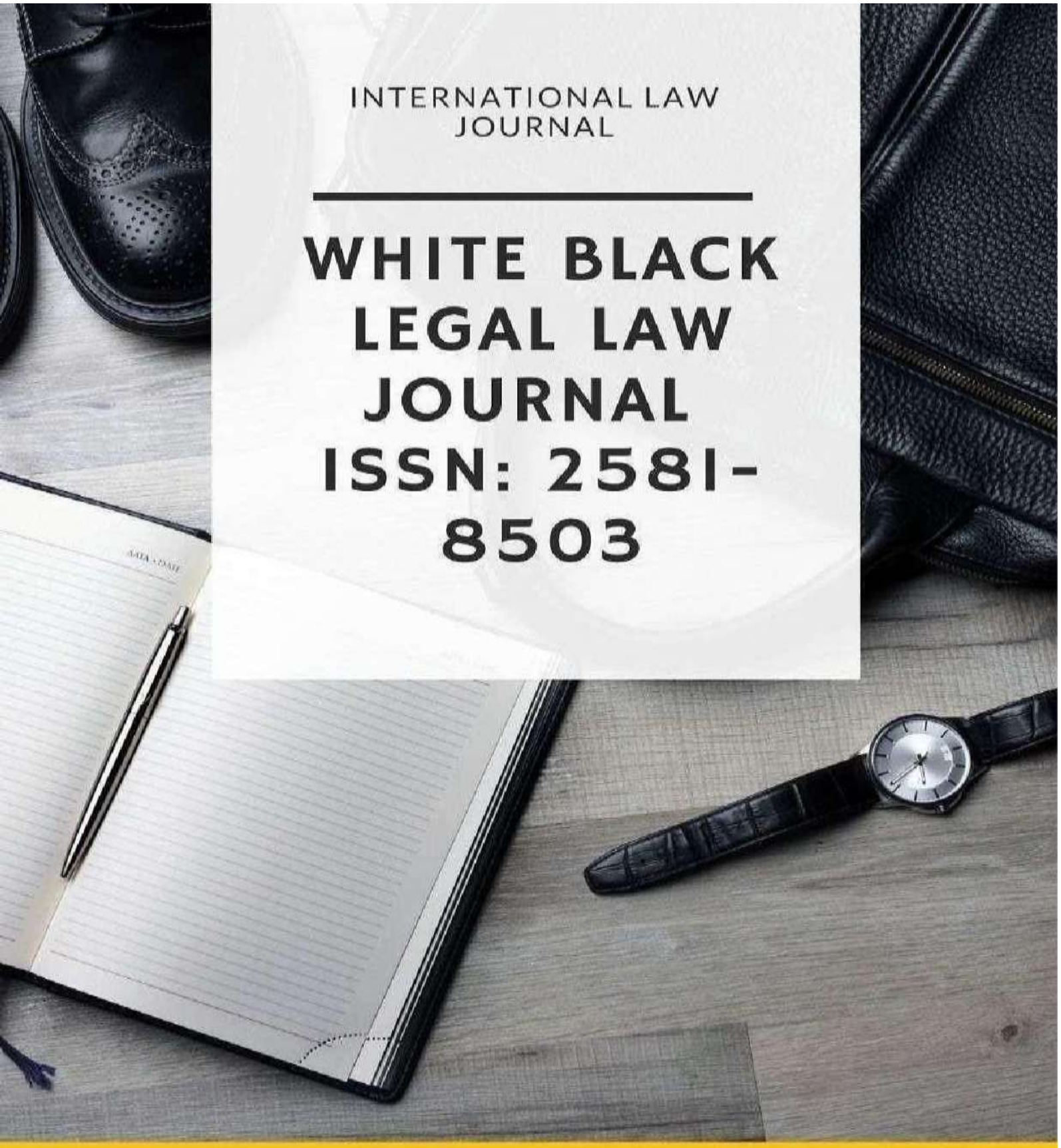

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UPHOLDING DIGNITY: A CRITICAL ANALYSIS OF HUMAN RIGHTS SAFEGUARDS IN INDIA'S CRIMINAL JUSTICE ADMINISTRATION

AUTHORED BY – HARISH KUMAR[1]

ABSTRACT

This Article, "Constitutional Safeguards: Human Rights and Criminal Justice," meticulously examines the foundational protections enshrined in the Indian Constitution that secure human rights within the criminal justice system. It highlights how these constitutional provisions serve as indispensable bulwarks against state overreach and ensure fairness and dignity for individuals subjected to legal processes. The analysis commences with an exploration of the overarching constitutional rights afforded to the accused, before delving into specific safeguards. These include the crucial protection against retroactive criminal legislation (ex post facto laws), the evolving principle of procedural due process as interpreted by the judiciary, and the fundamental right to equality and equal protection of law. Further, the Article scrutinizes the bedrock principles of presumption of innocence, the rule against testimonial compulsion (right against self-incrimination), and the prohibition against double jeopardy. Critical examination is also made of the safeguards against arbitrary arrest and detention, the nuanced rights related to release on bail, and the indispensable access to legal representation and right to legal aid. Ultimately, this Research Article underscores the profound commitment of the Indian Constitution to a rights-based criminal justice system.

KEYWORDS - *Human Rights, Criminal Justice Administration, India, Constitutional Safeguards, Accused Rights, Procedural Due Process, Equality Before Law, Presumption of Innocence, Self-Incrimination, Double Jeopardy, Arbitrary Arrest, Detention, International Human Rights Law, Indian Judiciary, Fair Trial*

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INTRODUCTION

Tinges of concern for Human Rights of individuals in the criminal justice administration system can be traced in Vedas, Epics and ancient history But the strong consciousness for the same is of recent origin Criminal Jurisprudence while it seeks to provide protective devices through punitive sanctions also aims at securing better social order Criminal justice system has various objectives It consists of four wings which deal with different aspects of crane control m society, namely the law givers, the law enforcers, the judiciary, and the correctional administration Proper administration of criminal justice necessitates certain requirements They are (1) independent and impartial investigating agency, (2) scientific investigation of cranes, (3) speedy trial and (4) proper punishment.

Since human rights are namely concerned with liberty, safety and dignity, the criminal justice system administration should provide a set of safeguards to ensure that the citizens are protected and their human rights are not violated A few of the safeguards enlisted below are to be built m the criminal justice administration m order to preserve human rights

a) All laws are tested on the touchstone of the Constitution,
b) Enforcement should be within the four comers of law,
c) Adjudication of guilt remains only with the judiciary, and
d) All wings of criminal justice administration system are to strictly follow due process and principles of natural justice. To preserve human rights these safeguards are to be built m the criminal justice administration.

Nowadays the relevance of criminal justice system is being seriously questioned It has become cumbersome, expensive and beyond the reach of poor. The reason is that it is based on the arbitrary laws which oppressively operate on the weaker sections of the society notwithstanding constitutional guarantee to the contrary The problem of protecting human rights in the administration of criminal justice remains both complex and acute It is complex because of the inevitable differences which arise between the law in books and the law in action, it is acute because all said and done, criminal law offers a constant summons to the will to power, the cost of repressive uses of criminal law continue to remain high."[2]

Criminal justice system, m theory and practice everywhere impinge crucially on human rights,

[2] Bakshi Upendra, in his Forward to "*Protection of Human Rights in Criminal Justice Administration"* by Manjula Batra (1989)

even as they seek to avenge wrongs injurious to individual as well as to the society The Criminal law and justice administration requires refurbishing so

"The extent to which human rights are respected and protected within the context of criminal proceeding is an important measure of society's civilisation What are the human rights which it is important to protect within our criminal procedure'? And more important again, perhaps is that to what extent should the human rights of the suspect and accused be protected when other important interest of the society is under attack and m possible conflict of the interest of the accused'? These are the difficult questions 10 answer, because there is a perpetual conflict between the interest of the accused and the fundamental interest of the society." [3]

In the light of the above, it is endeavoured to evaluate the constitutional safeguards m the promotion of the Human Rights and Criminal Justice corresponding to the provisions of the Universal Declaration and the International Covenants.

In the context of criminal jurisprudence the foremost and primary human right is the right attached to the person i e 'Right to Life and Personal Liberty' It means the right that one's life shall not be taken away except under the authority of law From the right to life comes the freedom of person which means that one's life shall not be taken away except under the authority of law The realisation of this - "Right to Live' and 'Freedom of Persons' - alone enables one to exercise a variety of other auxiliary right, and without which all other rights dwindle into insignificance.

The Charter of Universal Human Rights dwells on all aspects of the right to life, and personal liberty Much concern and stipulation for the protection of these rights have been proclaimed under several Articles of the Declaration and Covenants Article 3 of the Declaration proclaims that everyone has the right to liberty and security of persons and m safeguarding that right what is envisaged under Article 9 of the Declaration states;

"No one shall be subjected to arbitrary arrest, detention or exile"

Other aspects of personal liberty are covered under Articles 4, 5, 6, 11 and 12 of the Declaration.[4]

[3] Bhagwati P N, "*Human Rights in the Criminal Justice System*", published in '*Criminal Law, Criminology and Criminal Administration',* Gaur K D (ed) 1992 p 177

[4] These Articles deal with issues like *presumption of innocence, right to recognition as a person, protection against torture and degrading treatment, principle of legality* etc

The Covenant on Civil and Political Rights provides for these under Articles 6,9, 10, 14 and 15[5] Article 14 incorporating the same adds more rights viz right to be informed about the grounds of arrest, right to be produced before a Magistrate within a reasonable time, entitlement to take proceedings before a court of law to challenge the lawfulness of the arrest / detention, right to compensation for wrongful detention etc Article 14 (3) of the Covenant enumerates a set of minimum guarantees available to a person charged with a cranial offence, in the determination of criminal charge against him.

CONSTITUTIONAL RIGHTS OF THE ACCUSED

Constitution and are contained m Articles 20, 21, 22, 14 and 32 They correspond, to the major extent, to the foregoing provisions of the Declaration and the Covenants, relating to Human Rights m Criminal Justice They display a long list of human rights which are important to be protected under the Code of Criminal procedure in favour of the accused, under-trials and prisoners. The specific constitutional rights of the accused are so basic to human dignity that they have been made Fundamental rights.

The rights that are of special concern m regard to criminal justice are;

- Protection of personal liberty,
- Protection against ex-post facto laws,
- Right against double jeopardy,
- right against self-incrimination,
- Right to be informed of the grounds of arrest,
- Right to consult and be defended by a lawyer,
- Right to be produced before a Magistrate before 24 hours,
- Right against unlawful arrest detention,
- Right to bail and
- Right to speedy trial

[5] They correspond to and further extend the set of rights envisaged under the Declaration Article 6 states that, *"every human being has the inherent right to life" and that "this right shall be protected by law" Article 9 imposes prohibition against arbitrary arrest* and Article 10 reads *"all persons depended of their liberty shall be treated with humanity and with respect for the inherent dignity of human person"*

PROTECTION AGAINST RETROACTIVE CRIMINAL LEGISLATION

This is one of the basic principles of Criminal Justice System provided by the Constitution of India, m tune with the international endeavours The principle is that no person can be accused of an offence for an act which was not an offence under the Jaw in force on the date when it was committed It has its roots m the maxim "Nulla Poena Sine Lege" which propounded the idea that no man shall be made to suffer except for a distinct breach of the criminal law, which law shall be enacted beforehand m a precise and definite terms The rule prohibits, (a) retrospective imposition of criminality, (b) the execution by analogy of a criminal rule to cover a case not obviously falling within it and (c) the formulation of criminal law in excessively wide and vague terms.

This is a guarantee against ex-post facto operation of criminal law An ex- post- facto law is one which gives the pre-enactment conduct a different form that which it would have had without the passage of the enactment[6] The basis of the guarantee is that a man should be able to know m advance what conduct is and what is not criminal, particularly when punishment and penalties are involved The penal law must be accessible and intelligible because it is addressed to the people m society who are bound to obey it on pam of punishment[7] Another postulate of this principle is that penal laws should be sufficiently definite Certainty of legislation is necessitated for two reasons, (1) People must know then duty and precisely aware about the prohibition created by Jaw and(2) Criminal law should be certain so as to be determinable of the, men's rea which is an essential element of crime.

The Indian Constitution ensures protection against conviction for offences enacted retrospectively or retroactive by its specific declaration of this right as one of the Fundamental Rights Corresponding to Article 11 of the Universal Declaration of Human Rights the Constitution contains under Art 20(1) such safeguard. Article 11of universal declaration states "No one shall be guilty of any penal offence on account of any act or omission which did not Constitute a penal offence under national or International laws at the time when it when it was committed Nor shall a heavier punishment be imposed than the one that Was applicable at the time when the offence was committed" The same is found in Article 15 of the International Covenant on civil and Political Rights[8] This was repeated in Article 7 of the European

[6] Chaturvedi A N, '*Rights of the Accused under Indian Constitution'*, (1984) p 100
[7] Williams G, *Criminal Law* 2nd Edn p 582
[8] The term 'penal offence' found m Clause (2) of Article 1] of the *Universal Declaration of Human Rights* is

Convention on Human Rights, though with an important under that punishment is allowed for acts that are criminal according to the general principles of law recognised by civilised nations, Incorporating the same with only a slight difference in the language in which it is expressed, Clause (1) of Art 20 of the Constitution of India provides that;

"No person shall be convicted of any offence except for violation of a law in force at the time of commission of the act charged as an offence, nor be subjected to penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence"

Article 20 prohibits only conviction or sentence under an ex-post-facto laws and not the trial Retrospective change m the procedure or forum of the trial is not prohibited under Article 20(1) Interpreting the scope of Article 20, the Supreme Court in Shiv Bahadur Singh v State[9] held that 'what is prohibited under Art 20 is the conviction of a person or his subjection to a penalty under the ex-post-facto law and not the trial thereof Such trial under a procedure different from what obtained at the time of the commission of the offence cannot ipso facto be held to be unconstitutional' A person accused of the commission of an offence has no fundamental right to trial by a particular procedure except in so far as any constitutional objection by way of violation of any other Fundamental Rights may be involved' Further it was rendered that change of venue of trial of an offence from a criminal court to an Administrative Tribunal"[10] or a change of rules of evidence'[11] was not violative of Article 20(1).

Again, reinstating the same view in Maneka Gandhi[12] case, the Supreme Court stated, "A procedural change if administrative in matters of substance is not an ex-post-facto legislation even though it might work to the detriment of the accused person It is because the Indian Constitution does not confer a right to a particular procedure to be tried with for an offence However the procedure must be reasonable, fair adjust."

THE PRINCIPLE OF PROCEDURAL DUE PROCESS

The most fundamental of all human rights is 'Right to Life and Personal Liberty' "Everyone has the right to life and liberty and security of person", so states Article 3 of the universal Declaration of Human Rights Incorporating this right, the International Covenant on Civil and

replaced by the term 'Criminal Offence' in Clause (1) of Article 15 of the International Covenant on Civil and Political Rights It further adds, "*If subsequent to the commission of the offence, provision is made by law for the imposition of higher penalty, the offender shall be benefited thereby"*

[9] 1953 SCR 1188 at 520

[10] *Union of India v Sumar Pyne*, AIR 1966 SC 1206

[11] *CD S Swamy v State*, AIR 1960 SC 7

[12] *Maneka Gandhi v Union of India*, AIR 1978 SC 597

Political Rights lays down certain procedural safeguards under Articles 6 and Article 9[13] The two International Documents[14] have used the expression, "arbitrarily", "procedure established by law", "fair and public hearing" and "impartial tribunal established by law" and the ingredients of these concepts so expressed form part of human rights.

The principle that no person shall be deprived of his life and liberty except according to the procedure established by law has been enshrined in Art 21 of the Constitution of India which secures this right to all persons The right envisaged under this Article has two dimensions (i) Right to personal liberty is not absolute and (ii) intervention by the State m individual's personal liberty and the circumstances thereof shall be determined by the legislature so that there is no arbitrary action'[15] The Constitutional norm that an individual cannot be deprived of life and personal liberty under a valid law and a valid procedure calls for a protection of individual from arbitrary. oppressive and capricious use of the law designed to take away the liberty of the individual.

India has undertaken to maintain international standards for the implementation of Human Rights If that be, in the Criminal Justice System, at the preliminary stage itself, the human rights of the accused must be ensured at all levels and all cases This necessitates, probably, a venture for innovations relating to the Constitutional protection and procedural safeguards against misuse of law On this line of thinking it is a welcoming perspective that the Supreme Court has developed compensatory jurisprudence by awarding compensation[16] whenever the right to life and liberty of an individual is violated It widened the relief traditionally available under Article 32[17] by laying down an obligation of the State to make monetary compensation to persons on whom the abuse of power of the police and investigating authorities was exercised, persons who were imprisoned and detained without legal authority, persons whose rights, as a prisoner, implied and embedded in the omnibus right to life and liberty were denied and to the bereaved m the case of custodial death. This is a positive departure from the age, old jurisprudence with respect to the State liability in criminal cases.

[13] Article 9(1) of the ICCPR states that, "*every person has the right to liberty and security of person No one shall be subjected to arbitrary arrest and detention"*
[14] Article 9(1) of the ICCPR states that*, "every person has the right to liberty and security of person No one shall be subjected to arbitrary arrest and detention"*
[15] Kulshestra S K, "*Fundamental Rights and Supreme Court'*, 1995 Ed P 167
[16] Starting from *Rudal Shah v State of Bihar* (AIR 1983 SC 1086), masons of cases, the Supreme Court rendered compensatory justice
[17] The High Courts followed suit, doing the same under Article 226

RIGHT OF EQUALITY AND EQUAL PROTECTION OF LAW

The idea of justice starts from the presupposition that men are by then nature equal and results m the postulate that all men shall be treated in equal way This refers to a certain treatment which men either receive or ought to receive. Doctrine of equality is a deep rooted base of the principle of justice It visualises a sort of compensatory treatment to make all men equal before law without any consideration of caste and creed, big and small, privileged and unprivileged and rich and poor The principle of equality as a postulate directed at the authority creating the law meaning equality m law should not be confused with the principle of equality before law which is directed at the authorities Appling the law to concrete cases.[18]

The right to equality is guaranteed to every person under the Constitution of India ensured in Article 14 It is a general Article and is available to all persons. It states that the *'States shall not deny to any person equality before law or the equal protection of law within the territory of India'* Article 14 not only impresses upon the equality before law but also equal protection of law which is a positive concept implying equality of treatment in equal circumstances, meaning thereby, among equals law should be equal and equally administered,[19] Equality before law is a negative concept, which declares that everyone is equal before law that no one can claim special privileges and that all classes are equally subjected to the ordinary law of the land The latter part of the Article postulates an equal protection of all alike in the same situation and under like circumstances This clause merely requires that all persons subjected to legislation shall be treated alike under like conditions both in privileges conferred and liabilities imposed.[20]

Criminal justice is a distinctive embodiment of social interest m the process of administering law It is incumbent up on the State that the protection is afforded to an accused or an individual chosen for indictment for wrongs done m retrospect or for creating conditions prejudicial to his interest , that he does not suffer in a discriminatory way The Indian system of criminal justice administration being accusatorial, certain rights are recognised m favour of the accused as against the State viz the Right to Silence by prescribing the presumption of innocence requiring the State to prove guilt beyond reasonable doubt, and the requirements of elaborate pre-trial

[18] Kelson, 'What is Justice', p 15 cited in '*Human Rights and Fundamental Freedoms'* by Jagdish Swarup, 1975, p 190
[19] Ponnaiyan M and Aran Kumar, "*The vibrant spectrum of Human Rights*", published in PRP 'Journal of Human Rights, April-July, 1983 vol 2.
[20] AIR 1979 SC 327

evidentiary process The recognition of these rights and rules are well within the scope of Article 14 enabling the accused to get protective considerations against the powerful adversary, he State The role of the doctrine of equality becomes more significant to understand the rights of the person who has been accused of having committed a crime.[21]

PRESUMPTION OF INNOCENCE

A principal rule of criminal jurisprudence is that every person shall be presumed to be innocent till the contrary is proved against him It means that the presumption is that the accused is innocent Every matured legal system of the world, especially common law countries, regards the accused as innocent until he is proved to be guilty beyond all reasonable doubt So does India. The principle is envisaged in Clause 2 of Article 14 of the International Covenant of Civil and Political Rights, 1966 which reads;

'Everyone charged with a criminal offence shall have a right to be presumed /innocent until proved guilty according to law'

The basic principle, though not stated expressly, has been enshrined in Article 21 of the Constitution of India. The epistolary jurisdiction of the Supreme Court has enabled it to construe and read this human right into Article 21 and enlist the same within the ambit of the leading Article.

The emphasis is on human dignity, a basic human right. The usefulness of the doctrine of presumption of innocence is that it helps in defending the dignity of the individual in view of the fact that most of the persons accused of cranes are poor, uneducated and sometimes may go undefended. The presumption ensures a fair trial which is a valuable right of an accused against the State's enormous power and resources.

The principle of innocence of the accused person is a matter of law of evidence The principle necessitates that prosecution bears the burden of proving every fact essential to bring home the charge In a criminal case the prosecution has got to prove its case beyond reasonable doubt and the accused is not bound to open his mouth and lead any evidence[22] The evidence must be such as to exclude every reasonable doubt of the guilt of the accused Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt The degree of cogence need not reach

[21] "Chaturvedi, '*Rights of Accused under Indian Constitution*", (1984) p 60
[22] *Hanpada Dey v State of West Bengal,* AIR 1956 SC 757

certainty but it must carry a high degree of probability.[23]

Analysing the problem of when the doctrine of benefit can apply, the Supreme Court of India m Agarwal's case[24] held that an inference of guilt can be drawn only if the proved facts are wholly inconsistent with the innocence and consistent only with the guilt If two inferences are possible from the circumstantial evidence, one pointing to the guilt and the other also plausible that the commission of the crime was the act of someone, the circumstantial evidence would not warrant the conviction of the accused.[25]

In other words if the circumstances proved are consistent either with the innocence or guilt, the accused person would be entitled to the benefit of doubt A suspicion however grave it may be cannot take the place of proof and therefore m such cases the accused becomes entitled to the benefit of doubt[26] In Sat Kumar v State of Haryana[27] it has been held by the court that where one of the accused is acquitted on the ground of benefit of doubt, it would not mean that the other accused should also be acquitted m relation to whom the remaining portion of the evidence of that witness has been proved what is ensured m such constitutional safeguard is a fan trial which is a valuable human right of an accused against State's enormous power and resources As remarked by Sn Stephen, "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 m the present day is much stronger than the individual and is capable of inflicting so very much more harm on the individual than the individual can inflict upon society, that it can afford to be generous.[28]

RULE AGAINST TESTIMONIAL COMPULSION

A great concern for an individual's dignity and inviolable right is another constitutional protection, namely the protection against self-incrimination The principle of immunity from self-incrimination is the outcome of the doctrine of presumption of innocence of the accused Under the principle of presumption of innocence, the accused enjoys immunity from giving

[23] *Lord Denning m Miller v. Minister of Pensions*, 1974(2) All E R 372, cited in 'Indian Penal Code' by Misra S N, 1996 p 58
[24] *KM Shinde v State of Maharashtra*, AIR 1973 SC 2474
[25] *MG Agarwal v State of Maharashtra,* AIR 1973 SC 2474
[26] *Parminder Kaur v. State of Punjab*, 1953 Cr L J 154 SC
[27] *Parminder Kaur v. State of Punjab*, 1953 Cr L J 154 SC
[28] Sir Stephen J E, '*A history of Criminal Law in England',* vol I (London) 1883 p 354

self-incriminating[29] It grew out of the high sentiments and regard of the jurisprudence for conducting criminal trials and investigatory proceedings upon a plane of dignity, humanity and impartiality.[30]

It is always the duty of the prosecution, m a criminal trial. to prove the guilt of the accused beyond reasonable doubt and hence it cannot coerce the accused to produce evidence against himself As long as the 'presumption of innocence' remains as one of the fundamental cannons of criminal jurisprudence, evidence against the accused should come from the sources other than the accused The accused can invoke his constitutional privilege of silence and refuse to answer any question that is put to him when the answer is likely to incriminate him In such a case no adverse inference can be drawn against him Any evidence tendered by a person who is compelled to be a witness against himself is forbidden and will be rejected by the courts as inadmissible This is the 'Rule against testimonial compulsion' It enacts a measure of protection against testimony compelled through police violence, torture or overbearing and introductory methods The privilege of an accused to guard himself against self-incrimination is an important human right accepted and recognised by our Constitution as a part of criminal jurisprudence The guarantee of this human right of the accused is ensured by Article 20(3) of the Constitution What is envisaged under this Article corresponds to Article 14(3)(g) of the International Covenant on Civil and Political Rights which provides that no suspect can be compelled to testify against himself or confess guilt and to what is conveyed m Article 8(2)(g) of the American Convention on Human Rights 1969[31] Article 20(3) of the Constitution of India provides;

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

The rule embedded m this Article consist of the following components (a) a right pertaining to a person 'accused of an offence', (b) a protection against "compulsion to be a witness" and (c) a protection against compulsion resulting in his giving "evidence against himself."

A self-incriminating statement is one which either actually incriminates the accused or considered by itself makes the case provable against the accused Answers to the questions

[29] Tnpathi Mam B N, '*Criminal Law',* 1981 p 127
[30] Jagadish Swamp, '*Human Rights and Fundamental Rights'*, 1975 p 73
[31] Article 8(2) of the American Convention on Human Rights states '*Every person accused of criminal offence has the right to be presumed innocent so long as his guilt has not been proved according to law During the proceedings, every person is entitled with full equality to the following guarantees,* (g) *the right not to be compelled to be a witness against himself or to plead guilty*

during interrogation is incriminatory when it has the tendency of exposing the accused to a criminal charge Self-incrimination must mean conveying an information based upon personal knowledge of the person giving the information[32]A testimonial compulsion connotes coercion which procures the positive volitional evidentiary act of the person as opposed to the negative attitude of silence or admission on his part[33] Physical and mental terminations and tortures are implicit in a compulsory testimony aimed primarily at getting an easy way to prove the guilt of the accused The Supreme Court in Nandim Sathpati case laid down the test for the compulsive testimony Speaking through Justice V R Krishna lyer, the court observed that "any mode of pressure, mental or physical, direct or indirect, subtle or crude sufficiently substantial, applied by the police in obtaining information from the accused strongly suggestive of the guilt, makes the testimony "compelled testimony", violative of Article 20(3) An involuntary statement not extorted by using third degree methods would not be characterised as testimony by compulsion In Kalavathi v. Himachal Pradesh[34] it was held that a voluntary confession recorded by the Magistrate after warning the accused that it would be used against him in court is not hit by this rule If before the admission, the accused was warned by the Investigating Officer that he might be prosecuted for perjury if he did not make a true disclosure, merely because of that there would be no 'compulsion' within the meaning of Clause (3) of Article 21[35] Mere questioning of the accused by a Police Officer, resulting in a voluntary statement, which ultimately turn out to be incriminatory, is not compulsion.

Sooner the Court realised the need to enlarge the scope of the doctrine, In the changing context, and started giving a wide interpretation to the rule ma number of decisions The judicial approach has rediscovered and resurrected the philosophy of self-incrimination jurisprudence and has defined and delineated the contours of the privilege of self-incrimination. In Nandmi Satpathim[36] case the Supreme Court got the opportunity to view the scene m the context of changed social and political climate responding to the ethos of democratic liberalism In this case the petitioner Nandmi Satpathi , accused of some criminal offences done while m office as the Chief Minister of Orissa, when interrogated by the Investigating Police Office, refused to answer the questions invoking the protection under Article20(3) She was thereupon prosecuted under Section 179 of Indian Penal Code for refusing to answer questions put to her

[32] *State of Bombay v Kathi Kalu Oghad*, AIR 1961 SC 1808
[33] *MP Sharma v Sathish Chandra* 1954 SCJ 428
[34] AIR 1953 SC 131
[35] *Verra Ebrahim v State of Bombay*, AIR 1976 SC 1167
[36] *Ibid*

by a public servant The petitioner moved the High Court under Article 226 by way of writ to quash the proceedings and went on appeal to Supreme Court Appling the protection envisaged under Article 20(3), on a wider construction of the provision of the Article, the Court quashed the proceedings of the prosecution on the petitioner giving an undertaking that she would answer relevant questions, the answer to which will not incriminate her as to the offences of which she is already accused or other offences with which she may be charged in future.

The decision exhaustively dealt with the philosophy behind the privilege against self-incrimination and breathed a new life into it, resulting in the enlargement of the right which had otherwise become merely a protection, and sensitizing it to custodial interrogation The propositions serving as a strong guideline, aimed to not merely providing protection but also promoting the human right of the accused, in the light of the verdict can be summarised as under the prohibitive sweep of the protection against self-incrimination goes back to the stage of police investigation and is not confined to the court proceedings It is extended beyond the court process to cover any giving incriminating evidence or information even during police investigation the protection is applicable not only to an instant case where the accused is already charged, but also to other cases/charges which the accused has a reasonable apprehension of incrimination m future The imminence of exposure to such a charge is sufficient to attract Article 20(3);

- It covers not only such evidence which actually incriminates a person as well as the evidence which may tend to incriminate him,
- any mode of pressure, mental or physical, direct or indirect, subtle or crude but sufficiently substantial, applied by the police m obtaining incriminatory information from the accused makes the testimony 'compelled testimony' violative of Article 20(3),
- the compulsion may be presumed in case of custodial interrogation by the police "unless certain safeguards erasing duress are adhered to,
- In the light of the judicial views on the subject, the amplitude of the Article that guarantees such specific human right of the accused inbuilt in the criminal justice administration system can well be understood.

In India the principle is different from the Anglo-American principle The right is to refuse to answer only incriminating questions Non-incriminatory questions can be asked and the accused is bound to answer where there is no clear tendency to incriminate The guarantee in the Constitution is narrower m the sense, the protection is available only to the accused and not to

the witness as m the case of America and England Besides, the protection of Article 20(3) does not extend to the proceedings other than the criminal proceedings Such protection in any proceeding (whether civil or criminal) where the answer might incriminate him m future criminal proceedings, is provided in the American Constitution. It may be pointed out that in a country like India where the law enforcement officials and the investigating machinery desperately resort to any device to make out some evidence, irrespective of then accusation, at times on unverified suspicion, it would be a real safeguard for the possibly innocent persons, if the rale is made available in the pattern se prevailing in America and England as pointed above.

In view of the guideline in Nanda[37] case and on consideration of the fact that due to mass illiteracy ignorance and poverty a large number of cases go undefended by legal counsel, it is felt that if the circumstances of the case on its own are suggestive of 'compulsion' it should be drawn by the Court It is admitted that through this protection of the specific Human Right, namely the right not to be compelled to incriminate oneself, it is intended to activate the investigation from external sources to find out the truth and proof of the alleged crane, rather than squeezing out the evidence from the mouth of the accused in the form of confessions or statements However the human right of the accused should be balanced against larger human right, that is, that of the society One should not, while stressing on the the protection of the accused, lose sight of the society's interest i.e. interest in detecting cranes and punishing the law breakers,

The undesirable effect of the rule on the social interest may be that it may hamper the investigatory powers of the police leaving the State to confront with overwhelming difficulties There may be fanciful claims, unreasonable apprehensions and vague possibilities, making this rale a hiding place of crane, thus outliving it usefulness the judiciary bears the responsibility to strike at a balance between the two conflicting interest, namely the interest of the possibly innocent, i.e. protection from the oppression and injustice in the hands of the law enforcement machinery, or the social interest le the need for law enforcement.

3.8 PROTECTION AGAINST DOUBLE JEOPARDY

An important principle ensuring Human Rights in Criminal Justice Administration System is

[37] *AIR 1999*

the protection against double jeopardy This principle has been universally recognised as an established role of criminal jurisprudence The right to protection from double jeopardy is the facet of personal liberty that a man shall not be brought into danger more than once for one and the same offence[38] The doctrine is enshrined in Article 20(2) of the Constitution of India. It runs;

"No one shall be prosecuted and punished for the same offence more than once"

The paramount object of the doctrine of double jeopardy as ingrained in the criminal jurisprudence is to prevent unwarranted harassment of the accused by multiple prosecutions This protection is more essential m criminal trials as there is always an apprehension of conviction and consequently the person being stigmatised and his freedom being threatened The underlying idea of this principle, as per Black J, is that, 'the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for alleged offence, thereby subjecting him to embarrassment ,expense and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.[39]

The doctrine as found and applied m Common Law countries of England and America have two limbs (a) no one can be tried or prosecuted for the same offence more than once even if he is acquitted and (b) no one can be convicted for an offence more than once But the palpation of the rule m India is narrowed down and is restricted Under Article 20(2)of the Constitution of India only the second limb of the rale (of England and America) applies. The usage of the term "and" the frame "prosecuted and punished" necessitates the strict interpretation that for invoking the protection under Article 20(2), there should be a prior conviction for the same offence There can be no constitutional bar to a second prosecution and punishment for the same offence unless the accused has already been punished in the first offence Contrary to this under the Anglo-American system the protection against double jeopardy is available irrespective of the acquittal or conviction of the accused in the first trial In America the very fact of exposure to the risk of loss of limb or life in a prior proceeding is sufficient to raise a bar to a subsequent prosecution The protection available is not only from punishment but also from a second trial which commences when a man is charged before a competent tribunal The plea that the accused

[38] Chandan & Chaturvedi, '*Law of Fundamental Rights'*, (1995) at p 636
[39] *Green v United States*, 2L Ed 2 199, cited in '*Human Rights and Fundamental Freedoms'* by Jagdeesh Swamp, (1975) p 65

was formerly acquitted (Autn fois acquit) or formerly convicted (Autn fois convict) is a bar to a second prosecution, is the principle under the English Common law Article 20 incorporates within its scope only the plea of autn fois convict (formerly convicted) The other principle of autn fois acquit (formerly acquitted) as known to British jurisprudence is regulated merely by the provision of the Criminal Procedure Code Though the principle is restricted under our Constitution, the rale of 'autn fois convict' has been elevated to the status of Fundamental right, whereas it is not so under the English Common Law The Constitutional prohibition against the Double Jeopardy embodied m Article 20 was designed to protect an individual from being subjected to the hazards of trial and possible conviction more than once for an alleged offence The object of the clause of the Article is to avoid harassment which should not be caused to a person for succeeding criminal proceedings where only one crime has been committed.

3.9 RIGHT AGAINST ARBITRARY ARREST AND DETENTION

The right to life and personal liberty of an individual is the basic human right and is the fundamental of all Its protection takes the form of a declaration that no person shall be deprived of it save by a due process of law or by authority of law Arrest signifies apprehension of a person by legal authority depriving him of his liberty The decision to arrest a person has serious implications and cannot be indulged lightly[40] Article 21 of the Constitution of India and the international instruments stress on this Arrest or detention is arbitrary if it is on the grounds or in accordance with the procedures other than those established by law or under the provisions of law, the purpose of which is incompatible with respect to the right to liberty and security of persons Protection against illegal or arbitrary arrest and detention is achieved by certain controls which m varying forms exist m the different forms of legal systems of the world To enable a person arrested or detained to avail himself of the safeguards which the law has provided for his protection, different legal systems have recognised the grant to him of certain rights and treatment in this regard.

From the language of Article 21 of the Constitution of India emanates the directive that 'no person shall be subjected to arbitrary arrest and detention' It denotes a Fundamental Freedom recognised on the principles of Human Rights Article 22 supplements Article 21 and 'embodies a rule which has always been regarded as vital and fundamental for safeguarding personal liberty m all legal systems where the rule of law prevails[41] It deals with the question of

[40] Subramanyam, '*Human Rights-The International Challenges'* vol 2 p 224
[41] In Re *Madhuhmaye* 1969 Cr L J 1440

safeguard against arrest and detention, prohibiting that which is arbitrary and illegal and providing for the conditions when the State or its agency can interfere legitimately m that freedom It prescribes the minimum procedural requirements m accordance with which a person may be deprived of his life or personal liberty Those procedural requirements as under Article 22 must be enacted by the legislature m any process and procedure, whatsoever, of criminal justice administration.

Article 22 deals with two separate matters, namely, (a) Persons arrested under ordinary laws are to be dealt with under Clause (1) and Clause (2) and (b) Persons detained under the preventive detention laws are to be dealt with under clause (4) to (7).

The first two clauses of Article 22 deal with detention under the ordinary law of crimes and lay down the procedure which is to be adopted by the executive in relation to the detention. It puts a limitation upon the Union and State Legislatures in enacting any procedural law not m conformity with what is enshrined in that clauses for the deprivation of personal liberty It reads as follows;

"No person who is arrested shall be kept m custody without being informed, as soon as may be, of the grounds of arrest, nor shall be denied the right to consult and be defended by a legal practitioner of his choice."

"Every person who is arrested and detained m 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 set of protections to a person arrested and detained m police custody envisaged m this part of the Article is as under;

- A person arrested must be informed of the grounds of detention as soon as possible
- He must be produced before a Magistrate within twenty-four hours of his arrest
- He is entitled to consult and to be defended by an Advocate of his choice If such a person is detained for a period more than twenty-four hours, then it can be done only with the authority of a Magistrate.

These protections are available to all persons, whether citizen or a non-citizen. These grounds afford a possibility for immediate release in case the arrest is not justified. Right of being informed of the grounds of arrest is an important human right of the accused which is inviolable by the ordinary laws of the land The criminal jurisprudence requires that a person accused of a

crime should be informed of the grounds of his alleged implication in the crime so as to afford him an earliest opportunity to advance his defence This jurisprudential concept has been enshrined In Article 22(1) of the Constitution Though the Criminal Procedure Code covers to a large extent this concept, by then inclusion in the Constitution these provisions have become an integral part of the Fundamental Rights which make the right inviolable, further extending to the protections available under Article 226 and 32.[42] The two requirements of Clause (1) of the Article are meant to afford earliest opportunity to the accused person to remove any mistake. misapprehension or misunderstanding in the minds of the arresting authority and also to know exactly what the accusation against him is so that he can exercise the second right namely to consult a legal practitioner of his choice and to be defended by him.

The protective sweep of Article 22 is further buttressed by the wide reach of Article 21 which unequivocally prohibits the deprivation of personal liberty otherwise than the procedure established by law Clause (3) of Article 22 of the Constitution excludes the Article's second part containing clause (4) to (7) from the general principles contained in the first two clauses of the Article it reads

i. The protection under clauses (1) and (2) of Article 22 will not apply to any person who for the tune being is an enemy alien, and
ii. to any person who is arrested or detained under any law providing for preventive detention

This means an enemy alien or a detention under a preventive detention law need not be produced before a magistrate and he is not to have the assistance of any lawyer for the consultation or to defend him.

In spite of the Constitutional safeguards, it is observed that the incidence of arbitrary and indiscriminate arrest and detention is continuing The police seems to have devised a method to conveniently, with all immunity, to circumscribe the provisions of law by not making an entry of arrest when they actually arrest a person Subsequently they make an entry, probably before taking the accused to the magistrate, if they so decide, so as to create a record that they have complied with the requirements pertaining to arrest The reason why this violation go unnoticed and unredressed in a considerable number of cases is that the person who is arrested lacks knowledge or is totally ignorant of the constitutional and legal protections in then Favour

[42] Under these Articles a person can seek judicial intervention through *Writ of Habeas Corpus*, for his release from unlawful detention and even through *Writ of Mandamus* for arrest on insufficient grounds

against detention by the police Illiteracy and poverty add to then woes Perhaps on due weightage to all these, the Apex court m D k Basu[43] case laid down the directive that are to be complied with by the police when they arrest and detain a person. But the laudable directive has invoked not appreciable response. The impact is yet to be realised in a situation "where the police force is oblivious of then true role as the custodian of law.[44] They are yet to humanise themselves Should there be a proper supervision and accountability for non-conformance to the guarantee of human liberty and dignity Should the check be by policing the police m then conformation.

If only the magistrates before whom the person arrested is produced care to equine from the arrested person as to how long he has been kept m police custody, which obviously they do not, the continuing violation of human rights of the arrested person by police can be effectively checked The magistracy should be keenly sensitive to the rights of the people Improved awareness among the people about the constitutional and legal rights can contribute much to the avoidance of such violations The arresting authorities should comprehend the true connotation of arrest and the necessity to arrest They should adapt themselves to civilised standards of modern system of criminal justice of a democratic country Arrest should be made only on necessity principle as is followed m other civilised nations Imposing m the erring police officer of personal liability to pay compensation for having taken law into his own hands resulting m the violation of human rights of the people will go a long way in securing the noble rights of the arrested and accused persons.

It is again the judiciary and the National Human Rights Commission that have often asserted their role as the custodians of human rights of individuals. In a notable move the Supreme Court in **Bhim Singh v State of J&K[45]** awarded exemplary cost of Rupees 50000/- as compensation for the illegal detention of a person who was illegally detained without being produced before the magistrate within 24 hours In a similar move the National Human Rights Commission, has directed the Orissa State Government to pay Rs 50000/-within a week as interim relief to a 16 year old boy who was kept in illegal detention by the police for four days The Commission also recommended to the government to get cases registered against the

[43] *D K Basu v. State of west Bengal*, AIR 1986 SC 494.
[44] G S Sandhu, *"Violations of Human Right and indiscriminate arrests- an appraisal Of Constitutional safeguards for personal custody",* published in '*Human Rights in India- Problems and Perspectives*? by B P Singh Seigal at p 254
[45] *Bhim Singh v State of J&K*, AIR 1986 SC 494

police officials involved in the illegal detention and physical abuse, and also to hold an enquiry to be conducted by an officer not below the rank of Superintendent of Police The police officer concerned has been censured for his actions. The Commission felt that letting an officer for illegally detaining the petitioner simply by administering a censure cannot be said to be adequate punishment by any standard keeping an view the gravity of the acts committed which constituted certain penal offence Besides recommending registration of cases against the police official, the Commission also suggested initiation of disciplinary proceeding against the Superintendent of Police for his total lack of sensitivity towards the human rights problems of the citizen.

It is true that Article 22 lays down the permissible limits of legislation empowering Preventive Detention and 'hence all the procedural requirements of Article 22 are mandatory and even if one of such requirements is not complied with the detention will be illegal[46] The pale shadow of safeguards laid down in clauses (4) to (7) are m fact feeble And it is convincing that over and above these safeguards provided by Article 22, the reasonableness of the provisions of the preventive detention can also be considered under Article 21 by the courts But then for those who hail human rights m criminal justice system, certainly this is not appalling and acceptable For, the power to detain without trial under preventive detention laws is vested with the executive Here the person is detained merely on suspicion or anticipation in the minds of the executive authority and not on proof Neither any charges are formulated It is only an inference about the future conduct on the part of the detention The justification of such detention is suspicion or a reasonable probability and not a criminal conviction which can only be warranted by legal evidence Vesting of such power of detention without trial in the executive has the effect of making the Same authority both the prosecutor and the Judge, which is bound to result in arbitrariness, amounting to miscarriage of justice, For reasons known only to the framers of the Constitution, the provisions enabling preventive detention were made integral Part of constitution in the country While no other country has done it so In fact these are repugnant to the democratic constitutions sinister looking feature of the preventive detention is that it is not limited to time of war or emergency, but it is recognised as a subject on which the legislature can legislate m tunes of peace, in normal times Preventive detention is serious infraction of personal liberty, in view of which it is submitted that the efficacy of the meagre safeguards provided in checking the improper exercise of power as provided by the preventive

[46] *Ashok Kumar Bisht v State of J&K*, AIR 1982 SC 1978

laws is very much doubtful It is evident from the unpleasant experiences, as has been observed, when the series of Preventive detention laws, starting from the Preventive Detention Act 1950 to the erstwhile TADA of 1987, were in full swing,

RIGHT TO BE RELEASED ON BAIL

Criminal Justice with all its inherent principles demands that the freedom of a person accused of a crime, pending committal or trial or appeal, be secured by posting bail Right to be released on bail is not only an important privilege, but also an important human right which is subject to limitations While seeming this right which otherwise may be called provisional release, the law has to maintain a just balance between the rights of the individual and the legitimate interest of the State It is one of the foremost social defences under any civilised society.

The right to bail is concomitant of the Accusatorial system which favours a bail system that ordinally enables a person to stay out of jail until trial has found him guilty.[47] The very concept of bail arises from a presumption of the accusatorial system of "innocent till proven guilty."

In the context of criminal jurisprudence in our country the right to bail fits in the Constitutional scheme contained m Articles 20, 21 and 22. Though not expressly laid down as fundamental right, the constitutional derivative of the right to bail is article 21. The Judiciary by its valiant effort to develop the law of bails has treated it as a basic human right and accordingly has converted the right to bail as a part of the Fundamental Right to Life and Liberty. An individual's personal liberty which is fundamental right under Article 21 of the Constitution cannot be compromised until he is convicted and thus proven guilty From this it emanates that the accused should be enabled to retain his personal liberty by allowing to furnish security in the form of bail to secure his presence for trial The law on bails in the country is comprehensive and developed. Detailed provisions for bail are envisaged in the Criminal Procedure Code which is analysed in the subsequent Chapter of this work dealing with 'Procedural safeguards under law,' Speaking of the significance of Bail Justice V R Krishna Iyer remarked

"The issue is one of liberty, justice, public safety and burden of the public treasury all of which insist that a developed jurisprudence of Bail is integral to socially sensitised judicial process."[48]

[47] Gouse MD, "*The Pre-trial Criminal Process and the Supreme Court*", in Indian Bar Review, 1986 vol 13 p 22
[48] N. *Nangendrarao v Public Prosecutor*, AIR 1978 SC 429

The aim of the provision of bail is to restore the individual his liberty pending adjudication of his guilt by the court It protects convicted persons from the hazards of incarceration'[49] The State should comply to the demands to shield the individual from the hazards of alleged criminal trial, leaning on the jurisprudential concept of presumption of innocence of the accused However in preserving the individual personal dignity the general interest of the society should not be lost sight of and hence the provision for bail should interpose between individual personal dignity and the social interest of any given society Neither this, nor that should be undermined The law of bail tries to synthesise the two principles viz securing the presence of the accused to face the charge and to place minimum restraint of the freedom of the individual.

Expressing this theme most forcefully, the Supreme Court in the celebrated Hussainara Khatoon case,[50] speaking through Justice Bhagwati, brought to the fore the release of the accused on bail on personal bond without sureties and without any monetary obligations The court discarded the traditional view that in the case of a pre-trial release bail could be granted only with the monetary surety An appalling outrage in the form of a large number of under-trials languishing in prisons because their inability to produce sufficient financial guarantee for their appearance and not because they were found guilty of an offence was brought before the court Reading into the fair procedure envisaged by Article 21 the right to speedy trial and sublimating bail process to the problems of the destitute the court ordered for the release of such persons The court laid that it would be more consonant with the ethos of our Constitution that instead of financial loss as the deterrent from fleeing ,the system should take into consideration the other relevant factors such as family tie roots in the community job security etc which act as equal deterrent against fleeing Where it appeared that the accused had his roots in the community and that there was no likelihood of the absconding, the court might release him on his personal bond and without monetary sureties The court further indicated the factors which may be born in mind while determining whether the accused has roots in the community, which is most important consideration in this context, as that will throw light on the question whether the accused is likely to abscond or not, for the purpose of requiring sureties etc being obtaining of the presence of the accused to face trial Justice Bhagwati asserted that the quantum of bail should be individualised decision and should not be fixed mechanically according to a schedule keyed to the nature of charge.

[49] Subramanyam, '*Human Rights- The International Challenges',* vol 2 p 225
[50] 1979 AIR 1369

It can be well understood that the judicial approach m recognising the right to bail of the accused is human rights oriented Despite the elaboration by the Supreme Court, the working of the bail provisions continue to be unsatisfactory The defect lies in the very system of bail remaining to be property oriented As Justice V R Krishna lyer commented "Bail or jail at the pre-trial of post-conviction stage belongs to the blurred area of criminal justice system and largely hinges on the Bench, otherwise called judicial discretion " The accused continuing to languish m the cellular servitude due to cumbersome bail procedure or after bail being granted not being able to furnish bail is a travesty of justice Non-accessibility due to poverty to legal advice on bail matters add to their woes To humanise the criminal justice system the law should be accommodative of provisions that allow for sufficient discretion in all cases and to substitute bail by personal bond or bond of family members.

ACCESS TO LEGAL REPRESENTATION AND RIGHT TO LEGAL AID

Individuals become vulnerable to the State action for their alleged misdeeds Of having a brush with the law Morally and mentally distressed they are, such persons allegedly arrested or accused of a crime are pitted against the State with all its resources to prove Its action against them Very often the accused are placed in inability to meet their defence for want of legal knowledge and pecuniary reasons**.** Thus, the situation is very much imbalanced In the process always the danger is that the personal dignity of the individual, a concomitant of human right, being maligned To restore the human dignity m the altar of justice and to mitigate the imbalance m the State action versus the individual defence, it necessitates the recognition and provision for the institution of legal assistance at the time of arrest, accusation and trial.

Even before the Constitution this was statutorily incorporated in the Criminal Procedure Code 1898[51] This being an issue of an important human right of the accused, m the wake of the human right movement found its way into the Constitution This right is enshrined in the Constitution under Articles 22 and 39-A, expressly and is implied under Article 21 These Articles make this right of the accused into a constitutional guarantee In countries like USA and U K where human values are nurtured as in India the right to consult and be defended by a legal practitioner of choice is well recognised.

[51] Right of an accused to consult and engage a lawyer for his defence was protected by Section 340(1) Of the Criminal Procedure Code, 1898 Now it is replaced by Section 303 Code of Criminal Procedure, 1973

Access to legal representation In the context of the abuse and excess use of power by the police, many a times resulting in physical or psychic torture , in the pre- trial process particularly before the judicial screening , the presence and participation of the lawyer of counsel becomes an essential element If his presence is made available from the arrest and during interrogation it would improve the situation by minimising the coercion, ensuring accurate recording of statements of accused and facilitating their transmission to the trial court Apart from safeguarding the interest of the arrested person it may also help the police to clear doubts, if any about the suspect.

The Constitution as enacted originally contained only one Article that had something to say relating to legal assistance It is Article 22(1) which provides that no person who is arrested shall be denied the right to consult and be defended by a legal practitioner of his choice This corresponds to Article 14(3)(b) of the International Covenant on Civil and Political Rights 1968[52] and Article 8(2)(d) of the American Convention on Human Rights 1969[53] Article 22 guarantees to the accused a right to consult and engage a lawyer for his defence The right is m two parts - the first part confers a right of consultation and the second part for his defence by a legal practitioner of his choice. The essentiality of a right to counsel was dealt, though not directly, in Nandim Satpathi case[54] where the court laid down certain guidelines commending a prudent policy for the police However the court added a under with the words "we do not mandate but strongly suggest these guidelines" The main objective in Nandhim Satpathi dicta was to make the police more sensitive to humanity and to respect and honour the individual.

This right is available to every person who is arrested under a general or special law[55] and extends to all criminal trials However by virtue of the language of Article 22 clause (3) and Clause (6), a detenu under preventive laws is not entitled to obtain legal advice or be represented by a counsel201 It commences as soon as a person is taken into custody in relation to a criminal or quasi-criminal proceedings and subsists throughout the trial[56] In other words it continues till the decision of the case or the termination of the proceeding against him unless

[52] Article 14 of ICCPR states that, "*in the determination of any criminal charge, everyone shall be entitled to the following minimum guarantee m full equality" and "to have adequate facilities for the preparation of his defence and to communicate with a counsel of his choosing"*
[53] Article 8 of the American Convention envisages *the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing and to communicate freely and pinnately with his counsel*
[54] *State of Madhya Pradesh v Shobaram,* AIR 1966 SC 1910
[55] *Vemoon Subba Rao v. Govemement of Andhra Pradesh,* 1966 MLJ (Cn) 340
[56] *Khatn v State of Bihar,* 1981 SC 928

otherwise opted by him The right to be defended by a legal practitioner extends also to the appellate stage in the criminal cases.[57]

In the words of Justice VR Krishna lyer, the right of consultation extends and attaches to the accused not only ever since his arrest and detention under a punitive law but extends to attach "to any accused person under circumstances of near custodial interrogation." It is available not only against the arrest of a person but also against his charge Regarding the availability of this right, whether the accused is in police custody or judicial custody or whether he was on bail or personal bond makes no difference The right to be defended by a legal practitioner is a continuing one and is not lost by virtue of the arrested person being released on bail.

The legal status of the specific Human Right of the accused to have Free Legal Aid can be made out as under

I. The right to free legal services is an essential ingredient of 'reasonable, fan- and just procedure' and is well within the scope of Article 21
II. The right applies to every accused who is unable to secure the services of a lawyer on account of reasons such as poverty, indigence or is held incommunicado
III. It is the obligation of the Magistrate to inform the accused of his right to counsel in case of indigence or poverty and to the free legal services at the cost of State
IV. The right ceases when the party declines the offer. The party cannot claim a lawyer of his choice under this arrangement
V. Informing of and providing free legal aid to every indigent accused likely to suffer imprisonment if convicted and failure on the part of the accused to apply for legal aid will not absolve the State of this duty
VI. This right is not extended however to persons accused of Socioeconomic offences

CONCLUSION

The evolution of law by the Supreme Court for the protection of Human rights has evoked criticism from certain fractions but this criticism is not based on any empirical research. It proceeds on a presumption that any protection given to a suspect or accused is bound to injure the interest of the society by encouraging crime and making its detection difficult, if not possible. Unfortunately, in our country, there js less socio-legal or empirical research

[57] *Tika v State of Uttar Pradesh*, 1975 Cr LJ 337

particularly in the field of criminology, because of which our criticism of the law as interpreted and evolved by the courts is often not established on factual or sociological data but is based only on certain ingrained attitudes and misconceptions.

There must be socio-legal research in various areas of criminal law to afford guidance to the courts in their none-too easy of laying down the law which would best serve the interest of the society, without relinquishing the interest of the innocent. The institution of the National Human Rights Commission can contribute if, instead of becoming a face-saving device against international criticism of human rights conditions, it dedicates itself sincerely to the detection of human rights violations in crime control activity and actuates itself towards corrective and remedial steps.

A reconciliation lies in improving the domestic culture of rights which in tun will replenish our image on the international platform also. Thus, it can be concluded that to protect human rights and fundamental freedoms of the accused, we must generate awareness for human rights in people's minds, otherwise, the concept of human rights will zigzag one step forward, and two steps back.