CHAPTER -1

INTRODUCTION OF RESEARCH PROBLEM

Rights of arrestee include the rights of arrestee at the time of arrest, at the time of interrogation, at the time of search and seizure, during the course of trial and even after conviction.

The term “arrest” in its ordinary sense means the apprehension or restraint or the deprivation of one’s personal liberty.

Hon’ble Sri Justice Rama in his book ‘Seeds of Modern Public Law in Ancient Indian Jurisprudence’ while dealing with the Human Rights and Indian Values Said:

“Protection of human rights even when a person was apprehended by public servants for offences alleged to have been committed by him or even after conviction and sentence to undergo imprisonment was also envisaged.”

In this regards, he has also quoted the following verse from ‘Kautilya’:

धर्मसंग्रहसङ्कल्पिकसांस्कृततौ बलवशालवृत्तायसानकलोक्तः
संवारं सदार्थादृष्टे, सिध्धोत्साहदण्डः कर्तु: कार्यनित्य, बलव
जागरणसर्वेक्ष बलश्व

“An officer who obstructs or causes to obstruct prisoners in their daily routine, such as, sleeping, sitting, eating, etc, shall be liable to be punished with fines ranging from 3 panas and upwards.”

The constitution of India under article 22 (1) and (2) provides the rights of arrested persons.

1 Kautilya p. 255-235-S
Article 22 protection against arrest and detention in certain cases-

(1) “No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by a legal practitioner of his choice” (2) “Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate”.

Article 22 (1) and (2) provide the following fundamental rights:

i) “Every person has a right to know reasons/grounds of his arrest

ii) Every person has a right to consult a legal practitioner

iii) Every person has a right to be produced before the nearest magistrate within twenty four hours of his arrest.

iv) Every person has a right not to be detained in custody beyond the period of twenty four hours without the authority of the magistrate”.

Chapter V of the Code of criminal procedure 1973 deals with the topic of the arrest of persons.

Section 57 of Code of Criminal Procedure 1973, provides “that person arrested need not to be detained for more than twenty four hours. No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a magistrate under section 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the magistrate’s court”.

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Section 60A- provides that, arrest of any person shall be made strictly in accordance with the code (Code of Criminal procedure, 1973).

60-A Arrest to be made strictly according to the code- “No arrest shall be made except in accordance with the provisions of the code or any other law for the time being in force providing for arrest”. (Amendment Act, 2008- clause 10 inserts a new section 60-A with a view to prohibiting arrest except in accordance with the code or any other law for the time being in force providing for arrest.)

i) **Every person has a right to know reasons/grounds of his arrest:** Once a person is arrested, he has a right to move an application for bail or he can file a writ of habeas corpus under article 226 of constitution of India. But, if the person is not aware of the reasons and grounds of his arrest he is not in a position to prepare his defence for the purposes of his trial. So, article 22 (1) provides that every person has right to know reasons and grounds of his arrest.

**In Madhu Limaye’s case** the facts were: Madhu limaye, members of the Lok Sabha and several other persons while addressing a petition in the form of a letter to the Supreme Court under Article 32 mentioned that he along with his companions had been arrested but had not been communicated the reasons or the grounds of arrest. He was simply told that the arrest had been made under sections which are bailable. Madhu Limaye called it a violation of the mandatory provisions of Article 22 (1) of the Constitution.

The court therefore held that Madhu Limaye and others were entitled to be released on this ground alone.

Though the authorities may not necessarily furnish full details of the offence yet, sufficient particulars must be furnished so that the arrested person may understand why he has been arrested. The ground to

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2 AIR 1969 SC 2014
be communicated to the arrested person should be somewhat similar to
the charge framed by the court for the trial of a case. Thus, “merely to
inform the person that he has been arrested under section 7 of the
Criminal Law Amendment Act, 1932, without giving any particulars of
the alleged acts for which such action has been taken against him, is not
sufficient compliance with article 22(1).”

ii) **Every person has a right to consult a legal practitioner:** Every
arrested person has a right to consult a legal practitioner of his own
choice. In Article 22 (1) the opportunity for securing services of a lawyer
is also guaranteed. The article does not guarantee the supply of the lawyer
by the state. The only right is to have the opportunity to engage a lawyer.

In Moti Bai Vs. State case - It was held that: “The person arrested has
a right to consult a legal adviser of his own choice, ever since the moment
of his arrest and also to have effective interview with the lawyer, out of
the hearing of the police, though it may be within their presence. The
right extends to any person who is arrested, whether under the general
law or under a special statute.”

In Janardahan Reddy Vs. State of Hyderabad case the
petitioners objected that in criminal cases Nos. 17 & 18 of 1949, there
was no fair trial, that the persons accused in those cases were not afforded
any opportunity to instruct counsel and that they had remained
undefended throughout the trial. Since the accused were denied the right
of being defended by a pleader the whole trial was considered unfair.

Fourth para of the affidavit filed on behalf of the petitioners reads as
follows:

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3 Vishal Kishore Vs. State of U.P., AIR 1965 All. 56 (59)
5 AIR 1954 Raj 241
7 AIR 1951 SC 217
“The court never offered to facilitate my communication with my relations and friends or to adjourn the case or to appoint counsel at state’s expense for my defence. In fact they said they would not adjourn the case under may circumstances. Being ignorant, I did not know that I had any right to ask for any of these things”.

Another important provision in this connection is section 303 (earlier S. 340 of Criminal Procedure Code, 1973). That section reads: “303 any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this code, may of right be defended by a pleader of his choice.”

Before the Constitution came into force, the right of the accused to have consultation between him and his legal advisers appears to have been derived and sustained only from this provision.

**In Ram Sarup Vs. Union of India** case the facts were: The petitioner, Ram Sarup, a sepoy and subject to the Army Act, had shot dead two sepoys. He was charged on three counts under section 69 of the Army Act and was tried by the General Court Martial. He was found guilty of the three charges and was sentenced to death. One of the contentions raised by the petitioner was that he was not allowed to defend himself at the General court Martial by a legal practitioner of his choice and therefore, it was a violation of the provisions of Article 22 (1) of the Constitution. The petitioner alleged that on several occasions he sought permission to engage a practising civil lawyer to represent him at the trial but the authorities did not grant his requests saying that the Military rules did not permit the services of a civilian lawyer and that he would have to defend his case with the counsel provided by the Military Authorities. In reply it was stated that this allegation of the petitioner was not made in the petition itself. Hence no denial of his fundamental rights.

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8 AIR 1965 SC 247
The court thus pointed out that the petitioner did not state in his petition that he had made a request for his being represented by a counsel of his choice. He had simply stated that certain of his relatives who sought interview with him subsequent to his arrest were refused permission to see him and so it can not be called a violation of the fundamental rights. Infact, the petitioner should have made an express request in a straight forward manner in his petition. His vague language could only mean that he could not contact his relations for their arranging a civilian lawyer for his defence. The court thus held on the basis of these facts that there had been no violation of the fundamental right of the petitioner to be defended by a counsel of his choice conferred under Article 22 (1) of the Constitution.

Truly speaking in this case, the court took a technical view of the matter. Further the court was not much impressed by the statement of the petitioner, that he could not contact his relations for their arranging a civilian lawyer for his defence. It was because of hyper technical approach that the court held that Article 22 (1) was not violated.

**Right to be provided with a lawyer by the state:**

In **M.H. Hoskot Vs. State of Maharashtra**\(^9\) The Supreme Court observed that every step that makes the right of appeal fruitful is obligatory and every action or inaction which is useless is unfair and unconstitutional. Under Article 21 the responsibilities of the State is two fold “(1) service of a copy of the judgement to the prisoner in time to file an appeal and (2) provision of free legal services to a prisoner who is indigent or otherwise disabled from securing legal assistance. The ends of justice call for such a service. Both these are State responsibilities under Article 21.

\(^9\) AIR 1978 SC 1548
Section 304 (1) of Criminal procedure Code Reads: “(1) where, in a trial before the court of session, the accused is not represented by a pleader and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State”.

The court in Ranjan Dwivedi’s case referred to M.H. Hoskot’s case and Hussainara Khatoon’s case and also observed that primarily the mandate in Article 39A is addressed to the Legislature and the Executive but in so far as the courts of Justice can indulge in some judicial law making within the interstices of the constitution, the courts too are bound by the mandate. Even then the court expressed its inability to grant remedy to the petitioner on the ground that he sought writ of mandamus for the enforcement of the Directive Principle enshrined in Article 39A.

Right to be produced before a Magistrate : whether the abducted persons (Recovery and Restoration) Act 65 of 1949 violates Article 22 and whether the recovery of a person as an abducted person and the delivery of such a person to the nearest camp can be said to be arrest and detention within the meaning of Article 22 (1) and (2) was the question elaborately dealt with by the Supreme Court in State of Punjab Vs. Ajaib Singh. This appeal arose out of a habeas corpus petition filed by one Ajaib Singh in the High court of Punjab for the production and release of one Sardaran alias Mukhtiar Kaur, a girl of about 12 years of age. The material facts were : the petitioner Ajaib Singh had three abducted persons in his possession. The recovery police of Ferozpore, on 22-06-1951 raided his house and took the girl into custody and delivered her to the custody of the Officer in charge of the Muslim Transit Camp at Ferozapore from whence she was later transferred to and lodged in the recovered Muslim Women’s Camp in Jullundhur City. The girl was a Muslim abducted by the petitioner during the riots of 1947 and was,
therefore, an abducted person as defined in section 2 (1) (a), Abducted persons (Recovery and Restoration) Act 65 of 1949. The police officer recommended in his report that she should be sent to Pakistan for restoration to her next of kin.

Serious riots broke up in India and Pakistan in the wake of partition of August 1947 resulting in a colossal mass exodus of Muslims from India to Pakistan and of Hindu Sikhs from Pakistan to India. There were heart rending tales of abduction of women and children on both sides of the border. On 11-11-1948 an Inter-Dominion Agreement between India and Pakistan was arrived at for the recovery of abducted persons on both sides of the border. To implement that agreement Act 65 of 1949 was passed.

The expression ‘abducted person’ is defined by section 2 (1) (a) as meaning : “A male child under the age of sixteen years or a female of whatever age who is or immediately before 1-3-1947, was a Muslim and who, on or after that day and before 1-1-1949 has become separated from his or her family, and in the latter case includes a child born to any such female after the said date.”

Section 4 of the Act, which is important, provides that “if any police officer, not below the rank of an Assistant Sub-Inspector or any other police officer specially authorised by the state Government in that behalf, has reason to believe that an abducted person resides or is to be found in any place, he may, after recording the reasons for his belief, without warrant, enter and take into custody any person found therein who, in his opinion, is an abducted person, and deliver or cause such person to be delivered to the custody of the officer in charge of the nearest camp with the least possible delay.”

The Supreme court held that the Act did not offend against the provisions of Article 22 of the Constitution.
The Constitution commands that “every person arrested and detained in custody shall be produced before the nearest Magistrate within 24 hours excluding the time requisite for the journey from the place of arrest to the court of the Magistrate.” but S. 4 of the Act requires “the police officer who takes the abducted person into custody to deliver such person to the custody of the officer in charge of the nearest camp for the reception and detention of abducted persons.” The absence from the Act of the salutary provisions to be found in Article 22 (1) and (2) as to the right of the arrested person to be informed of the grounds of such arrest and to consult and to be defended by a legal practitioner of his choice is also significant.

The sole point for the consideration of the Court was whether the taking into custody of an abducted person by a police officer under S. 4 of the Act and the delivery of such person by him into the custody of the officer in charge of the nearest camp can be regarded as arrest and detention within the meaning of Article 22 (1) and (2).

**In Gunupati Keshavram Vs. Nafisul Hasan**\(^{10}\) there was a petition under Article 32 of the Constitution complaining that one Shri Homi Dinshaw Mistry was under illegal detention and he prayed that he be released forthwith. The petition alleged that Shri Mistry was arrested in Bombay and taken in custody to Lucknow to be produced before the Speaker of the Uttar Pradesh Legislative Assembly to answer a charge of breach of privilege. It was further alleged that Shri Mistry was not produced before a Magistrate within twenty four hours of his arrest; but was kept in detention in the Speaker’s custody at Lucknow even till the time of petition. The Supreme Court held this as a clear breach of the provisions of Article 22 (2) of the Constitution which requires that no such person shall be detained in custody beyond the said period without

\(^{10}\) AIR 1954 SC 636
the authority of a Magistrate. The Court directed that Shri Mistry be released forthwith. It is submitted that Gunupati’s case is wrongly decided. Though the person was arrested in pursuance of an order of the Speaker of a Legislative Assembly on a charge of breach of privilege, the implications thereof were not fully considered. Upon a literal application of Article 22 (2) it was held that since the arrested person was not produced before a Magistrate, the person must be released. It is doubtful how far the Magistrate before whom such an arrested person is produced can examine the validity of the Speaker’s order. There was no discussion about the merits of the contention raised on behalf of Mr. Mistry. The advocate did not advance any argument to support the contention that privilege superseded fundamental right. It was strange that the point was not discussed in the judgment and no reason in support of the view was stated.

In M.S.M. Sharma Vs. Sri Krishan Sinha\textsuperscript{11}, It was held by majority that Article 19 (1) (a) and Article 194 (3) (dealing with privileges of the Houses of the State Legislatures) have to be reconciled and the only way of reconciling the same is to read Article 19 (1) (a) as subject to the latter part of Article 194 (3). The provisions of Article 19 (1) (a) which are general, must yield to article 194 (1) and the latter part of its clause (3) which are special. The Supreme Court did not follow Gunupati’s case so far as it gave primacy to the fundamental right under Article 22 (20 over the privilege of the State Legislature. The supreme Court did not accept the argument that the observation in Gunupati’s case clearly establish that Article 194(3) is subject to the fundamental rights. The Court observed that the decision in Gunupati’s case proceeded entirely on a concession of counsel and cannot be regarded as a considered opinion on the subject. It is curious that Das J. Who was the

\textsuperscript{11} AIR 1959 SC 395
member of the Bench which decided Gunupati’s case, delivered the judgement of the majority in M.S.M. Sharma’s case which did not follow Gunupati’s case.

In under Article 143 of constitution of India\textsuperscript{12} popularly known as keshav Singh’s case, the Supreme court pointed out that the decision in Gunupati’s case dealt with the applicability of Article 22 (2) to a case falling under the latter part of Article 194(30 and the majority decision in M.S.M. Sharma’s case had incidentally commented on the decision in Gunupati’s case. It is also important to note that there was no controversy about the applicability of Article 22 in M.S.M Sharma’s case. So it was not necessary for the majority decision to deal with the point pertaining to the applicability of Article 22 (2). In Keshav Singh’s case the Supreme court observed that the obiter observations made in the majority judgment in M.S.M. Sharma’s case about the validity or correctness of the earlier decision in Gunupati’s case should not be taken as having decided the point in question. In other words, the question as to whether Article 22 (2) would apply to such a case may have to be considered by the Supreme Court if and when it becomes necessary to do so.

The contention of the petitioner in the case of Purshottam Vs. B.M. Desai\textsuperscript{13} was that S.46 (2) of the Income Tax Act under which Income Tax Officer issues the recovery certificate to the additional collector of Bombay is void under Article 13 (1) in that the same offends Article 22 (1) and (2). The objection that S. 46 (2) contravenes the fundamental rights guaranteed by clauses (1) and (2) of Article 22, in view of decision of this court in the State of Punjab Vs. Ajaib singh was not pressed. It was held that it is a fallacy to regard arrest and detention of a defaulter who fails to pay income-tax as a punishment or penalty for an

\textsuperscript{12} AIR 1965 SC 745
\textsuperscript{13} AIR 1956 SC 20
offence. It is a coercive process for recovery of public demand by putting pressure on the defaulter. The defaulter can get himself released by paying up the dues.

**In the case of Collector of Malabar Vs. E. Ebrohim**\(^1\) the facts were as follows: the respondent had been arrested in pursuance of a warrant issued by the Collector of Malabar under S. 48 Madras Revenue Recovery Act, 1864. Section 46 (2) of the Income Tax Act, 1922 read with S.48 of Madras Revenue Recovery Act, 1864 did not afford opportunity to the arrested person to appear before the Collector by himself or through a legal practitioner of his choice and to urge before him any defence open to him and it did not provide for the production of the arrested person within 24 hours before a Magistrate as required by Article 22 (2). On behalf of the respondent it was contended that these sections of the Act and the Indian Income Tax Act did offend, inter alia, Article 22 of the constitution. In this case, the arrest was not in connection with any allegation or accusation of any actual or suspected or apprehended commission of any offence of a criminal or quasi criminal nature. It was really an arrest for a civil debt in the process or the mode prescribed by law for recovery of arrears of land revenue. Relying on Ajaib Singh’s case and Purshottam’s case the court held that neither S.48 of the Madras Act nor S. 46(2) of the Indian Income Tax Act violates Articles 14, 19, 21 and 22 of the Constitution. The Court further observed that these sections clearly set out the mode of recovery of arrears of revenue, that is to say, either by the sale of the movable or immovable property of the defaulter, or by execution against his person i.e. by arrest and imprisonment of the defaulter. The arrest of the defaulter is one of the modes, by which the arrears of revenue can be recovered. Here the arrest is not by way of punishment for mere default. Therefore, that where

\(^{14}\) AIR 1957 SC 688
an arrest is made under section 48 after complying with its provisions, the arrest is not for any offence committed or a punishment for defaulting in any payment. The mode of arrest is no more than a mode for recovery of the amount due.

Every central and district jail shall have a library from which books may be issued to the prisoners free of charge. Every prison shall be provided, according to its size and importance, with an ample library of approved books, periodicals in English and in the language of the State for the use of literate prisoners. A sufficient number of copies of such journals as are permitted for use by the prisoners shall be placed in this library for such prisoners and arrangements made in each prison for reading out the news published in such journals as are permitted for use by the prisoners.

The Supreme Court held in Sunil Batra Vs. Delhi Administration 1980 (3) SCC 522 that the State Governments should take steps to prepare in Hindi and other regional languages a prisoners handbook of right and circulate copies to be kept in prisons to bring legal awareness to the inmates. Article 21 of the Constitution of India recognizes right to life. In includes right to live with dignity. Prisoners are also are human beings and they are entitled to all human RIGHTS AND HUMAN DIGNITY. Simply because a person is in prison, it does not mean that inhuman treatment may bemeted out to him and he be deprived of his fundamental rights.

Justice Mulla Committee examined all aspects of prison administration and made several recommendations. The recommendations touched upon several issues including the problems of women prisoners. The National Police commission (1977-80) looked into issues like arrest, detention in custody and interrogation of women and made several suggestions. Justice V.R.Krishna Iyer Committee made
several recommendations in respect of women prisoners. Basing on the report of women prisoners the National Commission for Women on Custodial Justice for Women (1993) made several recommendations in respect of women prisoners. The following are some of the important aspects referred in the report for implementation:

1. Women prisoners like men should be informed of their rights under the law.
2. Women constables should conduct searches.
3. Medical check ups of women prisoners or under trials, should be done by women doctors as soon as they come to prison.
4. Women prisoners should be allowed to contact their families and communicate with their lawyers, women social workers, and voluntary organisations.
5. Women prisoners should be allowed to keep their children with them.

Section 74 of the Indian Penal Code deals with the limit of solitary confinement.

Section 74 of the IPC reads as under:

“Limit of solitary confinement: In executing a sentence of solitary confinement such confinement shall in no case exceed fourteen days at a time, with intervals between the period of solitary confinement of not less duration that no such period and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the period of solitary confinement of not less duration than such periods.

No prisoner shall be placed in solitary confinement as a judicial punishment until the medical officer has certified that he is in a fit state of health to undergo the said punishment.”
In Kishore Singh Vs. State of Rajasthan Case the court vehemently condemned solitary confinement and putting cross bar fetters and declared that flimsy grounds, such as behaving insolently and in an uncivilized manner, tearing off the history ticket, etc. Can not be the foundation for solitary confinement and cross bar fetters.

Prisoner under sentence of death:

Immediately after the arrival of the prisoner under death sentence the medical officer shall examine his height, weight, and the measurement of his neck. The medical officer shall record his observations in the medical report book.

The prisoner sentenced to death shall then be removed to one of the condemned cells. The Jailer shall inspect the cell before the prisoner is placed in it and shall satisfy himself of its fitness and security. No prisoner under sentence of death shall be placed in a cell having only a wooden door, and if there is an external wooden door, in addition to the grated door, it shall be kept open. Prisoners other than those sentenced to death shall not be kept in this yard.

The following facilities shall be extended to the prisoners sentenced to death, namely:-

a) Books for reading.
b) Supply of tobacco
c) Admission of visitors
d) Payment of to-and-fro transport charges to the nearest relatives, for visiting before execution.
e) Legal aid as needed by the prisoners.

When a sentence of death is confirmed by the High Court, the court of session will issue a warrant to the superintendent of prison with reference to section 413 of the code of Criminal Procedure 1973 fixing the date of execution, which will be not less than 21 days not more than
28 days from the date of the receipt by the session court of the orders confirming the sentence of death.

The superintendent shall immediately on receipt of a warrant for execution consequent on the confirmation by the High Court of the sentence of death, inform the convict concerned that if he wishes to appeal to the supreme court or to make an application for special leave to appeal to the supreme court under any of the relevant provisions of the constitution of India, he shall do so within the period prescribed in the supreme court rules 1966.

**Police Torture against Humanistic constitutional power:** The Apex court in *Raghuvir Singh Vs. State of Haryana*\(^{15}\) held that the society was deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens, that their lives and liberty are under a new peril, when the guardians of law ignore human rights, to death. This development is disastrous to our human rights, awareness and humanistic constitutional orders.

**In Charles Sobraj Vs. Superintendent Central Jail, Tihar*\(^{16}\) it was held that the Apex Court would intervene even in prison administration when constitutional right or statutory prescriptions are transgressed to the injury of a prisoners.

**Right of juveniles:**

The Juvenile Justice Act 1986 was passed to bring about uniform, legal framework for juvenile justice in the country so as to ensure that no child under any circumstances is lodged in jail or police lock up. Under the said Act observation homes were to be established and maintained for the temporary receptions of juveniles during the pendency of the enquiry regarding them under this Act. The Juvenile Justice (Care and Protection

15 AIR 1980 Cr.LJ 801
16 AIR 1978 SC 1514
of Children) Act 2000 replaced the earlier Act with similar provisions with regards to detention of juveniles in observations homes and special homes.

In reference to M.P. there is a Jail Manual as applicable to Madhya Pradesh. In view of the law relating to prisons, the legislature had framed The Prisons Act 1894.

The State Government has also framed the M.P. Prisons Rules 1968 wherein the provisions related to classification of prisons and description and construction of wards, cells and other places of detention are provided. In the rules related to maintenance of Jail buildings, construction of wards and cells, etc., Sanitation, conservancy have been mentioned.

An act to make provision for the establishment and regulation of Borstal institutions in M.P. for the detention and training of adolescent offenders had been enacted known as M.P. Borstal Act 1928.

This Act deals with the establishment of Borstal institutions, where offenders may be detained under this Act and given industrial training and other instructions for their reforms and moral influences.

The state government had also framed the rules regarding Borstal institutions 1960.

An act to provide for the release of certain prisoners on conditions imposed by the Madhya Pradesh Government known as Madhya Pradesh Prisoners Release on Probation Act 1954 deals with power of government to release by licence on conditions imposed on offenders.

The state government had also framed the rules known as The Madhya Pradesh Prisoner’s Release on Probation Rules 1964.