

## **CHAPTER-V**

### **HUMAN RIGHTS RECOGNISED IN INDIA WHICH RELATES TO COURT PROCEEDINGS**

India is a land of multi lingual, multi-religious, multi-cast and multi-cultured communities. It is unique in the world because of its unity amongst diversity. Considering all aspects, the framers of the constitution of India adopted almost all the basic human rights in the constitution itself by collecting the same from the constitution of the worlds, universal declaration of human rights and other instruments. The ultimate aim of the constitution of India is to achieve welfare of the people who composed the same.

Further, by way of the liberal and harmonious interpretation of the provision of the constitution many rights which are not directly mentioned in the constitution as fundamental or basic human rights are also nowadays, recognized as fundamental rights and are within the constitutional mandate. This was possible only due to the active role played by the judiciary in our country.

In this chapter, the provisions as enumerated in the constitution of India, judicial decisions of the apex courts and high

courts, statutory laws covering various facets of human rights are narrated herein bellows item wise.

## **V.1 : UNDER THE CONSTITUTION OF INDIA, 1950**

Constitution of a country lays down the basic structure of the political system under which its people are to be governed. It establishes the main organs of the state- the legislature, the executive and the judiciary. It demarcates their responsibilities and regulates their relationships with each other and with the people. Every Constitution represents the vision and values of the founding fathers and is based on the social, political, and economic ethos, and faith and aspiration of the people.<sup>1</sup>

The Indian Constitution which came into force on 26<sup>th</sup> January, 1950,<sup>2</sup> was constituted after an elaborate discussion on the prevailing Constitution of democratic countries all over the world. The Drafting Committee also considered the prevailing international Human Rights Instruments and whatever best and better incorporated the same in our Constitution. The quality of the Constitution can be understood from the very fact that it took 2 years 11 months 18 days to give the final shape by the Constituent Assembly consisted of generous people including jurists in all fields.

Constitution is a living organism of the functioning institutions. It keeps constantly growing and evolving. Every constitution gets meaning and contents only from the manner in which and the people by whom it is operated, the effects it acquires from how it is interpreted by courts of the land and the conventions and practices that grow around it in the actual process of its working. The provisions of the constitution are not static. These are rapidly changing and thus it has evolved many important facets towards protection of the civil, political and economic rights of the citizens living within the state.

The Constitution of India starting from the preamble, chapter-III as well chapter-IV contemplates about the basic fundamental rights and freedoms of the citizens living in this country. It provides directives to the state authorities to frame laws for the well being of the citizen living within its territory. It also provides certain rights which are incumbent on the courts of law including the subordinate courts to follow in their dealings.

The Constitution of India provides the following aspects and rights which relates to justice delivery system by the subordinate courts.

## I. WHAT THE PREAMBLE SIGNIFIES AND DESIRES

It is commonly known that face is the index of mind. This means that ordinarily a person can be understood from the reflection that exposes on his face and appearance. Similarly, the contents of a book can be understood from the title or introductory part which it contains. Likewise, the preamble to the constitution of India reflects the philosophy of the whole constitutional provisions. It speaks the goal it wants to achieve. It not only speaks about the rights and duties of the executive or legislature, but also the rights and duties of the courts of law in discharging their functions. For proper expression, the preamble to the constitution of India which is also known as the 'Gateway' to the constitution is quoted herein below :

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC AND REPUBLIC and to secure to all its citizens;

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and opportunity;

And to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Among other objectives, the preamble intends to achieve social, economic and political justice to all the people who composed the Constitution for themselves. As the constitution of India was composed by the people living within its territory and presented to them, the Head of the state or the prime minister of the country or a judicial officer of subordinate judiciary are duty bound to achieve those goals. Although the preamble to the Constitution of India is not identified with any article, yet, in the case of *Keshavnanda Bharati v. State of Kerala*,<sup>3</sup> the Hon'ble Supreme Court of India held that the preamble is a part of the Constitution. Though in any ordinary statute not much importance is attached to the preamble, all importance has to be attached to the preamble in a constitutional statute.

Hon'ble Mr. Justice J.S.Verma,<sup>3-a</sup> very thoughtfully stated- the constitutional promise in the preamble envisages justice,

liberty, equality and fraternity assuring the dignity of the individual and unity and integrity of the nation. These are core values of the Indian polity. The system of administration of justice must ensure realization of this promise of a people-friendly welfare state. It must be conceded that the promise is yet to be realized, even though efforts are being made to move in that direction. We must therefore, identify the areas of deficiency and devise suitable pragmatic ways of eliminating the defects.<sup>4</sup>

Therefore, it is apparent that although the preamble to the constitution of India is not titled with any Article, yet, this bears great significance. It is the pioneer of all the other provisions. The philosophy and internal meaning inherent in it speaks that justice is to be done to all in its true perspective. And when the term justice comes, naturally, the subordinate courts also come into light. The subordinate courts are also under an obligation to respect the philosophy of the constitution so that it would be easier for them to promote justice to the aspirants.

## II. RIGHT TO EQUALITY

One of the very important provision embodied in our Constitution is Article 14. In the case of *Indira Nehru Gandhi v. Raj Narain*<sup>5</sup> the Hon'ble Supreme Court of India held that the Rule of

law embodied in Article 14 is the basic structure of the Indian Constitution and hence it cannot be destroyed even by an amendment of the Constitution under Article 368. Article 14 of the constitution of India provides that the state shall not deny to any person equality before law or the equal protection of the laws within the territory of India. It is a constitutional mandate that the state authority as defined in Article 12 of the constitution of India shall treat all the 'persons' living within its geographical territory on equal footing. Similarly, it is also the dictate of the state that all persons living within the territory of India gets equal protection of laws.

The term equal protection of the laws has been interpreted to mean subjection to equal law, applying to all in the same circumstances. It only means that all persons similarly situated shall be treated alike both in the privileges conferred and liabilities imposed by the laws. Equal law should be applied to all in the same situation, and there should not be any discrimination between one person and another on any ground. It envisages that like should be treated alike and not that unlike should be treated alike.<sup>6</sup>

Herein, it is seen that the duty of the courts comes into play. Equal protection of law is very much connected, rather mostly

attached with the justice delivery system. If other organs of the governing system discriminate in between persons on any unjustified grounds or criteria, the courts are to see that said actions are declared as illegal and thereby to provide the right seekers their legitimate rights. This principle is equally applicable to all the courts including the subordinate courts, which is the subject matter of this study.

### III. RIGHT AGAINST DISCRIMINATION

The term 'discrimination' is relatively an old term. Therefore, our forefathers incorporated a very important article on this in the constitution itself. Article 15(1) of the constitution of India provides that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them; Article 15(2) provides that no citizen shall, on grounds only of religion, race caste, sex, place of birth or any of them, be subject to any disability, liability or restriction or condition with regard to -

- (a) access to shop, public restaurants, hotels, and place of public entertainment, or
- (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public.

From the above provision of law it is clear that the 'state' as provided in Article 12 of the constitution<sup>6-a</sup> which includes subordinate judiciary also shall not tolerate any sort of discrimination among the citizens on the grounds of religion, caste or creed or sex in respect to having access to public institution, public place of use and place of entertainment. Having access to public institution, public restaurants, hotels, ghats or place of similar categories be made accessible to all. The court of law which is set up for protecting the rights of common people is to see that no citizen is deprived of his right of the above nature.

However, Article 15 (3) of the constitution provides that nothing in this article shall prevent the state from making any special provision for women and children and Article 15 (4) of the constitution provides that nothing in this article or in clause (2) of article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the schedule Castes and Schedule Tribes. This is a permissive clause providing that if any special provision is made for the upliftment of the women, children or backward communities, the court of law should not think the said privileges as discrimination among the citizens. Rather, the court of law is to

see that such special opportunities and benefits as given by the constitution or statutory law or executive instructions are properly implemented.

#### IV. RIGHT AGAINST UNTOUCHABILITY

Article 17 of the constitution of India provides that untouchability is abolished and its practice in any form is forbidden. It further provides that the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. Basically, this article mandates the state to see that untouchability in any form is totally prohibited and continuation or application of this phenomenon by any people or group of people is declared as an offence so that the wrong doer gets punishment and such evil traditions gets eliminated from the society.

Pursuant to the mandate of the constitution, the parliament of India enacted the Protection of Civil Rights Act, 1955 comprising 17 sections. Section 15 of the Act provides that the offences of untouchability in any form would be a cognizable offence<sup>7</sup> and can be tried by a Judicial Magistrate, First Class. Section 12 of the Act provides that any act constituting an offence under this act if committed in relation to a member of schedule caste the court shall

presume that such act was committed on the ground of untouchability. However, the presumption is rebuttable through cogent evidence. This is the strictness of the provision of law. Further, Section 16-A of the Act provides that the provision of the Probation of Offenders Act, 1958 shall not apply to a person above the age of fourteen years who is found guilty of an offence under this Act.

Normally, a person convicted for an offence not punishable for imprisonment for life or death can be released on probation of good conduct considering the age of the convict, the nature of the offence, the way it was committed as well as the antecedents of the convict. But, the law under the Civil Rights Act is tough enough directing the courts of law not to release any convict on probation if he or she was found to have committed any offence under the Act.

In order to eliminate the untouchability, the parliament of India has also enacted the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989. This Act is also intended to eliminate the atrocities prevailing in the societies in the name of so-called caste system. Like the Civil Rights Act, 1955, this Act also provides a special provision in respect of bail for the wrongdoers. It provides that section 438 of the Code of Criminal Procedure i.e. the

privilege of pre-arrest bail on any accusations, shall not be applicable if a person commits any offence under this Act.<sup>8</sup>

Therefore, the courts which are set up for building confidence in the society by removing such worse system rooted for years together can also play a great role through exemplary judgments. The court can also play an active role in constructing a civil society having moral values and equality. The judgments or orders that are passed by the courts are public documents.<sup>9</sup> These have direct impact in the society and environment as a whole. Therefore, the courts of law can also play a significant role in this regard. By way of application of the law in its proper perspective, good judgments and active role of the judges of subordinate judiciary during the proceeding, the prevailing discrimination on the basis of untouchability can be checked well, if not eliminated totally.

## V. RIGHT AGAINST EX-POST FACTO LAW

Article 20 (1) of the constitution of India provides that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

The provision has two aspects. First, it is a pious duty on the court of law to see that a person is not convicted for an offence which was not an offence at the time of commission. As for instance, prior to the enactment of the Hindu Marriage, Act, 1955 there was no prohibition on the followers of Hindu traditions to marry more than one wife. But, if a person marries another wife during the life time of the first wife or vice-versa, then he or she would be prosecuted for punishment under section 494 of the Indian Penal Code (I.P.C. in short). Therefore, if a Hindu person marries in the year 1954 and a prosecution is initiated against him under section 494 I.P.C. in the year 1957, then he cannot be convicted for the said offence. Secondly, an accused cannot be punished for greater punishment than which was prescribed by law at the time of its commission. As for instance, prior to 03-02-2013 the punishment for an offence under section 354 I.P.C.<sup>10</sup> was imprisonment for a period which may extend to two years, but presently, the punishment for the same offence is imprisonment for a period which may extend to five years. Thus, a person committing an offence under section 354 I.P.C. before 03-02-2013 cannot be sentenced for more than two years although the present law permits the same.

## VI. RIGHT AGAINST DOUBLE JEOPARDY

An important safeguard given to the citizen of this country by its constitution is the right against double jeopardy. Article 20 (2) of the constitution of India provides that no person shall be prosecuted and punished for the same offence more than once. This clause embodies the common law rule of *nemo debet vis vexari* which means that no man should be put twice in peril for the same offence. It provides that if a person is prosecuted again for the same offence for which he has already been prosecuted he can take complete defence of his former conviction or acquittal.

Broadly speaking, the principle contemplates three aspects. Firstly, the person must be 'prosecuted' for an offence as defined in the General Clauses Act, 1897. Therefore, it is clear that if a person who had committed an offence but he was not prosecuted for the same before a court, he cannot claim the defence of double jeopardy. Secondly, the prosecution must be before a court or judicial tribunal established by law. Therefore, if an offence was referred to a village *panchayat* or *sarpanch* not empowered to adjudicate the offence, and the same matter was ended on some verdict, then such person cannot take the defence of double jeopardy before the court of law in as much as the earlier

prosecution or proceeding did not commence before a regular court or tribunal established by law. Thirdly, the offence must be the same for which he was prosecuted and punished in the previous proceeding. In *Venkatraman v. union of India*<sup>11</sup> the Hon'ble Supreme Court of India while deciding the plea of the appellant when he was dismissed from service and also prosecuted under the Prevention of Corruption of Act held that both the proceeding were not same in any manner. The Hon'ble Supreme Court held that an inquiry conducted under the Public Service Enquiry Act, 1960 in respect of the said appellant was in the nature of fact finding to advise the government for disciplinary action against the appellant, and, the regular prosecution before the court was for commission of corruption. And, therefore, the defence of double jeopardy was not applicable.

Similar provision is laid down in Section 300 of the Code of Criminal Procedure, 1973. Section 300 (1) Cr.P.C. provides that person once convicted or acquitted not to be tried for same offence. A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same

facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

## VII. RIGHT AGAINST SELF-INCRIMINATION

Article 20 (3) of the constitution of India provides that no person accused of any offence shall be compelled to be a witness against himself. This provision makes it clear that a person who is accused of any offence shall not be compelled to state anything or to adduce evidence on any point which may incriminate him in that case. In our country, in criminal proceedings, it is the prosecution which is required to prove the accusation in accordance with law<sup>12</sup> and that too 'beyond reasonable doubt'. In civil proceedings also it is the plaintiff or petitioner who intends a judgment on his pleading is to establish the case in accordance with the law.

The protection under Article 20 (3) is available only against the compulsion of accused to give evidence against himself. But, the accused person may waive his privilege and may testify on any fact on which he is accused off. However, if the accused person intends to state anything, his statement must be voluntary. The court is to

see that no force, coercion, threatening or influence whatsoever has been made to him.

In *Mohammad Dastagir v. State of Madras*<sup>12</sup> the appellant went to the bungalow of the Deputy Superintendent of Police to offer him bribe in a closed envelope. The police officer on opening it found the envelope containing currency notes. He threw it at the face of the appellant who took it. Thereafter, the police officer asked the appellant to hand over the envelope containing the currency notes. The appellant took out some currency notes from his pocket and placed it on the table which was seized by the police officer. The appellant contended in appeal before the Supreme Court that the currency notes should not be produced in evidence as he was compelled by the police officer to give it to him. The Hon'ble apex court held that the accused was not compelled to produce the notes as no duress was applied on him to produce the notes. Moreover, the appellant was not an accused at the time of the occurrence when the notes were seized from him.

Section 315 (1) of the Code of Criminal Procedure, 1973 also provides that any person accused of an offence before a criminal court shall be a competent witness for the defence and may give evidence on oath in disprove of the charges made against him or

any person charged together with him at the same trial. However, the proviso provides that such an accused shall not be allowed to adduce evidence unless he approaches the court in writing. Thus, this provision and proviso make it clear that if a person accused of an offence files an application before the trial court informing his intention to adduce evidence, he can depose evidence. And, during examination if some facts come into record which goes against him, he will not be allowed the benefit of self-incrimination. Similarly, if an accused voluntarily confess his guilt known as confession<sup>13</sup>, then also he cannot take the plea during trial unless he proves that the same was not voluntarily made.

It is notable herein that all sorts of offences are tried in the subordinate courts and not in the higher courts. The accused persons are dealt by those courts only. Hence, it is clear that the role of subordinate judiciary in protecting the human rights keeping balance in all sides has great importance.

## VIII. RIGHT TO LIFE AND PERSONAL LIBERTY

One of the most important right that has been guaranteed by the constitution of India is the right to life and personal liberty. This is one of the most important human rights, in the absence of which,

other rights would not have any value. Article 21 of the constitution which provides that no person shall be deprived of his life or personal liberty except according to procedure established by law has a great impact on the Indian society. 'Right to life' does not mean and be confined to physical existence but it includes within its ambit the right to live with human dignity. The right to 'live' is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes the right to live with human dignity and all that goes along with it. In the case of *A.K.Gopalan v. Union of India*<sup>14</sup> the term 'personal liberty' was interpreted by the Supreme Court of India nothing more than the liberty of the physical body, that is, freedom from arrest and detention without the authority of law. But, in the case of *Maneka Gandhi v. Union of India*<sup>15</sup> the Hon'ble Supreme Court rejected the earlier limited interpretation of the term personal liberty. In that case, after elaborate discussion, the Supreme Court held that the expression personal liberty in this Article is of the widest amplitude and it covers a variety of rights which goes to constitute the personal liberty of a man and some of them have raised to the status of distinct fundamental rights and given additional protection under article 19. The Hon'ble Supreme Court held that the attempt of the court would be to expand the

reach and ambit of the fundamental rights rather than to attenuate their meaning and content by a process of judicial construction.

In *State of Bihar v. P.P. Sharma*<sup>16</sup> the Hon'ble Supreme Court of India held as under:

*Investigation is a delicate painstaking and dexterous process. Ethical conduct is absolutely essential for investigative professionalism.... Therefore, before countenancing such allegations of mala fides or bias it is salutary and an onerous duty and responsibility of the court, not only to insist upon making specific and definite allegations of personal animosity against the Investigating Officer at the start of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the court.... Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power.... The word 'personal liberty' (under Article [21](#) of the Constitution) is of the widest amplitude covering variety of rights which goes to constitute personal liberty of a citizen. Its deprivation shall be only as per procedure prescribed in the Code and the Evidence Act conformable to the mandate of the Supreme Law, the Constitution. The investigator must be alive to the mandate of Article [21](#) and is not empowered to trample upon the personal liberty arbitrarily.... An Investigating Officer who is not sensitive to the constitutional mandates may be prone to trample upon the personal liberty of a person when he is actuated by mala fides.*

The Hon'ble Apex court further held "Police atrocities in India had always been a subject matter of controversy and debate. In view of the provisions of Article [21](#) of the Constitution, any form of torture or cruel, inhuman or degrading treatment is inhibited. Torture is not permissible whether it occurs during investigation, interrogation or otherwise. The wrong-doer is

*accountable and the State is responsible if a person in custody of the police is deprived of his life except in accordance with the procedure established by law. However, when the matter comes to the court, it has to balance the protection of fundamental rights of an individual and duties of the police. It cannot be gainsaid that freedom of an individual must yield to the security of the State. Latin maxim salus populi est suprema lex - the safety of the people is supreme law; and salus reipublicae suprema lex - safety of the State is supreme law, co-exist. However, the doctrine of the welfare of an individual must yield to that of the community.”*

*The right to life has rightly been characterized as "supreme' and 'basic'; it includes both so-called negative and positive obligations for the State". The negative obligation means the overall prohibition on arbitrary deprivation of life. In this context, positive obligation requires that State has an overriding obligation to protect the right to life of every person within its territorial jurisdiction. The obligation requires the State to take administrative and all other measures in order to protect life and investigate all suspicious deaths.*

*The State must protect victims of torture, ill-treatment as well as the human rights defender fighting for the interest of the victims, giving the issue serious consideration for the reason that victims of torture suffer enormous consequences psychologically. The problems of acute stress as well as a post-traumatic stress disorder and many other psychological consequences must be understood in correct perspective. Therefore, the State must ensure prohibition of torture, cruel, inhuman and degrading treatment to any person, particularly at the hands of any State agency/police force.”*

In addition to the protection provided under the Constitution, the Protection of Human Rights Act, 1993, also provide for protection of all rights to every individual. It inhibits illegal detention. Torture and custodial death have always been

condemned by the courts in this country. In its 113th report,<sup>16-a</sup> the Law Commission of India recommended the amendment to the Indian Evidence Act, 1872 to provide that in case of custodial injuries, if there is evidence, the court may presume that injury was caused by the police having the custody of that person during that period. Onus to prove contrary is on the police authorities. Law requires for adoption of a realistic approach rather than narrow technical approach in cases of custodial crimes. The above principle of law has been vividly emphasized in the cases of *Dilip K. Basu v. State of W.B. and Ors.*<sup>17</sup>, *N.C. Dhoundial v. Union of India and Ors.*<sup>18</sup> and *Munshi Singh Gautam (D) and Ors. v. State of M.P.*<sup>19</sup>.

While interpreting the words mentioned in this article on the context of the preamble of the constitution, the Hon'ble Supreme court of India and the High Courts have evolved many other rights coming within the ambit of this Article. The right to travel abroad<sup>20</sup>, right to live with human dignity<sup>21</sup>, telephone trapping<sup>22</sup>, right to privacy<sup>23</sup>, virginity test<sup>24</sup>, dignified life in protective homes<sup>25</sup>, right to free legal aid<sup>26</sup>, right against solitary confinement<sup>27</sup>, right to speedy trial<sup>28</sup>, right against handcuffing<sup>29</sup>, right against inhuman treatment<sup>30</sup>, right against delayed execution of death sentence<sup>31</sup>, protection of illegal arrest and detentions<sup>32</sup>, right against police

atrocities<sup>33</sup>, compensation in rape cases<sup>34</sup>, within the ambit of this article. The rulings as given by the apex court are binding to the subordinate judiciary<sup>35</sup>. As such, apart from the literal meaning of this provision, in view of Article 141 of the Constitution of India, the other rights which have been evolved by the apex court are also to be protected by the subordinate courts of law. The role of subordinate courts in protecting the right to life and personal liberty cannot be ignored in any manner.

## IX. RIGHT TO KNOW THE GROUNDS OF ARREST AND TO HAVE LEGAL ASSISTANCE

Article 22(1) of the constitution of India provides that 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. This article makes it abundantly clear that whenever a person is apprehended and arrested by the investigating agencies, he or she must be informed about the ground of arrest. The person cannot be arrested like anything. This is intended to make the accused person to be alert and to prepare for his defence on the accusations against him. This is also intended to strike a balance between the needs of police on one

hand and the protection of human rights of citizens from the oppression and injustice at the hands of law enforcing agencies. This is a striking balance of the power of arrest and protection of the right to personal life and liberty of the common people. In the case of *Joginder Kumar v. state of U.P.(supra)* the Hon'ble Supreme Court of India held that the person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the police officer effecting the arrest that such arrest was necessary and justified.

This article further provides that the person so arrested must be informed about his right that he may take legal assistance from an advocate of his choice. Nowadays, the Hon'ble Supreme court of India while interpreting the Article 21 coupled with Article 39-A of the constitution held that if the person so arrested cannot afford an advocate due his financial or other disability, it is the duty of the court before whom he is produced to inform him about his right to have assistance of an advocate and that too with the cost of the state. In the case of *Hussainara Khatun v. Home Secretary, Bihar (supra)* the Hon'ble Supreme Court of India held that it is the constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons

such as poverty, indigence or other extenuating circumstances, to have free legal services provided him by the state and the state is under a constitutional duty to provide a lawyer to such person if the needs of justice requires.

Further, this article provides that as soon as an accused is arrested by the police or other investigation agencies, then he or she must be produced before the nearest magistrate within a period of 24 hours. And, such an accused cannot be detained by the police without permission from the magistrate. Similar provisions are incorporated in sections 50, 50-A and 57 of the Code of Criminal Procedure, 1973, as amended till date.

## X. RIGHT AGAINST UNNECESSARY DETENTION IN POLICE CUSTODY

In order to protect the human dignity and values of life the framers of the constitution has incorporated an important provision in the constitution itself. Article 22 (2) of the constitution provides that 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 of the court of the magistrate and

no such person shall be detained in custody beyond the said period without the authority of a magistrate. Therefore, from the above provision it has become clear that the court of law before whom the accused person is produced after arrest is to see that the accused person was not detained in the police custody for more than twenty four hours. In the event the police exceeds the time without cogent reason, it is violation of human rights of the accused person and therefore, the court is required to take action in accordance with law.

Section 57 of the Code of Criminal Procedure, 1973 elaborates the aspects more specifically. This section provides that 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. Detention beyond twenty four hours is possible only with the permission of a magistrate. Here magistrate is also to see as to whether the detention of the accused in judicial custody is really necessary or not. The accused who is produced before a magistrate cannot be remanded to judicial

custody without justifiable reason in as much as it violates the right to life and personal liberty of a person.

In *Delhi Judicial Services Association v. State of Gujarat*<sup>36</sup> while dealing with the role of police, this Court condemned the excessive use of force by the police and observed as follows:

*‘The main objectives of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect citizens' life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender. The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of police officers and police excesses in dealing with the law and order situation have been subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police and it must bear in mind, as held by this Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated.*

*It is imperative to state that it is the sacrosanct duty of the police authorities to remember that a citizen while in custody is not denuded of his fundamental right under Article [21](#) of the Constitution. The restrictions imposed have the sanction of law by which his enjoyment of fundamental right is curtailed but his basic human rights are not crippled so that the police officers can treat him in an inhuman manner. On the contrary,*

*they are under obligation to protect his human rights and prevent all forms of atrocities.*

It is pertinent to mention herein that after arrest the accused persons are produced before a magistrate and not before any other authority. And a magistrate works in the subordinate court and not in any high court. It is the magistrate who is required to look into the matter as to whether the accused was detained in the police station for more than twenty four hours, whether he was tortured by police or not, whether he was given human behavior while in detention or not. Therefore, it is clear that the role of the subordinate courts in protecting human rights of such accused is more and more significant.

## XI. RIGHT TO FREE LEGAL AID

Article 39-A of the constitution of India provides that the state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide *free legal aid*, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Although this article has been enlisted in chapter IV relating directive principles of state policies, yet, in fact, by virtue of the

judicial activism of the Hon'ble Supreme Court of India this right is now recognized as one of the fundamental rights, which in other words, known as human rights. And in view of Article 141 of the Constitution of India the law declared by the Supreme Court shall be binding on all courts within the territory of India. This article has been inserted in the constitution by the 42<sup>nd</sup> amendment, 1976 in order to secure the right of every citizen to the effect that for financial or other disability no person is deprived of from getting justice.

As stated earlier, common people use to come to the subordinate courts for different purposes and for some reason or the other they are not in a position to engage an advocate for leading or pursuing their cases before the courts of law, then definitely they are not getting protection of their fundamental rights. In such a situation, the role of the courts comes into play to see as to whether any such person is going to be deprived off from getting justice or not. The court is to see that it is the constitutional mandate that justice is secured to all including the poor and vagrant. If any occasion arises, the court may extend the needy litigants the benefit of free legal aid at its behest.

## XII. RIGHT CREATED FROM DUTY

It is an established principle of law that rights and duties are co-related. One cannot be separated from the other. It is a universally accepted principle. Whenever we speak about duty, it indicates that the duty to me gives rise to right to the other, and, a right which accrues to me accustoms others with duties. Article 51-A of the constitution of India, amongst others provides that it shall be the duty of every citizen of India -(a) to abide by the constitution and respect its ideals and institutions, the national flag and national anthem; (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, to renounce practices derogatory to the dignity of women; (h) to develop the scientific temper, humanism and the spirit of inquiry and reform; (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher level of endeavor and achievement. Thus, from the above four provisions it appears that it is the duty of every citizen of India to abide by the constitutional goals and its ideals, to promote harmony and spirit of brotherhood amongst all living in the country and so on.

The court of law is the 'role model' of the society. A judge can transform the society. A judge is not only an adjudicator but a lawmaker too. Through the process of interpretation of the different provisions in a given situation he unconsciously percolates his own philosophy, with the lapse of time becomes the trend setter in the society. A judge is not a revolutionary but an evolutionarily. A judge listens patiently and delivers judgment promptly by sacrificing his own pursuit. In the day to day activities of the court if the constitutional spirit and the duties assigned herein are kept in mind than definitely, a large numbers of people will be benefited and this will have a great impact on the society.

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## REFERENCES

1. Our Constitution by S.C.Kashyap, page-1-2.
2. Article 394 of the Constitution of India.
3. AIR 1973 SC 1461.
- 3.a. Hon'ble Justice Verma was the former chief justice of India and Chairman, National Human Rights Commission.
4. The Citizen of Judicial Reforms by S.C. Kashyap. page-45.
5. AIR 1975 SC 2299
6. Dr. V.N. Sukla Constitution of India. page – 27.
- 6.a. The authorities which come within the ambit of the term state has been described in Article 12 of the Constitution. It provides that “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the government of India.
7. Section 2(c) of Cr.P.C. defines the term cognizable offence. It means an offence for which, and “cognizable case” means a case in which, a police officer may in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.
8. Section 18 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities), Act 1989.
9. Section 74(iii) of the Indian Evidence Act, 1872.
10. Section 354 IPC states that whoever assaults or use criminal force to any woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both. Under the amendment Act, 2013 the punishment has been extend to five years.
11. AIR 1954 SC 375.
12. Section 101-114-A of the Indian Evidence Act, 1872.
13. AIR 1916 SC 756.
14. Section 24 of the Indian Evidence Act, 1872.
15. AIR 1915 SC 27.
16. AIR 1978 SC 597.