Law of Arrest: "Law in Books" and "Law in action"

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PREFACE

As a part of the law curricular and in order to gain more knowledge in the subject of C.r.PC under the topic arrest we are required to make a Research paper arrest without warrant; law in book and law in particle the basic objective behind this research paper is to understand the law used in books and the law used in practical life. In this research paper we have used various statutes and case laws. Doing this research paper has helped us to enhance our knowledge regarding the topic, we went through many relative topics through this research paper. We have come to know about the role of functionaries and the work under C.r.PC regarding the topic.

LITERATURE REVIEW

The main objective of this project is to enhance our knowledge regarding the same issues and to understand the present and past condition of this minority class of the society. Other than this all the information which is gathered are from authorized sources that is SSConline, Heinonline, Manupatra, Jstore etc and we are highly impressed with the material which was given to us and it was a matter of proud to study it.

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ABSTRACT

The term "arrest" originates in the Latin from the French word "arrester" The sense of stopping, remaining or including, and the sense of the rule is, legally speaking, an actual or Constructive confiscation or detention of a real or supposed individual Authorities, With the intention of getting the person into law custody. The procedures usually used in the law of arrest have steadily evolved from numerous replacements to private battle. The underlying concept was sell-help or self-restraint from primitive times. The injured party took it upon itself to make up for its loss. All communities are confronted with the police role nature problem. What's it? The policing duties, the extent of their control, and the methods are there any guarantees that police role is performed within limits? One big criticism against authoritarian modem states is that legal limits on modem states are not just Police powers loosely but, in fact, this power is mostly exercised without any Legal or moral prudence. Two signs of a well-organized society are the replacement of Legal remedies for self-help and marked distinction of criminal law of the judicial service Police. The arrest law consists of rules which deal mainly with: (1) meanings of arrest; (2) restrictions on the right of apprehension Arrest, differing with (a) the person making the arrest (police). Officer or private citizen), (b) the time of arrest in relation with that citizen Form of offence, (c) whether the arrest happens with or without a warrant; (3) issuing warrants; (4) issuing officer's duties or duties; Private individual after the arrest has been made; and (5) the consequences of (A) wrongful detention, and (b) neglect of duties following detention. This research is conducted to determine how the arrest law was complied with Particular attention has been paid to the application of the warrant in relation to the True police practice. This can be considered a case study of the larger theoretical issue results from the juxtaposition of two words, "law in book" and "law in action". The paper also discusses various landmark cases within the light of the topic and detailed information about the Amendments is provided. This paper also includes data from sources such as National Human Right Commission.

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INTRODUCTION

Protecting society from crime and lawbreakers is the primary aim of criminal law. Both procedural and substantive laws are part of criminal law. In India, the Indian Penal Code, 1860, is substantive law and the Criminal Practice Code, 1973, is procedural law. Two signs of a well-ordered society are the replacement of collective remedies for self-help in criminal law and the sharp separation of the police from the judicial role. The important step in replacing the unity of the people with the peace of the King in Frankish law is that a jury hearing replaces the ideals of vengeance and lynch, and one of the prides of the democracies is that detention does not amount to a prosecution[3]

The procedural elements of arrest are laid down in the Code of Criminal Procedure, according to which the complete process leading to the arrest of a person who has committed an offence is specified. Chapter V of the 1973 Code of Criminal Procedure deals with a person's arrest according to Sections 41 to 60.The word "arrest" comes from the Latin word "arreter" in French. The purpose of preventing, staying, or restraining, which legally means a real or constructive seizure or detention of the individual under a real or supposed authority in order to take the person into the custody of the law[4].

Preventive arrest is actually performed to deter a person from committing a potential cognizable crime. Historically, during British laws under the Bengal State Prisoners Regulation, 1818, preventive arrest was infamously used in India, which allowed the government to arrest or arrest anybody on mere suspicion.

The word arrest is not specified anywhere, but can be described as "a seizure or forceful restraint, an exercise of authority to deprive a person of his or her freedom." The main objective of the arrest is to put the defendant before a judge and to enforce the law safely. An arrest also serves the purpose of reminding society that an act that is against society has been committed by a single person and functions as a comment in the future to discourage crime.

[3]MUNROZ SMITH, THE DEVELOPMENT OF EUROPEAN LAW (New York: Columbia University Press, 1928) see particularly, 134-146.
[4]HORACE WILGUS, Arrest Without Warrant, MICHIGAN LAW REVIEW, Vol. 22 (1923-24), 543.

Section 151 authorizes a police officer to apprehend any person, without a warrant issued by a magistrate and without a warrant, if it appears to that officer that that person is intended to commit a cognizable crime and that the commission of an offence cannot otherwise be prevented.

EVOLUTION OF THE NOTION "ARREST"

A breach of peace in this early conception was a transgression against an individual rather than against a sovereign force of any sort. The very nature of self-help made it clear that people who had done wrongs could not cope effectively with the law or the king of the day.

In England, by the thirteenth century, self-help was largely replaced by some Procedures are more definitive[5]. Hue and Cry was commonly used to assist in offenders' capture, but it also meant that the law was very poor. When a person chanced, for instance upon a dead body he was to raise the hue and cry to attract the attention of the people in the community. The neighbors would then turn out with bows, arrows, and knives and the "hue" would be "homed from vill to vill.[6]'He would be taken forcefully to a court hastily called in situations where the perpetrator was overtaken and there were signs that he was liable for the crime. A member of the group could legally kill him if the accused resisted capture in some way. The accused could not say anything in self-defense so was usually executed by hanging, or beheaded. In the case of murder, the next of kin of the dead man could be responsible. Procedure was basically non-existent as such, for if the individual was it was almost a foregone conclusion that he must pay the penalty. He was caught.

Nevertheless, during the period covering roughly the fourteenth, fifteenth, and early sixteenth centuries the ordinary citizen in England had the same power to arrest suspected persons as an official even though he might be acting at his peril[7].By the latter part of the sixteenth century private citizens had relinquished their powers of arrest to officials of the government. The capacity of a private individual to arrest remained although it was at his peril. In this manner there was a gradual separation of the police function from the primitive "rule of lynch[8]."

[5]FREDERICKPOLIOCK AND WILLI.lf MAITLAND, HISTORY OF ENGLISH LAW.
[6]POLLOCK and MAITLAND, 577.
[7]WILLIAM HOLDSWORTRH, Vol. 3, HISTORY OF ENGLISH LAW.
[8]JEROME HALL, Legal and Social Aspects of Arrest Without a Warrant, HAVARD LAW REVIEW, Vol. 49.

However, in some specified circumstances, under common law, both the police officer and the private citizen could arrest without a warrant.

LAW OF ARREST IN "BOOKS"

The Rules of Common Law on Arrest without a warrant have a profound influence upon today's arrest procedures. Chapter five of the Code of Criminal Procedure, 1973 deals with the arrest of persons. Section 41 is the main section providing for situations when Police may arrest without warrant. It reads as follows:

• "The 41. When the police are permitted to arrest without a warrant-(1) Any police officer can arrest any person without an order from the magistrate and without a warrant.

(a) Who has been involved with some identifiable crime, or about which a reasonable allegation has been made, or who has obtained reliable evidence or is legitimately accused of having been so concerned;

(b) Who has in his hands, without a valid reason, the duty of proving the excuse shall lie to that person, or some act of house-breaking;

(c) Who has been declared to be a criminal either under this Code or by order of the Government of the State;

(d) In whose hands is found something which might fairly be suspected of being stolen property and which could reasonably be suspected of having committed an offence; or

(e) Who obstructs a police officer when doing his duties, or who escapes, or tries to escape, from lawful custody;

(f) (f) who is fairly accused of being a deserter of either of the Union's military forces;

(g)Who has been involved, or against whom a reasonable complaint has been filed, or where credible evidence has been obtained, or where there is reasonable belief that he has been concerned, by any act committed in any location outside India and, if committed in India, would have been punishable as an offence and for which he is liable, under any statute relating to extradition, or otherwise, to be enforced.

(h)Who, being a convicted citizen, commits a violation of any provision rendered pursuant to subsection (5) of section 356; or

(I) for whose detention any requisition, whether written or oral, has been issued from another police officer, such that the requisition specifies the person to be detained and the crime or other reason for which the arrest is to be made and it appears that the person can be legitimately arrested without a warrant from the officer who issued the requisition.

(2) Any officer in charge of a police station can, in the same way, detain or cause any person belonging to one or more of the groups of persons listed in section 109 or section 110 to be arrested."

- Another situation where a Police officer may arrest any person is stated in section 42. Another situation where a police officer may apprehend a police officer is stated in section 42. According to this section, if a person commits an offence in the presence of a police officer or has been accused of committing an non-cognizable offence and refuses to grant his or her name and residence to a police officer or to give him or her a false name or residence, that person can be arrested, but that arrest is for the sole purpose of deciding his or her name and residence.

  After such decision, he shall be released with or without promises upon execution of a bond, and shall appear before a judge, if so ordered. In the event that the name and residence of such a person cannot be ascertained within 24 hours of the date of arrest, or that such person fails, as necessary, to enforce a bond, he shall transmit it to the nearest competent magistrate.
- Section 43 describes a case where a private arrest may be made by a private person. The procedure needs to be followed for such an arrest by the person. Section 44 deals with a magistrate's detention. Under Section 45, members of the Armed Forces are covered from detention under Sections 41 to 44.The manner in which the arrest is set out is mentioned in section 46, Section 47 requires the police officer to enter a location if he has reason to suspect that the individual to be detained has entered that location or is inside that location. Section 48 requires police officers to persecute suspects in any location outside their jurisdiction in India.

- "However, Section 49 states that" The person detained shall not be subject to further limitations than are appropriate in order to deter his escape. Section 50 (referring to Article 22(1) of the Constitution) provides that the police officer shall promptly convey to the person under custody complete details about the offence for which he or she is being detained or on the grounds for such arrest. It also specifies that, if a person is being held for incarceration, the police officer shall alert the person of a bailable offence without a warrant, Arrested for arrest. Section 51 allows for the search of the arrested person, while section 52 requires the police officer to recover the offensive arms of the arrested person.At the recommendation of the investigating officer or at the request of the person detained, as the case may be, Sections 53 and 54 allow for a psychiatric examination of the person arrested. The procedure to be observed where a police officer deputies his subordinate to apprehend an individual without a warrant is laid down in Section 55 .Section 56 (which is identical to Article 22(2) of the Constitution) states that the person detained shall not be kept in custody of a police officer for a longer period of time than is reasonable and that, in any case, the period shall not extend 24 hours.
- Section 58 imposes a duty on the officers in charge of the police station to report to the stated authorities, within their jurisdiction, the arrests made without a warrant and whether or not those individuals have been admitted to bail. According to Section 59, no person arrested by a police officer shall be released, except on his own bond or bail, or by special order of the magistrate.

  The last section in the chapter, section 60, empowers the

  If he escapes or is released from his detention, he has the lawful custody to try and retake the arrested person.

PRACTICAL ASPECTS OF SECTION 41 AND 42

A reading of both of these sections shows the amount of power vested in Police Officers. Take the land, for instance, in clause (b) of Section 41. It allows a police officer to arrest an individual who is in possession of “any human, house breaking enforcement” and the burden is put on that person to satisfy that possession of such enforcement is not without" legal excuse. What does "house breaking introduce" mean?

Any rod of iron / steel or any appliance used by of house breaking, way-side repairers of punctured tires can also be used. Similarly, the (d) clause. Any individual discovered in possession of stolen property "and who may be fairly suspected of committing an offence in relation to such a thing." What is a broad discretion?

Take clause (a) itself for why. The circumstances protected by its a person who isconcerned with some cognizable offence; "a person who is" concerned with some cognizable offence," "a person who is concerned with some cognizable offence","a person who is reasonably accused of being" concerned with any cognizable offence"[9].

In fact, the generality of language and the consequent broad authority vested in police officers is immense, and it has been the very root of violence and misuse. In fact, the qualifying terms **"fair" "credible"** and **"reasonably"** in the section do not mean anything. In essence, they have become redundant.

MISUSE OF POWER OF ARREST

Notwithstanding the protections found in the Code of Criminal Procedure and the Constitution referred to above, the fact remains that, in a substantial number of cases throughout the state, the power of arrest is exercised wrongly and unlawfully. This power is most frequently used to extort money and other valuable property or to apprehend an enemy of the person arrested.

Except in the case of civil litigation, this power is invoked on the grounds of a false claim brought against a party to a civil dispute in the case of its adversary. The immense power granted by the C.r.PC to arrest an individual, except in the event of a bailable offence, can easily be exploited. For illustration, see section 151 of C.r.PC. There is still no in-house mechanism in the police force. But in those unusual cases, the Agency bears fruit in checking such misuse or abuse or in accusation of such misuse or abuse by senior police officers.

We must reiterate that we are not dealing with the vast discretionary powers of a simple civil service simplicity, we are dealing with the vast discretionary powers of the members of a firearms service, who are getting more and more complex with each passing day and whose actions impact the freedom and freedom of the people of this country and not just their

[9]www.heinonline.com.

entitlement.There is a civil service that is, no doubt, increasingly militarized to satisfy the emerging demands.

GUIDELINES LAID DOWN IN VARIOUS CASES BY SUPREME COURT

In ***Joginder Kumar v. State of U.P. (AIR 1994 SC 1349)***, , the powers of detention and the execution of those powers have been dealt with at length. The consistency of a nation's culture can be primarily determined by the strategies it employs to enforce criminal law, writes Ravi Agrawal. According to him, the rule of arrest is that of juggling human rights, freedoms and privileges, on the one hand, and individual roles, commitments and responsibilities, on the other. It's a matter of determining which comes first – a suspect or a society, a law-enforcer or a law-enforcer, he says. The next action to be made is D.K. Basu v. West Bengal State (AIR 1997 SC 610).

The next decision is referred to is D.K. Basu v. State of West Bengal (AIR 1997 SC 610).

The guidelines laid down in this particular Case are as followed:-

1. The police officers who carried out the arrest and handled the arrest the arrestee's questioning should be specific, noticeable and simple.Including their designations, identification and name tags. The identification of any those police officers performing the arrestee's interview must be registered in a log[10].
2. The fact that the police officer carrying out the arrest of the detainee is responsible for the arrest of a memo of arrest shall be written at the time of arrest and such a memo shall be drawn up. At least one witness may be a member of the family of the arrested person or a respected person in the position where the arrest is made. It shall also be countersigned and shall contain the time and date of the arrest of the convicted person.
3. The time, place of arrest and place of detention of an accused person must be notified by the police when the arrestee's next acquaintance or relative is via Legal Assistance

[10]PillaiChandrasekharan K.N, "lectures on Criminal Procedure", 6th edition, pg 39.

Organization in the District and the police station in the area involved, stays outside the district or town telegraphically for a span of 8 to 12 hours after the detention[11].

4. A person who has been arrested or detained and is being held in detention in a police department or detention facility or other lock-up shall be entitled to be told, as soon as possible, by an acquaintance or guardian or other person who is acquainted with him or has an interest in his health, that he has been arrested and is being detained at a specific venue, unless the witness attests to the memo.
5. The person arrested must be made aware of the right to have someone notified of his or her arrest or incarceration as soon as he or she is arrested or detained.
6. If required to do so, the arrestee should also be checked at the time of his arrest, and major and minor injury, if any, to his/her body must be reported at that time.
7. The "Inspection Memo" must be signed by both the arrestee and the police officer involved, and a copy must be given to the arrestee.

In the absence of conformity with the above-mentioned criteria, the in addition to making the individual concerned officially responsible for departmental action, It also renders him responsible for contempt of the Court and proceedings for contempt of the Court may be conducted in every High Court of the Court of Justice.

The specifications referred to above are taken from Articles 21 and 22(1) of the Constitution. And it is important to strictly follow the Constitution. In addition to the civil and legislative, these conditions are protections that do not distract from numerous other directions offered by the Courts in relation to the safeguarding of citizenship from time to time the integrity and dignity of an arrestee.

It is hoped that these provisions will serve to curtail, if not entirely eradicate, the use during questioning and prosecution of dubious practises leading to custodial commission of crimes.

II BROAD FEATURES DISCLOSED THROUGH THE DATA

The details given by the different States alluded to in Part One reveal the following broad features – (We also make our observations with respect to each feature):

[11]ShodhGanga.

The number of "preventive arrests" is exceptionally high. Preventive arrests clearly means arrests under sections 107 to 110 and 151 of the CrPC and municipal police decrees incorporating identical clauses. Although there is no discrepancy between the arrests made under Section 151 and Sections 107 to 110, we must understand that there is a qualitative disparity between them.

The number of convictions in bailable crimes is exceptionally high. However the number of suspects in bailable cases that stayed in custody/bail due to their failure to pay bail is still not given. Only the Condition of A.P. Relation is made to this factor without of course, giving the number of convicted to stay in prison.

The number of under-trial inmates in prisons is unusually high. The reasons for this may be the delays in the completion of proceedings in criminal courts, the rigidity of the existing legislation on bail and in some cases, the reluctance of the victim to provide bail. Casuality of which 28 prisoners' rights was dealt with by the prison authorities as well as by the criminal courts. The Supreme Court referred to the case **'Public Purpose, A Registered Society' v. UOI (1996) 4 SCC 33**'

In the present case, a written petition, pursuant to Article 32 of the Constitution of India, was filed by the Common Cause-a Society registered under the Societies Registration Act, 1860, engaged in addressing various common problems of citizens seeking redress, praying for the declaration of 'the right to die with dignity' as a constitutional right within the scope of the assured 'right to live with dignity' "My Living Will and Attorney' which must be submitted to the hospital for appropriate intervention in the event that an executor is admitted to a hospital with a significant disease, which may endanger the life of the executor or in the alternative, shall issue appropriate recommendations to this effect and appoint an advisory committee composed of physicians, social scientists and attorneys".[12]

It was held that under-trial inmates whose trials had been delayed for a period of time should be extended on parole or on a personal bond. These directives extended not only to cases pending on the dates of those orders, but were also prospectively successful. If and when the case of a single inmate comes within one or the other path provided in such cases, he must be freed. For this reason, both the criminal courts and the prison authorities should be diligent and collaborate

[12]Common Cause (A Regd. Society) vs. Union of India (UOI) (25.02.2014 - SC) : MANU/SC/0140/2014.

with each other. They must continuously track the facts about each imprisoned inmate. However, this is not done either because the prison administrators do not have complete and relevant facts or because the court itself does not understand these matters. This may be an unexpected influencing factor.

Many of the under-trial inmates who have been given parole are unable to use the said facility due to their failure to provide protection or to comply with the conditions for release. This is a practise that has been digging Indian prisons for many years, pending a variety of decisions by the Supreme Court. The number of arrests for minor crimes is large, if not higher than arrests for serious offences. This is a critical concern that needs our consideration. It is undoubtedly this aspect that has caused the Police Commissions to observe that a substantial number of arrests are needless. While the number of convictions in the statistics given by the different States is not clear, there is little question that the percentage of convictions in all of the States is very low.

III PROPOSALS TO AMEND THE CODE OF CRIMINAL PROCEDURE, 1973

The Code of Criminal Procedure divides the offences mentioned in the IPC into four different categories, namely,

(1) bailable and non-cognizable offences;

(2) bailable and cognizable offences;

(3) non-bailable-cognizable offences and

(4) nonbailable-non-cognizable offences [13]

(e.g., sections 466, 467 (first part), 476, 477 and 505 (first part) etc.) (There is a fifth category of offences e.g., sections 116 to 120, where the cognizability and bailability/non-bailability depends upon the nature of the main crime. This group includes and will be dealt with in line with the major crime.) Giving regard to the recommendations of the Third Report of the National Police Commission and the ratio and spirit of the judgments of Joginder Kumar and D.K. Basu and the judgments of the Supreme Court on the value of personal liberty guaranteed by Article 21 pose the question of whether it is not advisable to change the Code of Criminal Procedure by providing that:

[13]PillaiChandrasekharan K.N, "lectures on Criminal Procedure", 6th edition, pg 4

No person shall be detained for crimes that are actually treated as bailable and unrecognisable; in other words, the court shall not grant a warrant of arrest for those offences. Just a warrant to be delivered by a court of law-server or other means (but not 30 by a police officer) can be given. For this reason, the very word "bailable" will have to be modified. The word "bailable" means detention and automatic bail by the police/court. There seems to be little justification to detain a citizen convicted of what is now known as bailable—unrecognizable offences. It is correct because in the event of unrecognisable offences, the police cannot be detained without a warrant, which is clear from the provision.

(a) of section 41 but there are other sub clauses in section 41 which may empower this.

(b) provides that any person found in possession of “any implement of house breaking” is liable to be arrested unless he proves that there is lawful excuse for such possession.

(2) No arrest shall be rendered in respect to crimes already regarded as bailable and cognizable, but what can be referred to as a "notice of appearance" shall be served on the person directing him to appear at the Police Station or before the magistrate as and when called upon to do so, unless there are good grounds to assume that this should be limited to writing and reported to the higher police office. Section 41 must be amended accordingly in order to provide that no arrest may be made in the case of such crimes, except in the situation referred to above. Any 'excluded' offences from this Appendix shall continue to be regarded as bailable-cognizable offences.

(3) In respect of offences punishable with seven years imprisonment or less which are mentioned in Annexure-V (from which annexure, offences punishable under sections 124, 152, 216-A, 231, 233, 234, 237, 256, 257, 258, 260, 295 to 298, 403 to 408, 420, 466, 468, 477-A and 489-C, have been excluded) – and which are at present treated by the Code of Criminal Procedure as non-bailable–cognizable offences – should be treated as bailable-cognizable offences and dealt with accordingly. As long as offences exempt from this list (i.e. offences punished under section 124 and those referred to above) are concerned, they shall continue to be considered, as at present, as non-bailable-cognizable.

(4) No amendment is proposed to the current legislation in respect of non-bailable-cognizable crimes punishable by more than seven years in prison.

(5) As far as non-bailable-non-cognizable crimes punishable by up to seven years are concerned, they are listed as non-cognizable offences, taking into account the essence of the offences, even though they are regarded as non-cognizable by statute.[14]

3.2 General principles to be observed in the matter of arrest.-

The following general principles shall be observed in the matter of arrest for offences (other than those offences for which the punishment is life imprisonment or death but not offences where the punishment can extend up to life imprisonment) shall be followed:- 32 Arrest shall be effected

(a) Where it is necessary to arrest the accused to bring his movements under restraint to infuse confidence among the terror-stricken victims or where the accused is likely to abscond and evade the process of law;

(b) where the accused is given to violent behavior and is likely to commit further offences unless his movements are brought under restraint or the accused is a habitual offender and unless kept in custody is likely to commit similar offences again;[15]

(c) where the arrest of the persons is necessary to protect the arrested person himself; or

(d) where such arrest is necessary to secure or preserve evidence of or relating to the offence; or

(e) where such arrest is necessary to obtain evidence from the person concerned in an offence punishable with seven years or more, by questioning him.

In this connection, reference can be made to section 157 of the Code of Criminal Procedure, which states that if a police officer continues to examine the details and circumstances of the case (receiving intelligence on the commission of the offence), the defendant shall be detained only if it is "necessary." Subsection (1) of section 157, to the effect that it reads as follows: "(1) If, on the basis of intelligence obtained or otherwise, an officer in charge of a police station has cause to suspect the commission of an offence to which he is empowered under section 156 to investigate, he shall immediately give a report of the same to the Magistrate empowered to take care of that offence on the basis of a police report and so to take measures for the discovery and arrest of the offender…."[16]

[14]LAW COMMISSION OF INDIA CONSULTATION PAPER ON LAW RELATING TO ARREST.
[15]www.heinonline.com.
[16]Ratan lal and Dhiraj lal ,"The code of criminal procedure ",23 edition ,pg 411.

Merely on suspicion of complicity in an offence, no arrest shall be made.-The legislation shall expressly provide by amending section 41 and other related provisions, if any 33, that no person shall be arrested solely on suspicion of complicity in an offence. The investigating officer must be satisfied prima facie on the grounds of the material before him that he or she is engaged in a crime/offence for which he or she could be arrested without a warrant. In this connection, reference may have been made to the opinion of the European Court of Human Rights in Fox, Campbell and Hartley v. U.K. Declaring that Section 11 of the Northern Ireland Emergency Provisions Act, 1978 is in violation of Article 5(1) of the European Convention on Human Rights, delivered on 30 August 1990. The provision allowed a police officer to apprehend a citizen if he was "suspected to be a terrorist." The Court (by majority) ruled that simple doubt, however bona fide it could be, should not be a basis for detention. Pursuant to the ruling, the above-mentioned terms were replaced by the words "was concerned in the commission, preparation or instigation of acts of terrorism." This decision is in keeping with the modern definition of human rights, which is implicit in Section III of our Constitution.[17]

Incorporation of the protections found in the D.K. Basu's case.-It is equally important to grant statutory approval to the protections found in the judgment of the Supreme Court in D.K.Basu. The protections to be implemented (No. 1 to 11) have been set out above.

Bail should be given as a matter of course, except in the case of serious offences and in such circumstances.-In view of all offences except serious offences such as homicide, felony, kidnapping, rape and offences against the State, the bailable conditions should be made liberal and the bail should be granted almost as a matter of course, except when it is apprehended that the accused can vanish and e. The terms of the Cr.PC concerning the granting of bail can be amended accordingly.

Ensuring the protection and well-being of the prisoner is the duty of the detaining authority.-The statute should thus specifically specify that after the detainee is arrested, it is the responsibility of the arresting and detaining authority to ensure the safety and well-being of the detainee. The National Police Commission's decision on the compulsory medical test of the person detained deserves to be followed. In that relation, the decision of A.P. High Court of Challa Ramkonda Reddy v. State of A.P. (AIR 1989 AP 235) – recently upheld by the Supreme Court in AIR 2000

[17] LAW COMMISSION OF INDIA CONSULTATION PAPER ON LAW RELATING TO ARREST.

SC 2083 – and the instances provided therein, in which the State will be responsible for damages incurred by incompetence or neglect on the part of the police/jail authorities, should be kept in mind. To put it quickly, take a case where a person is arrested for simple robbery or simple rioting; He is a heart patient; he is not allowed to take his medications with him at the time of his capture, and he is not given any medicines despite his plea, and he dies. Or a situation in which such a person (though holding his or her medicines) suffers from a heart attack and fails to take sufficiently timely measures to offer immediate assistance to him or her by the authority concerned and he or she dies. It is obvious that had he not been arrested, his family and friends would have taken care of him. Should he die for want of medical help, only because he has been arrested and detained for a minor offence? It would be too big a punishment. In such cases, State would be liable for damages. [18]

The record of custody to be maintained at any police station.-The legislation should also provide that every police station shall retain a record of custody (which shall be available for review by members of the Bar and representatives of registered NGOs concerned with human rights) containing, inter alia, the following information: (a) the name and address of the person arrested/detained; (b) the name, rank and badge number; It must be clarified that the protections alluded to above are in addition to those required by the judgement of the Supreme Court. In D.K. Basu which must be given legislative recognition by making necessary amendments.

Tortious duty of the Administration.-Another factor which needs to be informed in this name is the opinion of the Supreme Court in Kasturilal Raliaram v. State of U.P. [1965 SC 1039]. In this situation, the gold seized from the individual arrested was held in the Malkhana police station, but was misappropriated by the police officer in question. The person arrested was freed, but the gold could not be returned. When an individual brought an action for the recovery of gold or its worth, the Supreme Court refused to do so on the ground that there was no suit in respect of the tortuous actions of the government servants which were due to the sovereign powers of the State. It was thus held to depend on Article 300 of the Constitution, which retains the freedom and the duty of the State to prosecute and to be sued until the beginning of the Constitution. In reality, says that the said rule shall continue until a law is made by the Parliament or the State Legislature, as the case may be, laying down the situations in which the State shall be liable for

[18] www.manupatra.com.

the tortious acts of its servants and where it shall not be liable on the ground that that act was done in exercise of the sovereign powers of State. The distinction between sovereign and non-sovereign 37 functions also needs to be clarified in view of the conflict between the judgments of the Supreme Court.

This consultation paper can be concluded with the opinion held by Shri Justice M.N. Venkatachaliah, then President of N.H.R.C., that 'the power to stop, search, arrest and interrogate is wielded against a person who may eventually turn out to be an innocent, law-abiding citizen. Arrest has a declining and demoralising effect on his personality. He is outraged, alienated, and violent. But then a balance must be struck between, on the one hand, the protection of the State (and the common interest of peace and law and order) and, on the other, human rights."[19]

CONCLUSION

Here we hit the conclusion of our 'arrest'-related report. As we go through the pages, it can be reasonably derived that 'arrest' lies as a 'power' to the police officers who are ordered to do so or to the judge who can do it on the basis of his views. However, there may be few problems that lie when it comes to the detention of a 'private citizen.' Because not many citizens will be aware of the fact that the Code of Criminal Procedure allows for an ordinary citizen to be arrested, but only when he observes an act banned by the statute.

In comparison, however the detained citizen still has a variety of protections to deal with any wrongdoing that may happen to him while in jail.

We addressed how a person can be detained without a warrant. But by reviewing the Commission's data on the Law of Arrest, we realize that people are not aware of their rights as to how this power to secure peace in society is being misused.

[19] Message of Justice M.N. Venkatachaliah, Chairperson, National Human Rights Commission On the occasion of UNITED NATIONS INTERNATIONAL DAY IN SUPPORT OF VICTIMS OF TORTURE, 26 JUNE 1999

The detention of a citizen has a demoralizing and weakening impact on his identity. The person so arrested becomes scandalous, isolated and violent. There should also be a compromise between the protection of the state and the rights of the citizen.

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