CHAPTER VI

CONCLUSIONS AND SUGGESTIONS

The criminal administration of justice in India assumes that the State as a prosecution using its investigating resources and employing competent prosecutors will try its best to prove the case while on the other hand accused will hire the equally competent services of a counsel to defend himself and challenge the accusations leveled against him. Moreover, the notion that a person is presumed innocent until proved guilty still looms large. It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system much worse; however is the wrongful conviction of an innocent person.

The criminal administration of justice is set at motion by First Information Report (FIR) resultanty the investigation process. Arrest is an ingredient of effective investigation. The prosecution is under obligation to detect the crime by whatever means and faces blame for not making any breakthrough in investigation.

The term arrest is not defined in the Code of Criminal Procedure but it means to take or keep in custody by authority of law. The elaboration of the term can be said to restraint and seizure of a person by someone (e.g. a police officer) acting under legal authority. Arrest is a form of State constraint applied to a person, during which the person is placed under detention, is imprisoned and is deprived of his right to move freely. An arrest serves the function of notifying the community that an individual has been accused of a crime and also may admonish and deter the arrested
individual from committing other crimes. Therefore, no doubt the arrest means deprivation of personal liberty but the Constitution of India which is supreme law of the country provides ample protection against arbitrary arrests. The most basic provision relating to arrest has been incorporated in the Article 21 of the Indian Constitution. It lays down that no person can be deprived of his/her right to liberty, except in accordance with procedure established by law. The arrest implies custody subject to compliance of Section 49 Cr.P.C. whereby the restraint is limited to prevent the accused from escape. The settled position of law is that a police officer shall not put handcuffs on the accused while arresting him. Handcuffing is only justified under exceptional circumstances or if there are sufficient reasons to believe that accused may attempt to escape from custody. This notion is based on the principles that if police officer is authorised to handcuff in all the cases of arrest, it would amount to be given the blanket powers to oppress the accused person.

Arrest can be made either upon warrant of arrest or without warrant. Arrest can be affected by Police officers, Individuals and Magistrates. Generally it is presumed that only the prosecuting/investigating agencies have the power to arrest but there are provisions in the Code of Criminal Procedure where even the persons other than prosecuting/investigating agencies may be authorised to arrest certain criminals. When a person thinks of arrest, the picture that most often springs to one's mind as fostered by pictures and televisions drama is that police officer implementing all means of oppression. The police remand has also the same picture in minds of common people. In fact law does not allow this and it is only the interrogation which is required to get
breakthrough in investigation. The suspect has a right to counsel during interrogation and should be allowed to meet his counsel; but the counsel need not be present throughout the interrogation; where necessary, he is entitled to free legal aid and enjoys the right to remain silent. If tortured, an accused should have the freedom to apprise the Magistrate of the incident, when produced before him. In such cases, the magistrate can remand him to judicial custody. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first – the criminal or society, the law violator or the law abider. In the ultimate analysis society comes first and the criminal should not go free because the constable blundered.

The evolution of the human rights of arrested persons dates back to time the concept of society emerged during ancient India. There are not many direct evidences to this effect but from the analysis of many surrounding set ups viz. political, social and economic and moreover the administration of justices, it is evident that the foundation for humanitarian laws was laid in ancient India. Many ancient writings in the form of Smritits, Sahintas along with writings of Kautilya and Narda suggest well organised administrative set up having regard for humanity above all. Indian civilization which is the oldest in the world besides Roman civilization, is reflected in many international civilizations and humanitarian laws which developed worldwide of which the great Magna Carta is the mile stone which paved the way for many international conventions supporting the
human rights of the accused or arrested persons all over the world. Ancient India had witnessed a drastic transformation of laws as initially, the Law or Dharma, as propounded in the Vedas was considered supreme in ancient India for the King had no legislative power. But gradually, this situation changed and the King started making laws and regulations keeping in view the customs and local usages.

So long as the territory was small, the form of administration was more or less democratic; but as the size of the territory grew large, it was found necessary to adopt a system in which political powers were concentrated in the hands of the Head of the State assisted by a Council of Ministers and a trained bureaucracy.

Even ancient criminal jurisprudence recognized that criminals were not born but made. The purpose of penology seemed to make an offender a non-offender. Ancient Smriti writers envisaged these ideas. The ancient Smriti writers appropriately paid consideration to individuality of the offender. The Smriti writers in their writings had referred the release of offenders on account of good conduct and integrity of character, which seems to sustain the recent concept of Probation. However there are evidences of torture against the arrested persons or accused persons but the rights of arrested persons in the form of fair trial, right of appeal, right to examine witnesses and right of being represented by a counsel, right against torture are found in many scripts during ancient India.

Torture is a general term for modes of inflicting pain associated first with punishment peculiarly severe excruciating and cruel kind, more specifically with the use of such modes by judicial or
quasi judicial authorities for the purpose of forcing an accused or suspected person to confess a crime or of extracting evidence. Legal Glossary defines 'torture' as "the infliction of excruciating pain." In D.K. Basu case it was held that torture of a human being by another human being is essentially an instrument to impose the will of the 'strong' over the 'weak' by suffering. Article 1 of the "Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)" defines torture as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or third person information or a confession, punishing him for an act he or a third has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

'Third-degree' is the most popular term relating to police torture. Major Richard Sylvester of Washington, who was the President of the Association of Chiefs of Police in 1910, explained that the "first degree" was the arrest, the "second degree", transportation to some place of confinement and "third degree" the interrogation of the arrested man as to his guilt. All these steps, he argued were essential parts of arresting process. According to Chamber's Dictionary, "third degree" is an American police method of extracting a confession by bullying or torture or any ruthless, prolonged and intensive interrogation usually denoting physical
and mental intimidation. "Third degree" a slang term now in common usage designates the use of force or duress by police and prosecuting authorities to extort confessions from persons in their custody. Justifications for the use of torture, or more euphemistically, "coercive interrogation," depend on accepting the principle that there is an appropriate balance between liberty and security that may include depriving individuals of their human dignity by subjecting them to torture or cruel, inhumane, or degrading treatment. Governments should, and do, balance civil liberties and security at all times and during emergencies, when new threats appear, the balance shifts to favor security over liberty.

The Supreme Court of India and High Courts have adopted a proactive stance in directing the Government and/or law-enforcement bodies to take various steps to tackle torture and have repeatedly criticised the latter for failing to do so. Civil liberties and human rights groups in India have played a major role, through public interest litigation and other means, to seize the Supreme Court and to highlight and combat the prevalence of torture. The courts in India have come down heavily upon the police for torture in custody for extorting confession, falsifying evidence for securing convictions and for corruption and lawlessness. "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" is a part of the Universal Declaration of Human Rights. The content of Article 21 of our Constitution read in the light of Article 19 is similarly elevating. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is "not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his
confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law. It may be a legitimate right of any police officer to interrogate or arrest any suspect on some credible material but it is needless to say that such an arrest must be in accordance with the law and the interrogation does not mean inflicting injuries. It should be in its true sense and purposeful namely to make the investigation effective. Torturing a person and using third degree methods are of medieval nature and they are barbaric and contrary to law. The police would be accomplishing behind their closed doors precisely what the demands of our legal order forbid. Torture is the anti-thesis of the rights of the arrested persons, which have been developed throughout the journey of civilisation and incorporated as fundamental rights in the constitutions of various democratic countries.

The Constitution of India has prescribed certain constitutional standards by proclaiming these yard-sticks in the form of fundamental rights of the accused persons. The constitutional values are also reflected in the procedural and substantive penal laws in detail. They are to be understood not only in the form and manner in which they are chartered in the Constitution and the penal laws but they must also be seen and appreciated in the light of the interpretation of these rights as proclaimed from time to time by the Supreme Court of India. There are certain fundamental and primary rights, which cannot be violated in the enforcement of any substantive as well as procedural penal laws. No doubt, all such
substantive and procedural laws have, in themselves built-in systems of checks and balances to ensure that on the one hand, the enforcement of penal laws are in the best interest of the community at large and at the same time on the other, just, fair and reasonable procedures are followed in all such endeavours to safeguard the interest of the accused persons and arrested persons.

The rights of the accused under the Constitution of India has been elaborated and pronounced in more explicit manner by the Supreme Court in two landmark cases namely *Joginder Kumar v. State of Uttar Pradesh* and *D.K. Basu v. State of West Bengal* in which the power of arrest and its exercise has been dealt with at length resulting in the emergence of new jurisprudence relating to rights of arrestees, which can be summerised as follows:

**Fundamental Rights of the Accused/Arrested Person**

1. Accused has right against double jeopardy. [Art 20 (2)]

2. Accused has right not to be compelled to be a witness against himself. [Art 20 (3)]

3. No accused shall be deprived of his life or personal liberty except in accordance with procedure established law which is just, fair and reasonable. [Art 21].

4. Accused has right to fair and speedy trial. [Art 21]

5. Accused has right to assistance of a Counsel. [Art 22 (1)]

6. Right to be produced before the Magistrate within 24 hours of arrest excluding the time for travel. [Art 22 (2)]
7. Right not to be detained in custody beyond 24 hours after arrest excluding the time for travel without the order of the Magistrate. Art 22 (2)]

**Rights of Arrestee issued as instructions in Joginder Kumar case**

8. An arrested person being held in custody is entitled, if he desires, to have one friend, relative or other person, who is known to him or likely to take an interest in his welfare, told as far as practicable that he has been arrested and where he is being detained.

9. The police officer shall inform the arrested person when he is brought to the police station of this right.

10. The entry shall be required to be made in the diary as to who was informed of the arrest.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.

**Obligation of Police Officers after arrest as laid down in D. K. Basu case**

11. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tag with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
12. That the Police Officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

13. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

14. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

15. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

16. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has
been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

17. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The “Inspection Memo” must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.

18. The arrestee should be subjected to medical examination by a trained doctor every 48 hours of his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State of Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

19. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

20. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

21. A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.
Duty of the Magistrate when the Accused is Produced

When the arrested person is produced before the Magistrate, he has a duty to enquire with the accused as to when he was arrested and the treatment meted out to him including subjecting him to third degree methods, and about the injuries if any on his body.

The above mentioned guidelines lay down a complete code to be complied with in the event of arrest. These guidelines incorporates procedure which is mandatory for making arrest and aims at ensuring that no arrest goes unaccounted with a view to prevent illegal detention and also the individual is deprived of his personal liberty only according to the procedure established by law. The compliance of these guidelines tested empirically through field survey method (by administering questionnaires and schedules) in the State of Himachal Pradesh and the findings of the empirical study can be concluded as following:

I. To ensure that there is no illegal arrest and a person is arrested only by the authorised person, the requirement of law is that the police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tag with his designation. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register. The study reveals that the police personnel carrying out the arrest and handling the interrogation of the arrestee are bearing accurate, visible and clear identification and name tag with their designation hence, the arrest is being made by the
authorised personnel and their accountability can be ascertained as and when required.

II. The second requirement laid down in D. K. Basu case while affecting the arrest is that "the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest". The study reveals that there is total compliance of the requirement of preparing the memo of arrest and its being countersigned by the arrested person but the level of compliance as to the requirement of attestation of memo of arrest by the family member of the arrestee or a respectable person of the locality from where the arrest is made is low irrespective of the claims of police.(for detail see Ch. V, at 279-280)

III. Third requirement of D. K. Basu case is that a person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee. The study reveals that the information relating to arrest has
been given in all cases without a failure either to the family member of the arrestee or to the friend or relative whosoever mentioned to be informed by the arrestee.

IV. The fourth requirement of D. K. Basu case is that “the time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or and through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.” The study reveals that it is being followed without failure in all the cases, as there is a well established system whereby the information of arrest and place of custody of the arrestee is communicated telegraphically i.e. through wireless signals to the concerned Superintendent of Police, which is the residential district of the arrestee and from there it goes to the Police Station of the native village and further served to the family members of the arrestee. Compliance of its service to the concerned members comes back to the investigating officers through reverse signals.

V. The arrestee has a fundamental right under Article 22(1) of the Indian Constitution to consult and to be defended by, a legal practitioner of his choice. This right of arrestee to consult and to be defended by, a legal practitioner can only be realized if there is someone in the know of his arrest so as to consult the legal practitioner of choice, as the arrestee himself is ceased of his movements. The Supreme Court of India felt the need that not only the
right to have someone informed about the arrest as soon as the arrestee is put under arrest should be recognised but at the same time the right to make aware the arrestee of this right should also be recognised as an independent right. Therefore, the Supreme Court of India has laid down by way of fifth requirement of D. K. Basu case that the person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained. The study reveals that the arrested persons are not aware of the fact that police officers carrying out arrest are duty bound to inform the relatives of the arrestee about his/her arrest. The study further reveals that despite the fact of ignorance of arrestees the police have informed the arrestees about the right that they have a right to have someone informed of his arrest or detention.

VI. The sixth requirement of D. K. Basu is that “An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.” The study reveals that there is hundred percent compliance of this requirement and it ensures double check over the procedure of arrest and it puts a seal of authenticity on the time of arrest and custody of the arrestee.
VII. Seventh requirement of D. K. Basu case is that “the arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.” This requirement is aimed at curbing custodial violence and affording the arrestee an opportunity to bring on record the injuries which the arrestee has suffered during the process of arrest or during police custody before actual arrest. Such record of injuries may become as vital evidence in the cases of custodial violence especially when the result of such injuries is death. Such memo of injuries will furnish evidence and act as a deterrent on those policemen who commit atrocities on arrestees in their custody but manage to escape legal consequences by reason of paucity or absence of evidence. The study reveals that none of the arrestee suffered any injury at the time of arrest and consequently no inspection memo of injuries was prepared. The absence of injuries shows that arrest in Himachal Pradesh is being made without any infliction of injuries and without any custodial violence.

VIII. The eighth requirement of D. K. Basu case is that “The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should
prepare such a panel for all Tehsils and Districts as well." Again this requirement is aimed at curbing of custodial violence and this is mainly applicable to those arrestees who are in police custody under remand for longer durations. The study reveals that this requirement is being complied in the State of Himachal Pradesh.

IX. The ninth requirement of D. K. Basu case is that "Copies of all the documents including the memo of arrest should be sent to the Magistrate for his record". This requirement helps the Magistrate to know in advance about the briefs of the case, make himself available for the purpose of production of the arrestee and prepare himself as per the requirement of the case. The production of the arrestee within 24 hours of arrest is the first stage to find out and ascertain the legality of arrest and to peruse whether proper safeguards have been adopted while making an arrest. The study reveals that all the documents including the memo of arrest, referred to above, are being sent to the Magistrate for his record well in time but very astonishing finding comes out that Magistrates did not inquire about the well being and infliction of injuries or use of third degree to the arrested persons.

X. The tenth requirement of D. K. Basu case is regarding allowing the arrestee to meet the lawyer during interrogation though not throughout the interrogation. The study revealed that no one of the arrested person met the lawyer during the period of their detention or interrogation, while on the other hand the investigating
officers revealed that they allow all the arrestees to meet the lawyer during interrogation provided a request comes from the side of the arrestee or their relatives. The study further reveals that the arrestees are not at all aware of the right to consult lawyer during interrogation hence, no consultation.

XI. The last requirement of D. K. Basu case is that “A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous police board.” The study reveals that compliance to this requirement is cent per cent as it is institutionalized. There are District Police Control rooms in all the Districts of the State which receive information of arrest on daily basis from all the police stations and then this information is compiled together and put on the Notice Boards established in all the District Head Quarters.

XII. The constitutional guarantee of the right of the accused to be informed of the grounds of arrest under Article 22(1) finds procedural prescription for realising this mandate in Sections 50, 50-A, 55 and 75 of Criminal Procedure Code, 1973. The provisions of these sections are mandatory in nature and non-compliance of these provisions shall render the arrest illegal. Where a person is arrested without any warrant, he should be informed of the
particulars of the offence and grounds of his arrest and where the offence is bailable one, of his right to be released on bail. These sections confer a valuable right and non-compliance with it amounts to disregard to the procedure established by law. Making known to the accused grounds of his arrest is a constitutional requirement and failure to comply with this requirement renders the arrest illegal. The study reveals that the compliance to the legal requirement of telling the arrestee reasons for his arrest is low and the compliance to the requirement of communicating grounds of arrest is even lower and unsatisfactory.

Although the non-compliance of the basic requirement of communicating the grounds of arrest to the arrestee can render the arrest illegal but most of the arrestees are not in a position to challenge it for the reason of ignorance of their right and fear of the police. Though it is mandatory after Joginder Kumar's case to have justification and need for arrest but the police officers are still accustomed to the old pattern of working for whom arrest is a ritual and they consider it as an accomplishment in the investigation. The police files of the present sample of study reveals that the investigating officers are not very keen on elaborating the grounds of arrest and they just conclude on the file that "from the investigation till now there are sufficient grounds of arrest against you and I hereby arrest you in this case" or some of the Investigating Officers go just little ahead and they write "from the investigation and statements of the witnesses till
now there are sufficient grounds of arrest against you and I hereby arrest you in this case." What are the statements of the witnesses or what the investigation has actually revealed does not form part of either the Memo of Arrest or the Case Dairies in this connection. When as such the grounds of arrest are not reached on the investigation file, how can it be possible to communicate it to the arrestee?

XIII. The settled position of law on handcuffing is that "police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to Court and back. Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/desperate and the finding that no practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner. In all the cases where a person arrested by police, is produced before the Magistrate and remand - judicial or non-judicial - is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand. When the police arrests a person in
execution of a warrant of arrest obtained from a Magistrate, the person so arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested. Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines given above, that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate". The study reveals that in the State of Himachal Pradesh every second arrestee is being handcuffed whereas, the settled position of law permits use of handcuffs in the rarest cases with due justification for its use.

The reason for heavy handcuffing in the State of Himachal Pradesh is a provision in the Himachal Pradesh Police, Act empowering the police to use handcuffs in certain circumstances without the order of the Magistrate. This provision under Sub-Section (2) of Section 65 of Himachal Pradesh Police Act 2007, reads as following:

"In making an arrest or detaining a person or keeping an arrested person in custody, only that amount of force shall be used as may be reasonably required to ensure that there is no possibility of escape, and handcuffing of a person arrested or in lawful police custody shall be resorted to only when there is a reasonable apprehension that such a person may turn violent, attempt
suicide, escape, or be forcibly released from arrest or detention."
Therefore, it is clear from the text of Section 65(2) of the Himachal Pradesh Police Act, that in certain circumstances the police officer can handcuff the arrested person or a person in lawful custody without the orders of Magistrate. It is because of this provision and the Standing Order by DGP Himachal Pradesh that the police officers are using handcuffing frequently and without any hesitation under the protection of legislation. The justifications under the provisions of Section 65(2) of Himachal Pradesh Police Act, 2007 can be applied to handcuff, only to the extent of first arrest and till the time the accused/arrestee is not produced before the Magistrate. Empowering police officers to handcuff even after production before Magistrate is not in consonance with the settled principles of law and is infringement of fundamental rights. This provision of Himachal Pradesh Police Act, beyond first arrest without warrant, is illegal as State can't make any law abridging fundamental rights. Therefore, all the officers handcuffing accused/ arrested persons while acting under the guise of this provision of state legislation are exposing themselves to the consequences of legal penalties.

Suggestions

The parameters determining the rights of the arrestees and the duties of the police officials tested empirically, aims at ensuring authorised arrest, barring illegal detention, devising procedural mechanisms where an account of arrest is found in the case files of the investigating officers, duly signed by witnesses and countersigned by the arrestees themselves and having parallel record in the daily diary so that there is left no space for illegal detention and its cover up pursuits. It further aims at ensuring the
communication of arrest to the relatives/friends, so that every accused is represented and gets fair opportunity to defend himself at every stage of criminal proceedings and finally it aims to secure to the arrestee a milieu wherein his fundamental rights under the Constitution of India are not violated and he doesn't fell prey to custodial violence and atrocious behaviour of law enforcing agencies. The study reveals that the record of Himachal Pradesh Police is satisfactory and the State can be taken as a place where there is hardly any unauthorised arrest and the arrestees are getting full protection of their rights by way of compliance to the requirements of law. However, after meticulous interpretation of data gathered through empirical study the redressal of the loopholes existing in the execution of rights of arrestees in the process of administration of justice can be improvised by way of the following suggestions in a befitting manner:

I. The compliance of the requirement of independent witness's presence in the State of Himachal Pradesh is low. The spirit of law is to associate an independent witness in the process of arrest to avoid illegal arrest. Accordingly, the law requires that memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. In practice when the arrestee is apprehended outside his native place it is not possible for police to associate his relatives as witnesses for their non-availability and the options which remains at the hand of the police officer is to associate the respectable person of the locality from where the arrest is being made. But quite often respectable persons are reluctant to volunteer themselves as witnesses
because they feel that they will have to appear as witnesses in the court of law. In fact it is this apprehension of being made witness in the court which demotivates the local people from becoming witness to the memo of arrest, though in actual the witness to the memo of arrest will be summoned to the court only in those circumstances where the legality of arrest is in question otherwise there is no need to cite them as witnesses. It is suggested that police officers should be sensitized on this issue so that they can explain this position of law to the persons to be associated as witnesses to the memo of arrest.

II. Though the study reveals that entry is being made in the diary at the place of detention regarding the arrest of the person disclosing the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is. In the State of Himachal Pradesh the Daily Diary is computrised in all the police stations of the State and it is being maintained through a software known as CIPA i.e. Common Integrated Police Application. The advantage of this software is that the entries which have been saved/ freezed cannot be changed subsequently. The copies of the Daily Diaries are printed on daily basis and checked by Gazetted Officers but the record pertaining to Daily Dairies is weeded out after two years. Therefore, it is suggested that the entries relating to the information of arrest and custody of arrestee should be made in a separate register and kept as a
permanent record which can be inspected at any stage as and when required.

III. Though the study reveals that the time, place of arrest and venue of custody of an arrestee are being notified by the police where the next friend or relative of the arrestee lives outside the district or and through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest without failure in all the cases, as there is a well established system whereby the information of arrest and place of custody of the arrestee is communicated telegraphically i.e., through wireless signals to the concerned Superintendent of Police, which is the residential district of the arrestee and from there it goes to the Police Station of the native village and further served to the family members of the arrestee. Compliance of its service to the concerned members comes back to the investigating officers through reverse signals. It is suggested that in addition to the normal procedure of communicating the information of arrest telegraphically the same shall be done by uploading on the websites of District Police on daily bases.

IV. Though the study reveals that all the documents including the memo of arrest are being sent to the Magistrate for his record well in time but very astonishing finding comes out that Magistrates did not inquire about the well being and infliction of injuries or use of third degree to the arrested persons. 93.8% of the arrested persons (for details see Ch. V at 301) revealed that
Magistrates neither inquire about their well being nor about the infliction of injuries or use of third degree. It is suggested that when the arrested persons are produced before the Magistrates for the first time, it should be reflected in the order of the Magistrate that the arrested person was inquired about his well being, infliction of injuries or use of third degree and response of the arrestee should be recorded in the order.

V. The study revealed that no one of the arrested person met the lawyer during the period of their detention or interrogation, while on the other hand the investigating officers revealed that they allow all the arrestees to meet the lawyer during interrogation provided a request comes from the side of the arrestee or their relatives. The study further reveals that the arrestees are not at all aware of the right to consult lawyer during interrogation. It is suggested that again at the time of the production of the arrestee for the first time before the Magistrate it should be the duty of the court to make the arrestee aware about his right to consult lawyer of his choice during interrogation and ask him whether he wants to consult lawyer during interrogation and his response should be reflected in the order.

VI. Where a person is arrested without any warrant, he should be informed of the particulars of the offence and grounds of his arrest and where the offence is bailable one, of his right to be released on bail. This is a valuable right and non-compliance with it amounts to disregard to the procedure established by law. Making known to the
accused grounds of his arrest is a constitutional requirement and failure to comply with this requirement renders the arrest illegal. The study reveals that the compliance to the legal requirement of telling the arrestee reasons for his arrest is low and the compliance to the requirement of communicating grounds of arrest is even lower and unsatisfactory, (for detail see Ch. V at 312-313). The reason for low compliance of the condition to communicate the grounds of arrest lies in the non-professional approach and harsh attitude of the police towards the arrestees. It is suggested that special training for sensitization towards human rights of arrestees aimed at making the police to realise that arrest is not an end in itself for completion of the investigation, may help police to improve and value rights of the arrestees in a better way. As there is enough number of law graduates available in the State, it is further suggested that candidates with law background should be recruited in the investigation wing of the State Police to have a better team of professionals.

VII. The study reveals that in the State of Himachal Pradesh almost every second arrestee is being handcuffed (for detail see Ch. V at 325) whereas, the settled position of law permits use of handcuffs in the rarest cases with due justification for its use. The reason for heavy handcuffing in the State of Himachal Pradesh is a provision in the Himachal Pradesh Police, Act empowering the police to use handcuffs in certain circumstances without the order of the Magistrate. This provision under Sub-Section (2) of Section 65 of Himachal Pradesh Police Act 2007, reads as
following: “In making an arrest or detaining a person or keeping an arrested person in custody, only that amount of force shall be used as may be reasonably required to ensure that there is no possibility of escape, and handcuffing of a person arrested or in lawful police custody shall be resorted to only when there is a reasonable apprehension that such a person may turn violent, attempt suicide, escape, or be forcibly released from arrest or detention.” This provision has been further elaborated by Director General Office Standing order No. 7 of 2007 (see as Annexure-III).

It is suggested that this provision of Himachal Pradesh Police Act, should be amended as handcuffing beyond first arrest is illegal and further handcuffing is legal only with the orders of the Magistrate. State can't make any law abridging fundamental rights. Therefore, all the officers handcuffing accused/arrested persons while acting under the guise of this provision are exposing themselves to the consequences of legal penalties. Legislating in contradiction to law settled by Supreme Court is a bad practice and deserves immediate correction. Though there may be a genuine professional necessity by police to use handcuffs in order to check the increasing custodial escapes but a law which is bad for the rest of Country cannot be permitted to be good for one State only. Law and Order being a State subject do not permit, the State Legislative Assembly to enact laws on the subject, but it can’t forget the operation of Article 141 of Indian Constitution, whereby the judgements of Supreme Court are binding on one and all and they act as
precedents. If an act has been held to be repugnant and violative of fundamental rights by the Supreme Court, then legislation justifying it is hit by Article 13(2) of the Indian Constitution and it has no legal sanctity.

In this regard it is further suggested that in order to meet the professional requirement of police to stop custodial escapes, instead of handcuffing, mechanism should be developed to restrict the leg movement of the persons in custody in such a manner that he is disabled from running but can walk comfortably. With the advancement of science and technology it is possible to devise a medically improvised health friendly leg control device, which will be maintaining the dignity of the individual on the one hand and provide a solution to the professional necessity of the police to avoid custodial escapes on the other hand. This device can be provided with a GPS system enabling the jail/police authorities to supervise the movements of the person being escorted. Handcuffing should be allowed only in the rarest cases where the person in custody is violent and prone to do physical harm to the escort team. For the first time such handcuffing may be done by police at their own but further handcuffing should be done with the orders of the magistrate mentioning therein the fact of his assaulting the escort.

VIII. Section 311A Criminal Procedure Code deals with the power of Magistrate to order person to give specimen signatures or handwriting. It reads:
"If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting:

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding."

Though the contents of the main section allows the Magistrate to order any person to give specimen signatures or handwriting if he is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting but the proviso to this section puts a rider that the Magistrate cannot make a order under this section unless the person has at some time been arrested in connection with such investigation or proceeding. As a matter of fact the proviso is supplanting the provisions of main section instead of supplementing it. Because the main section empowers to order specimen of any person including an accused therefore, arresting those persons who are not accused in the case but whose specimen signatures may determine the culpability or ex-culpability
of any persons can't be expected to be arrested. Moreover, even in the case of an accused person the culpability may be determined only after the comparison of writing/signatures so he can't be arrested before that as there will neither be grounds of arrest nor justification for arrest. Furthermore, as per the settled law in many cases there may be no justification for arrest as the case can be completed even without arrest but the investigating officer may need to take specimen handwriting to determine the culpability.

It is suggested that an amendment be made in the proviso to section 311(A) Cr.P.C to make it compatible with the provisions of main section. The wording of the proviso “Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding” be amended to be amended to be:

“Provided that no order shall be made under this section unless the person has at sometime been associated in connection with such investigation or proceeding”.

The change of word “arrested” with “associated” will make the proviso compatible with the main section and with this change the proviso shall supplement the main section instead of supplanting it, as it doing presently.