A. Human rights and bail: development of rights of an accused:

Basically human rights are nothing but basics rights of every individual which includes the person charged with criminal offences like accused or under trial prisoner. An accused is a person whose liberty has been kept under the coercive or power of the state. To neutralise this power of the state and to up bring the position of the accused from the state of disadvantage to the upper hand or at an equal position, the concept of human rights has been developed.

Today accused person has been given number of rights among them some are constitutional rights and some are protective rights. As mentioned discussed above the rights of the rights of an accused are basically are part of human rights, but the question is what are the human rights, the answer for this question is very simple, the general rights of every human being, now again the question before us is, why for this many years right from ancient civilization till the recent years the concept of human rights were not given much importance, as the new world of 20th century is more aware of basic human rights. To look for the answer we have to dig our history where we could possibly get the correct solution to our basic question.

In the initial civilization:

Humans use to leave with nature i.e. residing in caves, wearing cloths made with leafs made from tress and involved with other natural resources, slowly they started to organize themselves and made efforts to leave in small tribes for their survival from being killed or captured by other people or tribe. In early time there was no rule of law, the powerful use to dominate or control the weaker and use to make them slaves. There was the rule of jungle, one who has the power rules over the other, this principle continued in every religion, right from Egyptians to Mesopotamian followed by Hebrews and then Hindus, it was believed that law is communicated through the
rulers who was considered as next person to God, the ruler was believed to be the representative of God himself, the command of the rules was observed as the direct order of the God himself, and there was no looking back. This blindfolded belief of the people made the ruler more powerful and he started taking advantage of this belief. He was never asked the questions for his arbitrary decisions.

This legal system was later followed by many religions like Greek, Romans, Christianity and Mohammedans and so on. As the time travelled there has been changes in the legal system of justice and there comes the time when for the first time the concept of the magna carta was introduced, which was a charter (deed, contract) against the kings injustice or wrongs, which gave the idea of modern government. According to the explanation of the magna carta, “No free man shall be taken and imprisoned or disseised of any free tenement or of his liberties or free customs, or outlawed or exiled, or in any other way destroyed, nor will we go upon him nor send upon him, except by the lawful judgement of his peers or by the law of the land.” “To no one will we sell, to no one will be refuse or delay right or justice”.

It was due to the charter of the Magna Carta which established the rights, such as due process, habeas corpus and trial by a jury of peers i.e., where equal sit on judgements. Slowly but steadily this charter made influence on legislations and gradually progressively climbing in to the statutes and became example/patterns. After a long period of 75 years from the day of signing of the magna carta, as incidence of magna carta was relieved in 1307, where a bishop was detained in prison and made deprived of his lands, he was kept in jail for two long years without being charged, no charges were framed against him because of which he could not be taken to trial, with the help of charter of the magna carta he was released from the prison, not only this he was awarded with twenty thousand pounds, as his civil right was violated, as he was imprisoned and deprived of his lands and was not given any chance of being heard. Which was held as violation of law of land and against the greater charter.

Another important right which was guaranteed by the charter of Magna Carta was that, no man shall be put behind the bars except by the judgement that too lawful judgement of his peers. The first incident triggered in this regard was late back in 1302, where the right of trial by jury was upheld, the accused in this instance argued
that the judgement made by the jury was not made up of his pairs, the court upheld the objection raised and said, judgement of his peers required that the jury has to composed solely of knights. This instant made an impact on the later enactments in 1331 which provided that “neither life nor liberty not property should be taken” against the form of greater charter. Like this the rode for the betterment of human rights started and later number of other instances where reviewed through the charter of Magna Carta.

The word human right include all those rights which are essential to all human beings irrespective of cast, greed, religion, sex, nationality. Everyone on this world is eligible to some basic rights, wither he may be an ordinary human being or a person who is under arrest. These rights are those rights without which one cannot be recognised as human being. All the rights which make an individual to leave with dignity in the society are called as human rights. No person can be deprived of this rights at any cost except where it is required by the justice. Human rights are nothing but natural rights. Therefore, this rights are also known as natural rights, basic rights, and fundamental rights.

Human rights are natural rights of every individual because they have not been created by any legislation these rights comes to a person even before he comes in this world right from when he is in his mother’s womb and no authority on this world can make any amendments to these rights. The organisations like United Nations taken the responsibility to defend and encourage these human rights. Human rights includes life, liberty, equality and dignity. Following this path of changes in legal system later in 1625.

**The petition of right:**

The document of petition of right was introduced when Charles I, restored to arbitrary taxation, building troops, making arbitrary imprisonments and martial laws which was objected by the parliament and stopped funding the Charles I, when they refused to fund him, he imprisoned all of them. This incident of grievance laid the parliament in 1628 to form the petition of right. Through this document it was made that the king will not lodge soldier in the homes of the people, not to order imprisonment without giving a reason, not to force the people to make or yield any
loans, benevolence\kindness, tax or other charges without common consent by act of parliament. With the passing of time, when Charles II took the honour of wearing the crown, it was during this period when the parliament established one of the extreme safeguard\defence to liberty ever imagined by man that was the habeas corpus.

**The habeas corpus act 1679:**

According to this act any man arrested should be taken before the court and explained the reason for his arrest or being held behind bars. It was due to this act the powers of king were to some end, he was prevented from keeping the political prisoners in prison for a long time without being charges against them. It was due to the writ of habeas corpus that we have the guarantee that we have our personal liberty today, no individual can be kept behind bars without specific and proper cause. After Charles II, James III had the honour of succeeding through the throne, he was the brother of Charles II. But in very short period of time James run away from England to France when the William landed on the shore of England from Holland. Later on William and Mary became joint rulers of England.

**The Bill of rights:**

Before the new rulers were handed over the England and being crowned, parliament sketched\drew up the bill of rights, which was performed a mandatory to Williams and Mary taking the throne. In this bill of rights some important provisions were laid down according to which the king was not authorised to perform or give effect to any law nor can suspend or hung\put off any law without the approval\consent of the parliament; the people were given a right to request the king; the king was not allowed to uphold the army in peace time without the prior permission of the parliament; the king was forced to have the regular meetings of parliament and everyone should be given the right of free speech; instead of king the parliament would have the authority to levy taxes; excessive bail, fines and cruel and unusual punishment where prohibited.

The bill of right is considered as one of the most important document in the constitutional history of England after the act of habeas corpus. It preserved the existence of its principle for the coming generation in England for their future.
The social contract theory:

Then the time came when the social contract theory was introduced, the aim of this theory was to protect the people against the dictators or autocrats, it was derived from the concept of natural law theory, which advocated the state of nature which headed or lead the social contract and not one of lawlessness. It was aimed the state of liberty and not a state of license where it can do what it likes. It was this of social contract theory which gave much importance to individual’s life, liberty and property. This theory indicated that the government’s purpose is to protect the lives liberty and possession. Then the time came when workers to started to form unions and tried to solve their problems, this made the other countries like Europe and USA to become more democratic by giving or permitting men to vote irrespective of religion and other qualification. After a while of right to vote workers felt that there should be a legislation which would work for social betterment of workers, they forced the government to enact a social legislation which would help to improve the working a living conditions of the workers, which laid the German to make laws in that regard to accident insurance, child labour, maximum working hours etc. Later other countries have also legislated laws in that regard.

The period of 1837-1901, was deemed to be the best time for England, when Queen Victoria was lead the throne. During the era of Victoria a large development took place in different fields like trade and manufacturing etc. which lead to social reform, time limits were set in the working hours of women and children, it was made mandatory to provide safety equipment’s or devices for the workers those who work in mines and number of labour unions legislations were formed. Thus, in the middle of 19th century, the quiet’s or mission of man for equality had realised.

It was the charter of Magna Carta, which attracted the world to realize, the value of human being and to look forward for making good legislations which would help to improve the value human rights. This lead to the concept of human rights charter, the incidents like World War I & II lead all the civilized nation to form or enact a legislation which would apply to all the countries irrespective of their size or power.

The U.N. Charter:
The traces of human rights can be found in the ancient Greeks play where it was shown that there lived a person who was fighting against the king, he was a rebellion against the king. One day he was caught by the soldiers of king and was ordered to be killed, the king announced that he should not be buried, but his sister buried his brother against the order of the king, when she was arrested for violating the order of the king, she argued that, she has done what is required by the natural law which is created by god which are unwritten rules or laws of heaven called immutable, which cannot be ignored even by the king himself. Earlier majority of the nations of the world used to follow the concept of police state, according to which the king was the ruler and he was wasted with all the powers he was not answerable to anyone for any act or conduct he does even for his personal malice. He never used to pay any attention towards the people and no protection was given to them. All the people were to obey the king’s order without questions either by personal interest or by force, people at that time were not allowed even for basic human rights. At the beginning of 18th century a trend of slavery and bounded labour was started with the industrial revolution, which made the British to spread in western countries, with the britishers expanding their empire they started the open market of slaves where the humans were sold and purchased as animals which became the instance for violation of human rights.

The value to human rights was first recognised by Abraham Lincoln, he enacted number of laws and passed them which were against the slavery and bounded labour, he made provisions and taken efforts to give the blacks (Negros) equal rights and freed them from slavery. We may say that these were the initial steps towards the recognition and protection of human rights.

In this charter more value is given to the human rights, the preamble of the charter says that, it will save the fourth coming generation from being forced in to war and will conform the confidence of the fundamental human rights, their dignity and worth of human life, there will be equal rights for men and women and all the nations will be given equal importance irrespective of size either small or big, all shall be treated equally and everyone is bound to comply these aims to be fulfil. The united nation general assembly adopted the bill of rights now known as universal declaration of human rights. On December 10 1948, the general assembly made the declaration of
UDHR Universal Declaration of Human Rights) it is the only instrument which covers all most all the areas of human rights.

UDHR is that instrument which gives preconisation that, all humans are equal and everyone has the same rights, liberty and freedom, right to live in peace and to have equal justice in the world.

Art-one (1) of the UDHR says, all human beings are born free and equal in dignity and rights, they all are gifted with reason and concern and should live with another in the feeling of brotherhood.

Art-three (3), every person\human being has the right to life, liberty and security of individual.

Art-four (4), there should not be any kind of slavery or bondage.

Art-five (5), any person shall not be subjected to any type of torture, cruel, inhuman or shameful punishment or treatment.

Art-seven (7), every human being is equal before law irrespective of sex, colour, religion, race etc. and has equal protection of law.

Art-eight (8), everyone has the right to get effective remedy from a competent tribunal for acts in connection to the rights given or granted to him by law or by constitution.

Art-nine (9), arrest, detention of any person shall not be in arbitrary form.

Art-ten (10), every person shall be given equal and fair chance of hearing that too by independent and impartial court\tribunal while hearing his rights and criminal charges framed against him.

Art-eleven. I (11.i), every person charged with some criminal offence shall be deemed to be innocent, it is his right until he is convicted or his guilt has been proved, and he shall be given every chance to prove his defence.

Art-eleven. II (11.ii), no person shall be held guilty for any offence which is not a crime when it was done and committed, but later it was made a penal offence and punishable one and also one should not be imposed with heavier penalty other than
which has been applicable in the enactment. Penalty should not be imposed other than what has been described for such offence. Excessive punishment is not allowed.

Human rights today give much stress to the natural law, it has an important aspect or source of human rights. It is based upon the positive principle. The ideas and concert of human rights have inspired many nations, countries and in respect to that they have adopted number of UDHR ideas incorporated in their legislation. There is more to be done in different fields through the instrument of UDHR.

Much more importance was given to the human rights only after the founding of United Nations organisation (UNO). There has been a rapid progress and expansion in the area of protection of human rights.

The charter of U.N covers number of provisions in regard to human rights. There is an expression in the charter which says, we the people of U.N, by reading this phrase we may understand that how far U.N.O is dedicated to uplift the status of human being and human rights. The charters aim is to establish and encourage the international and co-operation and peace. Not only this, the U.N.O wants to develop friendly relations among the states\countries and to take suitable measures to strengthen universal peace. The U.N.O says that there should be universal respect for observation of human rights and there should be fundamental freedom for all without distinction as to race, sex, language, religion etc.

One of the major organisation of the UN is the international court of justice which time to time has pronounced land marking decisions in regard to human rights through international law.

**Human rights and its kinds:**

In general there are no kinds of human rights, all humans have equal rights and they are same for all, each and every right is important and it applies to all human beings. The rights have been divided into two categories to ensure that every right should be given equal importance.

Category one covers: Civil and political rights, and,
Category second covers: Economical, social and cultural rights.

Now we should see what is covered under civil and political rights.

Civil and political rights:

Under this category the general civil rights and liberties are covered which are related to the protection of life and personal liberty. This rights are very important for every human being which will help them to live with dignity. Were a human wants to live with dignity then he should be granted with this civil rights such as right to life, liberty, security, privacy, own property, freedom from torture and inhuman treatment. There should be freedom of thoughts and he may able to choose religion of his choice and also he should have the freedom that he may go to any place (freedom of movement).

On the other hand political rights are those rights which gives people an opportunity to participate in government, these rights includes right to vote, be elected, have a part in public affairs, sometimes directly and sometimes through their elected representatives etc.

Economic, social and cultural rights:

These rights are mainly related to minimum necessities of human life without these rights it is hardly possible to anyone to live and survive, these rights include right to food, clothing, housing, freedom from hunger, right to work, security, health condition and education. No person could survive on this world without these minimum required rights. It is food which gives him strength, clothes protect his dignity from being abused, house gives him shelter, work saves his struggle for survival, security protect him from being overtaken by others.

There are different organs which works under different fields for the welfare of human beings, their sole intention is to up bring the living conditions of every individual who feels unsafe or disgraced from the society.
Some of the organs of the UN which works to maintain peace and order all over the world and to protect human rights.

1) General assembly
2) Security council
3) Economic and social council
4) Trust-ship council
5) International court of justice

The main object and purpose of establishing the united nation was to maintain the peace and security at international level, which can be only achieved by protecting the human beings and their rights. One of the objective of the UN is to promote universal respect for observation of human rights and fundamental freedom. All principle organs of UN place their part with much care to promote and protect human rights and fundamental freedom all over the globe. Apart from this principle organs of UN there are some committees which where constituted to work for a specific area among these committees one committee is committee against torture. It was established in the year 1987, its primary function is to monitor\observe of the implementation\application of the convention against torture and other cruel, inhuman, treatment or punishment.

The consequences\outcome of the rights of an accused:

In the later part of 20th century, the question before many nation was what about the human rights of any accused or suspected, whether they should be protected or not as he is an accused. What to do when the Fundamental interest of the society comes across against the rights of an accused, obvious answer for this question would be sacrifice the rights of the accused. If we go through our history we will find out numerous examples of how an accused suffered during his trial.

Once there was an incident in England, a thief was caught with some articles in his possession he was then brought before the court, the jury sent him to jail for two months and on a later date when the thief again brought before the county court he
was convicted without being heard, the accused asked for the trial by combat, but the same was rejected by the judge and sentenced him for punishment that his eyes to be pulled out.

In old days there was no rule of evidence and the procedure of cross examination was unknown, the prisoners were not given any council to defend themselves. This was the position of an accused in old days. There was no question at all of his rights, he was discarded from the society as an evil.

**Factors contributing towards the rights of an accused:**

This type of incidence and cases dragged the attention of the world and made them to think to form a universal law which could deal to stop such kind of instances to be repeated in future. These and many more factors contributed to the work for the accused rights even though he was in prison or detention in jail.

In the 17th century much has been done to up bring the position of an accused, like the judge while hearing a trial must listen the trial without being influenced by the king, he should stick to his observation rather than taking advice from the king or his men, this was one of the major changes in the justice system. Before this it was presumed that every accused was the enemy of the king as he disobeyed the order of the king not to be involved in any offence, and the accused has breached that order while committing some crime or offence. It was considered a fight between the king and the suspected person, and the king was seen as the representative of god and his safety was more precious than against a person who was in question.

The concept of fair play began to emerge as the world was entering the 18th century, in the new century the things began to change rapidly and the accused who were felt that they were not given equal opportunity at trial were allowed to testify themselves and it was the duty of the judge to see that fair play was been observed, even though the opposite prosecutor was the crown himself.

**Presumption favouring the accused:**
Slowly but steadily, then came the time when some recognition was given to the rights of an accused, the principle of natural justice was followed and few but important rights and presumptions were given in favour of accused. It was this time when much importance is given to the accused life by presuming his innocence, this was the first time when an accused is presumed to be innocent till his guilt has been proved.

With this other rights were also given to the accused such as it was made compulsory before arresting as accused to inform him the grounds for his arrest, he was given a right that he would be released on bail before trial, right to make appeal for the pending trial etc. It was in this century i.e., 20th century, when an accused was recognised as a human being, he may be of any class, either rich or poor, any colour, white or black or any race.

**Lawful outline:**

The rights of an accused, the state became more powerful as it gained access to punish the wrongdoer for the crimes committed by the people, which put state on the upper hand as compared to the condition and position of an accused. This power of state made its officials more arbitrary comparatively to the accused who stands relevantly poor and alone. So to check this misuse or exploitation by the officials of state, in criminal system numerous rights are given to a suspected or accused from being tortured.

Two types of rights are given to an accused, first is that, by this right an attempt was made to cure the disadvantage position of an accused which he faces being an suspected offender, according to this right the accused has the right to remain, and has right not to be tortured, secondly, the presumption of innocence. These were the rights initially given to an accused suspected of a crime, by the criminal justice system or administration. Along with these two rights the other rights after some time later granted to the accused they were fairness in trial and follow the principle of natural justice and double jeopardy rule was applied. An accused cannot be punished and trialled twice for the same offence.

In India constitution has given recognition to the human rights of an accused U/Art-twenty, twenty one and twenty two. These articles were inserted in our
constitution with the intention and aim as a fundamental right to secure right to life, right to liberty and right to freedom of speech, which are to be applied in all conditions and which cannot be taken away at any cost, even it is mentioned that the new legislation shall also not cross these fundamental rights if they do so they will be declared null and void.

1) Art-twenty(20) of our constitution, protection from retrospective effect of criminal legislation:

It is of primary importance that a man should be made known about what is an criminal offence and what does not make a criminal offence, in advance so one would able to know what is right and what is wrong, what acts are punishable if done and what acts are legal which can be done without fear of being punished for. It is possible that certain conduct is not a crime/offence at present but which may become or fall in category of an offence on a future date. In simple words as conduct which is lawful to perform today but which may be a punishable offence in future if performed on that day due to the change in the circumstances. For example hunting was not an offence during British India period and even after independence, but after independence some years later as act was passed which prohibits any kind of hunting as an illegal act and at the same time it is punishable offence.

**What is Retrospective Effect**

a) The concept of Ex-post-facto law:

It means to punish for a conduct which is lawful when it was committed. No doubt it is a bad law which gives retrospective or back dated effect to certain act which was lawful when done and which is offence at present time to punish for such an offence or act. In other words Ex-post-facto law is a law that punishes for acts done in past means gives retrospective effect. Art-twenty (i) limits the legislatures to enact such laws it says that, no one shall be punished or convicted for an act or conduct or offence apart from that which is considered as violation of law when it is done or committed and not for the conducts which have already been done when there was no
law in that regard and shall not be imposed penalty greater than what has been mentioned for that act.

There shall not be imposed excessive punishment than what has given. Our constitution allows the legislatures to give prospective as well as retrospective effect to an enactment, but clause (1) of Art-twenty (20) restricts the legislation from giving retrospective effect to a criminal law. This clause (1) of Art-twenty (20) prohibits/forbids the legislature to make retrospective law.

What is prospective law:

When an act is done from or after the law has been enacted then that law will be applied to such act and shall be punished with such law accordingly, it is prospective effect. In simple words a law is prospective when it effects for conduct, acts done after the law comes into existence or effect. Most number of laws enacted today has the prospective effect, which shall take effect from the date on which it came into existence, but in very rare cases the legislations may be given retrospective effect. Which shall apply not only to the future acts or conducts but also to the acts or conducts or done even before the legislation was enacted. But it is to be noted that retrospective effect cannot be given to a criminal law.

It can be very easily explained in below three examples:

1) If an act of killing a tiger is done on 01/01/15, on that day hunting was not a prohibited act or there is no law or rule in that regard for hunting it was completely a lawful act. But later on 01/02/15, such act of hunting a tiger or any other animal is made a criminal act. Whoever kills any animal after 01/02/15 shall be punished with certain penalties, suppose two years imprisonment. This punishment will be applicable only to the persons who are caught while hunting after 01/02/15, and the person who have hunted before 01/02/15 are exempted from that punishment, for them it was a lawful act because previously there was no law in that regard. It is a prospective effect.
2) If a person has committed a crime of murder on 01/01/15 and at that time the maximum for punishment for murder was five years imprisonment, the trial prolonged for many years and he was found guilty on 01/01/25, and in meantime on 01/01/20 there has been amendments in the punishment for murder and it has been exceeded from five years to life imprisonment or death, now the question is what punishment would be sentenced to the accused, will it be five years or life imprisonment or death, the answer for this question would be the punishment applicable to the accused will be five years, because the crime was committed prior to the amendments made for the crime of murder. The accused will be sentenced for five years imprisonment and not with death or life imprisonment though the judgement came after the amendment.

3) One more important thing to be noted here is that, to take the advantage of provision of Ex-post-facto law by an accused, there is a rule of beneficial construction, which reduces the sentence which is applied to a particular crime or offence, by taking advantage of this rule the accused may ask the court to reduce the punishment which he is going to face. It can be explained with example suppose, if a person committees a crime for which the punishment is five years imprisonment on 1-1-10, later in 2015 the punishment was reduced to 3 months imprisonment for the same offence that which he has been convicted for, here the accused has an opportunity to ask the court for the provision of beneficial construction i.e. Ex-post-facto law as the later reduces the punishment.

**Safeguard against Double jeopardy:**

Art-twenty clause (2), protection against double jeopardy says that no one shall be trialed or punished twice for the same offence. This provision of double jeopardy has given the right to an accused that he shall not be made punished two times for the same crime, once a sentence has been announced against the crime for which the accused has done and he has compelled with it or completed his sentence, and on a later day there has been enhancement in the punishment of the same crime the person already completed or is undergoing his sentence he cannot be made comply with the enhanced punishment.
Safeguard against compelling self-incrimination evidence:

Art-twenty clause (2) says that no one shall be forced or compelled for any offence or crime to give witness against himself because it is a rule that every accused is presumed innocent till his guilt is proved and it is up to the prosecution to bring the evidence against the accused and prove his guilt from other sources and not to compare the accused to give statement against himself as a witness. On the other hand accused is free not to make statement against his own. This provision has been inserted to prevent the prosecution from being examine the accused by way of torture and force. If his provision has not been inserted there was possibility that the accused would have been subjected to force and torture. The reason for bringing this right was, in 14th century in England in a case the accused was made to self-incrimination and it was used as evidence against him which was taken by force and torture, this incidence of horror and terror gave rise to develop the present protection against self-incrimination to the accused. Out of this we may say that no person shall be forced in any criminal case to be a witness against himself. This protection is given to an accused person who is a suspected accused. It also protects him against compulsion to be a witness. Not only this, it is a protection against such compulsion resulting in his giving evidence against himself.

Who is an accused:

Now we have to ask who is an accused to know we have to turn the pages of our constitution and have a look at Art-twenty (three) (20 (3)). Art- Art-twenty (three) (20 (3)) applies to an individual who has been suspected of being committing an act which is unlawful or illegal according to law, or which is being prohibited from being done. If any person is caught of doing or involving in such act or is suspected in that regard he is know is accused. It is mandatory to note that section 26 of evidence act says that a confession made by a person in presence of police or in police custody or remand cannot be used as evidence against himself except where it has been made in presence of magistrate.
On the other hand section 27 of the evidence act lays down that during the investigation of a police if a suspected person gives any information regarding the offence which is under investigation about the weapons used in the crime is admissible in The court as evidence and it shall not be the violation of Art-twenty (three) (20 (3)) of our constitution. For example if an accused charged with murder says that he will show where the clothes of the deceased are kept and there up on takes the police at place where the clothes are buried and in presence of witness he digs them out and hand over the same to police, such a statement is admissible in court even though such a confession was made by the accused while being in police custody or remand.

Art-Twenty-one (21), right to life and personal liberty:

This is a most important right ever given to an accused, it is above all the rights given in different enactment of our land, our constitution gives this right to every citizen he may be an ordinary or an accused person. This Art-Twenty-one of constitution says “No person shall be deprived of his life or personal liberty except according to procedure established by law”. For a long time this article was taken as granted it was not much in limelight. It was interpreted as an ordinary right that one should not be deprived from his life and personal liberty by executive authorities unsupported by law. It was considered as protection from executive action which had no authority of law, if there has been any law or act which allows to deprive a person from his life and personal liberty that was enough for the authorities to take away this right from a person. This scenario was changed with the Maneka Gandhi case, the whole prospective of looking at article 21 i.e. right to life and personal liberty was over turned. All of a sudden much more importance was given to this article and in the true sense the correct interpretation of the legislature was dig out, this case changed the whole constitutional law of the country, it was possible only because of this case where the Supreme Court pointed out that, Art-21 not only limits the executive action but it also includes legislation in it. The Supreme Court for the first time said that no law can deprive the right and personal liberty of a person unless it has reasonable, fair and just cause to do so. It can be determined only by the court that weather any law is reasonable fair and just or not. Only the court has the power to
determine that, if the court finds that no proper procedure has been followed while enacting any law then in such situation the court will make such law invalid and struck it down.

Before the case of Maneka Gandhi, the Supreme Court was of view that constitutional rights have no guarantee, they can be taken away whenever the legislature wanted by enacting a law. It was believed that when a legislation is enacted and in it there are provisions contracted to the liberty of a person, then in such case the new enacted law will prevail over the right of liberty. A person may be deprived of his liberty in such situation or circumstance and the validity of that law cannot be challenged in the court of law on the ground that it is unreasonable, unfair or unjust.

It was this case of Maneka Gandhi which changed the thinking of jurist to take the reference of due process and declare any law as unconstitutional which deprive any person from his liberty. For a long time India has adopted the concept of English law, where court has no authority to invalidate\overturn a law which is made by the parliament. It is a rule in England that liberty is controlled by law. It can be enjoyed only till it has not been taken away by the representatives of the people i.e. parliament. This rule of England was reflected in the case of Gopalan, where the majority of the Supreme Court judges supported this rule of England that parliament enacts a law and all has to follow it without questioning it. As compared to English law, our constitution has made some restriction on the authorities who makes the legislations, though the parliament and the state legislature has upper hand in their respective fields.

Our constitution has given more preference to the legislatures then of judiciary. Where a law is enacted which disturbs the Article 21, it must satisfy that the law made which takes away the liberty of a person or which seeks to deprive a person from his liberty must give reason for such deprivation or must stipulate or specify a procedure for such deprivation which must not be arbitrary, unfair or unreasonable. With this it can be concluded that the case of Makena Gandhi had been followed in subsequent cases.
With this new clarification of art 21 which brought the obligation of reasonableness, fair and just procedure did number of growth\development in our constitution. Especially in the areas of criminal system\jurisprudence, some of the features of art-21 are, right to have legal assistance and right to speedy trial and justice.

**Article-Twenty two (22): right to be informed grounds of arrest:**

**Art-22** and **Sec-50 of Cr.p.c**, has given a right to an accused and protected through this Article and Section, if a person suspected of committing a crime which is a bailable offence and he has been arrested without a warrant of arrest then that person should be informed that he has every right to be released on bail on the ground that if he aggress to furnish a surety on his behalf. This provision is described in Section 50 subsection (2) and Article 22 sub clause (1) of our constitution, safeguards the personal liberty. It is that, every arrested person should be as early as possible to be informed the grounds of his arresting. So he may be able to verify the mistake, misapprention or misunderstanding that the arresting offices has and also he could able to arrange the evidence to defend himself and may have a chance to consult and appoint a legal practitioner of his personal choice who could defend him on his behalf.

This Article and Section is very important because in old age criminal procedure, the persons who were arrested were never informed the grounds of their arrest they were kept in an isolated place and was brought only on the day of trial before the court, they were also not given any chance to consult any of their relatives till the hearing day in such situation there was no question of preparing their defence. Not only this but during their detention they were subjected to torture and forced to admit their guilt to justify their arrest. These were the reasons which caused to introduce the charter of Magna Carta which ultimately gave reason to insert Art-22 and Sec-50 in our constitution and Cr.p.c.

To stop this kind of incidences the French Govt. made a declaration of rights of men and citizen in which it was mentioned that, no man should be accused, arrested or held in confinement except in case determined by law and in accordance to the forms which it has prescribed. Likewise, in every trial of criminal nature, the
defendant or accused, shall have the right to a speedy trial that to by natural and
unbiased jury that to within the jurisdiction where the crime has taken place along with
which the accused shall be informed the nature and cause of his arrest or under what
charge he has been taken in custody or he has been detained and also he shall be given
a chance to be assisted by counsel for his defence.

Our constitution and cr.p.c has given this right to the accused with an intention
that the accused person could able to arrange his bail by moving to proper court and
where the circumstances allow may go for the Writ of Habeas Corpus or make
arrangements for his defence.

In the previous Act of Cr.p.c, there was no provision regarding the information
to be provided to the accused about the grounds of his arrest. It was all because of the
expression “as soon as may be”, this expression gave the sufficient reason to the
investigation officer to delay the proceeding of giving information to the accused.
This expression gave the arbitrary authority to the officer that he may take as much
time as he may think fit to inform. Moreover, the accused was not able to know the
grounds of his arrest till the police files the charge-sheet in the court, U\S 173 of
Cr.p.c, there was a provision in old Cr.p.c 1898 that, the police may file charge-sheet
in the court only after the completion of investigation in a case and after that a copy of
the charge-sheet was given to the accused. Number of time it has been witnessed that,
the investigation procedure is delayed intentionally by the police to keep the accused
in remand. Sometime due to the political pressure and sometime due to personal
reason. Normally it takes a year or so to investigate in to a matter, till that time the
accused has to remain in custody or remand.

It has been seen in number of cases that, the punishment for an offence is
lesser than the accused has been kept in remand because of delay in filling the charge-
sheet as a result the accused was unable to move for bail or for habeas corpus or for
his quick trial due to this reasons the accused was deprived of his civil liberty for no
fault on his own but for the acts of state officials.

These and many more factors have lead the legislatures to make amendments
in the Cr.p.c and to incorporate Sec-50 in new Cr.p.c, which reads as; the arresting
authority has to furnish the grounds of arrest to the accused where the arrest is made without warrant and also to inform that he has every right to apply for bail.

**Right of accused to have counsel or advice:**

Any person who is arrested gets scared and not able to understand what to do exactly his mental condition suddenly changes and he gets emotionally depressed he feels himself helpless all of sudden and start thinking of his future or his fate. In India majority of population is economically weak and poor and at the same time illiteracy rate is very high in our society. Moreover, they are unaware of laws and legal system. In such situation it is not possible for them that they could think about the having a council or advice from a legal practitioner. Due to lack of legal knowledge many people are being held in custody for pity offences and also for not able to arrange for their defence due to their economic condition to get bail.

To get rid of all these drawbacks, our constitution has given us the protection of article of Article 22 (1) which states that, No individual who is being arrested shall be held physically detained in jail without being informed as early as may be of the grounds of his arrest. He shall not be denied the right to take advice from a legal practitioner that too, of his personal choice. It is right of every accused who is been arrested for some criminal crime or offence to have a counsel of his choice as it is a fundamental and essential for having a fair trial. This right is reserved on accused because he does not have the knowledge of law and also unaware of the court proceedings which are to be followed as he does not have professional skills to defend himself before the court of law.

Every accused person who is in custody has the right to consult his lawyer, if an accused is in custody it does not mean that he cannot take advice or consult his lawyer. This right is there from his since he has been arrested the accused must get opportunity to communicate or to interact with his lawyer while being kept in police custody. The communication between the accused and his lawyer is a confidential matter and it has to be done in private according to Section 126 of evidence act.
State to bear legal expenses for Accused:

where any accused due to his economic condition is unable to arrange a legal practitioner for his defence or a lawyer to defend him, then it is the duty of the state to provide him with the legal assistance and make arrangements for a lawyer who will defend the accused on his behalf that too on the expenses of the state. It would not be enough to say that a fair and just trial has been conducted for a trial where the accused was not having a lawyer to defend him. Article -39(A) of the constitution lays down the duty on the state to provide free legal aid to a disadvantage person. Section 304 of Cr.p.c says that, when a trial before the court is pending or going on, and the court finds that the accused is not having a representative to plead for him on his behalf due to insufficient funds to hire a pleader, in such case the court shall assign a pleader to accused to defend the case at the expenses of the state.

After the Maneka Gandhi case, the Supreme Court was of a view that, how one can say that it is a fair and just trial, where the accused who is poor to afford a lawyer and to go through trial without being made available for any legal assistances, it cannot be considered as fair and just trial. The court noted down that a prisoner who is to seek his liberty through the court process should have legal service made available to him. The Supreme Court made it clear that it is mandatory for the state to provide a lawyer to an accused who due to the reason of poverty, indigence or incommunicable situation is unable to hire a lawyer, under article 21 of the constitution. The Supreme Court also laid down that the constitutional right of legal aid cannot be denied even if the accused failed to apply for it.

Right to be produced before magistrate:

Another important right which is given to the accused is that he should be taken before the magistrate as soon as possible from the time of the arrest. This right is guaranteed by the constitution of India under article 22 (2), to every person who is being taken into the custody by police. The time frame which is given for producing an accused before is 24 hours from the time of arrest. This time of 24 hours does not
include the time taken for travel from the place of arrest. The maximum time within
which the accused is to be produced before the magistrate is 24 hours, if any delay is
to be happened there the permission to be taken from the magistrate for such delay.
This provision of time limit is inserted to prevent the authoritative arbitrary power
because it is possible that if the accused is detained for longer period in custody there
is a chance that he may be subjected to torture or may be abused by the police.

In Cr.p.c. this right is confirmed under section 56 and 57, it read as follows:
No police officer can detain a person without warrant, in police custody for more than
24 hours without the order of a magistrate.

**Right to be released on bail:**

This right cannot be considered as a compulsory right, but it is a rule of law
that personal liberty of every individual has to be protected at any cost which includes
the rights of accused also. The simple idea of bail is to release a person accused of a
suspected crime on the ground that he will deposit some security in court as surety
that he will reappear in court on the day of trial, which will prevent him from being
sent to jail or imprisonment. The court if satisfied with the security amount paid by
the accused may release him on bail believing that he will appear in court on given
date, else the money deposited will be forfeited. Many times a personal bond entered
by the accused is sufficient and in some cases where court is not satisfied with
personal bond of accused, there the court may ask the accused to produce extra surety
apart from his personal bond. The court may ask to bring some other person who will
take the responsibility to reproduce the accused in court on the day of trial. The court
does such thing to ensure that if the accused fails to comply with the conditions of bail
and does not appear in court for trial then, the court may ask the person who has taken
the surety of accused to produce him in court else the money deposited by the surety
will be forfeited.

An accused person is said to be admitted to bail when he is released from the
custody of officer of law and is handed over in the custody of a person known as his
surety, then the surety is bound to produce him (accused) in court to answer on a
given date and time at a place specified or we may also say that bail means, temporary
release from prison. It is to be noted that no definition is given to bail in any Indian enactment and courts have always used the dictionaries to interpret the bail.

**Preparation of defence and presumption of innocence:**

In every civilised country today a criminal justice system is followed where the accused persons are tried for their criminal offences by the state employed prosecutors and equally the accused is given an equal chance to defend his innocence through a legal practitioner of his choice. In this regard the audi-altram-partem rule is applied which ensures that no one should be condemned unheard. It is the basic and first rule of any criminal justice system that any person whose right or interest is being affected must be given a reasonable opportunity to defend himself.

Every person arrested and is going through trial has a right that he should be treated as innocent till guilt has been proved. This rule of innocence has been very finely explained in section 101 of Indian evidence act, which reads as follows: right to have the benefit of presumption of innocence till ones guilt is proven. Bail is allowed to an accused on the basis that he is innocent and where it is refused it will constitute punishment to a supposed accused even before his conviction.

**The contrivance (plan) of bail:**

In India, we all very well know that daily thousands of arrests are made by police for different charges among them few are pity offences and some are severe kind of offences, in all the cases the offender/accused are sent to police custody for detention in jail, for two obvious reason first to ensure his presence in court for trial and second to give justice to the victim, if the accused found guilty and to secure that the accused should not have chance to repeat the same thing doing again or not to involve in any kind of such things, in all the cases they are locked-up in jail till the trial comes to an conclusion. Here what is important to see is, how the personal liberty of the individual granted by the constitution get effected, personal liberty is a fundamental right given by the constitution to every person which applies even to accused, in that regard law of bail and arrest have been given much importance in modern times.
So to protect the (fundamental rights granted by the constitution) personal liberty of an accused the law of bail plays an important part in that regard, there is a procedure established by law which shows how the bail contrivance works or how one can take benefit of bail who is under detention. To see how bail works we have to understand what particular components go into every bail decision. The court while trying a bail decision has to have a glance at the circumstances/environments why the accused has been arrested and detained, the facts of the police record in relation of crime and offence, nature of offence, is it bailable or non-bailable, examine the surety and last what law says in that offence.

**Environments leading to the arrest and detention of a person:**

Whenever a crime has been reported or information is given of an offence to the police, it is very first duty of police to reach the place of offence and make the enquiry in interrogate\question the complainant\plaintiff or the victim\sufferer and the witnesses present at the scene and to gather the information about the suspect. If the suspect is there then take him in custody after the preliminary enquiry is over or done. This suspected then to be taken to police station and if found supposed accused then lock him up in jail.

Since the time of the complaint has been lodged or a F.I.R. has been registered from that time the person who is suspected accused in jail is deemed to be under arrest. It is mandatory\compulsory to take the accused who is under arrest before the magistrate\judge within 24 hours according to Article 22(2) of the constitution with necessary documents like case diary and evidence against the accused, after that the magistrate go through the case diary may ask the officer of court wither the offence is bailable or non-bailable, if it is found that the offence is bailable then the accused may apply for bail and may asked to deposit the bail amount in court. If the accused is prepared for that then he may be set to release on bail. But where the offence is non-bailable then it is up to the court wither to grant bail or send the accused in to the custody of police for further inquiry.

When the accused move his appeal of bail before the court, then it should be duty of the court to see whether the offence is bailable or non-bailable, in both the
cases the court shall presume that the accused is innocent. Then later the court must examine the material produced before it and on that basis it shall make its opinion whether to grant bail or to refuse it. The material to be examined by the court are police report, fax mentioned in the petition for bail and grounds of opposition to the granting of that petition.

To see the nature of an offence whether it is bailable or non-bailable, we have to go through the Cr.p.c. A category has been made which defines what kind of offences are bailable and non-bailable. The offences which are of simple nature in which imprisonment is less than three years shall be considered as bailable and the imprisonment in which is more than three years those offences are non-bailable offences. Bailable offences are less serious or dangerous and non-bailable offences are of gravies in nature. Where the offence committed is of less serious nature and is bailable then the court may grant bail to accused on furnishing the security amount set by court. Where in case of non-bailable offences or that which has gravies nature, then it is the discretionary of the court either to grant or refuse the bail application. It depends upon the circumstances of the case and the evidence available and also depends upon the previous record of the accused.

Where the court decide to grant the bail to an accused in either case bailable or non-bailable the accused has to execute a bail bond in which he should mention that he will appear in court on a given date and time at a place where court orders him to be present, it should be (bail bond) coupled with sufficient surety as may be required and also state that if he fails to present in court the amount deposited as security may be forfeited. Where the accused fulfil all the conditions required for bail, then he shall be released on bail. It is to be noted that the court should fix bail amount considering the position of an accused. A very high amount should not be fixed for bail to a person whose life depends upon daily earning basis, it would be too much to ask a person like him to arrange a heavy amount for his release on bail. The bail amount not to be excessive it should be fixed according to the circumstances of case to case, in case an excessive amount is fixed for bail then the high court or Court of Session has authority to reduce such amount.

With the above discussion\examination, we may come to a point that when an arrest is made the accused is taken before the magistrate who has the jurisdiction to try
the case, then the magistrate have a glance at the charges made against the accused depending upon the police dairy and previous record of the accused if any. Then the magistrate fix an amount to be deposited by the accused as a security for his release. Where the accused fulfil all the conditions imposed by the court he shall be released on bail.

In this part we shall look at, when the police has power to allow bail to an accused, when the police may arrest and on what ground the accused may be detained by police, in what offences police can arrest a person without warrant and where it is mandatory for police to have a warrant of arrest before arresting a person. In our country very wide range of powers are confirmed upon the police among which one is arresting a person who has committed a crime without the prior permission from the magistrate i.e., without warrant. An officer of police may take a person in to his custody or arrest a person without an order from magistrate and without warrant, if the police officer finds that there has been a complaint against such person or any information has been received that such person is being involved or has committed some crime or where the officer finds that the accused has something in his possession which according to law is illegal to hold such things, where the accused is a notorious offender or the accused having some stolen property in his possession or carrying it some place or where any person creates any obstacle in the investigation or enquiry which is been carried out by police and prevents the officer from doing so or interrupting his duty and where the accused trying to escape from the lawful custody or any requisition has been made to him by any other office to arrest certain person for an offence. In this above situation the police office has the power to arrest a person without the warrant of arrest or an order from the magistrate. The officer has no need to have permission from any other officer or magistrate to discharge his duties in the above mentioned category.

**Bail an absolute right:**

Where any person is arrested on charge of a bailable offence that too without warrant. It is conclusively enough to believe that the arrest is made without any judicial security. It shall be the right of every person arrested to be released on bail. This provision is mandatory in nature every court or officer of a police station are bound to obey the provisions where the accused is willing to execute a bond in that
regard. When the police arrest a person for an offence which is not of a non-bailable nature, then there should be no unnecessary obstacles should be put between the liberty and bail of that person and simply bail shall be admitted, he should be asked to furnish security on doing so should be released on bail.

Any police officer making an arrest is under the duty to follow every rule mentioned in the section 50(2), when he is arresting without warrant he is bound to give information to the person to whom he is arresting that he has a right that he may be released on bail and if preferring to do so then make arrangements for security on his behalf. Here the officer making arrest has given a discretionary power in regard to bail i.e., he may release the accused person on his personal bound or may ask the accused to furnish surety. Bail is a matter of right were the offence committed is of a bailable nature and it is not a favour by the police officer or court. Nor the court neither the police has power to refuse the bail where the offence is bailable nature, offence has nothing to do with either it is serious or minor the only question to be considered is either it is bailable offence or non-bailable offence. In a case it has been held by the High Court that the police cannot refuse a bail to an accused during any stage of trial of the accused is furnishing the security required for his bail. If the police refuse to do so or does not allow or grant bail, then it shall be illegal detention by the police, and furthermore, the police officer will be held guilty for wrongful confinement under section 342 of I.P.C.

Mandatory provision of bail at any stage of trial:

The accuse has a mandatory right in his favour to apply for bail at any stage of his trial in a court who has jurisdiction over his case in other words the court has jurisdiction to grant bail whenever an petition has been forwarded before it by the accused for his release on bail with or without securities.Granting of bail does not mean that the accused has been let free of charges frames or complained against him, it is only temporary release of accused from jail on furnishing on securities, to appear in court on later date when called upon. There is no restriction on the accused that he mail not move a fresh application of bail where his previous bail petition has been rejected or which is pending, he can apply for bail as many times he may feel free. An
order on a bail application does not finally determine the guilt or innocence of a person accused or an offence. Such an order of bail is not a judgement.

As we have seen that it is mandatory provision to grant bail to an accused as it is right to get bail while doing so, by the police officer or by the court as the case may be, may impose upon the accused, Such terms as they may feel reasonable. Neither the police nor the court has power or authority to impose any condition on the accused while granting bail, they cannot compel the accused to enter into any conditions to be released on bail, the only discretion available to court or to police is that they may only fix the amount of bail and neither to release the accused or personal bond or with security. Apart from that no other conditions can be asked from the accused while considering the bail application.

In a case, the magistrate imposed on condition or the accused that after bail has been granted he shall not visit to the disputed land till the final disposal of the case, the accused was arrested on bailable charges, the question was whether the court can impose such condition and does it make a valid condition. It was held by the High court that impositions of such condition was illegal on the ground that of the accused fails to comply with that condition the court would have to refuse the bail granted which is not permitted.

The police can ask the accused to appear only before the magistrate who has been released on bail, at a time and place mentioned in the bail bond. Police may not ask him to appear or present himself before the police. But the police or court as the case may be, before allowing bail to accused may ask him to execute a personal bond or by such person who is taking the surety that he will be present on court on a given date and time and such shall continue till the bail is in force. Bond is a document executed by the accused in which he promises of good conduct, due weight must be given to the affidavit produced by accused or by sureties.

Release on bail and recognisance are two different things. Bail means security with sureties and recognisance means the release of an accused on a sincere assurance in writing to the court without deposit of money or property. Release on recognisance normally done in crimes were the offence committed does not fall under the category
of serious crimes. The police officer in charge of a police station can release a person on his personal recognisance. Recognisance as a mode of release of an accused on self-undertaking to the satisfaction of the magistrate. Recognisance does not impose any condition of a pecuniary nature. It is merely an exchange of promise for the legal obligation of release.

The bail amount to be fixed by the court shall not be very excessive, it should depend on each and every case according to the circumstance. In a case the Supreme Court of India set a guideline stating that an accused can be released on personal bond without sureties where the court is satisfied, after taking into account, on the basis of the information placed before it, that the accused it can on safety release the accused on his personal bond.

In this regard, the law commission has also suggested to our law-makers that where a person accused cannot furnish or unable to arrange any surety within one month from his arrest, then such person shall be released on personal bond. Commission also insisted to make it as a mandatory provision.

**Can bail be granted in non-bailable offences:**

As we have seen that granting of bail in bailable offences is mandatory and it is the right of an accused and not to be taken as a favour done by court or police where accused has been released on bail. Now we have to see whether bail in non-bailable offences can be claimed as right, is court bond to grant bail in every apple moved to court’s desk. Bail in cases of non-bailable offences is a matter of discretionary power or authority of court, court cannot be made or compelled to grant compulsory bail. It is all up to the court to decide whether to grant bail or not to grant the bail, as the non-bailable offences are more of serious nature compared to bailable offences. The court may grant bail in non-bailable crimes or offences if the court is satisfied with the evidence and other circumstance produced before it, and after examination of all the material of court has the opinion that the accused has favour in his side then the court may allow bail even in case of non-bailable offence. It is unwritten rule that bail should not be granted in non-bailable offences but that
provision has been left to the discretionary power of court, if the court feels, it may or may not grant bail.

The crimes or offences which comes under the category where the imprisonment is more than three years, such are considered as serious crimes and they have been kept in non-bailable category. It is of utmost important that, yet the offence committed is of serious nature which falls under the category of non-bailable offence/crime, even though it cannot be overlooked that a person arrested or detained for such offence continues to remain innocent till the judgement is delivered or being convicted for such offence, the accused seeking/asking bail even in serious offences is justified.

Section 437 of Cr.p.c deals with non-bailable offences.

The law commission gave some suggestions in its 41st report that bail should be considered as matter of right where the offence falls under the category of bailable offences and where offence committed is non-bailable nature then it should be left to the discretionary power of the court and also suggested that the magistrate shall not allow bail to the accused where the offence involves punishment with death or life imprisonment, but where it appears to the court that the accused is a woman minor under 16 years of age or where the accused is sick or infirm/unwell person then the court may allow bail. This exception has been given to his category believing that because of their physical potential they may not able to interfere with the investigation or delay the trial by absconding or interference, by keeping this in view it is open for court to grant bail to this category even in offences which are punishable with death or life imprisonment.

There is one more provision where bail cannot be refused on that ground, it is a procedure that where any accused is arrested of a crime, he should be aligned with some other persons after that the witness is asked to identify the accused person who has committed the crime, it is called identification parade. On this ground police cannot ask the court not to grant the bail to accused. Identification by witness during
the investigation shall not be sufficient ground for refusing bail. The purpose of introducing this proviso\ condition is, in our country investigation of a case by police is always delayed which takes months to find the material and evidence in such situation bail ought not be refused to a mere suspect on the ground that he may be required for the purpose of identification. Bail cannot be refused only on the ground that the accused is wanted for the purpose of identification.

If there appears that there are no reasons to believe that the accused might have or involved committing such offence which is non-bailable crime to the investigation officer or to the court taking the trial, on that ground the bail may be granted to accused on the execution a bond by him with or without surety for his appearance. The accused may be granted bail at any stage either at the time of trial, investigation or at the time of inquiry where it appears to the officer or court that there are no reasonable grounds to believe that accused has committed a non-bailable crime.

It is a rule that every person arrested has to be taken before the magistrate within 24 hours from the time of arrest made, if the magistrate before whom the accused is produced has no jurisdiction then he shall direct the police to take the accused to the magistrate who has the jurisdiction within 15 days, this period of 15 days remand may be exceeded if there appears to the magistrate that adequate grounds exist for doing so, it is to be noted that such period of detention shall not exceed more than 90 days in the case where the punishment is death or life imprisonment or for 10 years and in all other cases it shall be 60 days, where the investigation is taking more than the prescribed time of 90 and 60 days then the person accused shall be released on bail if the accused applies for bail with all necessary conditions required by the court.

It is mandatory provision that the trial in non-bailable offences should be concluded within 60 days from the date when the accused brought before the court. If the trial is not completed within specified\ definite time, then the accused should be released on bail. When the trial is not done within the time or in absence of speedy trial the time spent in jail by the accused is nothing but an instance\example of making him undergo\suffer punishment before trial. In such case the court is left with no other option but to enlarge the application on bail.
**Temporary bail:**

Every court which has jurisdiction to try bail matter, has authority to allow a temporary bail or parole to an accused. Temporary bail means the accused is released from custody or jail for specific time and after completion of that time the accused has to return to jail or in custody as the case may be. Parole is another form of temporary bail. Recently number of times the convicted accused, Bollywood star actor Sanjay Dutt has been granted temporary bail or parole, temporary bail, parole is granted to the person who have been convicted in an offence.

**Interim Bail:**

It is another provision, where the accused can take advantage and may apply for bail on some genuine reason, mostly it is granted to the offences which requires to travel, also to women, children and the persons who have crossed the age of 70 years and also to the students who are appearing for any examination in such cases interim relief or bail may be granted. It is to be noted that interim bail does not mean that in future date regular bail may be granted, it can be granted only on merit\quality basis. The only condition where interim bail may not be granted is in offences which has death punishment, but this condition has been relaxed to women, children and aged person. Where an order of interim bail has been passed in favour of accused the ordering authority cannot impose any condition while granting bail.

**Anticipatory bail:**

Anticipatory bail means where a person has a feeling that he may be arrested for an non-bailable offence by the police on suspicion, to prevent such arrest the person moves an application in an appropriate court seeking bail in advance prior to his arrest this procedure is called anticipatory bail. Where the application of the person has been allowed then he shall show that order of court regarding anticipatory bail when the police comes to arrest him, on producing such order the person shall be released on bail. This option of anticipatory bail is available to every person who is been
suspected of committing or involved in some non-bailable crime or offence. It is very rare that where the court allows anticipatory bail it is not a mandatory provision the court has discretionary whether to allow or not to allow anticipatory bail to a suspected person. If the court at any point satisfied that anticipatory bail may be granted then court may allow the application.

Anticipatory means presumption or anticipation of something, a possibility that may happen or certain act may occur on a future day and to prevent that act from being happen necessary precautions need to be taken. Where the court allows anticipatory bail it means that in the event of arresting a person shall be released on bail, the anticipatory bail comes in function only on the occasion of arrest.

**Difference between bail and anticipatory bail:**

In case of ordinary bail the accused is released after he has been arrested by the police that too after being produced before the appropriate court. On the other hand in case of anticipatory bail a person is released without being arrested, on producing the order granted by the court. Even though he has not appeared before the court in case of arrest the person is taken in the custody by the police whereas immunity\protection from custody is given in anticipatory bail.

The object purpose of granting anticipatory bail arises because in number of times it has been witnessed that the influenced persons of the society make false allegations against their rivals for some personal gain to prevent such injustice to be done anticipatory bail is allowed. Apart from this it may also be granted where the person needs some emergency attendance which cannot be supplied if the person is taken into the custody and also in case where the reputation of the person in the society may be damaged where he has good respect which due to arrest may cause loss to his name. Nowadays political rivalry has increased because of which a trend of making allegations and false statements have been started among the politicians and in that flow sometimes people lodge false complaint against their rivals to provide a remedy to a person who genuinely\honestly apprehend\catch that he is likely to be humiliated by being arrested and jailed on false charges, the provision of anticipatory bail have been enacted. It is important to see that anticipatory bail applies, applicable only in cases of non-bailable crimes and not in cases of bailable crimes.
The petitioner must produce sufficient evidence before the court that there has been false allegations made against him and it is a clear case of malice intention behind it and he has prima facie proof that he is innocent. To take the advantage of anticipatory bail provision.

**Effects of refusing bail:**

The major impact of refusing bail fall on the prisons, prisons in India are already overloaded due to number of convicted persons, in a survey it has been revealed that the figure of prison population is increasing yearly and it is becoming more pathetic when under-trial prisoners are pushed in prisons or jails because of bail refusal and extending the remand by the court, the judiciary is sending more people in jails for longer period of time due to which there has been a rapid increase in prison figures. The major portion of prison population is filled up with poor, illiterate, agriculturist, tribes or the economically disadvantaged people. It is not justifiable to say that only refusal of bail is sole responsible for overloading prison system there are other factors which are also responsible, factors like arrears, understaffed judiciary unsophisticated police and scanty legal aid etc., but it can be accepted that refusal of bail is majorly responsible for this situation. Where a person is arrested he is taken to the police station and locked up in jail and from there the miserable journey of an arrested person starts.

The size of jail is so compact that hardly 5 to 6 prisoners can be held there, even though police fills them up to the throat they push each and every person arrested in that small jail which makes the jail look like a poultry farm. It becomes worst that the jails have attached toilet within it which is never cleaned, the jail stinks like drainage. The prisoners in police lock-up don’t have proper meals not even tea. The time spent by the accused in the custody\detention of police prior to his first attendance in the prison before the magistrate is more likely that court may consider the bail application and on succeeding occasion the court will only look for any new material is added to the previous application because at the first attempt of bail application court has already gone through the full details of the petition of bail. Mostly the court only
observe the severity of the offence charged to decide whether to hold the defendant or to release him.

It depends upon the nature of the offence committed to consider the amount to be fixed for bail. The magistrate go through the details provided by the police while taking a trail of bail and fix a picture in his mind about the accused, the magistrate does not take any initiatives to make personal observation of the accused and about his details because of over burdening of cases in his hand which are still to be settled, this makes impact on his personal performance and he finds the best way out as he denies bail one way or other.

Taking all this in consideration we may say that there is urgent need to improve the system of bail, irrespective of anything else, one clear alteration which requires to be made is, the magistrate must while deciding the bail shall have full information on what basis an intelligent decision can be made. In our country the system of bail is mainly depends upon speculations institution. The view of the police and the magistrate ability to judge. The defendant’s family, his character, social standing and his financial ability to raise bail is rarely taken into account.

**What arrangements need to be made:**

Nothing more will please to the accused than that of expeditious and speedy trial, it is like hell for an accused to remain in jail or custody for a long time even before he is pronounced guilty. When the investigation is over the trial of an accused should be held as speedily as possible without any interruption the trial should be finished or completed within three months i.e., 90 days from the date of completion of investigation, the adjournments should be granted regularly unless where it is absolutely necessary, the accused person should be kept separately from convicts and under trials. The summary trials should be taken for smaller offences or pity crimes which would help to dispose the trial in quicker time. The police should submit the charge sheet within a stipulated time, the specified time should be followed strictly else the accused should be released on bail. Frequent attempts should be made by the judiciary as well as police to make aware the public about the rights of arrestee. The police must take necessary steps and as far as possible make arrangements to release a person arrested in pity offences on bail at initial stages which will reduce the over
burdening of cases in court. The under trials and accused released on bail shall kept under the surveillance or super vision of the probation officer or member of mohalla or non-official voluntary organisations recognised by the government for the purpose.

**B. Universal declaration of human rights**

The UDHR made an great impact and its effects can be seen at various nations constitution, number of nations have incorporated various suggestions of UDHR in their constitution and adopted them as their own fundamental rights, India is also one of nation which have adopted some of the provisions from the UDHR articles, some of the rights which India adopted are, equality before law, prohibition of discrimination, equality of opportunity, freedom of speech and expression, freedom of peaceful assembly, right to form association or unions, freedom of movement within border, protection in respect of conviction for offences, protection of life and personal liberty, protection of slavery and forced labour, freedom of conscience and religion and remedy for enforcement of rights. These are the articles which India has incorporated in our constitution with reference of UDHR.

The human rights have been classified into three stages, first generation, second generation and third generation. Each generation has got importance, different rights have been recognised in each generation. Generation first contains civil and political rights, generation second contains economic, social and cultural rights, and generation third contains collective rights. Among these three generations the first generation which contains civil and political rights are of much importance in respect to an accused person.

**Rights guaranteed under UDHR**

This article states that every individual human being has this right, it comes to him naturally, straight away as he takes his first breath of his life, it is a in bond right no one can take away this right from him. The first phrase i.e., every human being means every living person in this world whoever he may be either ordinary human being or accused, it shall apply equally to both, where a person is a accused it does not mean that he has no right to live. The only case where a person can be deprived from this right that too when he has found guilty of very serious crime in which the punishment for such offence is death sentence, apart from this in no other way a person may be
deprived of right to life, but it is also subject to condition that the person who is sentenced to death shall be given a chance to seek mercy petition in which he may ask the court or govt. to convert his death sentence to life sentence. This article also gives exemption from death sentence to the people who are under 18 years of age and also to the pregnant woman.

Abolition of torture article 5 of UDHR:

No human being shall be subject to any form of torture to gather information from him, regarding the commission or involved or suspected of having committed certain crime by using any form of torture which includes causing the accused any pain or making him suffer by way of physical, mental, isolation, electric shock, suffocation, pulling out teeth, burning by cigarettes and sexual exploitation. Furthermore, the accused shall not be forced to allow on him any kind of medical and scientific experiments if they are to be carried out then free consent should be obtained from the accused for such act. This article restricts the public officials or persons authorised by the officials for using inhuman form of torture, it imposes\forces obligations on the state and its officials to make effective measures to stop\prevent the methods of torture and ensure that any one uses such type of method shall be punished for practicing the acts of torture on a accused person.

The term torture includes, medical and scientific experiment, inflicting pain and suffering, inflection of severe pain or suffering wither physical or mental, upon an accused who is in custody, it is difficult to define torture, it depends upon case to case circumstances in one case it may be considered as form of torture but in another case it may not. But some guidelines have been suggested by different organs of UN, which would constitute to a form of torture such as, prolonged\lengthy solitary\lonely confinement, ill treatment, pressure during interrogation, subjection to loud noise, sleep deprivation, food deprivation, and force accused to wall standing for long time, death threats, violent shaking, using cold air to chill a person.

Right to equality before law article 7 of UDHR:
Every human being is equal in the eyes of law and before the court and different tribunals, no one can be above law all shall be treated with equal concise, there should not be any discrimination among the people on the basis of religion, colour, status, class, etc., every accused brought before the court on charges of any criminal offence, has the right to be treated with all necessity care, his trial should be conducted with fair and just manner that too by a capable, neutral and self-governing judge or jury.

The trial of a accused should be a public hearing, means it should be open to all, but subject to conditions that were the court feels that such public hearing may effect or influence to the interest of justice then it may held the trial in a closed doors of the court were general public and press may not be included to take part at the trial, or were morals, public order and national security may be distributed, or where the interest of the private lives of the parties to the trial are involved which may effects their reputation of public hearing at a trial taken in such situation court may order that there may not be a public trial every person brought before court under some criminal charges against him or were a suspected person brought before the court has the right that he should be believed innocent till the time court convicts him for the offence.

Every accused is authorised\permitted\entitled to have the following minimum guarantees were it comes to the point of equality that, he should be informed the reasons for his arrest that too in the language which he understands, he should be given sufficient time to prepare his defence by a lawyer of his choice and to communicate with his council without any interference, the trial of the accused should be held as speedy as may be possible without any undue delay, the trial should be carried out in presence of the accused, he should be given opportunity to defend himself personally or by his lawyer.

Where a accused has no representative to defend him in such case for the interest of justice he should be assigned with legal assistant without the payment where the accused cannot afford to pay the lawyer, he should be given the chance to examine the witnesses and evidence against him where the accused does not understand the language used in the court the arrangement of interpretation should be made to make him understand the proceedings of the court and trial. The accused should not be forced to admit his guilt or to compel to testify himself against his own.
Where a trial is in regard to a juvenile person then the proceeding shall be done in a way of rehabilitation. Where the accused is convicted for an offence by the court he shall have the right to appeal against such order in the higher court and such court finds that the accused has been a victim of miscarriage of justice then he shall be compensated\paid off for the punishment he has suffered due to the judgement passed against him. No accused shall be punished twice for the same offence once he has already\previously convicted or acquitted.

Equality before law means to give equal treatment to all the persons who are brought before law, all the public officials, judges, prosecutors and police officers are required not to discriminate any one, all shall be treated with equal standards. The other impact of right to equality is freedom from discrimination. Right to quality also includes right to equal protection of law, every person shall be equally protected by the law, he shall be protected from being abused by his fundamental right which are guaranteed to him under the constitution of his nation and under UNO, he shall be protected from being deprived of his rights, it is duty of every state that they should protect the interest of the individuals at any cost they should not be made suffered by anyone. People should be protected from any injustice caused to them.

Right to remedy article 8 of UDHR:

This article has been inserted in the UDHR with intent to provide relief or remedy to the victim whose right has been violated, this article suggest to the state to support\promote\encourage and give value\respect to the rights of human being and make aware of violation of the rights to the executive bodies of government and to the general public. It is the duty of every state to provide justice to the victims of crime and who are exploited by the misuse of powers by the state authorities, the victim shall be treated with sympathy and they should be given respect and their dignity should be maintained where a accused has been wrongfully deprived of his right then he should be equally compensated for the damages caused to him due to the ignorance by the authorities. The states should take effective steps to establish and maintain the trust of the victims of crime and their families and to provide the safety to the victims
either physically, psychologically or to their dignity and privacy. The victim shall be allowed to take part in the proceedings during his trial.

This article insists to follow and apply the principle of natural law, the UDHR recognise that the victims should be honoured by way of giving respect to their rights to benefit with remedies, it is an urge of the UDHR to ensure respect that international human rights law shall be implemented in their local respective bodies of law and also to respect the treaties which the states have entered or to which they are parties and also to adopt the suitable and useful legislative and administrative procedures to deliver fair, effective, rapid or speedy access to justice which may provide proper\appropriate remedies to the victims.

An investigation shall be conducted where any violation of right has been found and such investigation shall be carried out in an effective, promptly, thoroughly and impartially and where violation is found to be true necessary action shall be taken in accordance with the domestic or local and international law.

Victims for the purpose of this document means the person who have suffered any kind of harm injury, damage either physically, mentally, emotional suffering or financial loss by way of damage to their fundamental right via acts or omissions of the officials, the term victim also includes the families of the accused person or the person who has been the victim of crime and whose right got violated. Every victim whose right have been violated has the right of remedy he shall be compensated by way of giving him an equal and effective access to justice, he should be sufficiently\ample compensated for the laws that he has suffered. He should be provided with all the information relating to the violation of his right.

Necessary action should be taken to reduce the problem\inconvenience causing to the victim, his family, representative who is acting on his behalf and provide adequate protection from any type of interference with his privacy and also protect the witnesses who are somewhere related to the trial before the trial starts during the period of trial and even after the trial has come to end in the interest of justice to be served effectively.

Ample compensation shall be provided to the victims whose basic human rights have been violated the repartition shall be comparative to the seriousness of the
laws or violation or harm suffered by the victim. It should be the duty of the state that the victim should be returned to the original position as he was before he was victimised, the liberty of the victim should be restored, and his identity, family life, citizenship and his basic human rights shall be returned to him along with employment and property if any he has suffered. He shall be compensated with all the loss that he has suffered during the trial like lost opportunities of employment, education and other social benefits not only this but also to be compensated for the expenses he has made for expert assistance, medical services apart from this he should be given assurance that he will not be subjected to any further harm or be threatened against his safety nor to him neither to his relatives, witnesses or to any other person who was involved in the trial.

An official statement should be made about restoring his dignity, reputation and rights of the victims or persons connected with him. The statement should contain a public apology mentioning that the responsibility has been taken for the violation. It shall also contain the guarantee that no repetition of such kind will happen in future.

The state should ensure to the general public that, those who have suffered any kind of damage in regard to the violation of their human rights, shall have the remedies, the state should issue a guidelines regarding the rights remedies available to the victims such as legal, medical, mental\psychological, social, administrative and all other facilities to which victims may have rights to accesses.

**Ban or Prohibition on arbitrary arrest Article 9 of UDHR:**

Article 9 of UDHR says that, every human being has a right of liberty and should have security, no person has the authority to detain any person against his will and make him deprive of his liberty. No one shall be arrested without any proper cause, if any person has to be deprived of his liberty then it should be done only by the order of appropriate court. The nature of this article is of obligatory type it restricts all the authorities, public officials, police and public at general to use unnecessary force to detain any person without reasonable ground, this article protects
the individual’s right of not being subjected to interference with his personal liberty and life. The person who has been arrested for an criminal charge for committing an offence or is found involved in some crime shall be immediately as soon as likely be produced or taken before the nearest magistrate and register him as being taken into custody before the magistrate. It is the right of every person that he should be produced before the court or magistrate within 24 hours from the time of his arrest.

Where there has been causing any delay due to any reason to produce the arrested person before the court in such situation the arrested person may be released on assurance from him that he will appear before court when required by court. It is a rule that no person who is awaiting for his trial shall be kept in custody or detained.

**Right to public hearing Article 10 of UDHR:**

Every person who has been arrested for an offence or crime shall be taken before the court and be tried there, his trial must be subject to public hearing, every person who is associated to the arrest person or who has some connection to that trial shall have the access to attend the hearing, the trial should be conducted in a open court hall so that everyone may able to see and hear what proceeding is happening, the trial should not be carried out in a closed door of the court where no one can know what is going inside, it will be considered as unjust trial. Every trial shall be commenced with caution assuming that the person against whom the trial is conducted is an innocent person, the trial must be fair, the jury sitting on dais must be impartial\neutral he should not have any interest in any of the parties either to applicant or to the defendant, the judge should act independently he should not be influenced by anyone.

Every person arrested shall be informed about the grounds of his arrest, it is a mandatory provision which is to be followed in all circumstances and such information shall be passed to the accused in the language which the arrested person is able to understand, the person arrested after informing the grounds of his arrest he shall be given ample or sufficient interval or time to speak with his council or lawyer of his desiring. There shall not be any delay in conducting the trial or accused, it is a mandatory rule that all the proceedings of the trial shall be conducted in the presence
of the accused and where it is not possible to produce the accused before the court due
to security reasons then the accused should be communicated the proceedings of the
trial through video conference using latest technology.

The accused must be given equal opportunity to defend himself personally or through
legal assistance of his choice or wish. He should have the opportunity to examine the
witnesses, in case were the accused is unknown to the language used in court then an
interpreter should be made available to the accused. Any kind of force shall not be
used against the accused to confess his guilt.

It is possible that a trial can be communicated in the private where the matter
is relating to the national security or where it is possible that public peace or order
may be disturbed if the trial is made open to general public or where the private life of
the parties to the trial may become a publicity which could prejudice\bias the interest
of justice. But the judgement of the trial shall be made public. Where the trial
involves of a juvenile then the publication of the judgement shall be preserved.

The idea of fair trial and public hearing is a common rule which applies to
entire criminal process. In a fair trial both the parties to the trial must have an equal
place\position, it would be a violation to the phrase of equality where one of the party
to the trial is denied to access of documents of the case for reference. The main
purpose behind the idea of public hearing is to safe guard the public interest and to
ensure to the public that justice is being done by giving opportunity to the public to
see the court proceeding and to ensure that the right of the accused is being protected.
It is at most important to note that all the hearings of the trial should be conducted
orally, the press and public can be separated from taking part in the trial where the
offence committed involves sexual offence. It is also permissible to keep the press and
public away from trail where it involves sexual offence against the children.

Right to the presumption of innocence Article 11 of UDHR:

It is a rule that every person arrested or detained for an criminal offence shall be
considered as an innocent or presumption to be made that he has not committed such
offence for which he has been brought before the court for trial till the time his guilt
has been proved by the appropriate court. No one shall be made guilty before the
trial\prosecution shows that charges framed against the accused are proved to be true
that too beyond the reasonable doubt. The innocence of the accused shall be continued till the time the final order or judgement from the court has been pronounced. This right of presumption of innocence can be protected in number of ways first, no one should make any kind of publication about the accused that a criminal offence has been lodged against the accused.

“No person” includes public officials, judges, prosecutors, police and government officials. The statement of guilt shall not be published before the accused been convicted for the acts which he has committed. The statement of guilt shall also not be published even after the accused has been acquitted. But this restriction however is subject to some conditions is permissible, the authorities can declare the name of the accused and the nature of his offence for which the suspected has been arrested. Second component which provides protection to the accused of being innocent relies on burden of proof, here to prove that the suspected has committed the offence relies on the applicant party i.e. prosecution, it is not on the accused to disprove at the initial stage charges alleged against him. In other words burden or load of proof lies on the prosecution to prove the guilt of accused rather than on the accused to prove his innocence. Third method by which the innocence of the accused may be presumed or be maintained relies on in what the way the accused or suspected can be presented, the due care should be taken by the officials regarding the presentation of the accused in the court. He should not be promoted like a captive or a detained, the accused should not be chained or put in iron rods and he should not be compiled to where the prison uniform which will make him appear like a convict, he should be provided with ordinary clothes to wear during the trial to make him feel like an ordinary civilian. The restriction from being handcuffed may be relaxed where it appears that the accused may get violent during the trial process. To prevent such nuisance from being taken place or for the security purpose the accused may be handcuffed. It would not amount to a violation of presumption of innocence.

The other way by which the presumption of innocence of the accused can be maintained is, while the trial is on the possible conviction to the accused should not be disclosed to the court, if the same is done there is possibility that the court may keep that possibility of conviction in mind which will certainly effect on the trial and will violate the right of accused of being presumed innocent. The reason for
inserting this provision is, if the accused is acquitted of discharged in the following trial then he may be able to return in the society by securing his innocence or as an innocent person. In this way the right of presumption of innocence is very useful right of an accused person.

Article 11 of UDHR also contains within itself that no human being held or arrested on the present day for a criminal offence or for an act or omission which the person has done in the past when it was not a penal offence but in the present day it is a penal offence. This article also states that when a person is arrested for committing a crime on that day the punishment of such offence is imprisonment for 6 months but later the imprisonment has been raised from 6 months to 1 year and on the present day punishment of committing such offence is 1 year now the question is what punishment will be applied to the accused who has committed the offence in the past if he is found guilty of committing that offence, the imprisonment of 6 months will be imposed on the accused because the amendment came after the offence has been committed and there is a rule that retrospective effect to a criminal offence cannot be given, every criminal offence amendment shall be given prospective effect, which is called ex-post-facto In other words heavier penalty shall not be imposed then the one that was applicable at that time penal offence was committed.

**International covenants on civil and political rights:**

Article 14 (3) (g) says that, no human being shall be forced to swear or testify against himself or forced to admit his guilt/fault. No person shall be compelled any other person by way either by force or by emotions to accept and confess that he had committed certain offence or he was involved in some criminal offence. It is the right of every person who is under arrest or detained to remain silent and not to answer any question asked to him by the authorities, where the person has no intention to answer any question asked to him in such situation no force shall be used against him to receive answers.

Right to remain silent includes or covers oral statements, any person who is under detention has the right not to give oral statement to the police or any other judicial officer throughout during the investigation process of a criminal offence. Every person arrested on a suspicious ground that he has committed an offence shall
be informed about the right of self-incrimination and right to remain silent after he has been taken into custody.

Article 14 (3) (f) states as follows:

Where a person has been arrested and brought before the court for trial, but the accused is not able to understand the language used in the court for trial purpose in such situation if the trial is continued then such proceedings shall be considered as unfair and unjust trial, so to clear this obstacle the accused shall be provided an interpreter who shall translate the language of court to the accused in the language which the accused understands, such translation shall be an oral translation.

Article 14 (3) (a) cotes that:

Every person arrested has a right that he should be informed or being told about the grounds of his arrest at the time when he has been taken into custody. It is a mandatory provision to do so because the accused person may be able to understand how he may prepare his defence.

Article 14 (3) (b) lays down that:

After the arrest of a person has been made and necessary information has been provided or informed about the arrest the accused person shall be given sufficient time to prepare his defence either personally or through his council, the time for preparation for defence may be defer from case to case, where it appears in one case because of difficulties there may cause delay to prepare defence. The accused must be given equal chance to access the documents and evidence which will help the accused to defend his case.

Article 14(3) (c) mentions that:
There should not be any delay in conducting the trial after the arrest has been made of a person, this article is not limited only to commencing early trial but it also insist that even the judgement should also be pronounced without any unnecessary delay, even the investigation shall also be concluded within a specified time limit from the time of arrest. It is stated in one of the phrase that delay in justice is no justice at all. But it depends upon case to case, where complexity is more in a case it may take time, there is a general rule that the more complex a case is the more time will be permitted to conduct the trial. It is a rule that where the trial is not contended within the time frame then the accused person shall be released from detention or custody.

**Article 14(3) (e) refers that:**

It is the right of every person who has been arrested and being tried to examine and inspect the witness personally or in his behalf by his legal assistance, this right has been inserted with a view to allow the accused to have a fair trial, but this right is subject to condition that if the witness fails to attend the court for the examination in such case it will not amount to the violation of the right to examination of witness, there is one more provision in this regard, the court is not bound to call each and every witness in court to be present, asked by the defence. But never the less the court should not violate the value\principle of fairness and equality wings or arms. Where the question of cross examination by the accused of the prosecution witness comes, he must be allowed sufficient\ample chance to cross examine the witness in court.

Following are some of the rights which are given to the accused or to the suspected which are regarding with legal assistance.

**Article 14(3) (d) relates to:**

Legal assistance, any person who is an suspected or accused, taken into the custody has been given a right that he may defend himself at the trial in court
personally or where he is unable to do so he may hire lawyer to defend him on his behalf, in the court, it is the right of every accused who is under detention that where a fair trial is to be conducted, there is a need that the accused shall be given a chance to get access to a lawyer at some stage during custody or detention, questioning or interrogation at the initial or preliminary investigation. It has been stated in a case that, where a person arrested has not been allowed to consult or access to council within 48 hours from his arrest it will be considered as the violation of human rights and fundamental freedom. Some experts argued against this right and some argued in favour of this provision, those who were opposing this right stated that if the accused is provided with immediate council there is possibility that if the accused or his council has any relation with other organised gangs the accused may pass any valuable information to them through the council, on the other hand those who were supporting this right argued that, if the accused is not allowed to access his council within the time then there is a possible risk that the accused may be subjected to torture, abuse or victimised in some way. In this discussion or debate the opinion of later experts who were in favour of this right was adopted and made applicable in call cases.

**Article 14 (3) (d) declares that:**

Every person who is either a suspect or an accused has a right granted to him that he shall have a council of his choice to defend him. The accused may have a qualified lawyer to protect him and to defend him at all stages of the trial but there are few conditions to this right that the lawyer which the accused choses to be his council should not be involved in any criminal offence or charged with any criminal offence. Another condition where the right of the accused to choose a council of his choice can be restricted where the lawyer of the accused rejects to follow the dress code which is required by the law to be worn in the court room during the trial. But in usual course the state must try that the accused may be able to get access to the council of his choice to represent him. Apart from the above tow conditions the accused or suspected has every right to choose a lawyer of choice where the accused is unable to pay for the legal assistance then the state must bear the expenses for accused.

The right to free legal assistance has been incorporated the article 14 (3) (d) along with right to choice of council, this right of free legal assistance is provided to a
accused where he cannot afford or to pay his defence to a lawyer, in such case for the interest of justice the accused shall be provided with free legal assistance for the purpose of casual understanding the importance of interest of justice means the court shall consider the grievance of the offence for which the accused has been arrested and the risk of the sentence which will effect to the accused if he has not been allowed free assistance and with that ability of the accused person whether he may or may not afford a representative to defend him on his behalf. It is important here to note that where a person is granted the free legal assistance there he has limited right to oppose or object to such choice of counsel. The only condition while providing legal assistance over the state is that the council provided shall be a competent person and he shall have the experience in that field for which he has been appointed. The state should pay sufficient incentives to the lawyer who is representing the accused provided by the state else the lawyer will not give much interest in protecting the accused which will be considered as unjust and unfair trial.

Under this article a mandatory free legal assistance provision has been inserted, where a person belonging to a weak or defenceless group (vulnerable group) such as children or where the person arrested is mentally disabled who has committed a serious crime, in such cases it is mandatory rule that the state shall provide compulsory free legal assistance to those persons and protect their right of free legal assistance at the expenses of the state.

Right to waiver of council is another important aspect of present article, where waiver of council means the accused who has been provided the free assistance of a lawyer he may deny or reject such lawyer or he does not want to exercise his right of free legal assistance. Where the accused rejects the right of free legal assistance he shall do such rejection in writing and shall declare that he has full knowledge of the consequences of such waiver of council. It is the right of every accused not to exercise the right of free legal assistance. Where the accused waive or surrender his right to council does not mean that he may not revoke it again on a future day. The accused may at any time and at any stage of trial may use his right of free legal assistance and the provision right of waiver will become void.

It is a right of every accused to communicate with his lawyer at any stage of the trial, communicating and consulting to his council while he is in custody or at the
time of court proceeding must be respected at all stages of the trial. Meeting between the accused and his lawyer is completely confidential, the detaining authority cannot interfere between them, they must be given sufficient time to interact with each other, the detaining authority may have a watch on them but he cannot hear what information they are sharing, it is equally important that the accused shall not be forced to disclose the facts which he shared with his council during the meeting. There shall be no device installed which may record the communication between the lawyer and his client the place where the communication is to be held shall be audio and video free zone. The communication held between the accused and his council cannot be used as evidence against the accused during the trial. It is the right of every suspected person or accused to communicate his council or lawyer at any stage of trial.

**Minimum standard rules set by UNHR for the treatment of prisoners:**

At the Geneva Convention the UN has declared the proposal on the prevention of crime and the treatment of offenders in 1955 which was adopted by the economic and social council. In this convention the basic general norms regarding the treatment of prisoners and the maintenance or management of institutions where adopted. On our globe there are different countries and each country’s geographical, social and legal conditions are different from each other in that view all the rules and provisions enacted by the Un cannot be applicable to all at the same time. Therefore the rules may be applicable according to the circumstances of each country. Furthermore the UN has set up a minimum standard conditions which can be suitable as a whole to all the nations all over the world.

These minimum standard rules have been divided into two parts, part-I contains rules regarding the organisation or management of institutions which shall be applicable to all the prisoners either civil or criminal, convicted or under trial or who are in prison by the order of the court either for security purpose or for corrective measures and part-II covers provisions which are related to special group of prisoners. Under this convention the rules were made to keep young prisoners in borstal institutions or at correctional schools, young prisoner’s means those who come under the authority or jurisdiction of juvenile courts. It is a rule that young prisoners as far as possible should not be sentenced or imprisonment. Apart from these there are number
of other provisions which have been adopted under the Geneva Convention regarding
the prisoners and whose which relates to the management of the institutions where
prisoners, under trials, convicts, accused and suspected persons are being held.

**Part-I is applicable to all prisoners:**

No discrimination shall be done among the prisoners on the basis of any sex,
colour, language, religion, nation or social grounds. Every prisoner’s religion to be
respected with equal potential. There shall be list which shall contain the records at a
place where persons are imprisoned or detained, every information of the person shall
be noted in that register such as identity of the prisoner, the reason for which he has
been detained, the time and date on which he has been brought in the prison and when
he shall be released.

The suppression should be made among the prisoners according to the
grevience of the offence that they have been charged with, means the person who are
detained for committing serious crimes shall be kept separate from that of the persons
who are involved in pity offences and under trial prisoners shall be separated from
that of convicted prisoners. Women and men prisoners should not be kept at one
place, there should be different prisons for both the categories, children or young
offenders should be kept or spilted up from the adult prisoners. The persons convicted
for civil crimes shall be kept separate that from criminal offenders.

Where it comes for keeping the accused or suspected persons who are held or
arrested, they should be kept in cell rooms or jails which have sufficient ventilation,
lighting the windows of such cell should be large enough through which fresh air may
pass. The cell rooms should have neat and clean washroom to meet the needs of the
nature of the persons held or detained within those rooms or jails. There shall be the
provision of drinking water, the food provided to the detained persons while in
custody should be sufficiently enough that they may have strength and health. The
food should be of standard quality. The detaining authority should inspect the persons
who are in his custody and to see whether anyone needs any medical service or check-
up or are there any sick persons who need treatment.
C. Legal Provisions Relating To Bail by Police and by Magistrate:

The word "police" is in the Indian Police Act 1861 and in various police Acts. In the framework of the Code of Criminal Procedure, a village Chowkidar is not a police officer and he is not allowed to exercise the powers granted to a police officer under the Code of Criminal Procedure. Since the Indian Police Act does not apply to the state of Jammu & Kashmir, a policeman, in that state cannot be assumed, a policeman in the framework of the Code of Criminal Procedure and therefore, an arrest made by him in any other part of the country in India is not justified. Police officers powers to accept Bail is governed by the provisions of the Code of Criminal Procedure.

A false rejection to Bail or to place obstacles in the path is regarded as neglect of duty. The code of the Code of Criminal Procedure 1973 gives broad powers of the police to arrest. In addition to the power of arrest, the Code gives police powers parallel to the magistrate to release an arrested person walk free.

In the case Morit Malhotra v/s state of Rajasthan, the accused was granted bail under section 436 by police. But when on the given date of hearing he presented himself before the court, the court directed him to seek bail from the court. On this basis he challenged the order of court in upper court i.e. in the Rajasthan high court, the high court decided that it is not necessary to get bail from court where the defendant has already granted bail by the police.

The court in a case Jamshedpur v/s State of Bihar dragged the provisions from the reasoning in the Supreme Court’s decision in the case of free legal assistance. where it was stated that if a judge (magistrate) once has granted bail then the accused person has no need to get or seek bail from any another court of session. The person who is on bond granted from the court which has power to do so U/S 436, with this reference one may seek that the courts generally not following the above said ruling. In one another case Haji Mohamed Wasim v. State of U.P an exciting query occurred before the Allahabad high court was wither the bail granted by police is valid or not. Here the accused person was granted bail by the police and on this belief he did not appeared before the court, later the trial court issued an non-bailable arrest warrant
against him stating that he has to take fresh bail from the trial court. The accused challenged that order U/S 482.

**It reasoned:**

The policeman or officer in charge of a police station allows a person or grants bail such bail will come to an end when the investigation or enquiry of the case has been concluded that to only where the offence is of bailable nature. In such cases the officer can grant bail after taking surety for appearance of the accused before the judge (magistrate) on the date so fixed. No parity/equivalence/equality can be claimed against an order passed by the judge or magistrate in opinion of allowing provision covered in clause (b) U/S 209 which states that judge or magistrate has been empowered to grant bail till the conclusion of the trial. This power was otherwise restricted to grant bail by him during pendency of committal proceedings U/S 209 (a).

The real thing today in the society is clear that the police do not always appropriate in the matters of arrest. The common people are always deprived of their right of liberty and the working of police has become a type of terror for the citizens because of police cruel behavior with the people and the suspects in question specially. Daily one may notice that in almost every newspaper we may find news relating to police arrogance.

This is well-known that, in order to pullout the information from the suspect, the police during the investigation of a person in their custody use the third degree treatment during which the accused sustain injuries. In some occasion where such things happen and which has been noticed by the media at that time some nominal departmental inquiries are conducted the purpose of these inquires is mainly to cover up the fault/taint. Even in some cases it has been seen that police arrest innocent persons and make them admit things that they have never done just to cover their incapacity of finding out the true suspect and such innocent persons are subject to hard treatment. Once a learned high court Judge during a trial said police is itself an organization of goondas, though the Supreme Court later censored those wordings. Even after all this we hear this kind of incidence’s all over around us.

**5.1 Bail by Police**
The power of a police officer to release on bail a person accused of an offense and held custody of him by him, can be divided into two heads: (a) when the arrest was made without any warranty; and (b) at the time of the arrest there is arrest warrant. Power of the police to bail are under the head (A) can be collected from Sections 42, 43, 56, 59, 169, 170, 436, 437 and schedule I column 5 of the Code. The powers of the police to bail under the head (B) by the favorable opinion in accordance with section 71 of the Code. Section 81 of the Code however, gives permission to police officer to release a person on bail if the person arrested has committed an offence which seems to be bailable offense even if arrest warrant contains no direction. In the case of non-bailable offences the endorsement or authorization has to be strictly adhered. However Endorsement should be with name on it.

5.2 Bail when arrest made without warrant

(i) Bail under section 42 Cr. P.C.: 

Sections 41 and 42. of Cr.P.C are the only sections under which a police officer can arrest a person for non-recognizable criminal offense. But this power can be exercised in accordance with the conditions laid down in the section. U/S 41 nine categories have been listed in which a police officer may detain a person without direction or command or order of judge or magistrate that to exclusively without warrant. The police can arrest only those person without warrant who are concerned with offence or suspected of such offence thereof.

There a person who claimed that he was in possession of a prohibited weapon once, he cannot be called as an accused or suspect in present time. Section 42 of Criminal procedure code 1973 may be used if the offender refuses to provide the name and address, or gives the name and the address to the police officer which is not true or gives incorrect. Where the police officer has the knowledge of the details so produced before him then there is no question of arrest or bail will arise. As soon as details of name and address have been brought to the knowledge of police officer there he cannot detain the person if the person is willing to execute the necessary bonds.

If for any reason, the real name and address of an arrested person cannot be determined in 24 hours, the conditions of Sec. 56 and 59 plays their part, the important thing about this section is, a bound by a person who is not a citizen of India
can take the security from an Indian. There is no similar restriction as to the residence of the surety is to be found in other provisions of the code. A police officer can be able to release a person on bail or he can arrest on doubt on the suspect. This Sec. not only allow officer in charge of a police station but also to an police officer because this Sec. has been passed or enacted particular for non-cognizable offence the section does not put any restriction on the powers of a police officer to release a person on bail after the correct name and address have been given.

(ii) Bail under section 43 Cr. P.C.:

The criminal procedure code provides power to arrest of a person by a private person though his power of arrest is limited. A private individual can arrest a person only if:

1. He is proclaimed wrongdoer/offender, or

2. In his presence, he commits a non-bailable and cognizable crime or offence.

After the arrest, the person arrested, without undue delay should be in the handed to a police officer, or, in his absence, take to the next police station. The question of the Bail will depend upon what the policeman forms opinion on the person in front of him.

1. If there is no sufficient reason to believe that the arrested person having committed any offense has, he shall be released at once.

2. If there is reason to believe that such a person is covered by the provisions of Section 41, a policeman will re-arrest and then the normal procedure of the investigation, determination of the question whether a non-bailable case is made out or not, and that it is desirable for release on bail etc. will be looked after.

3. If there is reason to believe that it is a non-cognizable offense he shall be released as soon as his name and address have been established in accordance with section 42 criminal procedure. A chowkidar, not a police officer is not entitled to take custody of a person arrested under this Section.
But where a chowkidar is a policeman as the Chota Nagpur rural police Act" (Act I of 1914) he can take custody of a person arrested under section 59 of criminal procedure (old) and detain him in custody.

(iii) Bail under sections 56, 57 and 59 Cr. P.C.:

Section 56 mandates that a police officer effecting an arrest without warrant must take or send the offender arrested, before a magistrate having jurisdiction in the case of before the officer in charge of a police station. But in the section 56, there's a built-in provision authorizing police officer to allow bail to offender, but the authorization of the policeman is in accordance with the provisions as to bail. Sec. 56 of the amended code corresponds to the section 60 of the old code. M.P. High Court stated in regard to Sec. 60 as under:

"The section 60 says as, the arrested person must be taken to the magistrate who has the jurisdiction in case of Bail demanded, only refers to the fact that the police to allow bail. If in the opinion police bail cannot be granted to an accused then the arrested person must be taken to the magistrate who has the jurisdiction. Sec. 61 (i.e. new Sec.57) is related purely with the period of detention by police of an arrested person without warrant", Sec. 57 provides that person who has been arrested shall not be kept in custody more than twenty-four hours.

The aim of the legislature is that an accused person should to taken to the magistrate having jurisdiction for a try. Sec. 57 is enacted with an intention to keep the liberty of an individual on high. Section 59 provides that a person, who was arrested by a police officer should be sent free except on his personal bond, or on the bail, or as directed by the magistrate. In Section 56, 59, the legislature used word "policeman".

(iv) Bail under section 169 Cr. P.C.

The section indicates that the grant of Bail is not at the beginning but only on carrying of an investigation in Chapter XII of Cr.p.c. till that time Bail is not allowed according to this section. Authority to allow a person in custody vests in the police officer in charge of a police station or of a police officer making the investigation. U/S 36 of criminal procedure, a police officer higher in rank to an officer in charge can have the same authority as of investigation officer.
According to Section 169. In an investigation it appears to the police officer in charge that there has been no sufficient proof to suspect a person in such situation the accused should be forwarded to magistrate, in that case the officer shall release that person on executing a personal bond with or without sureties as such officer may direct, to appear, if and when so required before a judge or magistrate as the case may be who has the jurisdiction to take the cognizance of the offence on a police report and to try the accused or make him for trial.

The "officer-in-charge" of a police station, due to any reason either illness or out of city or for any other reason is unable to perform his duties in time in such situation any other police officer next to the officer in charge who is above the rank of constable or where the State Govt. has the desire may direct any other officer so present to look in the matter and take necessary step. No officer either in-charge or so directed to act on behalf cannot allow a person bail where it appears that the accused to be bought before the magistrate on the source of a complaint in regard of the event which is under investigating by police.

If the accused who is in the custody shall be released soon after if there is no sufficient evidence or any reason to believe that he is involved in an offence charged against him. The judge, however, asks the police for further investigation. There is no provision, which empowers the judge to discharge an accused where the investigation is pending before the final form and taking cognizance of the offence.

If the officer investigating the case takes the bond from the accused for his appearance before the police it shall be null and void abinitio.

The bail will therefore only provisional measures and the judge or magistrate may if he feels can discharge the bond or issue an order of re-arrest of the accused.

The power of the police officer conducting the investigating to admit a person to bail are not obstructed by the nature of an offence of which he is accused.

(v) **Bail under section 170 Cr. P.C.**

In this section, the authority to allow the bail shall lie in the officer in charge of a police station when the offence is bailable. In accordance with the above, it can be
said that, a police officer who is releasing a person on bail on the basis that during the investigation it has been found that the offence committed is bailable offence, but when the accused was arrested it was thought that the offence was of non-bailable nature, here the question is whether in such case the police officer can allow bail as it has been found later that the offence is bailable, the answer to this question is very simple, the officer has every power to grant bail to the accused if it is found that offence committed is bailable in nature. It shall be immaterial what the initial investigation has disclosed against him (accused).

But Section 155 (3) of Cr.P.C states that, no person has the authority to release an accused to release on bail which includes officer in charge of a police station except magistrate or judge where the offence committed is of non-bailable nature. But where it has been found during investigation that the offence committed is bailable and first/initial accusation was due to mistake, in such case the police officer has the power to release accused on bail.

Section 170 says that, officer in charge where he finds that offence is of bailable nature he may either held accused in custody or he may release him on bail with condition that, the accused shall present himself before the magistrate on given time. But the officer cannot accept the application from accused to withdraw the complaint filed against him. Officer cannot discharge the accused.

(vi) **Bail under section 436 Cr. P.C.**

The provision of this section create/direct/impose a legal/statutory duty upon the officer of a police station to release a person on bail who is connected/involved in a bailable offence/crime. The officer of a police station has the power to release/allow either on bail or on a personal recognition i.e. bond without surety till the time where the person is in his custody. The accused can demand to be released on bail only when, he is prepared and able to produce personal bond or security. The accused cannot be detained where he has made such arrangement. In only one situation he can be detained in custody where the accused has failed to produce a personal bond.

(vii) **Bail under section 437 Cr. P.C.**
The power to release on bail a person accused of non-bailable offence is given/conferred only to one class of police officers namely an officer in charge of police station u/s 437 (1). Since the authority to allow bail is liberal, but not binding. It is because it has to be exercised with great caution since there is risk and danger involved. Before exercise his power, a station officer should satisfy himself that the release on bail would not endanger the law enforcement agencies in bringing home the guilty of the accused. In case the officer in charge gives or allows someone bail, it is compulsory/mandatory upon the officer to record the reason or special reason in the case dairy and preserve the bail bond until the accused are discharged either by the appropriate court or by the order of the court of competent jurisdiction. For the purpose of bail in non-bailable offences.

The legislatures has divided those under two heads.

1) Those who are punishable with death or life imprisonment and

2) Those who are not so punishable.

In case of a criminal offence punishable with death or life imprisonment, in such case a station officer cannot allow a person. If there are reasonable grounds for believing that such acts he has been found guilty, the gender or age or disease or infirmity of the accused cannot be considered by the police officer for the purpose of grating bail. These questions can be taken care only by the court. The police officer can grant bail only in those cases where he has belief that the accused has not committed an offence of non-bailable nature or where the offence complained is of non-bailable nature but no punishment with death or life imprisonment.

5.3 Bail by Police when arrest made in pursuance of warrant

The relevant provisions of Code of Procedure in connection with above heading are confined in section 71 and 81 of Criminal Procedure Code. (i) Bail under section 71 Cr. P.C. A police personal executing a warrant in according to this section is not empowered to use any unnecessary authority apart from that which is contained in the endorsement, the reason for that if a person arrested is willing to produce personal bond then the police officer cannot demand any kind of sureties from him (accused).
Only the court has the authority who has issued the warrant to give direction for release of the person arrested on bail or not.

When a person is not arrested against whom the warrant is issued till the day on which he is to be produced before the court, in such case the time for taking the bail lapses. But the warrant will remain in full force even after the date of producing the accused in the court has been lapsed according to section 70 (2) of cr.p.c. A magistrate has every power to issue an arrest warrant against a person to be produced before him in his court instead of a police officer. Section 73 cr.p.c lays down that a warrant of arrest can be executed by any police officer apart from whose name it is been directed upon.

(ii) Bail under section 80 & 81 Cr. P.C.

When the warrant is to be implemented outside the district apart from one which has issued, may direct any police officer other than District Superintendent of police or the Commissioner of Police to release an person arrested in accordance with the directions carried along in the endorsement. The District Superintendent of police or the Commissioner of Police as the case may be, can release a person on bail in an presidency town within their respective local jurisdiction only in those cases where it is bailable offence and the accused is prepared and eager/willing to produce bail to their satisfaction. In other words, where an arrest warrant is to be implemented/executed, within or outside the jurisdiction of the district of the court which has issued it, no police officer can involve himself to resolve the query whether the person arrested has done a bailable or non-bailable offence.

Because as he is an public servant under the Govt. he has to observe exactly with the contains endorsement if any. The officer cannot allow a person to have bail just because the arrested person is guilty of a bailable crime. Where the warrant is to be executed apart from the jurisdiction of the district in which it was issued, in that case the provision of section 81 (1) authorizes/allows the District Superintendent of Police or the Commissioner of Police of a district under whose local limits the person is to be arrested to release him on bail, only if the offence is bailable, and where the person to be arrested is willing and reddy to furnish security even though if there is no direction by the court issuing the warrant.
5.4 Bail by Magistrate

"Bail" is still an undefined term in the Code of Criminal Procedure 1975. Nowhere else has the term been defined by law to further understand conceptually, it is assumed as a right to claim freedom against the state’s restrictions. Because of the UN Declaration of Human Rights of 1947, in which India is a signatory, the concept of security/bail has found its place in the context of human rights. A right to get admitted to bail can lawfully be circumspect if the police needs the arrested person any time for purpose of investigation of the case.

The code of the Code of Criminal Procedure provides that a person who is suspected of a cognizable offense may be sent in police custody. In the case of arrest without an arrest warrant, the request for pre-trial detention in the case of a suspect begins with a formal arrest warrant. Any person who is arrested by a police officer, should be brought before the judge within 24 hours from the time of his arrest. If a person commits a criminal offense of bailable nature, then it is up to the judge to grant him the bail, but if he has committed non-bailable offense, then it is at the discretion of the magistrate, whether to grant or not to grant bail. Section 59, 44 (1), 88, 167, 436, 437 etc. deals with the powers of magistrate/judge on bail.

5.5 Bar of Discharge except on Bail under Section 59 Cr. P.C.

The first requirement in the code which appears regarding the powers of the magistrate/judge to release or discharge an arrested person is mentioned in section 59 of Cr.p.c. this section says that where the police has arrested a person, such person cannot be discharged in any condition except (i) on personal recognizance, or (ii) on bail, or (iii) under a special order of a Magistrate. Section 59 is inter-linked or parallel or corresponds to section 63 of old Cr.p.c.

An interesting question arises whether this section as it is worded confers any power on a Magistrate to release a person on bail or, the section itself does not confer any power on a Magistrate but it only enumerates in a general manner the ways in which
an arrested person can be enlarged. This High Court of Madhya Pradesh held that section 63 (old), Criminal Procedure Code as it is worded, does not itself confer any power to a Magistrate to release a person on bail. It only provides for the release of a person arrested without warrant, on his bond or on bail or on his discharge under special order of a Magistrate.

The issue was then in that time, the person to be released only when other provisions of the code i.e. Cr.p.c, allows the person to be released on his bond, or on bail or discharge with the special order of a magistrate/judge U/S 167 of Cr.p.c. his lordship has not mentioned any reasoning in his conclusion in that regard. On the other side/hand, one may assume that no importance has been attached to the words “herein contained” in modern section 56 of Cr.p.c. (previous section 60), instead the words used by his Lordship are “when under other provisions of the Code a person has been ordered to be released”. Again one finds that the words “A special order of a Magistrate” have been held to mean “a special order of a Magistrate under section 167”. Before pursuing the matter further it is necessary to point out at this stage that the word “discharged” used in section 59, Criminal Procedure Code, should not create any confusion in determining the correct scope of that section because the same expression has been used in the first proviso to section 436, Criminal Procedure Code, which is obviously a provision for bail. Therefore, the word “discharged” and “release on bail” have not two different meanings. This M. P. case criticizes the word “discharge” in old section 63 as not happy.

5.6 Bail when Warrant Executed Outside Territory under Section 81 Cr. P.C.

Section 81 corresponds to the old section 86 with some differences: Section 80, Cr.p.c. 1973, says that, a detained person outside the jurisdiction of a Court which has ordered the arrest of a person under warrant is to be produced before the court where it is within 30 km from the place of arrest or closer, than Executive magistrate or district Supt. Or Commissioner of Police.

The police authorities not below the rank of District Superintendent of police or Commissioner of police or the Executive Magistrate, then shall direct removal of the arrested person or make arrangements for his appearance before the court which
has issued the warrant. But where the offence is bailable in such situation the arrested person shall be allowed to be released on bail if he is willing to produce personal bond or security. But if the offence is non-bailable then only C.J.M is empowered to take the bail application to release him that to in accordance with section 437 Cr.p.c. but these condition does not limit the authority of the police to take surety U/S 71 Cr.p.c 1975. Section 187, Cr.p.c. does not override the provisions of sections 70 to 81, of Cr. P.C., 1975.

The advantage to have the bail can be taken by an arrested person only if he has been accused of an offence of bailable nature. If the arrest is to be made of a witness, the same provisions shall apply in case of witness also, the magistrate or judge has no power to accept bail from such person. If the arrested person is accused of a non-bailable offence, according to Section 80 and 81 the executive magistrate has no power to act outside/beyond the terms of the endorsement contained in the arrest warrant. The accused can be allowed only on one condition where accused is willing to produce the security needed in accordance with the endorsement. If there is nothing mentioned in the endorsement about taking bail in regard of non-bailable offence, in such case the magistrate is at liberty in whose jurisdiction the person is about to be arrested must send him to the custody of the court which has issued the warrant of arrested, in either case if person is a witness or accused, only thing to be taken in to consideration is that the person is the same person mentioned in the warrant, and where magistrate is satisfied, he can direct the removal of the arrested person in custody to the court which issued the warrant.

5.7 Requiring one to execute bond under section 88, Cr. P.C.

The purpose of this section only means that, the court is the only authority who can ask a person to execute a bond with or without sureties for his appearance before the court who is taking the bond or before the court to which the case may be transferred for trial (note: this section 88 the old section 91). This section or provisions of this section is only available to those persons who are present in the court at the time of hearing and not to those who have not attended the court on a given day or date. The
court is not under the duty to visit to the house of the accused and ask him to execute the bond a bond for his appearance in the court.

The provisions of this section are:

I. The person is present in court; and

II. For his appearance, the Court may send a summons; or

III. The Court may for his appearance issue an arrest warrant against the person. It is at the discretion of the Court to wither or not to allow a person with or without sureties a bond for his appearance. While the charge is pending, whether an accused guilty or not must obey the bond.

5.8 Security for peace and bail under section 106 Cr. P.C.

The section authorises the taking into account of the security for the preservation of peace. The criminal offenses in which the section applies are:

i. Criminal offenses within the meaning of Chapter VIII, Indian Penal Code, namely offenses against public peace/tranquility U/S section 141 to 160 with the exception, offenses under the section 153-A, 153-B and 154 I. P. C.;

ii. Attack/Assault or with criminal force or commit mischief.

iii. A criminal offense, a involving breaking of the peace;

iv. Criminal intimidation.

Security for the preservation of peace may be required in this section, if a person who because of certain criminal offense convicted. So to apply the provisions of this section it is necessary to:

i. That conviction is must.

ii. That the conviction must be for one of the offenses mentioned in the Sec.

iii. The conviction must be by a court which is mentioned in the section.

iv. This court is of the view that it is necessary to bind the accused to prevent the breach of the peace.
Is that the direction, asking for the security should also be approved, while applying this sentence, and person convicted shall not be entitled to show cause notice or preliminary interest for the demand for security.

One of the limitation on the powers of the Court of Justice and the Court of sessions in the connection relating to the period of taking security may be not exceed a maximum of three years and the complainant need not requested to furnish the similar security for maintaining the peace.

The demand for security U/S 106, of criminal procedure, is not limited to regular tests. Even if the accused is convicted, in summary proceeding, demand for security can be asked.

In this section it is necessary to identify what amount of security is required, if this is not done in any of the case, then the court is at fault. While asking to produce the security, the judge should consider the leaving standard of person concerned and condition of his life, so that he himself has a real chance to find security. The magistrate has no authority to order the convicted that certain person should take his surety or he may be one of the sureties.

Sub-section (2) of this section lays down that on the conviction being set aside, the order for security also fails to the ground.

**5.9 Magistrates who can demand security under Chapter VII of the Code (Sections 107, 108, 109, 110, 116, 117):**

Only the executive judge has authority to ask security in accordance with this Sec. The District Court or JMFC can apply Sec. 106 who has tried and the accused sentenced him. Two important conditions are necessary U/S 107 to initiation the proceedings: formation of judgment and existence of sufficient for bases for proceedings. Order shall not be issued mechanically. Sketching a Procedure only on basis of police report is ruthless. An excessive amount of RS 20,000 to be submitted as security bond is also incorrect.

The general creation of opinion on evidence is sine qua non for starting the proceeding.
The fact that the judge made his opinion must show on face of the record.

Chapter VII of the Code of Criminal Procedure considers the types of securities can be taken:

I. For the preservation of peace, and

II. For good behavior.

Section 107, criminal procedure code, describes the security for the preservation of peace and Sections 108, 109 and 110, criminal procedure code, the security for good behavior. Under Section 106, security for the preservation of the peace is required from a sentenced person, whereas: Pursuant to Section 107, safety is required, even if he is not been convicted of any offense, because there is reason to fear that he is likely to commit, or aggravate a breach of the peace. Procedure in the context of the two sections are judicial and not administrative.

5.10 Stages of Bail Under the Preventive Sections:

In the preventive sections in accordance with Chapter VII of the Code of Criminal Procedure, the question of release\bail can occur in five distinct phases:

(A) if a procedure has not been started but only at a glance\view.

(B) if a procedure have begun and Notice under section 112 criminal procedure code, it has been issued.

(C) if to the completion of the investigation in accordance with Subsection (1) of section 116 is pending, and the magistrate is of the opinion that immediate measures are required, so that the prevention of the violation of the peace or the fault of the public peace or the Commission of any criminal offense or for public safety. But, magistrate has no authority to demand such provisional or interim bond without investigation being done.

(D) pending the reference U\S 122 (4), criminal procedure code.

(E) to the appeal or revision pending. The various phases, in which the question of the Bail may come, have been enumerated above. But, strictly speaking, in some cases at
a stages the question of the security\bail must not come at all and if the judge asks the
detention of a person because the latter is not in a position to produce security to the
satisfaction of the competent judge, the detention is illegal. It cannot be gainsaid that
the question of release on security can only come if a person can be arrested on the
basis of the information produced before him. If he cannot be arrested, demanding
security from him is illegal. It has been found that a judge is not competent persons to
prison any person who is produced before him after the arrest unless he has been
given express powers for the same under the provisions of the Code.

5.11 Bail under Section 124 Cr. P.C.

If a person against whom summons or arrest warrant has been issued for the
appearance either for incompetence for his surety or the persons who has taken his
surety (sureties) are not acting in accordance with the bail conditions, where such
person is brought before the magistrate there the judge may grant such person the
unexpired portion of the term of such bond, fresh security description as the original
security.

From Sec. 121 till 124 Deals with the legal proceedings taken after the order has been
made in section 106 or 117.

The order made under section 124, in regard to Sec.118 to 123 shall be considered as
order passed U/S 106 or 117 as the case may be. In order to ensure that the furnishing
of security is within six months if it is not done in that time then the Judge has no
choice but take the person in custody and send the matter to the session judge or the
high Court, depending on the circumstances. The question about his freedom on bail
is governed by other provisions of the code, during the matter is in consideration at
the high court or session judge. The magistrate making the reference has no power to
grant bail for that period of time.

5.12 Bail under Section 309, Cr. P.C.

The goal of Sec. 309, Cr.p.c is different from the old and matching Sec. 344 of Cr.p.c.
in Natabar Parida vs. The state Orissa, 43 Sec.309 is involved simply after the judge
has taken the cognizance of offence. During this period of time, the magistrate may
allow the accused to enter the Bail doubtlessly. Even during the Interregnum the time
of submission of the charge-sheet and commitment to the courts of session, judge may
grant bail to the accused or to remain in his remand or custody.

5.13 Bail to Lunatics: Section 330, Cr. P.C.

Bail is not claimed as right by persons of unsound mind. It is up to the courts
to grant or refuse the bail as it has been huge and wide powers in regard to bail.
Sec.330 of Cr.p.c does not speak of nonbailable and bailable offences. The nature of
the crime and the seriousness of punishment for a particular crime should not be taken
in to consideration where the question of release on security of a lunatic is concern.

The advocate shall not try to convince the magistrate forcibly for bail, even if the
person is charged with most serious type of offense. It is up to the magistrate whether
to grant or not to grant bail to a lunatic person if he is of opinion that bail may be
granted then he may do so even in very serious type of crime and may not allow bail
in bailable offences. An accused of unsound mind may be set free on security
regardless of the crime he has committed wither serious or not. The court will find out
wither the person accused of is of sound mind or a lunatic and also during the
pendency of investigation in regard to his mental status [section 328 (2)].

Other than the security for the accused who is lunatic to be released is different from
the release of other person, in the former it is binding not only for appearance but also
for preventing the accused from causing injury either to himself or to any other
person. But it is to be taken in to note that any term which is not stated in Sec.330 of
Cr.p.c should not be imposed if the magistrate apply new conditions this is illegal and
unforceable.

There is no word in the Sec. 330. Cr.p.c. that the appearance is limited only in the
duration of the investigation\test or trial. The external security under this Section is
for appearance of the accused "when the judge or the court or officer appointed by the
Court in this behalf. In accordance with this section 330, it does not contemplate only
appearance at the proceedings of the inquiry or trial for the offence for which the
accused is charged, it does not terminate with the termination of the inquiry or trial.

A person standing security may be requested to furnish the person who is released on
his security even after the trial has expired. He cannot say that his security has came
to end where the person arrested has been terminated from trial. There is yet another difference is in the Security U\S 330 and section 436 to 439.of Cr.p.c.

The bond shall be implemented in accordance with the chapter XXXIII of the code (Sec 436- 439) is mandatory only for the date of hearing of such an offense and such charges. It does not undertake to be responsible for the presence of the accused to answer charges in respect of crime that might be committed at a later date.

where the security has been taken U\S 330 Cr.p.c. the surety not only undertakes, he shall be responsible for the attendance of the accused to answer charges in respect of crime or offence already committed but also assures that he will prevent the accused “from doing injury to himself or to any other person”. Thus the purpose of bail under section 330 Cr.P.C is different from the purpose of bail under sections 436 to 439 Cr. P.C.

There is a difference between normal remand under section 167 or 309 of Cr.p.c. On one hand U\S 330. If the judge opines that Bail should not be taken on account that sufficient security is not given, judge may send him to be remanded him to the safe place not necessarily the judicial custody. In order to ensure that the detention is in accordance with Sec.330 (2), it is binding that judge must report his ordering detention to the State Govt.

5.14 Bail for offence against Administration Of Justice : under section 340, Cr. P.C.

If a judge considers where the application made to him in this behalf or in any other way, that it is appropriate in the interest of justice, an investigation should be with regard to an offense punishable under Sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, 228 of the Indian Penal Code or a criminal offense described in section 463 or a criminal offense in accordance with Section 471, section 475 or Section 476 of the IPC, which is displayed to have been committed in relation to a procedures in that court, that Court of Justice may, after the initial examination or inquiry, if any, as it thinks fit, record a finding to that effect and make a complaint Thereof, in writing, signed by himself, and the same shall be forward to a magistrate
of the first class having jurisdiction. After the Court of Justice has recorded its reasons or findings and decided to make complaint, the power to detain in custody or release on Bail accrues to the complained court under this section.

If the infringement or offence complained of is bailable the court after taking sufficient security for the appearance of the prisoner before Judge or the alleged crime is nonbailable offense, it may, and if the court is of opinion then it may send the accused to the magistrate for custody. But until, the Court has finally made up its mind that the complaint should be made it has no authority assumed that the offense is bailable or non bailable or the person must be taken into custody or not. If the Court has taken a person in custody illegally, without making the final order about filing a complaint the remedy of the prisoner is by way of the writ of habeas corpus and not under section 439 CR, P. C.

5.15 Bail for Contempt in presence of Court:

Under section 346, Cr. P.C. When an offence, as is described in section 175, Section 178, 179, 180 or 228 of I.P.C. is committed in the view or presence of a Criminal Court and that court, instead of proceeding under section 345, Cr.P.C., it considers that the accused person due to the above-mentioned offenses should be imprisoned and otherwise in default for the fine, or to a fine not exceeding two hundred rupees should be imposed upon him, it should be that the court of justice after recording an accusation and facts and the declaration shall also forward the case to a magistrate having the jurisdiction try the same, and may also ask for the security to be given for the presence of such accused person before the magistrate and where satisfactory security is not given then the person may be sent to the custody to such magistrate.

In this section, the section 340, the person complained against shall not apply for bail in the court. This is up to the decision of the Court for the complaint either in accordance with the attendance of the accused by demanding a security for his presence before the transferee judge or it may inform the accused to be present on the date before that certain court. He cannot be taken in to custody only because he has not applied for bail not even for not providing the security he has been asked for.

5.16 Bail to Witness under Section 349, Cr. P.C.
If a witness or a person is called by the criminal court to bring or to produce a certain thing or document which is in his possession and to give information which he has with him which is required by the trailing court, and the same is been refused by such person and does not give any reasonable excuse for such noncooperation and continues his refusal in such situation he may be brought in provisions of Sec.345 and 346. This section says that a complainant is not a witness and a witness cannot be forced to provide information or bound to answer a question which is not related to the issue. The witness shall not be obliged to answer every question asked the court which convict him in criminal proceeding because section 165 of Evidence Act protects him from such prosecution even he is not be made bound to produce document in respect of which he claims privilege U/S 123 or 124, Indian evidence Act.

5.17 Bail to First offender etc. under section 360, Cr. P.C.

Sub-section (1) of section 360, Criminal Procedure Code, deals with the power of a court or a Magistrate of the second class specially empowered by the State Government in this behalf, to release a convicted offender on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Judge has discretion to punish the offender life imprisonment or release him on probation for good behavior.

The provision under the sub-section (1) of this section establishes the procedure to be followed by the magistrate of the Second class not specifically authorizes by the government, on this behalf, when such judge is of the opinion that the powers granted by section 360 CR. P. C must be exercised in favor of the sentenced person. An interesting question arises, as to what should a judge, who is not competent to release a convict, when there are more than one prisoner before him, he is of the opinion that one or more of them, but not all, have the advantage of this section.

This was held in a case by the Madras high court in Pandaram Pitamanayaga that the judge must resolve or dispose of the case of the other prisoner himself first and then submit the case of accused who deserves in his own opinion, the benefit of this section.
The High Court of Bombay has taken the same view. In one another case the same high court held that there was nothing in the language of either old section 562 or even 380 in the old part which prohibits a magistrate of second or third class sending to all the accused, the whole case, and the whole process to the S.D.M (Sub-Divisional Magistrate) in a case he suggests that, the steps should be taken under section 562 against only one or a few persons suspected.

The restrictions were imposed on the second class magistrate by the proviso to sub-section (1) shall not apply in cases in which the person concerned guilty to theft, theft, fraud, dishonest such misappropriation or any criminal offense punishable by the Indian penal code not for more than two years he and the Court is of the opinion, looking in to all of the mitigating circumstance, that it is a fit case when the offender should be released after due admonition. There is no legal compulsion on the second class magistrate to submit the proceeding before a S.D.M (Sub Divisional Magistrate) for his order.

5.18 Bail for misuse of liberty of section 360:

Under section 360 (9), Cr. P.C.

The question is who would be allowed to Bail may occur when the convicted offender to whom the benefits of Sec.360 Cr.p.c. was given does not follow the conditions of bail imposed upon him by the magistrate who convicted him, or by a Magistrate who could have dealt with the offender in respect of his original offence. In such case, an offender when he is apprehended on such warrant may either be send to the custody till the case is heard or may be allowed to bail with enough surety for his appearing for sentence.

5.19 Post-Conviction and Pre-Appeal Bail under section 389 Cr. P.C.

Looking at the section one may anticipate it deals with post-conviction and pre-appeal. The appellate court may while the apple is pending of conviction of the accused may release the convict on bail, the high court has this power to do so even
though the matter lies to session court. Where the court before whom the case is pending for convicting the accused is under the duty bound to allow bail to the accused as the order of bail is passed by appellate court or high court when

(a) he is already been granted bail and has been sentenced to imprisonment for a term less than three years; or (b) if the offense is bailable one. Even the accused can be refused to bail after fulfillment of the conditions by the court for any special reason. . Under this section an intention to present an appeal on the part of the convicted person is sufficient reason to justify the release of a convicted person on bail. It may further be noted that an order of bail under this section is for a limited period only and is applicable only to “convicted” persons and not to those who are bound over.

5.20 Bail while making reference under section 395 Cr. P.C.

If the magistrate sends the reference U/S 395 of criminal procedure code, to the high court for its opinion for the validity or any other act, rule or regulation, provisions or of any law or regulation involving in an act, where the decision is pending before the high court at such stage the magistrate may either send the accused to jail or allow him bail on condition to be present when called upon. It is the discretionary power of magistrate to allow or not to allow bail to the accused depending upon the gravity of the charge and severity of punishment provided in the act, regulation or law.

5.21 Bail During Revision Under Section 397 Cr. P.C.

The Court of session and the high Court in exercise of revision can call the records of lower Courts for the purpose of satisfying itself as to the accuracy for Justice to meet, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior court. The Court of revision calls for the records from such lower-court, it may direct the execution of
sentence or order be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

The revision of bail petition pending is within the discretion of the court concerned which must be guided by general considerations on the merits of the case, the likelihood of the applicant escaping\absconding, the nature of the offense, the punishment, etc. The revisional power by the High can be exercised not necessarily on the application of the aggrieved parties but also on own motion. Despite right of appeal being available, High Court suo motto can invoke the revisional powers on an illegal order being brought to its attention.

5.22 Bail under Section 437 Cr. P. C.

Section 437 deals with bail in bailable offence. Bail is a rule and jail is exception. In bailable offenses the person accused has the right to be released on bail. In cases of bailable offenses bail it is essential to allow bail. The access to the bars between the criminal procedures makes a distinction between bailable and non-bailable crimes\offences. To get bail in cases of non-bailable crime is optional\discretionary, But the person accused under bailable offense may at any time during his detention\remand without warrant is entitled to get bail at any stage of the trial has the right to be released on bail in accordance with Sec.436. of Cr.p.c 1975.

Even if the accused person committing a bailable offense is produced before a magistrate and he is prepared to give bail, then the magistrate has no option other than to release him on suitable bail.

5.23 Bail for non-bailable Offence: Under Section 437 Cr. P. C.

The provisions of section 437 empower two authorities to consider the question of bail, namely (1) a “court” which includes a High Court and a Court of Session, and (2) an officer-in-charge of the police station who has arrested or detained without warrant a person accused or suspected of the commission of a non-bailable offence. Although this section deals with the court discretion and the power as well as
a police officer in charge of police station to allow bail in nonbailable offenses it has also laid down certain restrictions on the power of a policeman to allow bail and certain rights of an accused person to obtain bail when he is being tried by magistrate.

Section 437, criminal procedure Code, says that, the authority of court taking the trial and the magistrate before whom the criminal is brought before by the police or where the accused himself surrendered or appears, in an assumed or suspected offence which is of non-bailable nature for grant or refusal of bail. The words "suspicious or by the Commission" was included in criminal procedure code (Amendment) act 1955 (1955 of 26 Sec.94. (a) (i). The words occur in the CR. P. C. 1973 also, so there is no difference between the person accused of the Commission of a non-bailable offense and a suspected person committing a non-bailable offense. Both have to be in the same category. But it may at its own discretion controlled by the Court of Justice, by two important limitations, viz: 1.If the prosecution can satisfy the court that there are reasonable grounds for believing that the accused is guilty; of the Commission of non-bailable crime in which punishment is death or imprisonment for life, he shall refuse Bail [Sub (1)]. 2. If the accused able to prove in the court that he has not committed any crime which falls under the category of non-bailable list of crime or where the court is of opinion after trial that the accused has not committed any such type of crime, in such case the has to release that person on bail [S-Sec (2) and (7)]. A-part from the above-mentioned restrictions, the Court of Justice has its sole and unfettered discretion to allow bail.

The session-committable trials the magistrate may ask the accused to give bail for appearance before the Court of Session. This prohibition on magistrate’s authority Enlarge one on bail, where there are reasonable grounds for believing that he has committed crimes a criminal offense punishable in the death or imprisonment for life, in particular with regard to the object is to prevent the repetitive of the offense, and securing the attendance of the accused and similar reasons. And so, the police and the magistrate has wide powers to gray of Bail but it must be granted carefully or cautiously. The discretionary power is also be used in sensible or judicious manner. The principles laid down by higher.

5.24 Criteria for Judicial Discretion to Grant or Refuse Bail
“Bail or jail”, to borrow the famous quote from KRISHNA IYER, J., is the question that repeatedly comes before courts wielding immense judicial discretion while exercising their bail jurisdiction. There is the question again and again, This can be shown that a frequently quoted, Krishna Iyer, J. in a case, Narasimhulu Gudikant vs P.P. (Public Prosecutor), High Court of A.P., "Bail or jail\prison." At the pre-trial or post-conviction stages belongs to the blurred area shall be maintained by the criminal justice system, and mainly centers on the hunch the bench, otherwise called judicial discretion.

These observations are still true, that the law is not the letter then, at least in practice, in-spit more and numerous judicial pronouncements and provisions in the statutes, as to how judicial discretion must be exercised. The court decided that the answer is in one of the most important fundamental rights the Constitution granted pursuant to Article 21, namely, the personal freedom\liberty. Bail is a gift to the personal freedom\liberty to a person who has already been arrested, or who is ready for the expected arrest. On the other hand, where bail is refused it means the person is sent to jail, or in police detention, as the case may be, and thus, may be deprived of personal freedom.

As a matter of fact, the question of "bail or prison." The question is not limited only to some people but the society in general, for ex: if an innocent person sent to jail may be more painful than a dangerous or hardened criminal released on bail to the society, there is possibility that dangerous criminal can destroy the evidence, threatening the witness, escaping the judicial process or may commit more crimes.

This is a very important judicial discretion, therefore it cannot restrained. One of the main reasons for the a uncertainty in use of the judicial discretion in bail trials is the fact that without going into the full details of the evidence, which in fact might not even have been collected till that time in many cases as the case concerned might still be under investigation, a Court has to decide whether a prima facie case exists which then becomes a grey area in which different shades of opinion could be possible. Highlighting the need for caution while exercising the said judicial discretion in bail matters, KRISHNA IYER, J., further observed that:
Personal freedom/liberty, is denied when bail is refused, is too valuable/expensive in regard with our constitutional Art. 21. It is an important and crucial authority which has to be used with great trust and not to be exercised casually but only judicially, with taking active concern or worry of the individual and the community/society. After all even the personal freedom/liberty of accused is also of great value and fundamental importance, suffering lawful eclipse only in terms of 'procedure established by law'. The last words of art 21 are the life of that human right.” However, the Lordship fully realized that the use of this judicial authority, discretion was difficult a matter which can be cleared from below observation:

"The code is mysterious on this topic and the court prefers to be unspoken and favors this theme, the court of justice in the deprivation of tacit, or not. And yet, the question is a liberty, justice, security, and the burden on the public treasury, insist that a organized jurisprudence of bail is integral to a socially sensitive judicial proceedings.

Select the necessary caution referred above, during use of judicial discretion in bail trials, Krishna IYER, J. furthermore, noted that: personal freedom/liberty, is deprived when Bail is refused, is too expensive of the constitutional system mentioned in Art.21. of the Constitution that the crucial power to negate it is a great trust exercisable not casually but judicially, with lively concern for the cost to the individual and the community. … After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of ‘procedure established by law’.

### 5.25 Can Conditions be imposed in Bailable Offence?

The Kota APpalakonda,66 in this case, the accused were charged by the police US 147,148 AND 447 324 and 323, IPC, which are bailable crimes. The magistrate allowed bail to all of them who applied for with the condition that non of them will enter in the disputed land till the final disposal of the case.

There was, however, the high court of the Madras, stated that the imposition of that condition was not proper on the ground that if the accused persons does not follow the
bail conditions then the court has no choice then to refuse the bail, which is not allowed in bailable crimes U/S 496 of Cr.p.c 1898, [as compared to Sec. 436 of Cr.p.c 1973]. It was observed that in non-bailable offenses, that could be no objection in imposing to such conditions, the magistrate has authority either to grant bail or to refuse to grant bail, he also has power U/S 497(5) of Cr.p.c of 1898 equal to Sec. 436 of Cr.p.c of 1973, sending person released to be arrested and sent to custody, if conditions of bail are not followed. Sec. 496 of Cr.p.c of 1898 [similar to Sec. 436 CR.p.c 1973], foreseen an accused person being released on bail when the charge against him is in regard to a bailable offence. The words used are “such person shall be released on bail” thereby denoting that it is mandatory on the Magistrate to admit him in that behalf.

He has no discretion to impose any condition, the only authority he has is, how much amount of bond or bond sureties be imposed. Any condition which is against the bail with regard to the provisions of section 496 should be considered as unconstitutional one.

The considerations which, based on the order of Sec. 497, CR). P. C. (1898 ) [similar to Sec. 436 CR.p.c 1973), do not apply for bail U/S. 496. In former case, the Court of Justice has the discretion to allow the accused on bail or not and where the court is of opinion to release the accused on bail it may impose certain conditions. But the accused is entitled to Bail on the Sec. 496. Therefore, it is held that, while Bail is set in the bailable offense, the accused is forced to appear before the Commissioner of Police, , as it was a condition which was repugnant to the terms of S. 496 Cr.P.C. (of 1898) [equivalent to S. 436 of Cr. P.C. of 1973]. Consequently, the clause in that behalf cannot be restored as it was validly deleted.

5.26 Surrender of Passport While Granting Bail

In Hazari Lal Gupta v. Rameshwar Prasad, while ordering release of the accused on bail, who has his business in UK and was a resident of there, the high court asked him to surrender his passport and should not leave without the permission of the court. It was argued that Sec. 496,497 and 498 of Cr.p.c of 1898 (similar to Sec. 436,437,439 of Cr.p.c of 1973) in regard to bail does not confer any power on the court when
granting bail to restrict the departure of the accused from India by requiring him to surrender the passport.

The claim, the Supreme Court held that the 496, 497 and 498 on the criminal procedure (1898) were not exhaustive of powers of the Court of Justice, in particularly to the terms and conditions of bail particularly when the High Court under S. 561-A of the Criminal Procedure Code (of 1898) [equivalent to S. 436 of Cr. P.C. of 1973] dealt with cases of this type. The apprehension of the accused jumping bail could not be brushed aside. The Supreme Court observed that if the accused wanted to retain the passport the court might not have granted him any bail; that even the reduction of the surety was made in order to enable the accused to be enlarged on bail; and that the reduction of surety was also on the consideration that the accused would not leave India.

Police and the judge has been given the powers to allow bail under Cr.p.c. in bailable crimes, and it can be claimed as a right. Police or Magistrate has no discretion in this regard. However, police uses discretion in granting bail as the people are not aware of statutory provisions. There is urgent need to impart awareness in this regard so that police may not misuse its powers for extraneous considerations.