

June 11, 2008

# Police Processes and Human Rights: An Indian Criminal Procedure Analysis

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## **INTRODUCTION**

*“Although the courts have not assumed to define ‘liberty’ with any great precision, that term is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct, which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective”.... Warren. Former Chief Justice of Supreme Court of United States*

Human Right violations by a law enforcement agency like Police is a universal malady but in a democratic set-up, the operational styles of the public institutions should be geared to respond to the needs of the good governance and that is assured by the special aspect that they draw sustenance from the people’s support and elicit public participation in their working. This weight of democratic accountability on the law enforcement agencies must lead towards a consistent and humane environment so that the human rights culture, which is desired by the most, must be positively promoted. Across the world there is a revamping of institutions of Government in the light of the well-recognized human rights standards. Human Rights are inherent in a person by virtue of his/her being a human. They comprise both civil and political rights as well as economic, social and cultural rights. Criminal justice as a vital institution is also reoriented in the same spirit. However, there are problems of human rights violations by criminal justice agencies.

One of the processes that impose a major threat to the liberty of the individual is that of arrest. This is very much required in various cases for the protection of the larger interests of the society; at the same time, the same law of arrest can be misused by the police for the numerous crimes that may be committed behind the bars of the police station, one of them being the police atrocities. Under this scenario, the researcher tries to look into the specific area of human rights issues in the pre-trial process mainly that of arrest in the due course of paper, The question has arisen time and again as to why the importance is given to the protection of Human Rights at the pre-trial stage? One of the reasons can be that, if a wrong is done to an arrested person at the beginning of the process, it cannot be corrected at any stage whatsoever as this is the basis of the whole trial. As it is true that a lot of Human Rights violations take place during the arrest procedure only, which is an insult to the dignity of an individual. To make sure that the power to arrest is not arbitrary exercised by the police officer Article 22 of the constitution of India and chapter V of criminal procedure code provides direction for safeguards against arbitrary arrest. But the question to be answered here is whether these provisions fulfil the purpose they are enacted for?

The emphasis on the importance of the Human Rights in police functioning means that a system of ideal regulation of the police organization, which helps it to hold high ideals

and continuously monitor its own functioning. There always remains a need to have a balance between the interests of the society and that liberty of the individual and to maintain that

balance, the researcher tries to look into two main questions that-How can the probable misuse by the police force (pertaining to arrest) be restricted? Are the existing provisions sufficient? Also the Scope, object, rights of the arrestee, consequences of illegal arrest and judicial activism will be analysed in the due course of the Article. In so doing, emphasis will be laid on the jurisprudence of the Human Rights Conventions also.

### **Arrest: The Concept and The Process.**

The word “arrest” has not been defined either in any procedural acts or in the several substantive acts, though Section 46 of the Code of Criminal Procedure lays down the mode of arrest to be effected. Arrest can be defined as “The act of taking the person into custody under the authority of law *or* by compulsion of another kind and includes that period from the moment he is placed under the restraint up to the time he is brought before an authority competent to order his continuous custody or release him”<sup>1</sup>.

The Black’s Law Dictionary defines the “arrest” as – “The restraint of a person’s liberty in order to compel obedience to the order of a court of Justice, to ensure that a person charged or suspected of a crime may be forthcoming to answer it. To arrest a person is to restrain his liberty through some lawful authority. Arrest is to deprive a person of his liberty by legal authority. Taking, under a real or assumed authority, custody of another for the purpose of holding or detaining him to answer a criminal charge.”<sup>2</sup>

Here, it seems from the above different interpretations and analysis that the word arrest when used even in a layman sense refers to means the apprehension or restricting or the deprivation of one’s liberty. These interpretations also show that, mainly there can be at least three requisites of arrest which are: Reasonable suspicion of guilt, nature and gravity of offences and existence of grounds justifying arrest.

It is important to mention here that, the Code of Criminal Procedure provides for mainly the three modes of arrest<sup>3</sup>, which are: Submission to the custody by the word or action, Touching the body of the person to be arrested and Confining the body of arrested person.<sup>4</sup>

Is there any need for the arrest, is the question that requires an explanation, while dealing with the concept and its related aspects itself. The reasons for the arrest can be enumerated as follows<sup>5</sup>:

- 1) Securing attendance of accused at the trial: This is when it becomes sure that such attendance cannot be secured by summons or notice.
- 2) As a preventive or precautionary measure: In cases where there is imminent danger as to commission of a cognizable offence, or in case of habitual offender.
- 3) For obtaining correct name or address: This is when the person so arrested refuses to give the correct name and address when asked by the police.
- 4) For removing obstruction to the police: In his/her duty as the police officer.

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<sup>1</sup> (authors name not available) “Right against arbitrary arrest”, 11 *JILI*, (1969), at 34.

<sup>2</sup> *Blacks Law Dictionary* 4<sup>th</sup> Edition

<sup>3</sup> S.R.Roy, *B.B.Mitra on the Code of Criminal Procedure* (Calcutta: Kamal Book House, 1995) at 127.

<sup>4</sup> *Roshan Beevi v. Joint Secretary Tamilnadu Government*, 1984 CriL.J.134.

<sup>5</sup> R. Nagrathnam, *Criminal Procedures: Principles and Precedents* (New Delhi: Tata McGraw-Hill Publishing Company Limited, 1990).

5) For taking a person escaped from the police custody: As regards the person who has escaped from lawful custody.

6) For protecting the accused person himself or herself.

It becomes abundantly clear that the arrest should be affected only in cases where there it is absolutely necessary and to have prompt arrest in cases of danger to the society. It shows that the arrest must be made in certain cases only where it seems that it has become necessary to have prompt arrest in cases of danger to the society .The main reason is that the fundamental right to personal liberty is violated if the safeguards are not followed.<sup>6</sup> Now, one more important aspect relating to the law of arrest is that of use of force while accomplishing the process of arrest. Should there be use of force at all? If yes, then how much use of force is justified? It has been an accepted principle that there has to be use of force in cases where there is no voluntary submission and the arrest is necessary. Justification for such use of force is that there is a duty on the police officer towards the society too.<sup>7</sup>How far this justification holds good will be seen in the due course of the paper.

**Arrest and Custody:** There is a difference between arrest and custody and the arrest is one of the modes under which a person can be brought to the custody of the police, there are various other means and reasons because of which a person may be brought to the custody of the police. This includes the reasons as to interrogate that person also.<sup>8</sup>Therefore, mere act of taking a person into custody does not constitute an arrest unless that person knows, either at time when he first taken into custody or as soon thereafter as it is reasonably practicable to inform him, on what charges or on suspicion of what offence he is being arrested.

Eminent expert like L.H.B.Leigh in his writing says that (giving instance from the English experience) that a procedure as to arrest must fulfil the following principles, as formal legality is not sufficient to justify intrusions into the human liberty<sup>9</sup>:

- a) **Legality:** Law should fix the procedures; the limitations and restrictions applicable should exclude arbitrary executive action. Restriction on individual liberty should be under the due procedure of law.
- b) **Protection of persons caught in the criminal process:** There should be a fundamental respect for human dignity; there should be protection against the possibility of torture or degrading treatment under the custody.

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<sup>6</sup> R. V. Kelkar, "Law of arrest: Some problems and incongruities", 22(3) *JILI*, at 314 (1980).

<sup>7</sup> Bruce C McDonald, "Use of force by Police to effect lawful arrest", *The Criminal Law Quarterly*, Vol 9 (4) 1966, at 435.

<sup>8</sup> *Id.*

<sup>9</sup> L.H.B.Leigh, "Protection of human rights in criminal procedure: The British experience", 17 (1&2) *CULR* 20, at 25 .

- c) **Just system must ensure quality of criminal process:** There should be a balance between the societal interests and individual liberty.

**The Procedure for Arrest:**

Now referring to as to the procedure followed for the arrest, it is important to know that the decision of arrest is taken by the Magistrate or the police officer (the arrest by the police officer has two aspects, one is that of detention, and other is that of punishment to the person who obstructs the police officer in the process of arrest) In case of the Magistrate taking such a decision, it is generally based on the information that is provided to him (such an information can be from the police or the complainant, or from the information given by any person other than the police officer or upon the knowledge of the Magistrate himself).<sup>10</sup> Such information should be reasonable in nature giving a clear indication as to the commission of the offence. Such reasonableness depends from the circumstances to circumstances.<sup>11</sup> Now a stage comes when, the Magistrate issues a “warrant of arrest” that is addressed to the police officer or some other person who is specially named, commanding him to arrest the body of the person named in the warrant. A warrant of arrest is a must in cases where an arrest has to be made of a person who has committed a non-cognisable offence. The Magistrate takes the cognisance of the offence and then issues the warrant. It means that, a police officer cannot arrest a person for any non-cognisable offence unless the warrant has been issued.<sup>12</sup>

But , it does not mean that there cannot be arrest without the warrant; this can be either before the commission of the crime or after the commission. This decision has to be based on certain aspects like<sup>13</sup>: Person reasonably suspected in cognizable offence, Person who has committed in presence of the police officer any non-cognizable offence and refuses to disclose his identity, Any person for whom any requisition is received from another police officer that is competent to arrest etc<sup>14</sup>.

Also, in the cases where, any person who obstructs the police officer in discharge of his duties, the investigating agency is given the power to arrest the person, though there is judicial scrutiny of the arrest so made. These may be specified as follows<sup>15</sup>:

Any arrested person has to be brought before the Magistrate within 24 hours of the arrest, Reports of the arrest have to be sent to the Magistrate<sup>16</sup> and If any Magistrate receives any

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<sup>10</sup> K.N.Chandrashekhara Pillai, *R.V.Kelkar's Lectures on Criminal Procedure* ( Lucknow: Eastern Book Company, 1998) at 21.

<sup>11</sup> *Supra* note 3 at p.119.

<sup>12</sup> Categorisation of offences namely: Cognisable: investigation or arrest by police officer without any order from the Judicial Magistrate and Non-cognisable: No investigation or arrest without any order from Judicial Magistrate.

<sup>13</sup> *Supra* note 3. at p125.

<sup>14</sup> *Id.*

<sup>15</sup> *Ibid* at p.126.

complaint about such an arrest, he should make an order as to call the police officer and ask as to why such an arrested person was not presented to the Court.

**Is there an obligation on the part of arresting authority to arrest?** : In the case of *State of Rajasthan v. Bhaeru*<sup>17</sup>, it was observed by the Court that there is no obligation on the part of the police officer to arrest immediately. However, if any obligation is present in such a case that is of a legal nature according to which the power of arrest must be judiciously exercised, meaning that the Police Officer must be satisfied that the complaint made to him or that the information received by him is credible and that the person who is to be arrested is concerned with a cognizable offence and there is a legal basis to arrest, or in the cases where the Magistrate issues the warrant. If such arrest is not made, it is considered as violation to the procedure.<sup>18</sup> This obligation is followed by the Judicial scrutiny as soon as possible, as a matter of right of the arrested person.

In addition to this the researcher will like to add that, the National Police Commission in its report recommended that Section 170 of Code of Criminal Procedure (which talks about the cases to be sent to magistrate when evidence is sufficient) creates an impression in the minds of the investigating officer that in every non-bailable case the accused has to be arrested and consequently he must be sent to the magistrate, this hampers the due process of law and functioning of the criminal justice system. Thus the commission recommended to amend the Section 170 according to Human Rights criteria's as the main guidelines for efficient working of the Criminal justice system. It gave the guidelines, when the arrest can be said to be justified during the investigation, when it is a cognisable offence, these guidelines are as follows:

- When the case has an element of grave offence like murder, dacoity, robbery, rape etc. In such cases it becomes important to arrest the accused and bring his movements under the restraint to infuse the confidence among the terror stricken victims.
- When the accused is give to the violent behaviour and in every probability there is a chance that he will commit further offences unless his movements are brought under a total restraint.
- When there is a possibility that the accused is likely to abscond and evade the process of law.
- When it is known that the accused is a habitual offender and unless kept in custody he is likely to commit similar offences.

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<sup>16</sup> S.58, Cr.P.C., 1973.

<sup>17</sup> 1997 Cri.L.J. 1237

<sup>18</sup> *Sadaram v. State of Madhya Pradesh*, AIR 1974 SC 2294.

Here, the researcher is of the opinion that these guidelines have been provided for the reason that the great number of arrests which are made in cases with minor prosecutions, should be discouraged as it is not quite necessary from the point of crime prevention.

**THE MECHANISM OF PROTECTION, SAFEGUARDS and JUDICIAL INTERPRETATIONS THROUGH JUDICIAL ACTIVISM:**

It has been held in the case of *D. K. Basu v. State of West Bengal*<sup>19</sup> that a person does not shed his fundamental right to life when he is arrested and Article 21 of Constitution of India<sup>20</sup> cannot be denied to arrested persons or prisoners in custody. Further safeguards are provided under other articles of the Constitution also. Under Article 20(3), no person accused of any offence can be compelled to be a witness against himself. Article 22 (1) and (2) provide that a person who is arrested must be informed as soon as may be of the grounds of his arrest. The person also has the right to consult a lawyer of his choice. An arrested person must also be produced before the nearest magistrate within 24 hours of his arrest. Moreover, the Code of Criminal Procedure also requires the production of the accused before a court within 24 hours. Section 54 of the Code of Criminal Procedure gives the arrestee the right to be medically examined. No statement of a witness recorded by a police officer, according to Section 162 of the Code of Criminal Procedure, can be used for any purpose other than contradicting such a statement. Thus admission of guilt before a police officer is not admissible in a court of law. These rights and other rights provided under both the Constitution of India and Code of Criminal Procedure as well can be analysed as follows:

**1) Right to be informed about the grounds of arrest and Right to be informed of right to bail:** Section 50 of Code of Criminal Procedure (it corresponds to clause(1) of Article 22 of the Constitution) creates an obligation upon the police officer to communicate to the person arrested full particulars of the offence for which he is arrested or other grounds for such an arrest. It also provides that where a person is arrested for a bailable offence, without a warrant, the police officer shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf. Timely information about the grounds of arrest serves the arrested person in many ways. It gives him or her an opportunity to remove any mistakes, misapprehension or misunderstanding, if any in the mind of the arresting authority; it also enables him to apply for bail, or for writ of habeas corpus, or to make other expeditious arrangements for his defence. In the case of *Guljarsingh v. State of Maharashtra*,<sup>21</sup> It has been held that the duty is mandatory and ought not to be treated lightly by the police officer in

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<sup>19</sup> AIR 1997 SC 610.

<sup>20</sup> Article 21 of the Constitution of India provides that "no person shall be deprived of his life and liberty except according to procedure established by law".

<sup>21</sup> 1976 Cri.L.J.1563.

curtailing the liberty of the citizens Also in *Ajit v. State of Assam*,<sup>22</sup> where a person who had been arrested without a warrant alleged, on affidavit that the ground of arrest were not communicated to him, and a police officer claim to the contrary that oral communication had been made did not prove of any help to them. It was held that the duty of communication is mandatory and ought not to be treated lightly by the police officer in curtailing a person's liberty. Also the Section 436 of Code of Criminal Procedure recognize the power of the police to arrest a person without a warrant in case of bailable offence. Moreover, no arrest (without warrant) can be made by the police of a person accused of a bailable offence unless it is a cognizable offence. Every police officer arresting without a warrant any person other than a person accused of a non-bailable offence, is required to inform the person arrested that he or she is entitled to be released on bail and he may arrange for sureties on his or her behalf.<sup>23</sup>

**2) Rights to be produced before a magistrate without delay:**

Sections 56 and 57 (it corresponds to clause (2) of Article 22 of the Constitution), provides that the person arrested shall not be kept in the custody of a police officer for a longer period than is reasonable and that in any event such period shall not exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the magistrate's Court and if the magistrate permits the police officer to keep such person in his custody, he can do so beyond the period of 24 hours.<sup>24</sup>

**3) Right of not to be detained for more than 24 hours without judicial scrutiny:**

This right has also been incorporated as a fundamental right in the form of Article 22(2) of the Constitution of India .<sup>25</sup> This right has been created with a view (i) to prevent arrest and detention for the purpose of extracting confession, or as a means of compelling people to give information.; (ii) to prevent police stations being used as though they were prisons;(iii) to afford an early recourse to a judicial officer independent of police or executive on all questions of bail or discharge.

**4) Right to consult a legal practitioner:** Both the Indian Constitution and the provisions of the code recognize the right of every arrested person to consult a legal practitioner of his or her choice has been guaranteed and recognised both by the Constitution of India as well as Code of Criminal Procedure. The right initiates the very moment when the arrest is made. This is an important right, as arrest can be a complicated matter of law and facts and it might be bit difficult for the person arrested in the circumstances that he or she is facing or otherwise, to

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<sup>22</sup> 1976 Cri.L.J. 1303.

<sup>23</sup> See S. 50(2).

<sup>24</sup> See S. 56 and 57.

<sup>25</sup> Art. 22(2) of the Constitution of India .

understand the complexities involved. It is true even more in the case of poor and underprivileged people. The Prevention of Terrorism Act also recognizes this right.

Now, coming to the aspect of judicial activism in the field of arrests and human rights, the judiciary has time and again exercised judicial control of interferences by the police or other law enforcing agencies with the individual's right to liberty. This is an essential feature and one of the fundamental principles of a democratic society, which is intended to minimise the risk of arbitrariness in the arrest procedure. It is important here to look into the decisions that are rendered by the Courts in order to understand the implication of the law, the guidelines and the role that the Judiciary plays in improving the mechanism of the law relating to arrest.

1. *D K Basu v. State of West Bengal*<sup>26</sup>: This landmark case became the best and principle guideline, which talked about the requirements which should be followed in all cases of arrest or detention till the legal provisions could be made in that behalf as preventive measures. These requirements are as follows:

- The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
- That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made, it shall also be countersigned by the arrestee and shall contain the time and date of arrest.
- A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

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<sup>26</sup> AIR 1997 SC 610.

- The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed; of the arrest and the names and particulars of the police officials in whose custody the arrestee is,
- The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor-injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
- The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.
- Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
- The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous police board.

The above mentioned requirements flow from the Articles 21 and 22(1) of the Constitution of India and are also in addition to the Constitutional and statutory safeguards. These guidelines go a long way in assuring the total protection of rights and dignity of the arrestee. This judgement has such an impact that these guidelines can be founded pasted in every police station throughout the country in the form of Standing order or some thing like that.

2. In another very important decision in the case of *Joginder Kumar v. State of Uttar Pradesh*<sup>27</sup>, the power of arrest, misuse of police power of arrest and its exercise was discussed, it was observed that, any arrest cannot be made because it is lawful for the police officer to do so. The existence of the power of arrest is one thing. The justification

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<sup>27</sup> AIR 1994 SC 1349

for the exercise of it is something which is another and therefore any arrest should not be made without a reasonable satisfaction reached after some investigation about the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. The Court further held that denial of a person of his liberty is a serious matter and is a clear violation of the norms and principles of Human Rights.

3. Also in the famous case of *A.K.Gopalan v. State of Madras*<sup>28</sup>, Supreme Court observed that the right to fair pre-trial detention stems from the very right to a fair trial and hence it should not be taken away in any sense. The Court further held that a person does not forfeit all his rights just because he is lawfully detained and even a convict should not be imposed with any treatment which violates his basic human dignity during his incarceration. The Court went ahead showing a great form of judicial activism when it observed that the Courts have got the jurisdiction to ensure the compliance of its own directives-by its power to look into the allegations of violations of the rights of accuse inside the prisons. It also ordered that the states are obliged to make it sure that humane environment is provided even inside the prison.

On one hand latest judgement like that of *D.K.Basu* and *Joginder Kumar* and on the other hand this judgement, which was delivered in 1959, talked about the basic dignity of the arrested person which should be respected. It shows the continuous activism and efforts of Judiciary to implement the Constitutional and Human Rights safeguards in the favour of the arrested person. In addition to this the Courts have reaffirmed as seen in the case of *Dr. Ghanshyam Narayan Singh v. State of Bihar* that when a person is arrested he should be informed as to the grounds of his arrest so that he may take up a reasonable defence about the same and if this is not done, then the arrested person may be released with immediate effect.<sup>29</sup>

**THE UNIVERSAL MECHANISM:** The present Section will provide an analysis of the basic legal rules governing arrest, in international human rights framework. All human beings have the right to enjoy respect for their liberty and security. It is obvious that, without an efficient guarantee of the liberty and security of the human person, the protection of other individual rights becomes increasingly vulnerable and often illusory. Yet, as is evidenced by the work of the international monitoring organs, arrests and detentions without reasonable cause, and without there being any effective legal remedies available to the victims concerned, are commonplace. In the course of such arbitrary and unlawful deprivations of liberty, the

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<sup>28</sup> AIR 1959 SC 27

<sup>29</sup> 2001 CriL.J. 2811 (Patna).

detainees are frequently also deprived of various rights and privileges guaranteed by Human Right standards as enumerated and discussed below:

**1. International Legal Responsibility:** The Article 9(1) of the International Covenant on Civil and Political Rights<sup>30</sup>, Article 6 of the African Charter of Human and People's Rights<sup>31</sup>, Article 7(1) of the American Convention on Human Rights<sup>32</sup> and Article 5(1) of the European Convention on Human Rights<sup>33</sup> and Article 3 of Universal Declaration of Human Rights<sup>34</sup>, guarantees a person right to "liberty" and "security". The gist of these articles in the respective covenants can be said to be that the wrongful deprivation human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself incompatible with the principles of these Conventions and International Human rights instruments. It has been expressly provided in these Human Right frameworks that it doesnot matter, whether a state has or has not ratified these instruments, the sate has to adhered to any of these human rights treaties, to ensure a person's right to respect for his or her liberty and security, which means that the States parties are under an obligation to take reasonable and appropriate measures to protect every individual and respect his/her liberty and security.

**2. Lawful and Unlawful Arrests:** The Article 9(1) of the International Covenant on Civil and Political Rights reads as: "*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*" Moreover, Article 5 of the European Convention on Human Rights is the only treaty that specifically enumerates the grounds, which can lawfully justify a deprivation of liberty<sup>35</sup> (the

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<sup>30</sup> Ian Brownlie and Guy.S. Goodwin, *Basic Documents On Human Rights* (Oxford: Oxford University Press,2003)at p.185

<sup>31</sup> *Ibid* at p.730

<sup>32</sup> *Ibid* at p.674

<sup>33</sup> *Ibid* at p.400

<sup>34</sup> Paul Sieghart, *The International Law Of Human Rights* (Oxford: Clarendon Press,1995)at p.135

<sup>35</sup> These grounds are:

- (a) the lawful detention of a person after conviction by a competent Court,
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law,
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so,
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority,
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug

list being exhaustive has been mentioned in the footnote). These provisions in the International instruments suggests that that a deprivation of liberty must in all cases be carried out with due regard to “the principle of legality”, which researcher understands to be the procedure established by law and this principle is violated when an individual is arrested or detained on grounds which are not clearly established in by the law in conformity with the International Human Rights standards.

With regard to the meaning of illegal or unlawful arrest or arbitrary arrest, the Article 9 of the Universal Declaration of Human Rights (UDHR)<sup>36</sup> says that : *The arbitrariness is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.* What researcher understands by this provision is that, if the arrest is neither reasonable nor necessary in the circumstances of the case , it will be arbitrary and illegal. Here drawing the analogy from the Article 9 of UDHR, it can be seen that when a person is arrested without warrant or summons and then simply kept in detention without any court order, also will amount to a violation of the right to freedom from arbitrary arrest and detention (as set forth in Article 9). In addition, given the importance of personal liberty by Article 9 of UDHR, it is essential that the applicable national laws meet the standard of fairness and lawfulness set by the declaration, which requires that all law, whether written or unwritten, be sufficiently precise to allow the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in all circumstances.

**Arrest on “reasonable suspicion”:** India as well as most nations world around have acknowledged the aspect of “reasonable suspicion” and it is generally said that the most common legitimate ground for deprivation of liberty is that a person is reasonably suspected of having committed an offence. This statement itself is lethal and is a powerful instrument, which can destroy the entire fundamental as well as human rights of an individual. It presupposes the existence of facts or information, which would satisfy any body that the person so arrested may have committed the offence. However, what may be regarded as ‘reasonable’ will depend upon all the circumstances of a case like in the case where a person is a dreaded criminal and it is generally accepted that he is involved in the disruptive activities, the degree of suspicion on that person is very high and his arrest on suspicion.<sup>37</sup> Sometimes can be said to be reasonable but then also in such cases the criteria which should

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addicts or vagrants,

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

<sup>36</sup> *Supra* note 35 at p.135

<sup>37</sup> *Supra* note 35 at p.147

be adopted is that the party which is insisting on the fact that the arrested person has committed offence must furnish at least some facts or information capable of satisfying the Court that the arrested person was reasonably suspected of having committed the alleged offence, otherwise it will be highly arbitrary to suspect the arrested person and will be a great harm done on his personality as well as rights also.

**IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS STANDARDS IN INDIAN SCENARIO:**

As discussed above, while mentioning the activist role played by Indian judiciary in order to implement the International Human Rights standards, the judiciary has time and again read the important International Human Rights provisions into the Indian circumstances. It gives significance and recognition to the fundamental significance of the Human Rights, some of them are implicit in the form of fundamental rights in Constitution of India. It has promoted the necessity to preserve, protect and promote the Rule of Law, which is in strict conformity with the International Human Rights standards. Moreover in addition to Judiciary's continuous efforts, the law commission of India also, as seen in the 177<sup>th</sup> report on the Law of Arrest, observed that Human Right standards should be incorporated in Code of Criminal Procedure, and in furtherance of its observation, it has suggested that the Section 41(2) of Code of Criminal Procedure which gives a vast and unaccountable power to the police pertaining to the arrests, must be deleted from the code as it does not stand in conformity with the International Human Rights standards and is a clear violation of provisions of Universal declaration of Human Rights and European Conventions.

Article 2(2) of the ICCPR<sup>38</sup> imposes certain kind of obligation upon the States, which ratify it to enact domestic legislation to give effect to the rights guaranteed by the Covenant. Moreover, the Article 3 further lays down an obligation upon such States to ensure that the rights guaranteed by the Covenant are made available to all their citizens.<sup>39</sup> In this scenario the problem arises when one thinks that what is the status of certain international covenants or agreements signed and ratified by India and what is the rate at which they can be said to be effective, encouraging and applicable and can they be enforced by the Indian Courts? And Can an Indian citizen claim the privileges granted by the provisions of these covenants? In this regard the best answer can be found in the context of judgements like that of *Vishakha v. State of Rajasthan*<sup>40</sup>, where it was observed by the Court that if an international covenant is consistent with the Fundamental Rights, provided in the part 3 of Constitution of India, and are in conformity with the very spirit of Constitution, those International Human Rights covenant and its provisions can be read into the provisions of Fundamental Rights. The Court

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<sup>38</sup> *Supra* note 31 at p.172

<sup>39</sup> *Id.*

<sup>40</sup> (1997 (6) SCC 241).

further observed that this effort will enlarge the meaning of Fundamental Rights of an individual and will promote the object of the Constitutional guarantee. It shows that Indian Courts are trying hard to encourage the support mechanism to stop the miscarriage of justice and are giving correct encouragement to the rule of law by adopting a more advanced and beneficial vision, when it comes to the Human Rights of an individual. These International Covenants are quite consistent with the rights provided under the Constitution of India and the Code of Criminal Procedure to an arrested person as it can be seen in the following instances that:

- The sections 50 and 75 of Code of Criminal Procedure and Article 22(1) of Constitution of India (later in the form of a Fundamental Right) expressly provides that, in cases of arrest with or without warrant the person arresting shall communicate to the arrested person, without delay, the grounds for his arrest. This is a precious right and has been recognised as one of the fundamental rights. This privilege has also been provided by the Section 10(a) of the Canadian Charter of Rights and Freedom, which provides for similar right on the arrest or detention.<sup>41</sup>
- The Sections 56 and 57 of Code of Criminal Procedure provides that, in case of every arrest, whether the arrest has been made with or without a warrant, the person arresting is required, without unnecessary delay and subject to the provisions regarding bail, to produce the arrested person before the magistrate or court having jurisdiction in the case and the person must not be detained for more than 24 hours in the police custody, therefore. Similar provisions can be found in the Article 5 (1)(c) and Article 5(3) of the European Convention for the Protection of Human Rights and Fundamental Rights.<sup>42</sup>
- Article 22(1) of the Constitution of India provides the Right to consult a legal practitioner of his/her choice.<sup>43</sup> This right begins from the moment such person is arrested. Article 6(3)(c) of the European Convention for the Protection of Human Rights and Fundamental Rights (which talks about the right to fair trial) also provides for the similar right.

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<sup>41</sup> The Section 10(a) of the charter says that, Everyone has the right on arrest or detention, To be informed promptly of the reasons for such an arrest or detention.

<sup>42</sup> Although this convention doesnot say anything about fixed time as is given in the Indian context (24 hours) it says that an arrested person should be brought before judge or other officer authorised by law within a reasonable time.

## CONCLUSION

*“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”.. Article 10(1) of the ICCPR*

Through the creative interpretation of the fundamental rights and a great understanding of the International Human Rights standards, a great deal of human rights jurisprudence has been developed by the Supreme Court of India. Moreover, it has attempted to strike a balance between the liberty of citizens (the most precious of all fundamental rights) and the social interest in the maintenance of peace and law and order. But still there is a need for modification of the situation and thereby the agency of criminal justice system namely the police to protect the human rights of citizens and fulfill the objective of welfare state. There should be regard for civil liberties and human rights. The most important transition that merits urgent attention hinges on the attitude of the average policemen in their day-to-day work. It is here that the leadership has to pull their collective weight in bringing first the attitudinal change of Police in their actions as well as their thinking. The changes like that in arrest procedures in the law in relation to the specific issues of the Human Rights abuses are urgently needed. Modernization of the police work, better investment in the terms of overall organisational reform and so on must be put on a national agenda. In such a scenario, the law enforcement can be made effective without discarding the reasonable and minimum standards of Human Rights provided by the Constitutional provisions relating to fundamental rights and national and international policies and treaties on the Human Rights<sup>44</sup>. To make this task really a possibility a great amount of social awareness coupled with the self-awareness on the part of the police personnel is a primary pre-requisite. In specific cases related to arrests and other offences also where there is a scope for the misuse of police power the abuse of police power can be stopped by Transparency of action and accountability. These two steps are perhaps the possible safeguards which our Courts and legislature must insist upon. Attention is also required to be paid to properly develop work culture, training and orientation of the police force consistent with basic human values. Training methodology of the police needs restructuring at the very implementation level. The force needs to be infused with basic human values and made sensitive to the constitutional ethos. Efforts must be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation.

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<sup>43</sup> This right has been also reaffirmed in the case of *D.K.Basu v.State of West Bengal*, AIR 1997 SC 610.

<sup>44</sup> S.Krishnamurthy, *Investigation of Human Rights Abuses Committed By Law Enforcement Agencies* (Bangalore: R.R.Publishers,2003) at p.77