the civil administration. In this regard, the function that police officers play is very significant."<sup>14</sup>

The roles that each department and agency in the government play may be easily identified. The police force is one of the most important organizations in any administration because it plays the most important part in keeping the peace and tranquilly in both the society and the country. This is essential because keeping the peace and tranquilly is a precondition for the overall development of the society. Law enforcement officials are responsible for a variety of tasks, including the upkeep of order and the enforcement of existing laws. It is also the responsibility of the police to hand over to the authority of the criminal justice system those individuals who break the law and infringe upon the civil rights of other people. The police expect other government agencies, in addition to obeying the law, "to uphold the constitutional commitment, to the preservation of basic rights of the citizen." Citizens' fundamental rights are protected by the constitution.

The three branches of the Criminal Justice System—namely, the police, the court, and the penal institutions—should work together in an integrated and congruent

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<sup>14</sup> Sahil, Mohd, The Principles of Fair Trial (August 11, 2021). Available at SSRN: <https://ssrn.com/abstract=3903240> or <http://dx.doi.org/10.2139/ssrn.3903240>

fashion. However, when put into reality, it is frequently discovered that this is not the case. It is frequently observed that the police violate human rights, rather than safeguarding and promoting them as their job should be. Reports of custody fatalities, non-registration of cases, arbitrary arrests, custodial brutality, and other similar incidents have been received by the National Human Rights Commission. Simply being locked up does not strip a person of their human or constitutional rights, regardless of whether they are in the custody of the police, awaiting trial, or already convicted of a crime. The two fundamental tenets of criminal law are known as the presumption of innocence and the burden of proof. According to the presumption of innocence, the burden of proving an accused person guilty lies solely and entirely with the prosecuting attorney; this responsibility does not pass to the defense attorney under any circumstances.

## **1 Provisions of Indian Constitution and Criminal Procedure Code**

### **a) Right to be Informed of Grounds of Arrest**

A person who has been detained under ordinary law for an offence which he committed is entitled to know as quickly as possible the specific charges against them, under Article 22 (1) of the Constitution. Arrestees have a right to know the legal basis for their detention, and failure to do so in a language they can understand would be a violation of their rights under the Constitution.

This appears to be the motivation for the need that the person being arrested be informed of the basis for the arrest. If he finds out why he's being arrested, he can ask the right court to release him on bail or petition the High Court for a warrant of HABEAS CORPUS.

### **Section 47 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 provides for the same thing, and it's not only the constitution that says so. -**

- i. In accordance with Section 47 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, any law enforcement officer or other person who makes an arrest without a warrant must immediately inform the individual of the nature of the crime for which he is being held and any additional circumstances that led to the arrest.
- ii. When a superior officer sends a lower-ranking officer to make an arrest under Section 55 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, that officer must have a written order detailing the details of the arrest, including the name of the suspect and the offence or other reason for the arrest. This officer must then notify the suspect of the details of the arrest before making it. If this clause is not followed, the arrest will be invalid.
- iii. According to Section 77, if an arrest is to be made on the basis of a warrant, the arresting officer or other person is obligated to inform the individual being detained of the nature of the warrant and, if necessary, present him

with a copy of the document authorizing the arrest. The arrest cannot be legal if the suspect is not informed of the basis for the warrant.<sup>15</sup>.

#### **b) Consultation Rights and the right to be Defended BYA Person Practising Law**

One of the many Fundamental Rights enshrined in our Constitution is this article. Article 22 (1) of the Constitution specifies, among alia, that no individual who is detained should be deprived the right to consult and to be represented by a legal practitioner of his choice. The state is not obligated to provide legal help per se under this Article; rather, it must provide the arrested and detained individual with all reasonable means to retain legal counsel. One's right to choose one's own attorney upon arrest is unrestricted. Quickly following an arrest, the right to confer with an attorney or other third party emerges.

Petitioners in **Janardhan Reddy v. State of Hyderabad**<sup>16</sup> and **D.K. Basu v. State of West Bengal**<sup>17</sup> argued, among other things, that the trials in criminal cases Nos. 17 and 18 of 1949 were unfair since the defendants were not given a chance to give their attorneys instructions. Since the defendants in these trials did not have access to a pleader, their advocates argued that the proceedings as a whole were flawed.

The Supreme Court noted that this provision must be liberally interpreted in the accused's favor, and ought to be read in conjunction with the regulations framed by the High Courts and the circular instruction given by them enforcing that in case of cases which are capital in nature, the person who is accused has no way to defend self, an advocate should be made available to represent him. Specifically, the court established the two principles below.

(1) The trial cannot be considered tainted as a general rule of law in all cases of capital punishment if the accused is not defended by counsel.

(2) A court of appeal or revision does have the ability to step in if it is determined that the person who is suspected was so severely disadvantaged by his lack of access to legal representation that the actions against him may be considered a denial of his right to a fair trial.

#### **c) Right to be Produced before a Magistrate**

A person arrested must be brought before a Magistrate within 24 hours, as required by Article 22 (2) of the Constitution. The Criminal Procedure Code now has a parallel provision in Section 56. If a police officer makes an arrest without a warrant, that individual must be brought or sent to a Magistrate

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<sup>15</sup> Satish Chandra Rai v. Jodu Nandan Singh, ILR 26 Cal 748; Abdul Gafur v. Queenmpress,

ILR 23 Cal 896.

<sup>16</sup> 1951 AIR 217, 1951 SCR 344

<sup>17</sup> 1997 (1) SCC 416

with jurisdiction over the matter, or the officer in charge of the police station, as soon as possible and in any event no later than the bail hearing set out below. Within 24 hours, without counting travel time from the place where the arrest has been done to the Court of the Magistrate, every individual detained and kept in custody must be brought before the nearest Magistrate. Article 22 (1) and Article (2) of the Indian Constitution reassuring guarantees that an individual detained has the right to know the legal basis for his detention and to confer with and be represented by an attorney of his choose which is equally noteworthy. If an arrested person is not brought before a magistrate within twenty-four hours, the court ruled in **Hariharnand v. Jailor**<sup>18</sup> that the individual has a right to be released. When an arrested individual is brought before a judge, the judge is expected to use his or her knowledge of the law to decide whether or not the arrest was conducted lawfully.

**d) Person Arrested not to be Detained more than Twenty-Four Hours**

Section 58 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 provides that “no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate Court.” It is also important to note that the right has been given even more protection by being recognised in the Constitution as a basic right. This is something that should be taken into consideration. The following is a provision that may be found in Article 22(2) of the Constitution:

“Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.”

The goal behind the right of an accused to be present in front of the magistrate in a time period of not more than 24 hours from the time when the arrest was made is:

- (i) to prevent the purpose of arrest from becoming solely for extracting confessions or forcefully compelling the arrestee to provide information.
- (ii) to stop people from treating police stations as if they were jails, which would be an inappropriate use of those buildings in the first place.<sup>19</sup>

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<sup>18</sup> AIR 1954 All 601

<sup>19</sup> Mohd. Suleman v. King-Emperor, 30 CWN 985, 987 (FB).

(iii) to ensure that any questions pertaining to bail or release have prompt access to a court authority who is not within the jurisdiction of the police; In the event that a police officer is not able to bring a person who has been arrested before a magistrate within a time period of 24 hr from when the arrest was made, he will be made liable for keeping in detention wrongfully.<sup>20</sup>.

#### e) **No Right to Police Officer to Cause Death of the Accused**

Subsection (3) of Section 43 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 states unequivocally that an arresting officer or other authorised person may use any means necessary to effectuate an arrest, but they do not have the authority to deliberately cause the death of an individual who is not charged with a crime carrying a death or life sentence. The person apprehended should not be put to more restriction than is required to prevent his escape, as stated in Section 46 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

Subsection (4) to Section 43 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 states that no woman shall be arrested between the hours of sunset and sunrise; in the event that such an arrest is necessary, a female police officer must first obtain the permission of the Judicial Magistrate within the jurisdiction of the offence or arrest by filing a written report with that court.

#### f) **Free Legal Aid**

If the accused cannot afford a lawyer to represent his or her interests because of poverty or indigence, the "right to counsel" is meaningless. According to the precedent set by **Sukhdas v. Union Territory of Arunachal Pradesh**<sup>21</sup>, the state is required under the constitution (both implicitly in Article 21 and explicitly in Article 39-A, which is a directive principle) to offer free legal assistance to a destitute accused individual.

The Supreme Court's decision in **Khatri v. State of Bihar**<sup>22</sup> established that the State must give free legal aid to a destitute accused individual at all stages of the criminal process, including the initial appearance of the accused before the Magistrate and any subsequent remands. If the court delays in bringing the poor defendant to trial and fails to advise him of his constitutional right to free legal representation, the right will be meaningless. Consequently, the Supreme Court has mandated that every Magistrate and

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<sup>20</sup> Citizens for Democracy v. State of Assam. (1995) 3 SCC 743:1995 SCC(Cri) 600, G.L.Gupta v. R.K. Sharma, 1999 SCC (Cri) 1150.

<sup>21</sup> 1986 AIR 991, 1986 SCR (1) 590

<sup>22</sup> 1981 SCR (2) 408, 1981 SCC (1) 627

courts notify the poor defendant of his constitutional entitlement to free legal representation.

**g) Right to be Tried in Presence of Accused**

The accused would benefit much by being present in court for the whole of his trial, since he would be able to learn more about the prosecution's case as it progresses. Making the necessary preparations for his defence would be much easier with this information. Criminal proceedings cannot proceed without the accused person present. Despite the lack of a specific provision to make this into effect, the Code does not intend for the accused to have the trial and judgement made behind their back. Provisions allowing the court to dispense with the physical attendance of the accused person under specific circumstances might be interpreted as implying that the accused person's presence is not required throughout his trial.

The accused would benefit much by being present in court during his trial as it would help him being better prepared. This would be helpful in getting ready for his defence. It seems inconceivable that a criminal trial could proceed without the presence of the accused. Although no provision to such effect can be found in the Code, a trial and judgement behind the accused's back are not envisioned by the Code. Provisions allowing the court to dispense with the accused person's personal attendance at his trial under specific conditions might be interpreted as implying that the accused person's presence is not required at all during his trial.

It is required under Section 308 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 that evidence be taken in the person of the accused; however, the same may be taken in the presence of the accused's pleader if the accused's personal attendance is waived. In order to ensure the accused has a fair trial, he or she must be present during the proceedings and informed of the nature of the charges against them. Therefore, it follows as a corollary that any evidence presented in such a trial must be collected with the accused present. Attempts to do so are made under Section 308. According to this section, all evidence must be collected while the accused is present. The trial would be invalidated if this did not happen, and the fact that the defendant had no complaint in this regard makes no difference<sup>23</sup>.

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<sup>23</sup> Ram Singh v. Crown, (1951) 52 Cri. LJ 99, 102; AIR 1951 Punj 178, Bigan Singh v. King-Emperor, (1927) ILR 6 Pat 691; (1928) 29 Cri LJ 260; Ram Shankar v. State of Bihar, 1975 Cri LJ 1402, 1403 (Pat).

#### **h) Right to Speedy Trial**

"Justice delayed is justice denied". This is especially true when a criminal trial is unduly prolonged and the defendant is not let out on bail. However, the accused does not have a guaranteed right to a speedy resolution of his case under the code. This is especially true when a criminal trial is excessively prolonged and the defendant is not let out on bail. Although the code does not explicitly deny the accused the right to a speedy resolution of his case, it does not expressly grant that right either. If the trial has not concluded 60 days after the initial date assigned for hearing and the accused is still in jail, he must be freed on bail per Section 480(6) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. However, this regulation only applies in cases when a Magistrate is involved, and it only helps the accused less than it would otherwise.

#### **i) Right of Appeal**

The Supreme Court has noted that "one component of fair procedure is natural fairness." A single right of appeal on the facts, where a criminal conviction is burdened with loss of liberty, is fundamental to civilised jurisprudence, with appropriate exceptions. Except under exceptional circumstances, such as the original tribunal having a high bench sitting on a college basis, this is essential to fair procedure, natural justice, and normative universality.

The appeals process is one of two major types of review available. A lower court's ruling is appealed when it's incorrect and the higher court must rectify the error. No right to appeal a final judgement or administrative decision exists unless it is specifically granted by laws. In a nutshell, a first appeal, as outlined in the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, exemplifies the importance of the principles enshrined in Article 21.

The appeal process is one of the two major types of review available. An appeal is a formal request made to a higher court to review the decision of a lower court to remedy any errors or unfair rulings that may have been made. No right to appeal a decision or result exists by default; rather, an appeal must be specifically provided for by statute.

## **Conclusion**

Human rights are the most fundamental of all rights, and without them, no individual can lead a dignified life. The Preamble and the Constitution's Articles both emphasise the need of protecting individual liberties and respecting people's inherent worth, so it's clear that the Indian government takes the issue of human rights very seriously. While protecting human rights, the Indian Judiciary even loosened the rule of locus standi, which paved the path for the rise of public interest litigation. As a result of public interest litigation, the courts have heard cases involving multiple violations of human rights. Women's, workers', children's, prisoners', and others' rights were all upheld by the judicial system. Thus, the court is acting as a rescuer of the people's human rights to ensure that everyone is able to live a dignified life. There had been incorporation of various international instruments for the safeguard of rights of human, and on the basis of the regulations of the international instruments, national endeavours have been made, like the enactment of the Protection of Human Rights Act 1993, which was designed to ensure that the United Kingdom complies with international standards for human rights protection. The Act establishes the National Human Rights Commission, as well as State Human Rights Commissions in several States, and it also establishes Human Rights Courts at the district level to ensure that victims of human rights violations receive justice at every level.

The effectiveness of a criminal justice system may be measured by how well it serves victims of crime and how well it safeguards the rights of those who have been accused of wrongdoing. The scales of justice must be balanced between the needs of the victim and those of the guilty. The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 and constitutional requirements of India's criminal justice system show that the compensation given to victims is disproportionately low. The scales are tipped in favour of the accused, and all efforts are focused on ensuring the accused's safety.

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