CHAPTER - 1
INTRODUCTION

1. INTRODUCTION

Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed to people or owed to people, according to some legal system, social convention, or ethical theory. Rights are of essential importance in such disciplines as law and ethics, especially theories of justice and deontology. Rights are often considered fundamental to civilization, for they are regarded as established pillars of society and culture, and the history of social conflicts can be found in the history of each right and its development. According to the Stanford Encyclopedia of Philosophy, "rights structure the form of governments, the content of laws, and the shape of morality as it is currently perceived".

The State maintains the framework of social order by implementation of various laws without which well ordered social life would not be possible. Various philosophers of social contract theory are of the view that object of the creation of state is to maintain and protect the rights of individuals. According to Aristotle, State came into existence out of base necessities of life and continues for the sake of good life. Prof. Laski expressed that State is known by the rights it maintains. Similarly Locke was of the view that end of state is to remove the obstacles that hinder the development of an individual. Thus, the existence of the state

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1 "Stanford Encyclopedia of Philosophy". Stanford University. July 9, 2007. Retrieved 2009-12-21. Rights dominate most modern understandings of what actions are proper and which institutions are just. Rights structure the forms of our governments, the contents of our laws, and the shape of morality as we perceive it. To accept a set of rights is to approve a distribution of freedom and authority, and so to endorse a certain view of what may, must, and must not be done.
2 UN UDHR Preamble: "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..."
3 J.S. Badyal, **Abc of Political Science** 73 (Raj publishers (Regd.), Jalandhar, 2005).
4 *Supra* note 1.
is recognized with the protection of rights and liberties of individual which is the main object of state.

Protection of the dignity of an individual is essential for harmony in the society, as its violation can have grave impact on individual in particular and on society in general. Each individual is entitled to some rights which are inherent to human existence. Such rights should not be violated on the grounds of gender, race, caste, ethnicity, religion etc. these are called human rights. Human rights are also known as basic rights, fundamental rights, natural rights or inherent rights. The concept of human right is not a new phenomenon, ‘Human Rights’ is a twentieth century term but its notion is as old as humanity. It has gone through various stages of development and has taken long time to become the concept of present day. These rights had place in all ancient societies though referred by different names\(^5\), it includes civil rights, liberties and social cultural and economic rights. These rights are essential for all individual as these are consonant with the freedom and dignity and ultimately contribute to social welfare.\(^6\)

Protection of human rights is a necessity for the development and growth of an individual personality, which ultimately contributes in the development of the nation as a whole. It is an internationally recognized issue and various international instruments have been established for the protection of human rights. The concept of human rights is dynamic and adapts to the needs of the nation and its people. The ultimate purpose of the national as well as international law is to safeguards the human rights of the people.

At international level various efforts have been made for the protection of human rights. The United Nations through its charter represents a significant advancement in the direction for the promotion as well as protection of human rights. International bill on human rights has

\(^5\) Dr. S. Subramanian, Human Rights International Challenges Vol.1 3 (Manas Publication, New Delhi, 1997).

\(^6\) Available at http://shodhganga.inflibnet.ac.in/bitstream/10603/8112/10/10_chapter_201.pdf (Last visited on September 28, 2016).
been incorporated in the UN Charter. The UN Charter contains various provisions for the promotion of human rights and fundamental freedoms in the Preamble and in various Articles 1, 13(b), 55, 56, 62 (2), 68 and 76(c). Apart from UN Charter there are four international instruments created under the auspices of the United Nations known as International Bill of Human Rights, which include the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, and the International Covenant on Economic, Social, and Cultural Rights 1966, the Optional Protocol to the International Covenant on Civil and Political Rights, 1966. The international human rights regime is continuously growing with the passage of time, it provides certain accepted legal standards which all the nations should accept and implement in their domestic laws. The Governments of all the nations must work to promote the welfare of people by eliminating all forms of discriminations and provide right to equality and justice to all.

1.1 RIGHTS OF THE ACCUSED

The protection of the accused is not a new concept. The landmark in the protection of the accused and people at large can be traced back down to the *Habeas Corpus* and Bills of Rights. Then gradually the concepts such as *rule of Law* and *fair hearing* developed. Many of these concepts are embodied in the broad doctrine of *Natural justice*.

After Independence protection afforded to an accused in the Indian system should be appraised within the Constitution and outside. A number of statues catered for the protection of the Accused and the Suspect. The protections are so important that the law requires the police to investigate fairly and according to law into offences i.e., according to the broad principle of *fair trial*, A procedure to be fair or just must embody the principle of Natural justice. Indian law before Independence and afterwards acknowledges the fundamental right of an accused person to get a fair trial, including the protection related to confession. Fundamental
rights are sacrosanct Individual Freedom is one among the most essential freedoms. It is the situation of man who should not be arrested, detained, but who should enjoy his liberty of movement.

“Human Rights are those minimal rights which every individual must have against the State or other public authority by virtue of his being a member of the human family, irrespective of any other consideration …. Though the concept of human rights in as old as ancient doctrine of natural rights founded on natural law, the expression human rights is of recent origin emerging from (Post Second World War) international charters and conventions….“7 After the conclusion of the Second World War movement for securing human rights, to all gained strength. Safety of life and liberty of a person are most significant Human Rights in any ordered society.

“All Human Rights derive from the dignity and worth inherent in the human person is the central subject of Human Rights and Fundamental Freedoms. In simple terms, whatever adds to the dignified and free existence of human beings should be regarded as human rights.”8 According to Indian Supreme Court: “All Human Rights are derived from the dignity of the person and his inherent worth” In simple language, Human Rights are inherent in all human beings throughout their lives by virtue of their humanity alone and they are inalienable. Justice Bhagwati and Justice Krishna Iyer emphasized that human dignity is an important aspect of liberty and hence while considering liberty people have to consider human dignity.

Justice Krishna Iyer took great pains to upload the human dignity and observed, “Spiritual basis of our Constitutional order is human dignity and social justice and not the sadistic cruelty of hard confinement for years” A procedure to be fair or just must embody the principles of

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Natural justice. Natural justice intended to invest law with fairness and to secure justice, the *law should be reasonable law and not merely an enacted law.*

The progress of any society is dependent upon proper application of law to its needs since the society today realizes more than ever before its rights and obligations, the judiciary has to mould and shape the law to deal with such rights and obligations. The vital issue of enforcing Human Rights is a paramount importance. The judiciary has been a Zealous guardian of Human Rights. Indian judiciary by virtue of the power vested in it under the Constitution is the protector of the Human Rights of persons.

Crime analysis across the globe reflects the fact that there cannot be a society without crime and criminals, tragedy and violence. Crime is a social phenomenon. Crime is one of the most important problems faced by modern society. No society – primitive or modern, no country whether developing or developed is free from its clutches. Crime damages the social fabric. Criminals are not born but made by situation of society. Many Criminals attempt criminal activities because of their extreme anger or lack of patience. Some criminals after the crime feel very bad about their activity and want to recover from it. Hence, the prisoners have to be identified as sensitive human being. The criminal justice system must do more than punishing the criminal. It must seek to heal the wounds-emotional, physical and financial – cost by crime. This is difficult but essential goal.

The subject of criminal justice reforms in India has received considerable attention in recent years, due to the high incidence of arbitrary arrest and custodial abuses – even for minor offences; undue delays in investigations, framing of charges and the conduct of trials – contributing to the growth of *under-trials,* and the chronic problem of *under-reporting* of crimes ignited by refusal to file *First Information Report* (FIR) as a deliberate measure to artificially keep the Crime-rates
low. Under-reporting of Crimes is caused by the reluctance of police personnel to register a *First Information Report* purposefully for recording low-crime rates in their respective areas. More often than not, it is poorer people who are more likely to be arrested, detained and mistreated – even in the course of minor offences. The Greek philosopher *Aristotle* since long observed that poverty endangers revolution and crimes originate from poverty. The emergence of so many economic offences leads to the growth of not only poverty, but also the implications of statutory laws to be implemented wholeheartedly.

Criminal law system seeks to balance the individual freedoms and interests with the social or collective interests and thereby strives to ensure peace and tranquility. Within the given theoretical and operational paradigm of criminal law system, criminal justice delivery system shows concern for freedom, liberty and life of those who violate criminal law as well as for the victims thereof. In all criminal prosecutions the accused shall have the right to defend in person and by counsel; to demand the nature and cause of the accusation against him; to have a copy thereof; to meet the witnesses against him face to face; to have compulsory process served for obtaining witnesses in his behalf, and to a speedy public trial by an impartial jury of the county or district in which the offence is alleged to have been committed etc. The Apex Court on more than one occasion has stressed the need to ensure fair trial and fair administration of justice.9

“The mood and temper of the public with regard to the treatment of crime and criminals is one of the unfailing tests of the civilization of any country. A calm, dispassionate recognition of the rights of the accused - and even of the convicted criminal against the State; a constant heart-searching by all charged with the duty of punishment; a desire and eagerness to rehabilitate in the world of industry those who have paid their

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due in the hard coinage of punishment; tireless efforts towards the discovery of curative and regenerative processes; unfailing faith that there is a treasure, if you can only find it, in the heart of every man; these are the symbols which in the treatment of crime and criminal, mark and measure the stored-up strength of a nation, and are sign and proof of the living virtue in it.”

The essential purpose of criminal law is to protect society against criminals and lawbreakers which is done by holding out threats of punishments prospective as well as by making attempts to make an actual offender suffer the prescribed punishment for their crime. Hence, criminal law, in its wider sense consists of both the substantive criminal law and procedural law. The criminal procedural code controls and regulates the working of the machinery set up for the investigation and the trial of the offences. On one hand, adequate wide powers have been given to make the investigative and adjudicatory processes strong, effective, efficient and on the other hand, precautions have to be taken against error of judgment and human failures and to provide safeguards against probable abuse of powers by the police and judicial officers. A nice balancing of conflicting considerations, a delicate weighing of opposing clamoring for recognition has to be done and the extremely difficult task is deciding which of them predominates.

Arrest means the deprivation of the person of his liberty by the legal authority or at least by apparently legal authority. Various powers have been given to the police for facilitating the making of arrests but their powers are subject to certain restraints which are primarily provided for the protection of the interest of the person to be arrested, and also the society at large. The imposition of the restraints can be reconsidered to an extent, as the recognition of the rights of the arrested person. Some other

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provisions also exist which expressly create more important rights in favor of arrested person.

Safeguards have been provided to the accused under this Act at every stage starting from the time of arrest, at the time of trial, also at the time of conviction and after sentence. Like at the time of arrest, accused has right to meet an advocate of his choice during interrogation\textsuperscript{12}, examination of arrested person by medical officer\textsuperscript{13}, no unnecessary restraint\textsuperscript{14}, person arrested to be informed of grounds of arrest and right to bail\textsuperscript{15}, Transfer of the case on the application of accused\textsuperscript{16}, supply of copies of statements and documents to accused\textsuperscript{17} etc.

The Criminal Justice system ‘revolves around the accused’\textsuperscript{18}. The object of the criminal trial is to dispense justice according to law of the land. The accused person faces the accusations for commission of some offence. The Law is set in motion from the moment of receipt of information about commission of an offence by police and lodging First Information Report in the Police Station\textsuperscript{19}. The police is expected to investigate the commission of the offence in accordance with procedure established by law. The objective of investigation is to collect evidence and to trace out and arrest the offender to face the accusation. The conviction or acquittal of the accused depends on the gravity and reliability of evidence. The criminal justice system thus starts from the police station and ends up in jail where offender undergoes the sentence.

The accused person is presumed to be innocent unless proved otherwise. This principle runs like a golden thread through the entire fabric of our criminal jurisprudence. Equally vital principle of criminal

\textsuperscript{12} Under Sec. 41-B of CrPC
\textsuperscript{13} Under Sec. 54 of CrPC
\textsuperscript{14} Under Sec. 49 of CrPC
\textsuperscript{15} Under Sec. 50 of CrPC
\textsuperscript{16} Under Sec. 190 of CrPC
\textsuperscript{17} Under Sec. 208 of CrPC
\textsuperscript{18} Verma, R.S., and Thokcham, I.B.S., rights of an Accused, Delhi (2nd edn, 1999)
\textsuperscript{19} The complaint can also be filed before the Magistrate under Section 190 Cr.P.C. for commission of an offence. Magistrate of First Class OR second class specially empowered can take cognizance of any offence.
jurisprudence is that the burden of proving beyond reasonable doubt the
guilt of accused lies on the prosecution. These two cardinal principles are
foundation of the criminal justice system and are inherited from British
legal system.

The offenders are human beings and they deserve to be treated so.
The attitude of the society towards the offenders have also undergone a
change with the passage of time. In ancient times accused persons were
punished with all brutalities and treated like animals, though some rights
were available to the accused person. Now person behind the bars have all
Constitutional Rights. The basic fundamental rights and freedom cannot be
denied even to the person in police lock up or jail. The Magna Carta
declared basic rights for the people in U.K. in 1215 but the concept “human
rights” at universal level came through the Universal Declaration of
Human Rights in 1948 which affirmed the “faith in fundamental human
rights in the dignity and worth of human person, in the equal rights of man
and woman....”\textsuperscript{20} This Universal Declaration also affected the minds of
makers of the Indian Constitution who were drafting the Constitution at the
contemporary period. Therefore all “human rights” find place in Part-III
(Fundamental Rights) of Indian Constitution\textsuperscript{21}

The term ‘accused’ is though used in the Constitution of India\textsuperscript{22} and
the Code of Criminal Procedure,\textsuperscript{23} but it has not been defined. Term
“accused of any offence” has been used in Article 20(3) of the
Constitution. It is clear that there is always a “accusation” against the
accused. Kautilya in ancient time s used the term “accused” in
Arthshastra\textsuperscript{24}. The concept of ‘Rule of Law’ was in existence though not in
the refined form. The accused had some basic rights and with the passage

\textsuperscript{20} See Preamble to the Universal Declaration of Human Rights, 1948.
\textsuperscript{21} A Comparitice Study reveald that almost all human rights provided in the Universal
Declaration of Human Rights, 1948 and the International Covenant on Civil and Political
Rights, 1966 are identical to the Fundamental Rights enshrined in the Constitution.
\textsuperscript{22} See Article 20(3).
\textsuperscript{23} The term is not defined in Section 2 of the Code. The term "accused" is used in several
Sections of Cr.P.C. , e.g. Secs. 207, 209, 228(2) etc.
\textsuperscript{24} See Kautilya(iv. 8.7,8.8)
of time new rights have emerged. The system for dispensation of justice keeps on changing. In the beginning the objective of trial of the person accused of an offence, was to punish the offender. For some time, ‘tooth for tooth and eye for eye’ rule also prevailed. Now offenders are treated like sick human beings who can be reformed and rehabilitated. The accused is also a person and citizen, therefore, he cannot be denuded of Constitutional rights and fundamental freedoms.

A right is a claim of an individual recognized by society and the State. Rights are those conditions of social life without which no one can survive in the society. The Constitution being source of all laws of the land is a supreme law. The Preamble of the Constitution aims to achieve the social justice, liberty of thought, expression and equality of status, among others to all citizens. Except the legal restrictions, imposed on him, other fundamental rights are available to accused and he can move the courts for enforcement of his rights. The basic Constitutional rights can’t be halted at the prison gates and can be enforced within the prison campus. Convicts are not by mere reason of conviction denuded of all the fundamental rights which they otherwise possess. The Constitution enshrines Fundamental Rights in Part III endeavours that” human liberty may be preserved human personality developed and effective social and democratic life promoted.” These Fundamental Rights are available against the State, for they are limitations upon all the powers of the Government, legislative as well as executive.

The Constitution commands that “The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 14 has been held to be the basic structure of the
Constitution.\textsuperscript{33} The concept of equality before law is a negative concept which establishes the rule of law.\textsuperscript{34} It is direction for the State to treat all persons alike and not to discriminate any person.

In the context of criminal justice administration, it is not only the Constitution but also the substantive laws of criminal law and the procedural law that become relevant. It is customary today that the society tries to incorporate a protection to the individual in his relation to the society as the authority of society is vested in certain functionaries who may abuse law. An independent and impartial instrument like the court is, therefore, established to resolve the conflict between the individual and the state. In India, Constitution contains a number of provisions spelling out the rights of the persons in conflict with criminal law. These protections are operationalized in the various provisions in the statute law as in the case of Criminal Procedure Code, 1973 and Indian Evidence Act, 1872.

An individual can come in conflict with law enforcers at various stages of criminal justice process. Right from the time of his arrest his freedom of movement is infringed and both the Constitution and the Criminal Procedure Code contain a provision enabling the arrested to be produced before a judicial officer to determine whether the act of police-society infringing the freedom of the individual was justified in law. One of the basic tenets of our legal system is the benefit of the presumption of innocence of the accused till he is found guilty at the end of a trial on legal evidence. In a democratic society even the rights of the accused are sacrosanct, though accused of an offence, he does not become a non-person. Rights of the accused include the rights of the accused at the time of arrest, at the time of search and seizure, during the process of trial and the like.

The accused in India are afforded certain rights, the most basic of which are found in the Indian Constitution. The general theory behind

\textsuperscript{33} Indira Nehru Gandhi v. Raj Narain AIR 1975 SC 2299.
\textsuperscript{34} For concept of Rule of Law See Jennings, Ivor, Law of the Constitution, 3rd edn. p. 49
these rights is that the government has enormous resources available to it for the prosecution of individuals, and individuals therefore are entitled to some protection from misuse of those powers by the government. An accused has certain rights during the course of any investigation; enquiry or trial of an offence with which he is charged and he should be protected against arbitrary or illegal arrest. Police have a wide powers conferred on them to arrest any person under Cognizable offence without going to magistrate, so Court should be vigilant to see that theses powers are not abused for lightly used for personal benefits. No arrest can be made on mere suspicion or information. Even private person cannot follow and arrest a person on the statement of another person, however impeachable it is.

Though the police have been given various powers for facilitating the making of arrests, the powers are subject to certain restraints. These restraints are primarily provided for the protection of the interests of the person to be arrested, and also of the society at large. The imposition of the restraints can be considered, to an extent, as the recognition of the rights of the arrested person. There are, however, some other provisions which have rather more expressly and directly created important rights in favour of the arrested person.

In the leading case of *Kishore Singh Ravinder Dev v. State of Rajasthan*,\(^{35}\) it was said that the laws of India i.e. Constitutional, Evidentiary and procedural have made elaborate provisions for safeguarding the rights of accused with the view to protect his (accused) dignity as a human being and giving him benefits of a just, fair and impartial trail. However in another leading case of *Meneka Gandhi v. Union of India*\(^{36}\) it was interpreted that the procedure adopted by the state must, therefore, be just, fair and reasonable.

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35 AIR 1981 SC 625.
36 AIR 1978 SC 597.
The word ‘accused’ within the meaning of the Extradition Act of 1989 has different meaning. It is, however, possible to state in outline the approach to be adopted. The starting point is that ‘accused’ in section 1 of the Act of 1989 is not a term of art. It is a question of fact in each case whether the person passes the threshold test of being an ‘accused’ person. Next there is the reality that one is concerned with the contextual meaning of ‘accused’ in a statute intended to serve the purpose of bringing to justice those accused of serious crimes. There is a transnational interest in the achievement of this aim. Extradition treaties, and extradition statutes, ought, therefore, to be accorded a broad and generous construction so far as the texts permits it in order to facilitate extradition.\(^37\) That approach has been applied by the Privy Council to the meaning of ‘accused’ in an extradition treaty.\(^38\) It follows that it would be wrong to approach the problem of construction solely from the perspective of English criminal procedure, and in particular from the point of view of the formal acts of the laying of an information or the preferring an indictment. Moreover, it is important to note that in England a prosecution may also be commenced if a custody officer decides that there is sufficient evidence to charge an arrested person and then proceeds to charge him.\(^39\) Despite the fact that the prosecuting authorities and the court are not involved at that stage, the charging of an arrested person marks the beginning of a prosecution and the suspect becomes an ‘accused’ person. And that is so even if the police continue to investigate afterwards. It is not always easy for an English court to decide when in a civil law jurisdiction a suspect becomes an ‘accused’ person. All one can say with confidence is that a purposive interpretation of ‘accused’ ought to be adopted in order to accommodate the differences between legal systems. In other words, it is necessary for


\(^{38}\) Rey v. Government of Switzerland [1998] 3 W.L.R. 1, 7B.

\(^{39}\) S. 37 (7) of the Police and Criminal Evidence Act 1984; and see generally as to the commencement of prosecutions Card, Cross and Jones, “Chapter 4” Criminal Law (1995).
courts to adopt a cosmopolitan approach to the question whether as a matter of substance rather than form the requirement of there being an ‘accused’ person is satisfied. That such a broad approach to the interpretation of section 1 of the Act of 1989 is permissible is reinforced by the provisions of section 20. This provision deals with the reverse position of an extradition of a person ‘accused’ in the United Kingdom and contemplates that ‘proceedings’ against him may not be commenced (‘begun’) for six months after his return. This provides contextual support a correspondingly broad approach to ‘accused’ in section 1.

It is to be mentioned that only natural law was followed in the Vedic period and the accused persons were not given any specific safeguards. Justice was given by Hindu rules by acceding to the Dharmashastra and the same was given by Muslim rules by following the Quran and their other holy books. Many acts were passed by Britishers but they served their purpose only and were neither meant for the benefit of the society nor for the accused.

The accused got some rights for their protection at the time of arrest and during trial only after making of the Constitution of India. The backbone of all the laws is the Constitution of India or it can be said that it is the base of all the laws. The Articles of our constitution will prevail in case of any conflict between articles of the constitution with any act prevailing or passed. The requirements of law change with the passage of time resulting in wide interpretation of Articles of our Constitution. Many Articles like Article 21 as in the case of Sunil Batra etc. have been already interpreted widely in accordance with the needs of the accused. Had this not been done then the whole law would have broken down. The requirements of the society will have to be justified by law.

Acts are made by the Legislature by passing the Bill as per the requirements of the society. The law exists in the shape of Bill before the law is passed. The committee of experts appointed by Parliament drafts the bill after preparation and research on all the aspects of the society.
Thereafter, the Bill is presented in the Parliament wherein three readings and huge discussion is done regarding the bill. It is mandatory that both the houses pass the Bill and then it is sent for the assent of the President. Thereafter, the bill takes the shape of law. Hence, the best law is the law made in the Parliament as every aspect of the society is analyzed thereby. It has been found by way of research that there is only one drawback in passing of the bill which is that it is a time consuming process and it is not beneficial for the society as no remedy is available at the time of need.

It has been held under Section 27 of the Indian Evidence Act, 1872 that the information furnished by an accused person after his arrest to the investigating officer which leads to the discovery of articles is admissible in evidence and Article 20(3) of the Constitution of India is not offended thereby in any way because it cannot be said that the accused person has been compelled to be a witness against himself merely because he made a statement while in police custody. It can not be inferred that the accused was compelled to make the statement merely because of the fact that the accused was in police custody at the time of making the statement. In Pershadi v. State of U.P., the Hon'ble Apex Court\(^{40}\) held that in a charge of murder if the accused has stated to the police officer that he would give the clothes of the deceased which he had placed in a pit and thereafter he, in the presence of the witness, dig out the pit and took out the clothes which were identified as the clothes belonging to the deceased, the statement of the appellant was held to be admissible. But if the statement has been obtained by the police by employing third degree methods, then the statement would be barred under clause (3) thereof.

\(^{40}\) AIR 1957 SC 211.
1.2 **NEXUS BETWEEN SECTION 24 AND SECTION 27**

There has been difference of opinion regarding the relation between Section 24 and 27 of Indian Evidence Act. It has been held in certain cases that Section 27 does not qualify Section 24, whereas in others it was held that Section 27 qualifies all the three preceding sections, i.e., Sections 24, 25 and 26. The latter view has been adopted by some writers. It is to be submitted that taking into consideration Article 20(3) of the Constitution and interpretation of Hon'ble Supreme Court regarding the same in *Kathi Kalu v. State of Bombay*\(^{41}\), the better view is that Section 27 does not qualify Section 24.

1.3 **RELATION BETWEEN SECTION 27 EVIDENCE ACT AND ARTICLE 14 OF THE CONSTITUTION**

In the case titled as *State of U.P. v. Deoman Upadhyaya*\(^{42}\), the constitutionality of section 27 Evidence Act was challenged. It was urged that Section of Evidence Act is violative of Article 14 of the Constitution as an unjustifiable distinction is created between person in custody and person out of custody in so far as it makes information given by a person in custody of the police relevant and renders irrelevant the information given by person not in custody of the police. But the Hon'ble Apex Court held by majority that the section does not violate Article 14 of the Constitution for the reasons to be followed hereinafter:

1. The distinction between person in custody and person not in custody in the context of admissibility of evidence is not arbitrary.

2. When a person not in custody approaches a police officer investigating the offence and offers to give information leading to discovery of a fact having bearing on the charge against him,

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\(^{41}\) 4th August, 1961.

\(^{42}\) 1960 AIR 1125.
he may be deemed to have surrendered and may be deemed to be in custody of the police officer. Exceptional cases may be imagined in which a person may give information without presenting himself before the police officer. But such an occurrence would be rare and therefore, Section 27 should not be declared unconstitutional because of the possibility of abnormal instances to which the legislature might have but has not extended the rule.

Justice Subba Rao, as he then was, held in his dissenting opinion that the alleged differentia is not intelligible or germane to the object but extremely arbitrary. He was of the view that Section 27 of Evidence Act accords unequal and uneven treatment to persons under like circumstances. An interesting problem was cited by him in support of his view; “A and B stabbed C with knives and hid them in a specified place. The evidence against both of them is circumstantial. One of the pieces of circumstantial evidence is that both of them gave information to the police that each of them stabbed C with a knife and hid it in the said place. They showed to the police the place where they had hidden the knives and brought them out and handed them over to the police and both knives were stained with human blood. Excluding this piece of evidence, other pieces of circumstantial evidence do not form a complete chain. If it was excluded then both the accused would be acquitted and if included then both of them would be convicted for murder. But A, when he gave the information was in the custody of the police, but B was not so. The result is that on the same evidence, A would be convicted for murder but B would be acquitted.”

He cited examples of decided cases in order to show that accused person can make confessions without being in police custody and held that historical background of Section 27 of Evidence Act did not warrant any assumption that the legislature thought that cases of
persons not in custody of a police officer making confessions before him would be very few and therefore need not be provided for.

1.4 SECTION 27 OF EVIDENCE ACT AND ARTICLE 20(3) OF THE CONSTITUTION

The vires of Section 27 of Evidence Act has also been challenged on the ground that it is of violative of Article 20(3) of Constitution which provides that no person accused of any offence shall be compelled to be a witness against himself. This said question was decided by the Hon’ble Supreme Court in case titled as *State of Bombay v. Kathi Kalu Oghad*\(^43\) wherein a batch of three appeals were heard by the Court out of which one was from the Bombay High Court and one each from the High Courts of Punjab and Calcutta. As far as appeal from Punjab High Court is considered, the accused therein was convicted under S. 380 and 457 of the I.P.C. and S. 19(1) of the Indian Arms Act. The evidence against the accused out of other items was his statement leading to discovery of some firearms which were stolen from a shop and buried at a certain place. The evidence of his statement leading to discovery as mentioned above, was admitted against him under Section 27 of the Evidence Act. The accused preferred an appeal to the Supreme Court in order to challenge the constitutionality of Section 27 of the Evidence Act on the grounds that it is violative of Articles 14 and 20(3) of the constitution. As far as Article 14 is considered, the court held that it had already been decided in *State of UP vs Deoman Upadhayay*, that Section 27 of the Evidence Act is not violative of Art 14 or Art 20(3), as the said question was raised for the first time before the court in Kathi Kalli’s case, wherein it was held as follows:

“That information given to the accused by the police officer leading to discovery of a fact which may or may not prove

\(^{43}\) Ibid
incriminatory has been made admissible in evidence under section 27 of the Evidence Act. If it is not incriminatory of the person giving information, the question of violation of Article 20(3) does not arise. It can arise only when it is of an incriminatory character so far as the person giving information is concerned. If the self incriminatory information has been given by an accused person without any threat that will be admissible in evidence and will not be hit by the provisions of article 20(3) of constitution for the reason that there has been no compulsion. It must therefore be held that provisions of section 27 of the Evidence Act are not within the prohibition of Article 20 (3), as no compulsion has been used in obtaining information.

It was contended on behalf of the accused that compulsion may be presumed where the person giving information is in police custody. The court held that compulsion means what in law is called ‘duress’. It is a physical objective fact that and not a mere state of mind. The mere fact that the accused, while giving information, was in police custody would not by itself be sufficient to presume that the accused was compelled, though that fact may be considered along with other circumstances as to whether statement was in fact made under compulsion.”

1.5 COMBINED EFFECT OF SS. 24, 25, 26 AND 27 OF EVIDENCE ACT AND S. 162 OF Cr. P.C.

The combined effect of the provisions of Sections 24-27 of Indian Evidence Act and S. 162 Cr. P.C. is as follows:

- Any confession which is procured by way of inducement, threat or promise as described in Section 24 of the Evidence Act is not relevant. It is not material as to whom it is made.

- Confession made by an accused person to a police officer whether during custody or out of custody is irrelevant. It be irrelevant even if it is made in the presence of Magistrate and even if there was no inducement, threat or promise.
A statement made by any person to a police officer during investigation is inadmissible under S.162 of Cr. P.C. even if it does not amount to confession.

A confession made by an accused voluntarily to any person other than a police officer while he was not in police custody can be proved.

A confession made by an accused while in police custody to any person, such as fellow prisoner, doctor, visitor, etc. are irrelevant unless made, in the immediate presence of the Magistrate.

If an accused person, while in police custody, gives any information and a fact is discovered as a result of such information, so much of it as directly relates to discovery of such fact will be relevant under Section 27 of the Evidence Act even if it amounts to confession.

It is the observation of the researcher after analysis of Cr.P.C. in detail that numerous safeguards have been provided to the accused in the Code of Criminal Procedure. It has been realized that the object of Cr.P.C. is not only the protection of the society but also the protection of the rights of the accused as enshrined in the constitution in order to give fair trial to the accused by protecting the rights of the accused but all the rights are not availed by the accused. The Code of Criminal Procedure is a procedural law which gives practical shape to the existing laws given in the Constitution of India. Meaning thereby that it will not be useful if the rights are only given in Cr.P.C. but not in Constitution of India.

The admissibility of confessions is regulated by several provisions under the Indian Evidence Act. There are severe limitations upon the ability of prosecution to use confessions. The English rule has been adopted in Section 24 of the Evidence Act to the effect that a confession is inadmissible if induced by fear or prejudice or hope of advantage held out
by a person in authority. Section 25 of the Evidence Act postulates that ‘no confession made to a police officer shall be proved as against a person accused of any offence.’ Section 26 of the Evidence Act further states that all confessions made in custody of a police officer are inadmissible unless made in the immediate presence of a Magistrate’.

Hence, as a sequel of the above discussion it is clear that provisions under different Acts are not sufficient unless the same are not fully used and properly interpreted. This is where the role of Judiciary comes. The law is changed as per demand. The need of the hour gives birth to law passed by Legislature but it is very time consuming. At times, quick action is required at that very time and it is the Judiciary which steps forward in order to solve the problem. But at the same time, there can arise confusion when different decisions are given by different courts at the same time.

The present scenario is the product of a competition between many sets of conflicting values. On one hand, subjection of the accused person for questioning is regarded as absolutely necessary for the proper investigation of offences. It is a matter of belief that law enforcement is unduly hampered by artificial rules which restrict the admissibility of material obtained during the investigation. Per Contra, it is the apprehension of the society that the zeal and power of law enforcement officers may outrun their self-restraint and wisdom. It is the philosophy behind almost categorical rules enacted in section 25 and 26 of the Evidence Act that these safeguards are absolutely necessary for the protection against the possibility of extorted confessions. The systematic police questioning is usually carried on in secrecy and protracted questioning is resorted to, which gives sufficient justification for the present strict rules. Even otherwise, it is desired that the present artificial rules should be replaced by more rational principles, if such principles can be devised.
1.6 OBJECTIVE OF THE STUDY

The objective of the present study is to examine and understand the legal rights of the accused specifically during a criminal trial under the Criminal laws and the Constitution of India also considering the scenario as laid down in landmark judgements. Also, the objective is to rationally examine the relationship between rights of the accused with that of the Protection of witnesses.

1.7 HYPOTHESIS

The hypothesis of the present research is that the rights provided to the accused in a criminal trial owe their existence to Human Rights and the principles Natural Justice. The element of Natural Justice i.e. both sides shall be heard, or audi alteram partem and the right of the accused to cross-examine the witnesses and his right to legal representation are comparable. Another significant right would be the ‘Rule against bias’, a person cannot be a judge in his own cause. This is an elementary Natural Justice principle which is also the right of the accused in the present day’s criminal justice system.

1.8 RESEARCH METHODOLOGY

This study has used a blend of doctrinal as well as analytical form of research and writing.

1.9 CHAPTERISATION: THE STUDY COMPRIZES SIX CHAPTERS.

Chapter - 1: Introduction

Chapter 1 deals with the introduction of the concept of Accused and his rights in India. In this Chapter, the objective of the study, research methodology have also been discussed. The researcher has also discussed the meaning of the rights provided to the accused.

Chapter - 2: Historical Perspective

The researcher has studied the gradual development of the law relating to this aspect. The rights available in the ancient literature including Vedas, Manusmriti of Manu, Arthashastra of Kautilya, Smritis,.
Dharmashastras and Mahabharata etc., have been traced. The rights available to the accused person during medieval, British period i.e., pre-independence and post-independence period finds place in the Chapter. Though various rights were available to the accused but the term “human rights” was not used. The concept of human rights is as old as ancient doctrine of ‘natural rights’ is of recent origin, emerging from (post second world war) International Charters and Conventions. The term “human rights” have been used in the UN Charter, 1945 and thereafter in the Universal Declaration of Human Rights, 1948.

Chapter – 3 : Constitutional and Legislative Provisions available for the Accused In India

“Rights of Accused in the Constitution of India” have been discussed, with regard to the constitutional provisions in the light of natural justice and equality. The chapter specifically throws light on the Articles 20 and 21 of the Constitution. It is an endeavor to trace out the rights of accused person in the Constitution of India which is the fundamental and Supreme law of the land. The fundamental rights which are available to the accused like right to equality (with reference to the doctrine of Rule of law), freedom of speech and expression including freedom of publication, protection against self-incrimination, protection against double jeopardy and right to personal liberty have been discussed. It also elucidates the Legislative Provisions relating to the rights of the accused and various schemes under the Legislature. It also deals with the study of the right of bail available to the accused. The object of the bail, bail as a matter of right and bail as a judicial discretion have been analysed.

Chapter – 4 : Recent Judicial approach towards the Rights of Accused in India

The researcher has discussed in detail the landmark judicial decisions related to the arrested person. The provisions concerned with the compensatory justice under the Code of Criminal Procedure, 1973, the Constitution of India have been provided. The judicial approach derived
from the judgements of Supreme Court and High Courts have also been analysed in depth.

**Chapter 5 : Rights of Accused in India: A Critical Analysis**

This Chapter deals with the Critical Analysis of the concept of Rights of Accused in India. Whenever we read any law or any new concept, we cannot deny the other side of the coin. Keeping this in mind a chapter has been added under this title.

**Chapter - 6 : Conclusion and Suggestions**

Chapter 6 embodies the evaluation of the study in the form of appraisal. The study would be incomplete without offering suggestions. Therefore, after careful analysis of the rights of accused within the parameters of framework, suggestions for better enforcement and protection of fundamental rights pertaining to right to equality, right to silence during police interrogation, right to presence of counsel during interrogation, rights of detained person(under preventive detention laws), right to free legal aid, suggestions for reformation of bail law and compensatory justice under the Constitution, Cr.P.C. and PHR Act, 1993 etc. have been highlighted. The Chapter also compromises probable future trends which have been worked on the basis of the judgements and judicial trends and considering the present and future needs.