

SAVE PRISONERS FROM INJUSTIC

(ILLEGAL DETENTION)

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INTRODUCTION

The Constitution of India provides that no one shall be deprived of his liberty except in accordance with the procedure prescribed by law¹. Even clauses (1) and (2)² are born out of a concern for human liberty. This article attempts to study the extent of the human rights violation by the police. It also focuses on the reasons for the violation, the adequacies of the existing law to prevent violations, nature of violations done by police, etc. In a free society like ours, law is quite jealous of the personal liberty of every individual and does not tolerate the detention of any person without legal sanction. The right of personal liberty is a basic human rights reorganized by the General Assembly of the United Nation in its Universal Declaration of Human Rights. This has also been prominently included in the convention on Civil and Political Rights to which India is now a party.³ The important function of the state in modern times is the protection of life, liberty and property of its citizens by maintaining law and order in the state. The police force plays a vital role in protecting society through the administration of criminal justice by preventing and detecting crimes. While ensuring safety and security of the people they ensure that no member of the society is put in peril and no person's human rights and dignity are curtailed. It is a difficult task for the police to find out the culprit a set justice in motion to punish the delinquent without tempering the interest and interest and dignity of human beings and the rules appended therewith. Unfortunately rule of law comes to an end when the police who are the authority to protect the common man turn out to be the violators of their human rights. Police investigation, interrogation, arrest and detention have always been controversial for the non compliance of the procedural requirement. This resulted in making the accuse and other persons in difficulty by violating their human rights and dignity/ police commit large number of human rights violations irrespective of all the measures taken to protect the human rights of the people.

Concept of illegal detention under International convention-

The concept of human right is as old as the coming into existence of human beings on earth. These rights are inherent in every person by virtue of his birth. Human rights are those fundamental rights which are essential for life as human being. There are many laws to protect the human rights due to its significance

¹ Article 21

² Article 22

³ R.V.Kelkar, Criminal Procedure, Eastern Book Company [Fifth edition 2008 Pg.N. 7]

both nationally and internationally. Human rights can generally be defined as these fundamental and natural rights that are attached with human beings. The Universal Declaration of Human rights 1948 declares that “all human beings are born free and equal in dignity and rights.”⁴ Human rights are universal across all nations. They are based upon the belief that each individual should be treated with dignity and respect to which, as human being, they are entitled. The section 2(d) of the Protection of Human Rights Act, 1993 defines “human rights” as the right relating to life, liberty, equality and dignity of individuals guaranteed by the Constitution or embodied by the International Covenants and enforceable by courts in India. human rights defined in constitution and legislation are the attempt to express how people’s humanity should be respected by those with power over them, particularly the Governments and their law enforcement agencies like police. The Universal Declaration of Human Rights also declares that “No one shall be subjected to arbitrary arrest, detention and exile.”⁵ The provision of the Universal Declaration of Human Rights have influenced various national constitution enacted after the adoption of the Universal Declaration. The Indian Constitution bears the impact of the Universal Declaration. Sikri, C.J. of the Supreme Court referring fundamental rights contained in Part III of the Constitution in the case of Kesavanand Bharti v. State of Kerala⁶ observed, “I am unable to hold that these provision show that some rights are not natural or inalienable rights.” Violation of right to liberty and security has been considered a human rights violation. Various international legal rules governing arrest and detention have been embodied in Art. 3 of the Universal Declaration of Human Rights, 1948; Art.9 (1)⁷, Art.6⁸, Art.7 (1)⁹ and Art.5 (1)¹⁰. Despite these international commitments, there are a good number of persons deprived of their liberty due to arbitrary detention, who do not have access to the substantive, procedural and institutional guarantees. Such persons deprived of their liberty are frequently unable to benefit from legal resources and guarantees that they are entitled to in defending themselves as required by law in any judicial system.

Illegal Detention and Human Rights-

Illegal detention means an unjustifiable imprisonment by the way of arrest for a wrongful cause or suspicion and continued restriction of freedom by such person in custody. The rights of people either it is human rights or fundamental rights have been a matter of grave concern of all civilization from time immemorial. Good governance consists with respect of human rights. Any institution whether they are police, army or civil administration is bounded by the duty to respect and promote human right regulation and punish the culprits. All human beings have the... Yet it is evidenced by several national and

⁴ Universal Declaration of Human Rights, [Art.1]

⁵ Universal Declaration of Human Rights, [Art.9]

⁶ [AIR 1978 SC]

⁷ International Covenant on Civil and Political Rights, 1966

⁸ African Charter on Human and Peoples Rights, 1981

⁹ American Convention on Human Rights, 1969

¹⁰European Convention on Human Rights, 1950

international organ, arrest and detention without reasonable cause, and without there being any effective legal remedies available to the victims concerned, are common thing. In this course of such arbitrary and unlawful detention the victims are subjected to torture and other forms of ill treatment. It is essential that the rules and law exist in national and international law to remedy and prevent these kinds of human rights violations be adhered to by the judges and prosecutor, and that lawyer are aware of their contents, to enable them to act effectively on behalf of their clients. The International Covenant on Civil and Political Rights declares that “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”¹¹. As to the Principle of legality, it is violated if an individual is arrested or detained on grounds which are not clearly established by law. ‘Arbitrary arrest 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. This mean that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in the circumstances.

Concept of Illegal Detention under ambit of Indian Constitution-

Arrest is a legal process which takes away personal liberty otherwise recognized as a fundamental right and guaranteed as such to all persons. Article 22¹² provides the procedural safeguards against arbitrary arrest and detention. An arrest has serious ramifications and thus can only be made under the authority of law and in accordance with that law. In a free and civilized society an individual needs to be protected from the police atrocities and abuse so as to ensure the effective administration of criminal justice. All human beings have the right to liberty and security and it is the duty of the state to ensure the protection of these rights so as to make all other rights meaningful. Violation of these rights is however commonplace, and arrests and detention on unreasonable grounds are rife. In order to guarantee the right to security and liberty, various procedural safeguards have been incorporated in the Criminal Procedure Code, and for giving these rights a constitutional status, Art.22 embodies various other corresponding/incidental protection to make these rights a reality. Under the Criminal Law there is presumption of innocence till the guilt of the accused is proved beyond reasonable doubt. Article 22 guarantees constitutional safeguards to an arrestee and a detenu under illegal detention. These protections in a way ensure prevention from miscarriage of justice and check on police atrocities. Arrest and preventive detention have the effect of curtailing right to personal liberty; hence these safeguards are very crucial. These rights cannot be curtailed otherwise than by following legal process.

¹¹ Article 9

¹² The Constitution of India,1950

Concept of Arrest

Basically we see that when any person commit any offence or break any law the he get arrested. The police have authority to arrest any person for his wrongful act. "Arrest means a physical restraint put on a person as a result of allegation of accusation that he has committed a crime or an offence of quasi criminal nature."¹³ The term of Arrest has not been defined in the Cr.Pc. Chapter V (section 41 to 60) deals with arrest of person; every deprivation of physical restraint is not considered arrest. Only that deprivation which deprives the liberty by any legal authority or apparent legal authority in professional manner amounts to arrest.

Cr.Pc¹⁴. Proposes only two types of arrests:-

- I. Arrest made in with warrant issued by a magistrate.
- II. Arrest made without such a warrant but made in accordance with some legal provision permitting such arrest.

Constitutional Provisions Regarding Protection against Arrest and Illegal Detention

Personal liberty of every individual holds significance in a free society like ours. No person can be detained without legal sanction. The right to personal liberty is a basic human right. There are three rights that stand independent of each other- the right to be made aware of the reason of arrest as soon as an arrest is made, the right to be produced before a Magistrate within twenty-four hours and the right to be defended by a lawyer of own choice. Besides these rights there is a general declaration that no person shall be deprived of his personal liberty except by procedure established by law, that insists on legality of action. The rights given by Article 22(1) and (2) are absolute in themselves and do not depend on other laws.¹⁵

Rights of an Arrested person-

Clause (1) and (2) of Art.22¹⁶ guarantee four rights on a person who is arrested for any offence under law. A plain reading of first part of Article 22 of the Constitution of India, clearly indicates that a person who is arrested cannot be detained in custody without being informed, as soon as may be, of the grounds for such arrest. It means that he is to be informed of the grounds for his arrest. The personal liberty being the cornerstone of our social structure, the legal provisions relating to arrests have special significance... Some of the procedural protections have been provided to a person to be arrested in Sections 50, 50-A 11,

¹³ State of Punjab v. Ajaib Singh, AIR 1953

¹⁴ 1973

¹⁵ State of Madhya Pradesh v. Shobharam [AIR 1966 SC]

¹⁶ The Constitution of India, 1950

55 and 75 of the CrPC. Section 50¹⁷ casts a strict duty on the part of the police officer making the arrest immediately to communicate the grounds of arrest to the arrested person.

Right to be informed-

A person's personal liberty cannot be curtailed by arrest without informing him about the reason of his arrest, as soon as possible. In case of arrest by warrant/order, as the case may be, the warrant or the order itself must tell him, and where there is no warrant or order the person making the arrest must give him that information. The basis of this rule is to enable the arrested person to prepare his defense, and to move the court for bail. A citizen's liberty cannot be curtailed except in accordance with law. When a person arrested without warrant alleges by affidavit that he was not communicated with full particulars of the offence leading to his arrest in the face of such affidavit, the police diary cannot be perused to verify the police officer's claim of oral intimation of such particulars. Even if such oral communication was made, whether full particulars were communicated not being known the arrest and detention of the person is illegal.¹⁸ In the case of **Joginder Kumar v. state of U.P.**¹⁹ the Supreme Court has laid down guidelines governing arrest of a person during the investigation. This is to intend to strike a balance between the needs of police on one hand and the protection of human rights of citizens from oppression and injustice at the hands of law enforcing agencies. **In the case of Arnesh Kumar v. State of Bihar**²⁰, The apex court emphasized the need for caution in exercising the rigid power of arrest by the police and also by the magistrate while authorizing detention of the accused. It would be rational for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuines of the allegation. All basic facts and materials on which the order of detention is based, and influenced the detaining authority in making the order of detention must be communicated to the detenu.

In *State of Madhya Pradesh v. Shobharam*, the supreme court ruled out that a person's personal liberty cannot be curtailed by arrest without informing him, as soon as it possible, why he is arrested. Failure to inform the person arrested of the reason for his arrest would entitle him to be released. If information is delayed, there must be some reasonable grounds justified by the circumstances.

"The court held that a right to consult a legal practitioner starts from the day of arrest. The arises as soon as a person is arrested"²¹.

Right to Be Produced Before the Magistrate within 24 Hours

In addition to the furnishing of the ground of arrest the arrested person must be produced before the magistrate within 24 hours of his arrest. It can be extended beyond 24 hours only under the judicial

¹⁷ The Criminal Procedure Code, 1973

¹⁸ *Ajitkumar v State of Assam* 1976 Cri LJ

¹⁹ [1994] SCC

²⁰ [(2014) SCC]

²¹ *Motibai v. State of Rajasthan*

custody. It affords possibility, if not an opportunity, for information release in case the arrest is not justified. In the case of. **C.B.I. v. Anupam**²², the court held that when a person arrested under section 57 of Cr.Pc. It is necessary to present before the nearest Magistrate within 24 hours.

Right to Legal Assistance

In America, if a person is arrested he must be afforded opportunity to consult lawyer of his own choice and person is arrested he must be afforded opportunity to consult lawyer of his own choice and if is unable to employ a counsel it is the duty of court to employ a lawyer for him. Prior to the Manteca Gandhi's decision in India the view of the court was that it was not bound to provide the help of a lawyer unless a request was made by him. But as a result of the ruling of the Supreme Court in Manteca Gandhi's case²³ and series of case following that case it is clear that the courts will be bound to provide the assistance of a lawyer to a person arrested under an ordinary law also. The Supreme Court has held that" it is the constitutional Rights of every accused person who is unable to engage a lawyer and secure legal service on account of reason such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the state and the State is under constitutional duty to provide a lawyer to such person if the needs of justice so require."²⁴

NHRC Report of 2016

It is pathetic to state that the majority of the complaints received by the National Human rights Commission are against police personnel. The commission has given some report of cases where police has committed a serious offence.

- **Illegal Detention and Torture of Vijay Singh and His Nephew Jitendra Singh of Village Mdhaka by Constables of P.S. Cantt. Agra, Uttar Pradesh²⁵ (Case No.18400/24/1/2013)**
The case under reference relates to illegal detention and torture by police in Agra on 6th may 2103 without registration of a FIR. In this case the complainant Vijay Singh and Jitendra singh were kept in the lock-up of Police station and tortured by the police personnel without registering any FIR. The constable without the permission/direction of senior officer and without any complaint being registered caught hold of the victims indisputable was a violation of human rights. According to Addl. Superintendent of police Rular during departmental enquiry Constable Ravinder Singh was found guilty.
- **Harassment to Arif by Police at P.S. Janakpuri, Saharanpur, Uttar Pradesh²⁶ (Case No. 18702/24/64/2012)**

²² [(992) SCC]

²³ [1978]

²⁴ Hussainara khaton v. Home Secretary, Bihar [AIR 1979]SC

The complainant in this case alleged that on 3 June 2012 at 10 a.m., her son Arif aged 17 was picked up by the police of P.S. Janakpuri, Saharanpur from his shop at the instance of certain persons who had to recover money from the complainant's son and was beaten by the police. It was further alleged that the complainant approached the Station House Officer for release of her son but he refused to release him till the time the money was returned to those persons. Instead, the SHO threatened the complainant to implicate her son in a false case. The Commission upon consideration of the matter and material placed on record directed the Government of Uttar Pradesh for payment of compensation of Rs. 25,000/- (Rupees Twenty-five Thousand only) to the complainant, Smt. Wasim Akhtar.

➤ **A 19 Year Old Suspect and Three Other 17 Year Old Juveniles Forced to Have Unnatural Sex with Each Other in Police Custody in Chennai, Tamil Nadu**

The complainant, Shri G. Dsouza, a human right activist, alleged that two police personnel forced a 19 year old suspect and three other 17 year old juveniles to have unnatural sex with each other, while they were in police custody in Chennai. It was pointed out by the complainant that though CB- CID had registered an FIR against the two erring police personnel there was no information about their arrest. The complainant had thus sought the intervention of the Commission in the matter. Pursuant to the directions given by the Commission, it was informed that a case vide Crime No. 01/2015 u/s 323/330/355 IPC r/w Section 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 and 20, 12 and Section 23 of the Juvenile Justice Act, was registered against the named police personnel, which was under investigation and the erring police personnel have also been suspended from their services. The Commission further considered the matter and observed that it is unfortunate that police personnel, who were entrusted with the safety and security of its citizens, are shockingly found indulging in the act of forcing young boys to have unnatural sexual that may have an everlasting effect on their minds. The subjection of the young boys to such an act inside the police custody is a gross violation of the human rights of the victims.

➤ **A Journalist Mercilessly Beaten-up by Police near Village Barara and Then Brought to Police Station Barara in Ambala, Haryana Case No. 134/22/13/2015)**

The complainant Shri Sandeep Kumar, a journalist, complained to the Commission that in the evening of 17 August 2012, when he wanted to take photograph of the SHO of Police Station Barara and other Police Constables, beating a youth, at a crowded place near Village Barara, the

SHO got enraged and thrashed him mercilessly. Subsequently, he was brought to the Police Station, Barara and again beaten up ruthlessly in the Police Station. Upon consideration of the reports obtained from the police authorities, the Commission observed that the facts and circumstances of the case clearly indicated that the injuries on the body of the complainant were caused by the police. The Commission thus issued a notice to the Chief Secretary, Government of Haryana to show cause as to why monetary relief be not recommended for payment to the complainant whose human rights were violated by the police of Haryana.

➤ **A Boy Allegedly Beaten Brutally and Later Shot Dead by Police in Mathura, Uttar Pradesh (Case No. 10704/24/52/2013)**

The Commission took suo motu cognizance of a report telecast on IBN-7 on 20 March 2013 about the death of one Jitender, aged 18 years, a resident of Shergarh Kasba in Mathura, Uttar Pradesh during the course of police action in Mathura. It was reported that Jitender was stopped by police personnel and bribe was demanded from him while he was on his way for selling goods on his tractor. On refusal to pay, he was brutally beaten and later shot dead.

Conclusion-

It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that not arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fide of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Thus, the Constitution of India to protect from these atrocities of police has given some remedies under Art. 32 and 226 for its citizen. By going on NHRC report we came to conclusion that power of arrest has been misuse by the police authority. Illegal detention and arrest, has a diminishing effect on a person. He is outraged and become hostile. But the author wants to mention that there is need of balance between security of the state and individual freedom. The Supreme Court also held that the court has power to award monetary compensation in appropriate cases where there has been violation of constitutional right of citizen. Corruption, political nexus or personal bias in particular cases under investigation may also cause violations of human rights by the police. Thus, it is seen that the extent of violation of human rights by the police covers a wide spectrum of areas like custodial death, torture, unlawful arrest, illegal detention, fakes implication, failure in taking action, etc.