CHAPTER - 1

RIGHTS OF ACCUSED : A HISTORICAL PERSPECTIVE
OF HUMAN RIGHTS

(I) PRELUDE

The history of crime is as old as the existence of humanity on this earth. The criminal justice system revolves around the 'accused' and 'law' function as the means to an end called "justice". Crime and justice are related with each other through "laws". The "criminal justice system involve the interactional patterns among crime victim, crime reporter, police, prosecutor, courts, defence counsel and corrections, probation and parole personnel." The primitive man had not known anything like human rights. With the dawn of civilization one might have hoped that some respect for human rights would emerge.

According to Austin the "Law is the command of sovereign". Whereas according to Salmond "Law is the body of principles recognised and applied by the State in the administration of justice. In other words the law consists of the 'rules recognised and acted on by court of justice." The main characteristics which law contains are that- (a) It is a command set by a sovereign individual backed by the requisite force so as to claim habitual obedience from the bulk of the society; (b) that law is correlated to justice in the sense that it is only a means to an end, the end being the administration of justice; (c) that law is uniform and is applied to all without any distinction; (d) that these rules of law are administered by the courts; and (e) that customary rules are also law when they are accepted by courts and incorporated in decisions. Therefore justice has to be administered in accordance with law. The first ever offence was perhaps committed by "Adam" when enticed by "Eve" and he got the punishment. The object of this study is to trace out rights of accused person in ancient, medieval and modern times in Indian context. The present rights of accused are a result of

evolution through ages. The rights which were available to the accused person in ancient India would be traced from vedas and other scriptures of India which are the early source of all rights and duties of all persons including rights of the accused person. The rights of accused described in epics like Mahabharta, Smitis, Smritis, Dharamasastras would also be examined. The Manusmriti and Arthasastra which were considered a sort of codes in ancient times to run administration and dispense justice would also be referred, highlighting their provisions relating to right of accused person and other human rights.

During medieval India muslim rulers, ruled the country and scriptures like 'Quran' and other literature contained rights of accused person, rules of evidence and bail etc., also needs to be examined. The British rule in India is also a flash point whereunder criminal law i.e. Indian Penal Code, Criminal Procedure Code, Evidence Act and other laws were codified and enacted. These enactments provided plethora of rights for the accused person. This is a coincidence that the Universal Declaration of Human Rights, 1948 was proclaimed when Constitution of India was under preparation and its reflection is evident in Fundamental Rights and Directive Principles of State Policy enshrined in Indian Constitution.

(II) MEANING OF RIGHTS OF THE ACCUSED

The term "accused is nowhere defined in the Code (Criminal Procedure Code)"

5. "Manusmriti" was written by Manu about 2500 years before between 200 BC- 100 AD.
6. "Arthasastra" was written by famous Author Kautilya or Chanakya between 221 and 300 B.C.; Arthasastra is divided into 14 books sub-divided into 150 Chapters covering 180 topics running into 5391 Sections (salokas).
7. Quran or Qoran is considered as sacred Code of Islam containing basic rules of justice.
8. East India Company was established in India in 1600. The Regulating Act, 1773 conferred power to administer and British Rule Continued till 15th August 1947.
9. Indian Penal Code, 1860, The Criminal Procedure Code, 1861 and Indian Evidence Act, 1872 and Police Act, 1861 were enacted by British India and thus western legal system was transplanted in India.
nor in the Constitution of India. The word accused connotes a person charged with offence, when used in terms of noun it connotes as defendant(s) in a trial. "Accused" used in the Code of Criminal Procedure means an "acused person" or person accused of any offence. In every administration of criminal justice, a trial revolves around the accused.

The term "acused of any offence" indicate an accusation made in a criminal prosecution before the court or a judicial tribunal where a person is charged with having committed an act which is punishable under the Indian Penal Code, 1860 or any special or local law. In ancient times crime was considered as a sin and people used to condemn and punish the accused with all sorts of brutalities. During trial inquisitorial methods were used to discover the truth by applying all sorts of torture and other inhuman methods against the dignity of human being.

Under the ancient criminal procedure which differed from modern criminal procedure, persons after their arrest were kept in confinement more or less secret till their trials and could not prepare for their defence as they had no information of the grounds of arrest and detention and moreover of evidence against them. During the confinement they were subjected to cruel treatments and tortures in order to extort admissions and confessions of guilt justifying for their arrest.

The presumption of guilt of the accused gave rise to a number of inhuman practices like torture - a third degree method for the extortion of confessions. Under

12. The term "acused of any offence" is used in Article 20(3) but it has not been defined in the Constitution; See Article 366 of Constitution for 'definitions'.
14. See Abraham Verghese v. State, AIR 1965 Ker.75 : 1965 (2) Cr.LJ.102; Punja Mava v. State of Gujarat 1965 Guj 5; The term "acused" has been used in various sections of Cr.P.C., e.g., secs.207,209,228(2),299,303,310,313,315,317,363,379,390,391,428.
15. Supra note 7, p.9.
17. Stephen, Sir, J.F., A History of the Criminal Law of England, Vol. I, London (1883), pp.227 and 345 at p.227. There is a mention that in John Thurtell's trial on 6th and 7th Jan. 1824 who was executed on the 9th for the murder of William Weare on the 24th Oct. 1823. In the Times Newspaper, Oct. 31, 1823 there is a statement that Magistrate's investigation commenced at 10;30 pm. "The prisoners were not brought into the room, it being thought best to keep them ignorant of the entire evidence against them, at least for a short time."
18. Ibid.
the ancient laws torture was an essential part of the procedure based on ordeal test similar to the presumption of guilt.”\(^{19}\)

While all criminal laws define the offences and provides for punishments but no law has ever been enacted whereby rights of the accused person facing trial are spelt out.\(^{20}\) Prisoners are still persons entitled to all Constitutional rights unless their liberty has been constitutionally curtailed by procedure that satisfy all the requirements of due process.\(^{21}\) A prisoner is not wholly stripped of constitutional protections, when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country.\(^{22}\) To protect a citizen's liberty includes that an accused, thus making the right of an accused person as sacrosanct, for though accused of an offence he/she doesnot become a non person. As a matter of fact the law of India-constitutional, evidentiary and procedural have made elaborate provisions for safeguarding the "basic right of an accused" with a view to protect his dignity as a human being and giving him benefits of a just, fair and impartial trial.\(^{23}\)

There is a presumption of innocence of the accused person till his guilt is established beyond any shadow of doubt. Law believes that "it is better that ten guilty persons escape, than that one innocent suffer."\(^{24}\) An accused is to be presumed to be innocent unless the presumption is rebutted.\(^{25}\) In a criminal trial, the presumption of innocence is a principle of cardinal importance and so the guilt of the accused must in every case be proved beyond a reasonable doubt. Probabilities, however strong, suspicious and grave, can never take place of proof.\(^{26}\) The surest and quickest way to

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20. Penal laws like IPC, and other local and special laws provides for offences and punishments. Though Constitution of India (Part III) and some provisions of Cr.P.C. provided for some procedural rights to be followed during trial but no separate statute is available which deals exclusively with rights of accused person.


reduce crime and achieve a more humane and enlightened penal system is to increase
the likelihood that the guilty will be convicted.\[27\] It is not necessary that all persons
arrested or facing trial are guilty as the guilt of person is to be proved in the court
therefore unless guilt is established the accused is innocent. The object is to list out
the rights available to accused under Indian Constitution i.e. Part-III, fundamental rights,
Part - IV Directive Principles of State Policy and provisions relating to bail and legal
aid under Cr.P.C.

Accused persons or undertrials sometimes suffer at the hands of jail authorities
and remain in illegal detention for years without any valid authority\[28\] or when barbaric
criimes are committed in custody for blinding of prisoners\[29\] or illegally detained\[30\] by
the police they are entitled to claim compensation for wrongful act of governmental
agencies under the provisions of the Constitution and CrPC.\[31\] The National Human
Rights Commission has also been active in safeguarding rights and liberties of people
and have awarded compensation in number of cases.\[32\] The Supreme Court and
various High Courts through number of judgments have issued directions to ensure
that there are no excessness by police during interrogation and relatives of detained
person are aware of whereabouts of the person.\[33\] The Supreme Court has rightly
observed in *Sunil Batra's* case that "Natural law or Dharma commands humane
treatment even to those in prison. Prisons are built with stones of law and so it behoves
the court to insist that, in the eye of law prisoners are persons, not animals, and punish
the deviant 'guardians' of the prison system where they go berserk and defile the
dignity of human inmate."\[34\]

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1470.
31. See Article 32/226 of the Constitution and Sections 250, 357, 358 of Cr.P.C.
32. See Chapter 5 for cases where NHRC have recommended for payment of compensation for
violation of Human Rights; see also Section 18 of the Protection Of Human Rights Act, 1993.
(III) RIGHTS OF ACCUSED IN ANCIENT INDIA

In ancient times crime was regarded as a sin and people used to condemn it with all possible brutalities. The primitive societies lacked the institution of government to enforce a prescribed code of conduct that is now called law, but in the ancient civilized societies a pervasive concept of "Dharma" was evolved. Thus, in the ancient Indian civilized society the violations of "Dharma" rules and some of the custom rules regarded as crimes and sins and the criminals were punished for their violation.\textsuperscript{35} Dharma was not religion in the technical sense but a code of conduct which regulated the whole expression of life. Further, the concept of Dharma can safely be equated to the ‘Rule of Law’. \textsuperscript{36}

Our earliest source books are, of course, the Vedas. We do get from them an inkling of the conditions in which the foundations of the traditional Indian legal system were laid.\textsuperscript{37} The Rigveda provides "three civil rights that of Tana (body), Skridhi (dwelling place) and Jibhasi (Life). Long before Hobbes, the Indian Scriptures tell us about the importance of the freedom of the individual (civil liberties) in State. The concept of Dharma, the Supreme Law which governed the sovereign and the subjects alike covering the basic principles involved in the theory of rights, duties and freedoms."\textsuperscript{38} The accused is a human person and "Human person possesses rights because of the very fact that it is a person."\textsuperscript{39} Rights in ancient times were the outcome of natural law or divine law. Justice Holme referring to natural law stated that it "is a purely inductive statement of certain minimum conditions we cannot do without if life is to be decent"\textsuperscript{40} and the "natural law is so immutable that it cannot be disobeyed by God himself."\textsuperscript{41} These natural rights were later on classified as civil rights, political rights, personal rights, economic, social and cultural rights.

\begin{itemize}
\item \textsuperscript{35} Chaturvedi, A.N., Rights of Accused under Indian Constitution (1984), p. 229-30
\item \textsuperscript{36} Mukharji, P.B., Civil Liberties Ramananda Lectures (1965) of the Calcutta University, (1968), p. 22 at p. 24.
\item \textsuperscript{37} Deva, Indra and Shrirama, Growth of legal System in Indian Society (1980), p.1.
\item \textsuperscript{39} Supra note 35 p.17.
\item \textsuperscript{40} Laski letters.
\item \textsuperscript{41} Grotius, Mare Liberum.
\end{itemize}
Natural law or *Dharma* commands humane treatment even to those in prison^42. This humane treatment was germane to human rights in ancient time and in fact "the concept of human rights has been evolved from the concept of natural rights which in turn were derived from Natural Law."^43 The *Dharma* envisages natural law as manifestation of the natural attributes of Man. It is an ideal system of law dictated by nature of man or by nature itself. According to the earliest philosophers, the natural law meant natural justice, an instrument which could harmonise the whole mankind and bestow happiness essential for good living of a society. The natural law is based on reason and commands those things which ought to be done and prohibits the reverse. Natural rights are inherently moral rights which every human being at all times ought to have simply because of the fact that he is rational and moral being.^43 *Dharma* is what holds together (*Dhr* i.e. to hold) or a Code of duties for the harmonious functioning of the various divisions of society.^46

*Under the Dharma there were many schools of thoughts.* "The first is the Kautilya’s *Arthasastra*, the second is the Brihaspati school represented by the ‘*Kamandaka Niti Sara*’, and third is the Ausana school embodied in the ‘*Sukra Niti Sara*’, and the fourth school is represented by the *Mahabharata*. Incidentally Sukra is the most radical among Indian thinkers. It was he who preached that the sovereign was the servant of the people and should not act without discussion and advice from the ministers". ^46

Long before, Hobbes, the Indian epic *Mahabharata* described the civil liberty of the individual in a political State. Ancient Indian society was a highly structured and well organised affair with the fundamental rights and duties not only of individuals but of classes, communities and castes clearly laid down.^47 *Mahabharata* tells about the importance of the freedoms of the individual (civil liberties) in a State.^48 In ancient

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42. *Supra note 34*,
48. *Supra note 38*, p.56.
times Dharma included the rules of moral and legal ethics and also the rules of religion. A "Samiti was the central assembly while the "Sabha" was a local assembly." 49 According to Macdonald and Keith the function of Samiti was general deliberations on policy matters including judicial work. The Sabha according to them was an assembly of Brahmins and rich patrons which may be termed a kind of village council. 50 According to Dharmasastras, the Sabha was the main judicial body for administration and dispensation of justice. In ancient Hindu judicial system it was believed that "justice should never be administered by a single individual seems to have been established principle of the early Hindu judicial system which runs paralleled to the later theme of Aristotle who accepted this principle on the ground that as the supremely wise man is difficult to discover, several ordinary heads are better than one and that a multitude of men are less liable to corruption than a single individual." 51 The Manusmriti provides for appointment of a Headman for each village for trial of criminal offences in the village and appeal lied to the King. 52 Though the King was the fountain of justice but he, alone, never administered justice 53 King used to "appoint only such councillors to assist him in dispensation of Justice who maintain a balanced view both towards friends and foes i.e. adversaries to a cause." 54 Circumstantial evidence was recognised to be used but with great caution as appearances might be deceptive. As Yajnavalkya says that an injury to the body of the complainant might sometimes be self-inflicted. The Hindu Law excludes hearsay evidence generally. This is evident from the word "Sakshi" which means the man who himself saw or heard. To this evidence one exception appears to have been made by the Hindu Law which has been described as "uttara" witnesses. This means when a pre-appointed person to a transaction is about to die or to go abroad he may inform another person of all he knew about the

51. See Philipson, Trial of Socrates, p.237.
52. See Manusmriti, VII, 115-17
53. Supra note 39, p.23.
transaction and authorised him to testify to the same as if and when an occasion arose.\footnote{55} Manu says:

The King should protect and support all his subjects without any discrimination in the same manner as the earth supports all living being.\footnote{56}

A King who punishes those who do not deserve to be condemned and fails to punish those who deserve punishment, becomes infamous and is ultimately doomed to hell.\footnote{57} Ancient Hindu jurists suggested that by committing a crime, the criminal comes to owe a debt towards the society and this debt can be discharged when he suffers punishment at the hands of society. Thus Manu, the ancientlawgiver observed:

Men who are guilty of crimes and who have been punished by the King, go to heaven becoming pure like those who performed meritorious deeds.\footnote{58}

\textit{Manusmriti} made provision for payment of compensation to the victim of bodily injury to the extent required for treatment and also for loss of property.\footnote{59} Manu, thus provides for direct reparation to the victim of the crime apart from payment of fine to the King (the State).\footnote{60}

In general, the criminal law made it incumbent upon the King to punish those who deserved to be punished.\footnote{61} The primary concern of criminal law was, thus to punish the offenders rather than paying any compensation to the victims. The reason for this was probably that mere payment of compensation was not regarded as sufficient to meet the ends of justice.\footnote{62} Moreover, the ancient jurists also recognised the fact that

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\item [55.] Kane Edition of 'Katyayana' 375 and footnote thereto; also see \textit{supra note} 5, p.23; Section 32 of Indian Evidence Act, 1872 carries the same spirit in refined manner.
\item [56.] Manu, IX, 311.
\item [59.] Manusmriti Ch. 8; see also Bag, R. K., "Perspectives in Victimology in Context of Criminal Justice System", \textit{JLI}, (1999) vol 41 Number 1, p.78, at p. 83.
\item [60.] Bakshi P.M., "Compensation to the Victim of Crime", \textit{KLJ}, 1979 Vol. 5p.69,at p. 83.
\item [62.] Sen, P.N., \textit{op.cit}, p. 335.
\end{itemize}
the urge for vengeance which develops in the victim's mind on his subjection to the crime could be satisfied only through imposition of punishment.\textsuperscript{63} However, still provisions for payment of compensation to the crime victims were available e.g. compensation could be ordered to be paid when death was caused\textsuperscript{64} or hurt to the person caused,\textsuperscript{65} in case of damage caused to property.\textsuperscript{66}

Manu says, if a limb is injured, a wound (is caused) or blood (flows) the assailant shall be made to pay (to the sufferer) the expenses of the cure, or the whole (both the usual amercement and the expenses of the cure as a fine (to the King)).\textsuperscript{67}

In India, for such crimes as theft, assault, adultery, rape and manslaughter, the Smriti texts prescribe a money compensation to the person wronged as well as corporal punishment in the first instance and monetary compensation in addition.\textsuperscript{68}

Brihaspati says, "A merchant who conceals the blemish of an article which he is selling, or mixes bad and good articles together, or sells (old articles) after repairing them, shall be compelled to give the double quantity (to the purchaser) and to pay a fine equal (in amount) to the value of the article.\textsuperscript{69}

Gautama deals with compensation by the state in cases of theft.\textsuperscript{70} The King, he says, must secure the restitution of the stolen object, otherwise, the King is liable to pay the value out of his coffers,\textsuperscript{71} a rule which survived at least in theory into the early British period.\textsuperscript{72} Gautama also makes a mention about the judicial system, he says if there was a difference of opinion among the judges, the King was to seek the advice

\begin{itemize}
\item 64. \textit{Ibid}.
\item 65. Sen, P.N., \textit{op.cit.}, 9 339.
\item 66. \textit{Ibid}.
\item 67. VIII, Manu 287, Vol. 25, Sacred Book of the East; Amercements were of three kinds. In first amercement fine of 48 to 98 panas, in middle amercement 200 to 500 panas and in high amercement 500 to 1000 could be imposed; See Kautilya i, 17.8 to 17.10; see also Gupta, V.K., Kautilyan Jurisprudence (1987), p. 8.
\item 68. Kane, History of Dharmashastra (1972), p. 387.
\item 69. Brihaspati, Sacred Book of the East, 358 verse 9-10; Brihaspati wrote this book between 300 AD to 500 AD.
\item 70. Ling at Classical Law of Ancient India (1973), p. 70.
\item 71. \textit{Ibid},, Gautama, X-46.7
\end{itemize}
of those who were learned in the three vedas (along with the other judges) and decide the matter finally.\textsuperscript{73}

Kautilya's\textsuperscript{74} Arthasastra is not only a treatise on economic rights but it also elaborately make mention of civil and political rights. Kautilya envisaged a welfare State where "the King shall provide the orphan, the dying, the infirm, the affected and the helpless with maintenance, he shall also provide subsistence to mothers as well as the children whom they give birth to."\textsuperscript{75} Arthasastra provides, "All urgent matters, shall be heard at once and shall not be put off, for matter when postponed, become difficult or even impossible to settle"\textsuperscript{76} and, "any person who keeps an innocent man in confinement (Perivasayatah Suddham) shall be punished with the first amercement."

For the hindrance of sleep, sitting down, meals, answering calls of nature, or movement, putting fetters (in judge's lock up - or in prison house) the fine shall be three panas increased by three panas for him who does it and for him who causes it to be done successively.\textsuperscript{78} Arthasastra provides for basic necessities to be made available in a prison house and steps to be taken to ensure safety and security of inmates. It laid down that, separate wards for males and females with hall, pits, wells, bathrooms and places of worship of respective deities shall be constructed, providing sanitary arrangements, protection against fire and poisonous and other dangerous creatures.\textsuperscript{79}

Those whose guilt was found probable were subjected to torture,\textsuperscript{80} and torture was to be given on alternative days and only once in a day.\textsuperscript{81} No pregnant woman or one who has not passed month after delivery shall be put to torture.\textsuperscript{82}

According to Kautilya, "Punishments which alone can procure safety and

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\bibitem{74} Kautilya is also known as Chanakya or Vishnugupta. He placed Chandragupta Maurya on thorne; \textit{Arthasastra} was written by Kautilya between 321-296 BC.
\bibitem{75} Sharma, Gokulesh, Human Rights and Social Justice (1997), p. 11.
\bibitem{76} Kautilya, \textit{Arthasastra}, Book (i) Chapter 19 Section 30.
\bibitem{78} \textit{Supra note} 76, Book (iv), 9.21; see also Gupta, V.K., Kautilyan Jurisprudence (1987), p. 61.
\bibitem{79} Kautilya, Book (ii), 5.56
\bibitem{80} \textit{Ibid.}, iv, 8.4
\bibitem{81} \textit{Ibid.}, 8.25
\bibitem{82} \textit{Ibid.}, 8.14; Kautilya provided that torture of woman shall be half of the prescribed or only examination by interrogation. (see Book iv 8.18)
\end{thebibliography}
security of life is, in turn, dependent on discipline"\textsuperscript{83} therefore "by not punishing the guilty and punishing those not deserving to be punished, by arresting those who ought not to be arrested and not arresting those who ought to be arrested; and by failing to protect subjects from thieves etc., through these causes - decline, greed and disaffection are produced among the subjects.\textsuperscript{84} From the perusal of Arthasastra the following rights of accused person can be listed out:

(i) when a person keeps or causes to keep a person or a minor in illegal confinement, he shall be punished with a fine of 1000 panas.\textsuperscript{85}

(ii) when a person accused of theft proves in his defence the complainant's enmity or hatred toward himself, he shall be acquitted.\textsuperscript{86}

(iii) when the Superintendent of jails put any person in lock-up without declaring the grounds of provocation (samkruddha-Kamana Khyaya), he shall be fined 24 panas; when he subjects any person to unjust torture, 48 panas; when he transfers a prisoner to another place, or deprives a prisoner of food and water. 96 panas; when he troubles or receive bribes from a prisoner, he shall be punished with the middle most amercement; when he beats a prisoner to death, he shall be fined 1,000 panas.\textsuperscript{87}

(iv) Kautilya says, "Any one who keeps an accused cleared of guilt in confinement, shall be punished with the first amercement."\textsuperscript{88}

(v) There existed system of commutation of sentences, Kautilya says, "on ruler's birthday or on full moon days, such prisoners as are very young, old diseased or disabled shall be released."\textsuperscript{89}

Kautiliya has not even spared the King from the punishment. He provides, "If an innocent person is punished, Magistrates and Judges are punished for wrong

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\bibitem{83} Kautilya (i 4.3)
\bibitem{84} \textit{Ibid} (vii, 5.22,26)
\bibitem{85} \textit{Ibid} (iii, 8.7); see also iii, 20.19
\bibitem{86} \textit{Ibid} (iv, 8.7)
\bibitem{87} \textit{Supra note 77}, p.256.
\bibitem{88} Kautilya, (iv 8.8)
\bibitem{89} \textit{Ibid.}, ii, 36.44.
\end{thebibliography}
judgement; even the ruler must impose on himself a fine thirty times that amount, and offer it, to **Varuna** (chastiser of Kings) and thereafter distribute it among Brahmins so that the sin of wrongful punishment may thereby be wiped out. Detailed rules were laid down for the guidance of the King. It was his duty to uphold the law, and he was as much subject to law as any other person. It was obligatory upon him to enforce not only the sacred law of the texts but also the customary laws (rights and claims of the subjects). Two norms, viz., **Dharma** and **Danda**, which were necessarily influenced by the theological tenets of the vedic Aryans, contained several features of a regulatory mechanism for religious practices. Manu says that it is not the King who rules and protects the subjects but it is danda which rules and protects, as during the time when even the guardians of law sleep - as human being sleep they must - it is the danda which being the real upholder of the world keeps awake keeping in control the evil forces of the world. It is also true that "Law is the King of Kings; nothing is superior to Law; the Law aided by the power of the King enables the weak to prevail over the strong". Infact, it is the law which enabled to establish "Rule of Law" which prevailed over "Rule of Man" in the modern age. The concept of "Rule of Law" establishes the supremacy of Law and not of any man, whatever or whosoever he may be.

Thus the **Dharmasastras** and **Arthasastra**, Smritis and other vedic revelations provides for basic rights for the accused person. At no time accused person was convicted without affording opportunity of being heard and if he could prove biasness or enemity of the complainant he had a right to acquittal. The system of examination of witnesses in the presence of accused was followed. "except the King’s court, no other inferior tribunal could award the punishment to the accused."

The justice used to be dispensed by the King and councillors or jury therefore

90. *Supra note* 86, (13.42-43); see also Sastry, R. Shama, *op. cit.*, p.268
93. Kautilya, *op.cit.* (vii, II)
94. Brihadarniyaka Upanishad 1.4-14; see also the Principal Upanishads by Dr. Radhakrishan, p.170.
its integrity and impartiality was beyond doubt. Certain basic rights were available to accused person when he was in lock up or jail and the violation could attract punishment for the public servants. "Long before second century B.C., we boast of elective Kingship and the law of nature which even Kings had to obey on pain of disposition." The study of 'Mudra-Raksha' shows that dispensation of justice was considered as one of the important duties of the rulers. Torture and inhuman treatment of prisoners were prohibited under Ashoka's administration. Dr. K. P. Jayaswal has given a geographical account of the administration of justice. According to him, in Vaishali, the rights and liberty of the people were protected by the State. It is further, revealed that the rise of Buddhism and Jainism were certainly a reaction against the deterioration of the moral order existing in the post-vedic period as against the rights of privileged class. A close examination of the concept of human rights in Buddhist polity discloses that it was more human and liberal and repudiated caste distinctions.

Before 1236 AD. the accused was required to take an oath and this oath itself was a ritual and the decision of guilt or innocence was correct pronouncement of oath.

In ancient civilizations, the victim of an offence was the central figure in any criminal setting. In our pre-modern polity the injured or the victim had a vital say in matters connected with restitution or retribution. But gradually, as one civilization gave way to another, private revenge gave way to public justice, with the Government taking on the responsibility for meeting out justice the offender has become the *prima facie* and the victim is completely forgotten.

(IV) RIGHTS OF ACCUSED IN MEDIEVAL INDIA

The invasions by muslims started with the expedition of India by Mohd-Bin-Qasim in 712 AD. but real penetration was made by Kutubuddin Aibek in 1206 AD. Muslim Rule along with Muslim legal system continued in India till 1857. With the

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96. Supra note 4, pp. 56, 100.
97. Rapson, E.J., The Cambridge History of India, (1921), Vol. I, p.436; ‘Mudra Raksha’ was written by Vaishaka Dutt who was contemporary of King Chandragupta.
100. See Swaminathan, S. Magnes, Criminal law of India Pt. II, Madras (1914), p.4
102. See Puri, S.K., Indian Legal and Constitutional History (1st ed.)
assumption of sovereign power by the Muslim Rulers, the Muslim system of government came to be established in several parts of India.\textsuperscript{103} Muslim law was mainly contained in Quran, Haddies, Sunnahas and Kiyas.

Islamic jurists say that state belonged to God and thus the violation of any right created by the State, that is a public right, was treated as an offence against the God. Various crimes mentioned by these jurists fell under two heads namely, the public offences and the private offences. The public offences were to include, first, the offences against God e.g. adultery, apostacy, theft etc., and secondly, offences against the ruler e.g. rebellion, misrule and moral turpitude on the part of chieftains.\textsuperscript{104} Various punishments imposable for the crimes were divided into four categories, viz. \textit{Kisa, Hadd, Tazeer and Diya}. \textit{Kisa} meant retaliatory punishment i.e. tooth for tooth and eye for eye. \textit{Hadd} meant, specific penalties for specific offences, which could be varied at the discretion of the magistrate. \textit{Tazeer} meant discretionary punishment dependent on discretion of Judge. Under this head even punishments coming under other heads like \textit{Diya or Dyut}, meant for blood money, could be imposed.\textsuperscript{105} \textit{Diya}, used to be awarded in certain cases of unintentional injuries to the victim himself or the next of his kith or kin, on a fixed scale. After having accepted the \textit{Diya}, \textit{Dyut} the kith or kin of the victim used to forgo his claim of revenge against the offender.\textsuperscript{106} While fixing the precise amount of blood money the judges were to take into account the factors like nature of the injury, loss sustained and culpability of the act causing it.\textsuperscript{107} Under the Islamic law compensation could be paid by the wrongdoer to the victim when so demanded by the victim or his heirs as an alternative to retaliatory killing even in a case of homicide.\textsuperscript{108}

Thus, it can be said that in medieval period also the institution of crime victim compensation continued to exist, although in a form different from that in the classical

\begin{itemize}
  \item \textsuperscript{103} Jois, Rama, M., Legal and Constitutional History of India (1984), p.1.
  \item \textsuperscript{105} \textit{Ibid.}, at p.405.
  \item \textsuperscript{106} \textit{Supra note} \textsuperscript{102} at p.21.
  \item \textsuperscript{107} Rahim , A, Mahammadon Jurispudrence, Allahabad Law Agency, (1985) at p. 238.
  \item \textsuperscript{108} Bag, R.K., \textit{op.cit.} p.83; see also M. Cheri Bassionni, The Islamic Criminal Justice System (1981)
\end{itemize}
period of Hindu jurisprudence. Unlike the position under ancient Hindu Law, the payment of compensation or *diya* during medieval period could entitle the offender to escape punishment. Moreover, in majority of the cases *diya* used to be awarded on a fixed scale, rather than in accordance with the peculiar facts and circumstances of the case.\(^{109}\)

It is truism that under Muslim Law, there was no specific provision regulating the Constitution and organization of the State.\(^{110}\) The Muslim concept of administration of "justice is based on the tenets and injunctions of *Holy Quran*. The *Quran* may, thus be described as the supreme legislative code of Islam which laid down basic rules of justice.\(^{111}\) Every Muslim ruler was required to rule in conformity with the tenets of their sacred law, the *Quran* which laid down the broad principles governing the social life of muslims.\(^{112}\) There was no separation of criminal and civil courts and *Kazis* used to administer justice. Muslim law was never the national law of the land. Sher Shah Suri brought in tremendous change and separated civil and criminal courts. During his regime chief Munshif was to look after civil matters and Siqdar used to deal with criminal matters. '"Under the Islamic Juriprudence justice is regarded as part and parcel of the Divine nature. Another point on which emphasis is laid is that the administration of justice must be without a tinge of bias or partiality." \(^{113}\) G.S. Rankin, who translated 'Al-Bidayuni' while referring to criminal justice system during Muhammed Tughlaq's period (pre-Mughal period), says:

"The Sultan used to keep four muftis to whom he allotted quarters in the precincts of his own palace ... so that when anyone was arrested upon any charge, he might in the first place argue with the Muftis about his due punishment. He used to say, "be careful that you do not fail in the slightest degree by defect in speaking that which you consider right, because if any one should be put to death wrongfully the blood of that man will be upon your head." Then if after long discussion they convicted (the prisoner) even though it were mid-night he would pass order for his execution." \(^{114}\)


\(^{110}\) *Supra note* 103., p.4

\(^{111}\) Chaturvedi, A.N., *op.cit.*, p.27.

\(^{112}\) *Supra note*. 103, p.4

\(^{113}\) Ibid., p.29.

The justice was made less intricate during the reign of Aurangzeb and the corruption in judiciary was made an offence for the first time in whole Muslim rule in India and "if delay in justice resulted in loss to a party, the aggrieved party could be compensated by the Judge himself." Aurangzeb made it a rule that no one was to be detained in jail except on authority of a Qazi. He has further directed that no warrant of arrest should be issued unless there was prima facie case against the person in question. After arrest, he should be produced before a law court within the shortest possible time and his case quickly decided. Indefinite detention without trial or conviction were frowned upon and prohibited. He also framed rules regarding release of persons on bail. The right of an accused to be released on bail did exist during Mughal rule in India. Mohammad Amin Khan, the Governor of Lahore put Manucci in prison on a false case of theft, but the Governor-designate, Fidai Khan granted bail for his release by issuing the order of release. Inspite of his release order he was required by the Kotwal to furnish surety. The judgment used to be pronounced by the Presiding officer in open court. The right to speedy trial of criminal cases developed during the period of Mohd. Tughlaq and Akbar the great.

In Mughal period "quick disposal as a right of accused during muslim rule in India was well recognised." The institution of lawyers was found, and an accused with an offence, if, he so desired, had a right to be represented through a lawyer. Expert knowledge of law was required both for practice of law and for acting as Qazi. The authorities of that time referred the institution of lawyers as vakils. Every person, having resources could engage vakil. Zamindars, Mansabdars, Faujdars and Kotwals used to be represented by vakils in their cases before King (Emperor). During

120. Ibid.; See also Travels of Lee, p. 194; Badaoni makes a mention about Hindu Vakil in Rai Arzani of Khan Zaman, Vol.II, pp. 76,97; Akhbarat-i-Darbar, mu’alla, 4th Oct. 1693, The following cases were argued by lawyers; (1) Amin Khan v. Manucci, theft, Storia, II, p.198 (2) State v. Mirja Beg Kotwal, murder, Qaramuddin argued the case, pp. 257-58, Khafi Khan-II.
Mughal rule, the Indian legal system is recorded to have an institution of bail with the system of releasing an arrested person on his furnishing a surety. The use of this system finds reference in the seventeenth century travelogue of Italian Travellor Manucci who himself was resorted to his freedom by bail from imprisonment for a false charge of theft. He was granted bail by the then ruler of Punjab, but Kotwal released him only after he furnished a surety.\textsuperscript{121} The responsibility of administering Muslim Personal Law was vested in the officer designated as Qazi. His duty was to decide cases falling within his jurisdiction after considering the facts and circumstances and the law applicable as enunciated by the official law officers called Muftis. Thus, the courts were in existence but the aims of justice was to provide effective and efficient machinery for the protection of the interest of the rulers. The entire State machinery had nothing to do with the welfare of the masses but was meant to perpetuate the existence of the Empire. Further, under the Muslim Law, non-muslims did not enjoy all the rights and privileges which the Muslim did.\textsuperscript{122} However, the fundamental concepts underlying muslim law, like the Hindu Law was the authority of the King, who was subordinate to that of law. It is imperative to mention here that the Muslim ruler did not interfere with the law of the Hindus and the Hindus continued to be governed by their own laws in personal matters. The Judicial System of Muslims was modelled after that of the caliphate of Baghdad and of Egypt with such modifications as were necessary on account of the age and conditions in India.\textsuperscript{123}

The right to benefit of doubt was not unknown to the Muslim jurisprudence in the administration of criminal justice. The benefit of doubt was known as the doctrine of \textit{Shuba} (doubt) which entitled an accused to be acquitted.\textsuperscript{124} The Magna Carta was enacted in 1215 in England\textsuperscript{125} which was contemporary to the muslim period. Magna

\begin{itemize}
  \item \textsuperscript{121} Irvina, William, Mughal India, Vol.II, 198 (1907); Manucci’s Travel account of the mid seventeenth century was originally published in Italian and was translated later by William Irvina; See also Right to Bail, \textit{ILJ}, Publication Delhi, 2000. p.4-5.
  \item \textsuperscript{122} Deshta,Sunil and Deshta,Kiran, \textit{op.cit.} p. 23.
  \item \textsuperscript{123} \textit{Ibid}.
  \item \textsuperscript{124} Chaturvedi, A.N., \textit{op. cit.}, p.39.
  \item \textsuperscript{125} In 1215 people of England revolted against King John at Ranneymede for enforcing their demand for basic rights of people. People succeeded and Magna Carta was enacted in 1215.
\end{itemize}
Carta, a corner-stone of human rights" was the first charter which codified human rights. It provides:

No freeman shall be taken, imprisoned, disseized, outlawed, banished or in any way destroyed, nor will we proceed against or prosecute him, except by the lawful judgement of his peers and by the law of the land.\textsuperscript{126}

Another Clause reads, "To no one will we sell, to no one will we deny or delay right or justice." \textsuperscript{127}

(V) RIGHTS OF ACCUSED DURING BRITISH PERIOD

When East India Company was established by Britishers in India, they brought with them the common law of England which remained restricted to British subjects in the company's factory. "These factory establishments thus became the nurseries of the English Law in India which in course of time brought about tremendous influence over the laws and the system of administration of justice in the whole of subcontinent."\textsuperscript{128} Gradually, Britishers grabbed administration all over India and created Mayor's courts in Presidency towns in 1726. Mayor's courts were abolished by Regulating Act, 1773 and Supreme Courts were established in Presidency Towns and jury system was introduced. Thus the trial by jury of serious offences started for the first time in 1672 at Bombay. Jury trial was accorded statutory recognition by the Code of Criminal Procedure in all trials before High Courts in relation to felonies committed within the limits of the Presidency towns but outside the Presidency towns the trials before Sessions Courts were either by jury or judge but left to the particular government. The jury trial continued till its abolition was recommended by the 1955 Law Commission of India."\textsuperscript{129} The second half of 19th century is called statutory period when statutes like Indian Penal Code, 1860, Criminal Procedure Code, 1861 (later Cr. PC. 1898), Police Act, 1861 and the Indian Evidence Act, 1872 were enacted besides other laws pertaining to contract and other civil matters. Lord Macaulay was architect behind

\textsuperscript{126} Clause 39 Magna Carta, 1215; King John-I signed the historical document of Magna Carta in 1215; see Dick Howard, A.D., "Magna Carta' celebrates its 750th year", \textit{Journal of American Bar Association}, Vol.51 June (1965), 529 at p.539.

\textsuperscript{127} Ibid., Clause.40.

\textsuperscript{128} Ibid., p.43.

\textsuperscript{129} Ibid., p.46.
these laws. While commenting about possibility of improvement in Mohammedan criminal law, Lord Macaulay observed that it is "so defective that it can be reformed only by being entirely taken to pieces and reconstructed."\textsuperscript{130}

In England, "After the abolition of the courts of Star Chambers, the principle was recognised that the accused shall not be put on oath and no evidence shall be sought from him. This right was conceded to the accused by the end of the reign of King Charles-II of England."\textsuperscript{131} The privilege was fully recognised only in the year 1700.\textsuperscript{132} The transplantation of English Law in India imported this practice to Indian soil also. Gradual changes came into existence.\textsuperscript{133} India followed the British pattern in this regard. Thus, Section 3 of Act 15 of 1852 recognised that the accused, in a criminal proceedings, was not a competent and compellable witness for or against him. This provision was repealed by the Evidence Act, 1872. In the meantime, Sections 204 and 203 of Cr.P.C. of 1861 provided, respectively, that no oath was to be administrated to the accused and it was in the discretion of the Magistrate to examine him. Section 250 of Cr.P.C. 1872 made compulsory a general questioning of the accused after witnesses for the prosecution had been examined and Section 345 provided that no oath or affirmation was to be administered to the accused. These provisions were continued in the later Codes of Criminal Procedure and were incorporated into Section 342 of Cr.P.C. of 1898 (now Section 313 of the CrPC 1973). ... Thus, the Indian Law as regards self incrimination continued to be the same as the English Common Law as regards the accused and production of documents; but was modified as regards witnesses by compelling them to answer incriminating questions and giving them immunity from prosecution based on their answers.\textsuperscript{134}

The Code of Criminal Procedure, 1898 and the Indian Evidence Act, 1872 laid down many procedural rights during criminal trial and the prominent among them are, the right to presumption of innocence of accused\textsuperscript{135}, right against protracted confession.

\textsuperscript{130} Macaulay's letter to Lord John Russel, Jan 19, 1837.
\textsuperscript{132} Supra note 17, p. 375-429.
\textsuperscript{133} Williams, G., The Proof of Guilt, 3rd Ed. (1963), pp.63-64.
\textsuperscript{135} Secs. 102 and 105 of India Evidence Act, 1872.
accepting guilt of accused, right to cross-examine the prosecution witnesses and to also cross examine defence witness if he turns hostile, right to secracy of communication with counsel, right to get copies of documents and statements of prosecution witnesses for defence, right of being produced before the magistrate, right to counsel, right to be tried in open court, right to production of evidence in presence of accused, right to discovery of statements, right against testimonial compulsion, right against double jeopardy, right to bail, right of appeal, right to produce evidence for defence, is a public servant or judge, right to try independent and impartial judge/ Magistrate and right to get copy of judgement.

British institution of bail were statutorily transposed into Indian legal system by the passing of Code of Criminal Procedure in 1861 followed by its reenactment in 1872 and 1898 respectively. Its latest reflection is the improved version of the provisions relating to bail in the Code of Criminal Procedure, 1973 which were preceded by the adoption of the Constitution in 1950 and some recommendations of the Law Commission brought out in the 41st Report in 1969. The Indian Evidence Act, 1872 and the Code of Criminal Procedure enunciated number of procedural safeguards for the accused. These provisions are based on English common law and statute law.

136. Sec. 25 Ibid.
137. Secs. 136-138 Ibid.
138. Sec. 154 Ibid.
139. Sec. 126., Ibid.
140. Sec. 173, 251-A(1) of The Code of Criminal Procedure, 1898.
141. Ibid., Secs. 60 and 61
142. Ibid., Sec. 341(i)
143. Ibid., Sec. 352.
144. Ibid., Sec. 353.
145. Ibid., Secs. 161, 162, 173(4) and 207-A(3).
146. Ibid., Secs. 342(2) and 342-A.
147. Ibid., Sec., 403.
148. Ibid., Secs., 426, 496 and 497.
149. Ibid., Sec. 371(3).
150. Ibid., Secs. 195, 196, 197 and 197-A.
151. Ibid., Secs. 251-A(8) to 10.
152. Ibid., Secs. 556, 352 and 191.
153. Ibid., Secs. 371 and 548.
The provisions of Cr.P.C, 1898 continued even after independence and some of the rights have also been guaranteed in the Constitution of India which will be discussed in other Chapters. The Cr.P.C, 1898 was repealed in 1973 when new Code of Criminal Procedure, 1973 was enacted in which drastic changes were made.

(i) RIGHTS OF ACCUSED IN MODERN INDIA

The Universal Declaration of Human Rights, 1948 which was adopted by the United Nations, declared "whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world," and "it is essential if man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law". This Declaration provided for following specific rights for the accused person:

(i) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.\(^{156}\)

(ii) No one shall be subjected to arbitrary arrest, detention or exile.\(^{158}\)

(iii) Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.\(^{159}\)

(iv) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.\(^{160}\)

(v) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or International Law at the time when it was committed. Nor shall a heavier

\(^{155}\) Preamble, Universal Declaration of Human Rights, 1948.
\(^{156}\) Ibid.
\(^{157}\) Supra note 48; see Article 5.
\(^{158}\) Ibid., Article 9.
\(^{159}\) Ibid., Article 10.
\(^{160}\) Ibid., Article 11(1).
penalty be imposed than the one that was applicable at the time the penal
offence was committed.\textsuperscript{161}

The substance of various human rights proclaimed and adopted by the United
Nations in the Universal Declaration of Human Rights, 1948 were incorporated in the
Constitution of India by the Constituent Assembly.\textsuperscript{162} The reflection of all human rights
provided in the declaration can be visibly noticed in Fundamental Rights and the
Directive Principles of State Policy. Some of the human rights are already available in
the procedural laws like Cr.P.C. and Indian Evidence Act, 1872.

In 1950, the Constitution of India was enforced. The Constitution enshrines
Fundamental Rights for the people in Part-III of the Constitution.\textsuperscript{163} Basic rights like
Equality before laws,\textsuperscript{164} equality of opportunity in matters of public employment,\textsuperscript{165} have
been provided. The discrimination on grounds of religion, race, caste, sex or place of
birth has been prohibited\textsuperscript{166} and untouchability\textsuperscript{167} and titles\textsuperscript{168} have been abolished.
The basic freedoms have been ensured for all citizens i.e. the right to freedom of
speech and expression\textsuperscript{169}, to assemble peaceably and without arms,\textsuperscript{170} to form
associations and unions\textsuperscript{171}, to move freely throughout the territory of India\textsuperscript{172} and to
reside and settle in any part of the territory of India.\textsuperscript{173} The protection in respect of
conviction for offences\textsuperscript{174} i.e. against \textit{ex-post-facto} laws \textsuperscript{175}, double jeopardy\textsuperscript{176} and

\begin{itemize}
  \item \textsuperscript{161} Ibid. Article 11(2).
  \item \textsuperscript{162} CAD. Vol-III, pp.40-41; Also see Mehta, P.L., \textit{op. cit.}, p.27.
  \item \textsuperscript{163} Fundamental Rights are available against the State. Some fundamental rights are available
to citizens and others to persons; See Articles 12 to 35 of the Constitution of India.
  \item \textsuperscript{164} Article 14.
  \item \textsuperscript{165} Article 16.
  \item \textsuperscript{166} Article 15.
  \item \textsuperscript{167} Article 17.
  \item \textsuperscript{168} Article 18.
  \item \textsuperscript{169} Article 19(1)(a).
  \item \textsuperscript{170} Article 19(1)(b).
  \item \textsuperscript{171} Article 19(1)(c).
  \item \textsuperscript{172} Article 19(1)(d).
  \item \textsuperscript{173} Article 19(1)(e)
  \item \textsuperscript{174} Article 20.
  \item \textsuperscript{175} Article 20(1).
  \item \textsuperscript{176} Article 20(2).
\end{itemize}
self-incrimination,\textsuperscript{177} is also provided. No person can be deprived of his life or personal liberty except according to procedure established by law.\textsuperscript{178} An arrested person has the right to be informed, as soon as may be, of grounds of such arrest\textsuperscript{179} and right to consult and be defended by a legal practitioner of his choice.\textsuperscript{180} The arrested person has right to be produced before a magistrate within 24 hours of his arrest.\textsuperscript{181} In case a person is detained under preventive detention laws,\textsuperscript{182} the person is to be informed the grounds of detention\textsuperscript{183} to enable him to make a representation.\textsuperscript{184} The representation and grounds are to be examined by the Advisory Board within 3 months of detention.\textsuperscript{185} The Constitution also prohibits traffic in human being and forced labour,\textsuperscript{186} employment of children in factories,\textsuperscript{187} freedom of profession, practice and propagation of religion\textsuperscript{188} to manage religious affairs\textsuperscript{189} and protection of interest of minorities\textsuperscript{190} were provided in the Constitution.

All these fundamental rights are enforceable in Courts in India and a person can approach Supreme Court or High Courts for enforcement of these guaranteed rights.\textsuperscript{191} The Supreme Court and High Courts are empowered to issue writs or any other order or direction for enforcement of these rights.\textsuperscript{192} Some directive principles of state policy are also laid down in the Constitution; which are not enforceable in court of law but nevertheless they are "fundamental in the governance of the country"\textsuperscript{193} and

\begin{itemize}
\item \textsuperscript{177} Article 20(3).
\item \textsuperscript{178} Article 21.
\item \textsuperscript{179} Article 22(1).
\item \textsuperscript{180} Ibid.
\item \textsuperscript{181} Article 22(2).
\item \textsuperscript{182} See clause (3) to (7) of Article 22; see also National Security Act, 1980.
\item \textsuperscript{183} Article 22(5)
\item \textsuperscript{184} Ibid.
\item \textsuperscript{185} Article 22(4) and (5).
\item \textsuperscript{186} Article 23.
\item \textsuperscript{187} Article 24.
\item \textsuperscript{188} Article 25.
\item \textsuperscript{189} Article 26.
\item \textsuperscript{190} Article 29.
\item \textsuperscript{191} Articles 32 and 226.
\item \textsuperscript{192} Ibid.; Writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari and other orders or directions can be issued under Article 32 by Supreme Court and under Article 226 by High Court.
\item \textsuperscript{193} Article 37.
\end{itemize}
State is duty bound "to apply these principles in making laws". All these fundamental rights and directive principles correspond to various human rights enshrined in Universal Declaration of Human Rights and two Covenants of United Nations issued in 1966.

(VI) SUM UP

It is crystal clear from the above discussion that basic human rights were in existence in the ancient times, medieval and British period in India. "Hinduism had preached the good and happiness of all humanity and, in fact, of all living beings including animals and birds. So had Christianity, Buddhism, Jainism and Islam. With its development in Medieval European moral and political theory and these human rights and rights of accused person were in vogue in one or the other form. There were some legal rights available to accused person in ancient, medieval and during British India regime.

The Muslim rulers could not appreciate the value of liberty of the subjects and conditions of jails were barbarous and unduly cruel and it can be inferred that the rulers lacked in human values and question of personal liberty was alien to their way of living. The punishments during this period were harsh and barbarous. The proclamation of Universal Declaration of Human Rights, 1948 and subsequent Convenants by United Nations have provided number of rights for undertrials and prisoners behind the bars. The Constitution of India and other laws have provided different safeguards for the accused person. After enactment of the Protection of Human Rights Act, 1993, National Human Rights Commission has been established to keep watch and check violations of human rights, the rights of the poor and down trodden.

194. Ibid.
197 Supra note 116., p. 167.
Despite the fact that we have detailed provisions to protect and safeguard the human rights of the people we see that a steady process of devaluation, even demonetisation of human dignity and personality is irresistibly advancing and brutal betrayal of those basics which are enshrined in International Bill of Human Rights becomes a common scenario. The object is to educate and to create awareness among all persons about their rights because "A person who does not know his right has little advantage over those who have none. Rights are not self enforcing. The attack on human dignity arises in the contest between the individual and the State when the power through the government is used unfairly to attack those fears or hates."