CHAPTER - 2
AIMS AND OBJECTIVES OF THE RESEARCH

The aims and objectives of the research are to illustrate how various legal guarantees are enforced in practice for protecting the rights of detained persons and their legal counsel and to explain what legal measures and/or actions judges, prosecutors and lawyers must take in order to safeguard the rights of the persons arrested or detained.

1. In relation to the research problem Arrests and Detention without reasonable caution is a major problem.

All human beings have the right to enjoy their liberty and security with respect. It is axiomatic that, without an efficient guarantee of the liberty and security of the human person, the protection of other individual rights becomes increasingly vulnerable and often illusory. This bitter truth is evidenced by the work of the international monitoring organs, arrests and detentions without reasonable cause, and without there being any effective legal remedies available to the victims concerned. In the course of such arbitrary and unlawful deprivations of liberty, the detainees are frequently also deprived of access both to lawyers and to their own families, and also subjected to torture and other forms of ill-treatment.

It is essential, therefore, that the legal rules that exist in international law should be remedied so as to prevent all kinds of human rights violations, to awaken national judges and prosecutors to rise to the occasion and to enable all lawyers to be made aware of their responsibilities so that they act more effectively on behalf of their clients.
Although arbitrary or unlawful arrests and detentions occur, and can occur, at any time, the experience of, inter alia, the Working Group on Arbitrary Detention has shown that the main causes of arbitrary detentions are related to states of emergency. However, the question of emergency powers relating to deprivation of liberty will be dealt with in Chapter 16 of this Manual, and will thus not be considered in the present context.

All human beings are social animals. Their basic need is to live in society for their better living. Human beings love a peaceful & harmonious life. For that they live in an organized society wherein a strong and civilized state takes shape. All human beings, who live in the State, are being taken care of by the authorities of the said State.

Jail system in India originated during the reign Lord Macaulay in 1938. A committee was constituted namely Prison Discipline Committee. The said committed had submitted its report in the year 1838. The committee recommended increased rigorousness of treatment while rejecting all humanitarian needs and reforms for the prisoners. Following the recommendations of the Macaulay Committee between 1836-1838, Central Prisons were constructed from 1846, which was an inhuman era of the modern jail system.

Thus the jail administration in India is illegitimate heritage of British Rule. It is based on the notion that the best criminal code can be of little use to community unless there is good machine for the infliction of punishments. It is a long drawn experience of our society that an individual from weak section or from indigenous class of people, who are innocent and happen to come into the clutches of investigators, are be in interrogated against the laid down spirit of law. They are being subjected to third degree treatment. They are being mentally and physically tortured to confess the crime, which an
unknown might have committed. Such physical and mental trouble or harassment should not be caused to the alleged accused. For that purpose law has provided some safeguards, securities & protection by laying down the legislation. In other words whatever rights which are provided to an accused by law are to be availed of by the suspect accused for fair and free justice. Whatever rights are attributed to them are to be availed of by such category of the prisoners. The researcher has chosen this topic for redressing the legal rights available to individuals who are in awkward circumstances and who are kept in police custody and jail. Most of the citizens in our country are semi literate and hence they are not fully acquainted with their civil rights, the legal rights, their constitutional rights and criminal judicial system. The actual situation is quite worse in our country. Moreover, illiteracy in our country prevails over the majority of our citizens. Among the literate population also on prima facie, it seems that legal literacy is negligible. Thus legal knowledge about the rights of the persons is to a greater extent, not known to people at large. All the human beings have been guaranteed civilized treatment in all the adverse circumstances. Such fundamental rights and legal rights denote that there is a guarantee that certain acts cannot or ought not to be done to a person against his will by the authorities. According to this concept, human beings, including the accused, the suspect, under trial prisoners, or prisoners of war, or detenu, convicts and prisoners, by virtue of their humanity, ought to be protected against unjust and degrading treatment.

2. **Power tends to corrupt and absolute power corrupts absolutely.**

   In India and in most of the countries of the world, police force and jail authorities remain in powerful position which tempts them to abuse the right of the accused, arrestees, under trial prisoners and
convicts, or tempts them to take bribe. India, also for a long time has suffered from police State or totalitarian State condition, and the position is still somewhat same. In the popular culture too the proverb of “Angrezo Ke Zamane Ka Jailer” is practised in situation, which signifies the dictatorship in prisons. After independence, our country has displayed the concept of welfare state in India, even though for a long time out police force and jail authority remained unaffected, with its traditional and century old attitude. Fundamental rights of the accused, arrestees, detenu, under trials, prisoners and convicts have been secured by various criminal laws of India and also by Constitution of India. Supreme court’s direction in the D.K. Basu case. The Indian Criminal laws such as Code of Criminal Procedure 1973, Indian Peal Code 1860, Prisoner Act 1894, Indian Evidence Act 1872, Juvenile Justice Act 2000, probation of Offender Act 1958, COFEPOSA Act 1974, NDPS & Jail Manual of state, and police manuals etc. are the protectors of the rights of above classes. All the citizens have been held to have a number of rights as ingredients of right of life and personal liberty, right to equality, right to freedom under corresponding articles 21, 14 & 19 of Constitution of India in all the circumstances. Besides, under its wide interpretation of fundamental rights under chapter III of Constitution of India Supreme Court pronounces certain rights. By a series of judgment regarding rights of suspects, under trials, convicts & prisoners, the S.C. has fabricated police & Prison jurisprudence. Certain rights have been made as components of fundamental rights. In fact the court, through its judicial pronouncements has made out a strong case for prison freeform and in the process it has shaped a code in this regard. But
legislation has passive attitude towards the codification of these rights, and their implementation. After the continuous intervention of Hon. Supreme court in the matters of jail and bar betters, the prison reforms are visible. Still none wants to go to jail however good the prison might be. To be deprived of liberty and family life and friends and home surrounding is a terrible thing. To improve prison conditions does not mean that prison life should be made soft. It says that lives in custody should be made sociable, humane and sensible. Awareness about the right of the accused, under trial prisoners & convicts is necessary to protect innocent citizens from being arrested & harassed by the police merely on the suspicion. Complicity is an offence, to be used to avoid executive high handedness, to safeguard the dignity & humanity of under trial prisoners & convicts. Almost one century ago all the types of offences and crimes were regarded anti social and termed as heinous. There were religious do’s and dont’s. The communities had set certain norms as set principles of law. There was no scientific classification of crime and criminals. There were no scientific methods of investigation of crimes, no procedure to determine the guilt and fixed sort of punishment was given to the convicts. But the concept of crime is always changing so also the concept of right changes according to time, situation & circumstances. In India right to life & its ancillary rights such as right to live with human dignity etc. have been recognized after the independence. Consequently though, the person is suspected as under trial prisoner or convicts yet he has some inherit rights because in the end he is a human being.
3. Aims and objective of the proposed research work

Criminal Jurisprudence and its process can not be appreciated without some understanding of the rights & protection given to the suspect, the accused person not only during the trial but also before and after trial. These rights and protections aim at providing a fair trial to an accused person so as to eliminate any possible abuse of process resulting in miscarriage of justice. The right of the accused includes right to be produced before the magistrate within 24 hours of the arrest (Article 22 of the constitution of India & Section 76 of Cr. P.C), right to bail to the accused (1st schedule of Cr.P.C) reasonable right to be released on bond (Section 440 (i) Cr.P.C.), right to have counsel and legal aid article 22 (3) of Cr.P.C, the principle of legality article 20, principle of presumption innocence section 101 of Indian Evidence Act 1872, and right to speedy investigation and trial etc.

Our criminal justice system, even today, finds itself helpless in providing fair, free, cheap and seedy justice. After 65 years of independence, none of the genuine efforts have been made to redraft penal norms, radicalize punitive processes, humanize prison houses and reform antisocial & antinational criminals such as hoarders, smugglers, tax evaders, black marketeers white collar criminals etc. On the other hand whatever legislation, piecemeal amendments, substitution and election that have taken place during the last five six decades to ameliorate the conditions of the down trodden masses, are all aimed to protect in the interests of the rich and bourgeoisie class. Of course, judiciary in recent years has taken a lead & has come forward with a helping hand to give some relief to the victims of criminal judicial system. For instance the landmark decisions handed over by the Hon’ble Supreme Court in Haskot1, Motiram 2, Hussainara 3, Sunil Batra 4, Sheela Barse 5, Charles Shobharaj 6, Nilabati Behra 7, D.K. Basu 8
etc. have depicted that despite the Constitutional mandate and statutory guarantees, the legal rights even today remain non-existent for a large percentage of the illiterate, ignorant & poor population of the country. The problem of under trial prisoners has assumed new proportions in recent years. In India, there are many reasons such as poverty, illiteracy etc., of which under trial prisoners have easily become preys. They are languishing in various jails in different States for a period much longer than the maximum term for which they could have been sentenced, if convicted. Many of them are innocent persons who are caught in the web of the law eagerly waiting for their trial date. It would be unjust and unfair to deprive a person of his freedom and liberty and keep him in confinement, if his presence in the court whenever required for trial., is assured. The plight of under trial prisoners for the first time came to the notice of Supreme court of India In Hussainara Khatoon Vs. State of Bihar case 1. In 1979 wherein it was disclosed that thousands of under trial prisoners were languishing in various jails in the State of Bihar for periods longer than the maximum terms for which they could have been sentenced, if convicted. While granting freedom for the under trials who had virtually spent their period of sentence, the court with reference to these cases such as M. H. Haskot Vs. State of Maharastra¹, Motiram Vs. State of U.P.², Hussainara Khatoon Vs. State of Bihar³, Sunil Batra Vs. Delhi Administration⁴ Sheela Barse Vs. State of Maharashtra⁵ Charles Shobharaj Vs. Superintendent, Central Jail⁶ Nilabati Behara Vs. State of Orissa⁷ observed that their detention

¹ AIR 1978 SC 15482  
² AIR 1978 SC 15943  
³ 1980 SCC 884  
⁴ AIR 1980 SC 15795  
⁵ AIR 1983 SC 3786  
⁶ AIR 1978 , 15147
was clearly illegal and a blatant violation of their fundamental right guaranteed under Article 21 of the Constitution of India. The court further said that speedy trial is a constitutional mandate and the state cannot avoid its constitutional mandate and its constitutional obligation by pleading financial or administrative inability. Despite the Supreme Court’s landmark decision in Hussainara Khatoon, the condition of under trials in prison is no better and more than a lakh of under trial prisoners are still languishing in the prisons of India at present. The provision of section 167 of the Code of Criminal Procedure, 1973 regarding time limit for completion of police investigation and that of free legal aid to indigent and poor under trial or liberalization of jail justice system etc. have not helped in minimizing the number of under trial prisoners in Indian jails. It is a well know dictum of traditional principle of Mahatma Gandhi that “Hate the sin, not the sinner”. Suspects and the convicts, in the entire situation cannot be put at same place as most of them became prey of their own destiny. Since the beginning the prisoners have some rights but powers of the public officials were very wide and still continuing wide powers are enjoyed by them at many instances. The rights of prisoners and convicts are abused. A prisoner does not cease to be a person inside a jail and is, as such, entitled to receive a reasonably decent and civilized treatment in the prison. There are certain legal and constitutional mandates which protect and safeguard the rights and interests of the prisoners. The Prisons Act 1894, the prisoners Act 1900. The Transfer of Prisoners Act 1950, the Repatriation of Prisoners Act 2003, the Repatriation of Prisoners Rule 2004, Jail Manuals of various States, Indian Penal code 1860, code of Criminal Procedure 1973, Police Act, along with several landmark verdicts of hon’ble Supreme court give rights against

7 (1993) 2 SCC 7468 AIR 1997 SC 610
solitary confinement, right to meeting with family members and friends, right to expression and communication, right against inhuman treatment, right against delayed execution, right against custodial torture in Prison, right against use of fetters.

There is, however hardly any change in the conditions of the jails and the attitude of jail administration and in spite of Constitutional mandate for speedy trial, there are over two lack prisoners, convicts and under trials who are endlessly awaiting an early hearing of their cases.\(^8\)

It is possible to reduce the backlog of criminal cases if the judiciary and lawyers together resolve to refrain from unnecessary and repeated adjournment. “Hence, at last, it can be concluded that there is need to improve the techniques of handling the accused person, treating under trial prisoners and radically changing the worse conditions of convicts by appraising the old one and comparing with reformatory works in other countries and reconciling with human rights perspectives and international covenants. The aims and objectives of the proposed research are enumerated below:

1. The researcher shall point out constitutional and basic rights which are available to the accused, suspect, under trial prisoners and convicts under the criminal laws of India, Constitution of India Human Rights Jurisprudence and under the International obligation in the form of International covenants.

2. The present proposed research work aims at finding the conditions of under trial prisoners after the verdict in D.K. Basu case.

---

\(^8\) "Humanizing the prisons system” The times of India, 15 Jan 1997 p.11 (1997) 2 SCC 642
3. The torture, oppression and abuse of the powers by officers of administration of Justice are carried out easily and frequently. The proposed work is aimed at finding the main reasons behind it.

4. The thorough study of the criminal law, administration of India, constitution, Judicial Pronouncement, Human Rights, trial prisoners and convicts, would help in knowing the depth and genuineness of the jail menace, & bringing out the positive suggestions.

5. In this study we have to find out the awareness about these rights among the accused, under trial prisoners and convicts and also in other members of the society.

6. This research work includes visit to jails, to police stations and courts of law.

The Apex court in the landmark decision of Rama Murthy Vs. State of Karnataka deals with 9 major problems in the prison system.

1. All prisoners shall be treated with respect due to their inherent dignity and value as human beings.

2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.

4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State’s other social objectives and its fundamental responsibilities for promoting the well being and development of all members of society.

9 (1997) 2 SCC 642
5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights.

6. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.

7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.

8. Condition shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country’s labour market and permit them to contribute to their own financial support and to that of their families.

9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

   With the participation and help of the community and social institutions, and with due regard to the interests of victims, favorable conditions shall be created for the reintegration of the ex-prisoners into society under the best possible conditions.

   The above Principles shall be applied impartially.

   The aims and objectives of the researcher is to bring awareness with respect to constitutional rights of the accused as well as the procedural rights of the accused available to him during the course of detention.

   The aims and objectives of the researcher in relation to constitutional rights of the accused, is to bring awareness on the followings points among the citizens:

1. Fundamentalness of fundamental rights

2. Right in respect of conviction
3. Right of the accused against conviction for violation of a law not in force:
4. Right against double jeopardy
5. Right against self incrimination
6. Right to life and personal liberty
7. Right to life of the accused
8. Right to personal liberty of the accused
9. Right to fair trial
10. Right of the accused to speedy trial
11. Directions of Supreme Court
12. Right against handcuffing
13. Protection against arrest
14. Procedure to be followed for effecting arrest
15. Protection against arbitrary detention
16. Preventive detention
17. Interpretation of preventive detention
18. Principles of preventive detention
19. Act of the detenu
20. Grounds of detention
21. Right to consult
22. Failure to inform grounds
23. Consideration of representation
24. Language of communication
25. Right to essential particulars
26. Right to be released
27. Right to clear grounds
28. Right to know period of detention
29. Right to communication of subjective satisfaction
30. Safeguard against subsequent order of detention
31. Right to make representation
32. Right to hearing before advisory Board
33. Right to be assisted by friend
34. Right to legible copies of document
35. Right to procedural safeguards
36. Challenge to detention order prior to execution
37. Right to silence
38. Right against leading questions
39. Right of the Accused to counsel
40. Right to legal aid
41. Right against custodial torture
42. Right of arrestee or detenu and procedure to be followed
43. Right of the female accused
44. Right to decency and dignity
45. Rights of persons of unsound mind and children
46. Right in prison
47. Right against admission to prison
48. Right to safe custody
49. Rights of under trial prisoners
50. Right to speedy trial
51. Sexual exploitation of juvenile under trials
52. Rights of the convicts and the condemned
53. Right of access to law
54. Rights of female inmates
55. Child birth in prison
56. Female prisoners and their children
57. Food, clothing, medical care and shelter
58. Education and recreation for children of female prisoners
59. Right of the accused to legal remedies
60. Writ of habeas corpus
61. Right of appeal
62. Delay in disposal of appeal
63. Scope of appeal against acquittal
64. Appeal against conviction

The aims and objectives of the researcher in relation to procedural rights of the accused, is to bring awareness on the followings points among the citizens:

1. Right to private defence
2. Right to be produced before jurisdiction Magistrate :
3. Safeguard respecting warrant
4. Right respecting torture
5. Rights against arbitrary arrest
6. Knowledge of lodging of First Information Report FIR
7. Investigation
8. Recording of confession
9. Search by police officer
10. Indefeasible right under section 167
11. Taking cognizance
12. Bar under Section 195, CRPC
13. Protection of public servants
14. Offences against marriage
15. Private complaint cases
16. Right to copies of documents and statements
17. Protection Under Section 209
18. Framing charge
19. Prohibition to pursue trial
20. Right to challenge appointment of Special Public Prosecutor
21. Right to be discharged
22. Protection against plea bargaining
23. Evidence of Prosecution
24. Evidence of defence
25. Compensation for accusation without reasonable cause
26. Trial procedure: Safeguards
27. Double Jeopardy: protection against
28. Right to be defended
29. Right to have legal Aid
30. Power to pardon
31. Protection against voice recording
32. Trial of deaf, dumb etc.
33. Power to summon other persons
34. Right to just and fair sentence
35. Bar to take cognizance of cases barred by limitation
36. Quashing of proceedings

4. Objectives of the study: The study is intended to investigate the causes of human rights violations in police custody and abuse of their authority by using third degree and inhuman methods on persons in their custody. Further
it concentrates on the ways by which the police personnel can be made duty-bound and thereby make them withdraw themselves from committing custodial torture and make them aware of the need for protecting the human rights values.

5. **Research Problems**: The major research problems dealt under this topic are:

1. What is the pattern of rights violation in police custody?
2. How far are the rights of a person in custody protected by the international covenants, Constitution of India and other laws?
3. Why do police resort to third degree methods?
4. What are the socio economic and political circumstances which lead to torture in police custody?
5. How to strike a balance between the authority of police and protection of rights of persons in custody
6. How to modify the existing provisions of various legislations conferring power to the police so as to prevent custodial torture.