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ROLE OF JUDICIARY IN PROTECTION OF THE HUMAN RIGHTS BY TAKING ACTION AGAINST ARBITRARY ARREST IN INDIA

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Introduction

'Article 9 of Universal Declaration of Human Rights, 1948, which was unanimously adopted by the General Assembly of the United Nations, provides No-one shall be subjected to arbitrary arrest, detention or exile.'[1]

'Article 9 of the International Covenant on Civil and Political Rights reads as follows':

> *"1. Everyone has the right of 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."*[2]

'According to Section 2(d) of the Protection of Human Rights Act, 1993, Human Rights' means "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India".

'The Law Commission of India in its 177th Report' under the heading '*Introduction to the doctrine of "arrest"*' has described as follows: "*Liberty is the most precious of all the human rights. It has been the founding faith of the human race for more than 200 years…. Above all, Article 21 of the Constitution of India proclaims that no one shall be deprived of his right to personal liberty except in accordance with the procedure prescribed by law. Even Article 20(1) & (2) and Article 22 are born out of a concern for human liberty….".*[3]

Thus, in tune with the International Covenants and statutory framework of the country, we may say that 'human rights' are 'commonly understood as inalienable fundamental rights

[1] Article 9 of the Universal Declaration of Human Rights, https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf

[2] B.P. Srivastava, Right Against Arbitrary Arrest and Detention under Article 9 of the Covenant As Recognized and protected under the Indian Law, https://www.jstor.org/stable/43950009.

[3] Vide Para No. 91 of the judgment dated 2nd December, 2010 of the Hon'ble Supreme Court of India in the matter of Siddharam Satlingappa Mhetre vs. State of Maharasthra & Ors. 2010 INSC 843 in connection with Criminal Appeal No. 2271 of 2010.

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to which a person is inherently entitled simply because she or he is a human being, and which are inherent in all human beings.'[4]

Constitutional & Statutory Provisions

The '*Right to Liberty*' thus being a basic '*Human Right*' has been accorded its due recognition in Article 21 and 22 of our Constitution under Chapter Part – III i.e., the chapter dealing with the Fundamental Rights. And 'Hon'ble Supreme Court of India' even before enactment of 'Protection of Human Rights Act, 1993', by a series of decisions nourished and protected the precious human right of liberty of persons against State action. The decisions came either when there is absence of legislation or when legislation is found to be insufficient to protect the people against arbitrary arrest.

The Procedural law of arrest is mostly governed by the 'Code of Criminal Procedure, 1973 (now, Bharatiya Nagarik Suraksha Sanhita, 2023)'. Any 'Police Officer may without an Order from a Magistrate and without a warrant, arrest any person who committed a cognizable offence'. However, this power when contrasted with provisions of 'Section 157 of Cr.P.C. (Section 176 of BNSS, 2023)' we found that arrest of the offender has been made a part of the procedure for investigation and in Section 176(1), the legislature has used the expression, "*to take measures for the discovery and arrest of the offender*". Therefore, law 'mandates' that the 'Police Officer' is 'required to first take steps for the discovery' (i.e. 'identification') 'of the persons involved in the commission of offence' and then take measures for his arrest. However, unfortunately, this mandate is not scrupulously followed and arrest has been made without making investigation. And, this is the genesis of arbitrary arrest.

According to the 'Report of National Police Commission', "*the power of arrest is grossly abused and clearly violates the personal liberty of the people, as enshrined under article 21 of the Constitution, then the Courts need to take serious notice of it. When conviction rate is admittedly less than 10%, then the Police should be slow in arresting the accused*."[5]

[4] Dr. Minal H. Upadhyay, Principle, B.K. Mer. Bank Law College, Palanpur, Gujarat (India), "Role of Judiciary in Protecting the Human Rights of Prisoners", Dr. Minal H. Upadhyay [Subject: Law] internationial Journal of Research in Humanities & Social Sciences, Vol. 2, Issue. 8, Oct. – Nov. 2014, ISSN:(P) 2347-5404, www.raijmr.com.

[5] Para 93 of the judgment dated 2nd December, 2010 of the Hon'ble Supreme Court of India in the matter of Siddharam Satlingappa Mhetre vs. State of Maharasthra & Ors. 2010 INSC 843 in connection with Criminal Appeal No. 2271 of 2010.

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Colorable exercise of power

In our country law enforcing agencies without examining the accusations made in the 'FIR (Section 154 of Cr.P.C. / Section 173 of B.N.S.S., 2023)' resorted to arrest and this is not inconsonance with procedural law of arrest and constitutional principles. For better understanding of the scope of colorable exercise of power, causing 'deprivation of liberty' of persons by making 'arrest', by the law enforcing agencies of the country, we may rely upon the judgment of the 'Hon'ble Supreme Court of India' as passed in '*Collector (District Magistrate), Allahabad and another vs. Raja Ram Jaiswal* '[6], where the 'Hon'ble Court held as follows',

> *"Where power is conferred to achieve a purpose, it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to effectuate the purpose. And, in this context "in good faith" means "for legitimate reasons". Where power is exercised for extraneous or irrelevant considerations or reasons, it is unquestionably a colourable exercise of power or fraud on power and the exercise of power is vitiated"*

Again, in '*Ravi Yashwant Bhoir vs. Collector*[7], it was held thus':

> *"Malafide exercise of power does not imply any moral turpitude. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorized purpose constitutes malice in law."*

Evolution of Doctrines to 'prevent arbitrary arrest'

'In order to address the arbitrary arrest', the 'Hon'ble Supreme Court of India' in '*Joginder Kumar vs. State of U.P.* '[8] held thus, –

> *"No arrest can 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 for the exercise of it is quite another… No. arrest should*

[6] (1985) 3 SCC 1
[7] (2012) 4 SCC 407
[8] Joginder Kumar vs. State of U.P, 1994, AIR 1349

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> *be made without a reasonable satisfaction reached after some investigation about the genuineness and bonafides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest.*

Denying person his liberty is a serious matter."

Thus, the theory of '*necessity of arrest*' has been infused into Indian legal system. In the constitutional journey for protecting the 'right to liberty against unnecessary arrest by the Police, Supreme Court of India' passed 10 (ten) solemn directions 'to the Police in the judgment' of '*D.K. Basu vs. State of West Bengal and Ors*'[9]. The Court by asking the 'Police Officer to prepare' a "*Memo of Arrest*" at the 'time of arrest', its attestation by 'at-least one witness' 'who may be either a member of the family of the arrestee or a respectable person of the locality', prevented the police from making 'deprivation of personal liberty of a person' without following due procedure. The Court also directed that the arrest should be communicated to near friends or relatives so that near friends or relatives after being informed can initiate measures for his bail. The Police has been asked to scrupulously mention the 'time, place of arrest' etc so that the statutory and Constitutional 'mandate of producing' the 'arrested person' 'before the nearest Judicial Magistrate within 24 hours of arrest' is complied with, so that there should not be any 'detention beyond 24 hours' without judicial oversight. The direction of the Court to permit the 'arrested accused to meet lawyer during interrogation also aimed to prevent unnecessary restraint'. Thus, all the ten directives in aggregate ensured that the 'no person shall be deprived of personal liberty except according to the procedure established by law and by recognizing the rights of the accused persons, the Court made the Law Enforcing Agencies aware of their limitation in encroaching personal liberty at the drop of the hat'.

And the above 'Principles as laid down by the Court prevented unnecessary detention and custodial torture in the country and now this has been further expanded by the Hon'ble Court in Paramvir Singh Saini vs Baljit Singh and Ors,[10] where the Court directed to install CCTV in all police stations in a way so that no part of police station is left uncovered from CCTV coverage'. And 'Officer-in-Charge' of the 'police station' has been directed to ensure its functioning. The 'Court' also asked to maintain Audio-Video footage of the said CCTVs for preservation for a period of 18 months. Therefore, by this directive along with the direction

[9] D.K. Basu Vs State of West Bengal and Ors (2015) 8 SCC 744
[10] Paramvir Singh Saini vs Baljit Singh and Ors 2020 SCC Online SC 983

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of videography of crime scene during investigation, the 'Hon'ble Court' has not only strengthened the 'Rule of Law' but also prevented abuse of 'human rights' by falsely implicating persons and making false arrest. Thus, Supreme Court became a sentinel of preserving human liberty against arbitrary arrest.

'The Hon'ble Court in Siddharam Satlingappa Mhetre Versus State of Maharashtra and Others[11] held that before arrest the Arresting Officer must record the valid reasons which have led to the arrest of the accused in the case diary. And the Court expected that the remarks and observation of the arresting officer would be properly evaluated by the Court. It further proceeded to observe that it is imperative for the Courts to carefully and with meticulous precision evaluate the facts of the case. Importantly, the Court further explained that in cases where accused has joined investigation and he is fully co-operating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided.'

Further, at 'Para 127 of the said judgment, the Hon'ble Court held that the' "*personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances*".

The court in 'order to justify arrest' asked the Police Officer to examine the complaint to understand the 'gravity of the offence, role of the accused'. Further, arrest is necessary when the accused is at flight risk, there are chances that he would threaten the witness, cause disappearance of evidence, or commit repeat offence.

Meanwhile, the 'Parliament' in order to prevent unnecessary arrest inserted 'Section 41(1)(b) in Code of Criminal Procedure, 1973 where at Clause (ii) as inserted after the said Section 41(1)(b) directed the Police Officer to reach into satisfaction before making arrest in respect of the offence punishable with imprisonment for a term which may be less than 7 years or which may extend to 7 years whether with or without fine'.

The Parliament also brought 'Section 41A in Cr.P.C. 1973 to avoid unnecessary arrest by providing the provision for serving notice of appearance before police officer in respect of the offence as mentioned in Section 41(1)(b) above.'

However, the aforesaid 'legal mandate has not been followed' and again the 'Supreme Court of India' in order to implement the said legislative intent, and to prevent unnecessary arrest 'in respect of the offence' as mentioned in 'Section 41(1)(b) of the Code', in 'Arnesh Kumar v. State of Bihar & Anr.'12, was pleased to observe 'that arrest not only restricts

[11] Para 95 and 97 of the judgment dated 2nd December, 2010 of the Hon'ble Supreme Court of India in the matter of Siddharam Satlingappa Mhetre vs. State of Maharasthra & Ors. 2010 INSC 843 in connection with Criminal Appeal No. 2271 of 2010.
[12] Arnesh Kumar vs State of Bihar (2014) 8 SCC 273

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freedom of liberty but it also brings stigma.' The Court directed again all Police Officers 'to satisfy themselves about the necessity of arrest' and in respect of arrest of an accused in connection with an offence having punishment 'which may extend to 7 years with or without fine', the 'Police Officer' is to furnish mandatorily 'a check list' disclosing the necessity for 'arrest while forwarding the accused before the Magistrate seeking remand'. 'The Court also directed' the 'Magistrate to examine the report of the police and only after recording its satisfaction would authorize further detention'. 'The Court further held that non compliance of their direction would render the police officer liable for departmental action.'

This case once again directed the police from making arrest in a routine and casual manner since it affects the liberty of people and therefore, while making arrest police is required to exercise utmost caution. It also directed that so long 'an accused complies' with the 'terms of the notice as served under Section 41A of Cr.P.C.' he shall not be arrested without recording the reasons for its necessity. This Judgment emphasized that Police should strictly adhere to the provisions of 'Section 41A in conjunction with Section 41(1)(b) of Code of Criminal Procedure, 1973'[13]

Further, the 'Hon'ble Court also directed the Judicial Magistrate' concerned to 'authorize' detention only after recording reason. Hence, by imposing the duty of providing checklist containing reasons and materials necessary for arrest, the Hon'ble Court has definitely put restrictions on the Police to resort to 'unnecessary arrest and detention'.

'Article 22(1) and Code of Criminal Procedure (Section 50 / Section 47 of BNSS 2023) mandate that the person arrested is to be informed of grounds of arrest.' However, 'this is not scrupulously followed by the Law Enforcement Agencies of the Country'. And Hon'ble Supreme Court in order to prevent such mischief in the 'judgment' of 'Prabir Purkayastha vs State (Nct of Delhi)'[14] was pleased to 'direct that the grounds of arrest' is to be 'furnished in writing to serve the purpose of constitutional mandate'. The Court also distinguished the terms 'reasons for arrest' and 'grounds for arrest'. According to the Court, the 'reasons for arrest' are 'formal in nature and can be generally attributed to any person arrested on accusation of an offence' while the 'grounds of arrest would be specific to the person arrested'. The 'grounds of arrest would be required to contain all such basic facts' in the hands of 'the Arresting Officer which necessitated the arrest of the accused' and here, the 'entries' cannot be of formal parameters but should be case specific and extremely personal to the accused. The Court also laid down that unless there are 'grounds of arrest' in the remand application, the 'initial arrest

[13] Arnesh Kumar vs State of Bihar (2014) 8 SCC 273
[14] Prabir Purkayastha vs State (Nct of Delhi), 2024 INSC 414

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of the accused and grant of police custody would be illegal and unconstitutional and the person would be entitled to get a direction for release from custody'.

The above 'Jurisprudence has been further re-affirmed by the Hon'ble Court' in '*Vihaan Kumar versus State of Haryana & Anr'*[15]. Here again, 'the Hon'ble Court' emphasized on the 'requirement' to '*communicate*' the '*grounds of arrest*' in 'writing to a person arrested in connection with an offence and non-compliance of this would be violation of the mandate of Article 22(1) of Constitution of India as well as the statutory mandate and would lead to the custody being rendered illegal'. Any infringement of provision of 'Article 22(1) of the Constitution would vitiate the process of arrest and remand.' The Court interpreted the word "communicate" in such a way so that the arrested accused gets the 'sufficient knowledge of the basic facts' constituting the 'grounds of arrest' and by emphasizing on the 'communication' by writing, the Court tried to ensure that 'the arrested person would be fully aware of the grounds of his arrest so as to give him the opportunity to avail bail and state his defence before the Magistrate.' The Court also laid down that the language of the 'communication' is to be the language which the arrested person understands. This is to ensure his constitutional safeguards. The Court further directed that the Magistrate is required to see as to 'whether compliance with Article 22(1) and other mandatory safeguards have been followed and any violation of Article 22(1)' [as explained above] would entitle the accused to get the bail even if there remains any statutory restrictions on '*grounds of bail*'.

Thus we see the 'requirement of communicating' the 'grounds of arrest' in 'writing is not only to the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal.'

In the country the law enforcing agencies harboured from an incorrect proposition of law that arrest of accused is mandatory while forwarding the case before the 'Magistrate under Section 170 of the Code' and the word "*custody*" has been interpreted as 'Police Custody'. Even our subordinate judiciary maintained the same 'misconception that in every non-bailable and cognizable offence, the police is required to invariably arrest a person, even if it is not essential for the purpose of investigation'. In this premise, again 'Hon'ble Supreme Court of India' in '*Siddharth vs. State of U.P'.*[16], stated that 'Section 170 of Cr.P.C. doesn't impose an obligation on the Officer-in-Charge to arrest each and every accused at the time of filing of the charge-sheet'. 'The Court' stated that the word "*custody*" appearing in 'Section 170 of Cr.P.C.

[15] Vihaan Kumar Versus State of Haryana & Anr, 2025 INSC 162
[16] (2021) 1 SCC 676

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doesn't contemplate either police or judicial custody but it merely connotes the presentation of the accused by the investigating officer before the Court while filing the charge-sheet'. In this case, the Court once again reminded us that in 'normal and ordinary course, the police should always avoid to arrest a person if investigation can be completed without doing so' and 'every kind of cooperation' is 'provided by the accused'. 'The arrest may be necessary only when the person may be required for recovery of incriminating articles or weapon of offence or for eliciting some information or clue as to his accomplishes or any circumstantial evidence.'[17]

Under the Indian law anyone has the privilege to register FIR at any police station. However, the people has no scope to know as to whether his name has been arrayed in any FIR unless, he gets knocked by the police or by the Court through the process of arrest or receipt of notice or summons. This was the disability of common people which prevented them even to take recourse to pre-arrest bail for ensuring his liberty. And it is not the legislature but our 'Supreme Court on 07/09/2016 in Writ Petition (Crl.) No. 68 of 2016 was pleased to direct at Para No. 12(d) of the Order to compulsorily upload all FIRs on the Police Website within 24hrs of its registration so that any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances.'

Conclusion

Above survey leads us to hold that the apex court by series of decisions not only preserved the right to liberty, a human right but prevented inhuman wrongs. Survey justifies presence of Article 32 in Part – III of our Constitution. It tells the people to be informed, helps them to prepare its defense, to seek redressal before the court against arbitrary deprivation of liberty by Police. It also urged the Magistracy to apply mind while examine of remand prayers made by the Police, Scrutinize the case diary before granting remand / detention to uphold human liberty.

Even, the 'Court' in 'Neelabati Bahera vs. State of Orissa'[18], acknowledge '*the right to compensation*' in 'cases of unconstitutional deprivation of personal liberty in terms with Article 9(5) of the International Covenant on Civil and Political Rights, 1966 i.e., compensation against unlawful arrest.'[19]

[17] The judgment dated 11th July 2022 of the Hon'ble Supreme Court of India in the matter of Satender Kumar Antil vs. Central Bureau of Investigation & Anr. (2022) 10 S.C.R. 351 in connection with the Miscellaneous Application No. 1849 of 2021).
[18] [1993 (2) SCC, 746]
[19] N. Krishna Kumar, Associate Professor, Government Law College, Kerala, Thrissur, "Judicial Trend in Protecting Human Rights of Persons in Police Custody.", Jurnal Cita Hukum (Indonesian Law Journal), Vol. 9 No. 1 (2021), pp 45-62, DOI: 10.15408/jch.v9i1.18299.