

## JUDICIAL APPROACH TOWARDS SAFEGUARDING THE RIGHTS OF ARRESTED PERSONS

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### **ABSTRACT**

*The fundamental rights enshrined in the Constitution of India serve as a check on the powers of legislative as well as executive law-making bodies to ensure the rule of law. The power to abridge or violate the fundamental rights of an individual – a free person or an arrested and detained person, is subject to constitutional guarantees. The way a free individual enjoys fundamental rights, an arrested person too, to some extent, has been guaranteed such rights. The Constitution embodies the rule of law that dictates an unfanciful approach to dealing with arrested persons. It calls for authorities to follow an established procedure to ensure the application of constitutional safeguards against arbitrary arrest and detention. To ensure compliance, the judiciary plays a pivotal role by upholding the inviolability of fundamental rights of arrested and detained persons. In doing so, it often interprets the constitutional and legal provisions in the broadest possible way to preserve the spirit of the Constitution. The approach of the judiciary has been tremendously active and supportive in protecting and upholding arrested persons' rights. Various landmark judgments contribute to safeguarding the rights of such persons. As a general procedural law, the Code of Criminal Procedure 1973, furthermore, provides safeguards to prevent arbitrary arrest and inordinate use of power. It protects the rights of arrested persons by requiring arresting authorities to act in a certain manner. In this context, this article is an attempt to delve into the arena of rights and safeguards available to arrested and detained persons under the Constitution and the Criminal Procedure Code and how the judiciary has been instrumental in protecting them. The need for a vigilant judicial approach and what predicaments courts confront while dealing with arbitrary use of powers of arrest and detention by the authorities have been also dealt with in the paper.*

**Keywords: Arrested Persons, Criminal Procedure Code, Fundamental Rights, Judicial Activism, Rule of Law.**

### **INTRODUCTION**

In modern democracies with written constitutions, the rule of law protects the rights and liberties set therein to maintain a balance between the state's power and the individual's existence. The rule of law requires all individuals, including those arrested, to be protected against whimsical actions aimed at violating their fundamental rights. It strikes against arbitrary and unreasonable state action and requires that individuals are protected against actions infringing or abridging their civil liberties. Consequently, it forbids arrest or detention that violates the procedure established by law and calls for equity in approach and equal

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protection of the laws. Besides, the rule of law enhances the probability of compliance with the law when the governing authorities apply the parameters recognised and established by law without an arbitrary approach. It reduces the likelihood of a person engaging in behaviour that may harm society.

The Indian Constitution and the Code of Criminal Procedure provide extensive protection to safeguard the rights of arrested persons and mandate fairness of approach from the stage of arrest to the completion of the trial. In an adversarial criminal justice system, the innocence of an accused person is the fundamental rule that calls for protecting human dignity and extends to protecting the fundamental rights of an arrested person. While depriving any person of his life and personal liberty, humane treatment and freedoms guaranteed for the existence of more than a mere animal are indispensable and are a bare minimum.

The Constitution guarantees certain fundamental rights to all individuals, including arrested persons. Article 21 guarantees the right to life and personal liberty, which also extends to an arrested person to a certain extent. In its broader perspective, Article 21 mandates the rule of law as enshrined in the Constitution. Besides being constitutional, a law depriving a person of his freedom must pass the test of fairness and reasonableness in its procedural aspect. Fair trial is another unenumerated right established by the judiciary under Article 21; the privilege against self-incrimination under Article 20(3) also protects an arrested person from becoming a witness against himself, as the burden of proving the guilt of such a person lies on the prosecution in an adversarial system. Article 22 provides various safeguards against arbitrary arrest and detention, including the right to legal representation. Articles 14 and 19 deal with the right to equality and the freedom of speech and expression to an extent restricted only by reasonable restrictions, respectively.

The Code of Criminal Procedure is in tune with the spirit of the various rights provided to an accused under the Constitution. It is mainly accused-centric instead of victim-centric so that an innocent person is not punished while administering criminal justice. Thus, it provides a procedure for arrest, investigation, inquiry, and trial as a check on the abuse or misuse of power and requires a balance between the individual's interest and state authority at every step of the exercise of power, which restricts the liberty of an accused person.

The judiciary acts as a watchdog and keeps a keen eye on the legislative and law enforcement authorities' actions by safeguarding and enforcing every individual's fundamental rights. It intervenes where the arrest of a person is not lawful and is empowered to order his release or direct the police to comply with the safeguards provided under the law.

This paper highlights the grim reality of the plight of arrested persons in India. Various issues have been identified that interfere with the rights of arrested and detained persons, such as overcrowding of prisons, lack of legal aid, inadequate accountability of the police, and widespread use of pretrial detention, etc. The proactive role of the judiciary in safeguarding the rights of arrested persons through the vigorous exercise of its power to entertain public interest litigation is also evaluated.

## CRIMINAL JUSTICE SYSTEM IN INDIA

In India, various substantive and procedural laws provide for the administration of the criminal justice system. On the one hand, laws are designed to maintain law and order, on the other, they protect the rights of citizens. It is a complex and multi-layered process that involves various agencies, such as the police and courts, which are responsible for investigating crimes, prosecuting the accused, and ensuring that justice is served. The police are responsible for the investigation, and the state initiates the prosecution as the crime is considered an offence against society rather than merely against a victim. The offences that lead to arrests in India range from minor traffic violations to serious offences, such as murder and rape. Despite the mechanism established for the administration of criminal justice, the system faces several challenges. The systemic issues and challenges that need to be addressed include delays in disposing of cases that often result in prolonged detention and lengthy trials. It, in addition, leads to overcrowding of prisons and a backlog of cases in the courts. The National Crime Reports Bureau shows an increase of 14.9% in the number of undertrials in 2021 compared to 2020.<sup>1</sup> The report further said three-fourths of the jail inmates were under-trial prisoners. In 2021, 77% of total prisoners in jails in India were under-trials.<sup>2</sup> These delays often result in denial of justice and violation of the fundamental right to a speedy trial. Thus, adequate measures must be adopted to prevent and control such challenges. It is possible to achieve such an objective only when laws are appropriately implemented, from an accused person's arrest to his investigation and trial. One such challenge the system faced emerged during the 2012 Nirbhaya case<sup>3</sup>, which irked the conscience of every Indian generated widespread outrage about gender-based violence and called for legal reform in the criminal law. The trial took over seven years, with delays attributed to various factors. These include the complexities related to the age of maturity of juvenile offenders to understand the consequences of committing the offence of rape. The protracted delay in the decision was also due to the number of accused involved and procedural delays. Despite many challenges, the court demonstrated the potential of the criminal justice system to deliver justice for heinous crimes. It awarded death sentences to four criminals considering it as the rarest of rare cases. The Juvenile Justice Board sent the minor to a reformation home for three years, whereas the sixth co-accused committed suicide in jail before his conviction.

The challenges the criminal justice confronts due to the increasing number of arrests and decreasing conviction rates need to be addressed effectively. According to the National Crime Records Bureau (NCRB) data, the registered cases increased by 3.6% in 2017 over 2016. As against 48,31,515 cases in 2016, 50,07,044 cases of cognizable crimes were registered under IPC, Special, and Local Laws in 2017.<sup>4</sup> There were 50,74,634 cognizable offences reported in 2018 compared to 50,07,044 in 2017. The number of cases registered

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<sup>1</sup> NATIONAL CRIME RECORDS BUREAU, PRISON STATISTICS INDIA 2021, xii, [https://ncrb.gov.in/sites/default/files/PSI-2021/Executive\\_ncrb\\_Summary-2021.pdf](https://ncrb.gov.in/sites/default/files/PSI-2021/Executive_ncrb_Summary-2021.pdf) (last visited March 19, 2023).

<sup>2</sup> Sreedev Krishnakumar, 77 percent of India's Prisoners are undertrials: NCRB, MONEYCONTROL (Sep. 27, 2022, 12:07 PM), <https://www.moneycontrol.com/news/india/77-percent-of-indias-prisoners-are-undertrials-ncrb-9142041.html>.

<sup>3</sup> Mukesh & Anr v. State for NCT of Delhi & Ors., (2017) 6 SCC 1.

<sup>4</sup> NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA 2017, Vol. 1, vii, [https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202017%20-%20Volume%201\\_0\\_0.pdf](https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202017%20-%20Volume%201_0_0.pdf) (last visited Mar. 16, 2023).

increased by 1.3% over 2017.<sup>5</sup> In 2021, there was a decline of 7.6% in the registration of cases over 2020. It was 60,96,310 in 2021 compared to 66,01,285 in 2020.<sup>6</sup> However, the data on different cognizable offences show that the number of convictions concerning the number of arrests made from 2017-2020 is considerably less, which shows that the police need to be reasonable while making arrests. Table 1 show the number of person arrests and convictions, discharges, and acquittals for four years from 2017-2020.

**Table 1: Disposal of Persons Arrested under IPC Crimes<sup>7</sup>**

Year	Arrested	Charge-sheeted	Convicted	Discharged	Acquitted
2017	37,27,909	35,72,935	8,73,983	1,08,354	11,57,236
2018	33,15,033	35,75,644	8,64,686	89,735	10,73,377
2019	31,12,639	35,56,801	8,37,075	1,22,033	10,26,906
2020	44,24,852	44,17,740	6,34,229	55,650	5,03,044

**Source:** National Crime Records Bureau.

All these challenges have been dealt with through reforms in the criminal justice system, which are mainly based on various reports of the Law Commission and also the result of judicial activism adopted to ensure the rule of law through its landmark decisions which emphasise the right of legal representation of the accused, increasing accountability of law enforcement officials, and addressing biases and discrimination that exist in the system. In 2013, Section 375 of the Indian Penal Code was amended. It broadened the scope and definition of rape in Section 375. It inserted Sections 354A to 354D into IPC. The 2013 Criminal Law Amendment was in tune with the Justice Verma Committee recommendations that suggested to broaden the meaning of rape. The committee was constituted to recommend ways for conducting fast trial and suggest punishment of the accused for committing rape.<sup>8</sup>

## JUDICIAL ACTIVISM AND FUNDAMENTAL RIGHTS OF ARRESTED PERSONS

Judicial activism refers to a philosophy of decision-making where judges are inclined more towards protecting individual rights and liberties by interpreting the law and the Constitution. In safeguarding the rights of accused persons under the Constitution, judicial activism can have a significant impact. In India, judicial activism has led to scrutiny of government actions, including law enforcement practices, to ensure the consistency of such activities with

<sup>5</sup> NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA 2018: Statistics, Vol. 1, xi, [https://ncrb.gov.in/sites/default/files/CII%202018%20SNAPSHOT%20STATES\\_1\\_1.pdf](https://ncrb.gov.in/sites/default/files/CII%202018%20SNAPSHOT%20STATES_1_1.pdf) (last visited Mar. 16, 2023).

<sup>6</sup> NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA 2021, Vol. 1, xi, [https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202017%20-%20Volume%201\\_0\\_0.pdf](https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202017%20-%20Volume%201_0_0.pdf) (last visited Mar. 16, 2023).

<sup>7</sup> National Crime Records Bureau, Government Of India, Crime in India Table Contents, Table 19a. 5 (2020), 7-8; Table 19A. 5 (2019)7-8, [https://ncrb.gov.in/sites/default/files/crime\\_in\\_india\\_table\\_additional\\_table\\_chapter\\_reports/Table%2019A.5\\_1.pdf](https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2019A.5_1.pdf); Table 19A. 5 (2018) 7-8, [https://ncrb.gov.in/sites/default/files/crime\\_in\\_india\\_table\\_additional\\_table\\_chapter\\_reports/Table%2019A.5\\_0.pdf](https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2019A.5_0.pdf); and, Table 19A. 5 (2017)7-8, [https://ncrb.gov.in/sites/default/files/crime\\_in\\_india\\_table\\_additional\\_table\\_chapter\\_reports/Table%2019A.5\\_2.pdf](https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2019A.5_2.pdf) (last visited Mar. 16, 2023).

<sup>8</sup> Akshayan K S, Mukesh v. State for NCT of Delhi, *Indian Law Portal* (Aug. 23, 2020). <https://indianlawportal.co.in/mukesh-v-state-for-nct-of-delhi/>.

constitutional protections. The key challenges the judiciary has confronted while protecting the rights of arrested persons include custodial violence, lack of legal aid, delays in the trial, and a growing number of under-trials languishing in jails awaiting trials for several years. While addressing such challenges, the courts have laid various legal principles implicit in the Constitutional provisions in Part III. While interpreting the scope of personal liberty and the rights of an arrested person, an observation made by Justice Krishna Iyer in *State of Rajasthan v. Bachand*<sup>9</sup> led to the coining of the legal principle, 'Bail is the rule, and jail is the exception'. This was based on the fact that bail serves the role of securing the appearance of the accused. Its object is neither punitive nor preventive. Deprivation of liberty might result in punishment if the later arrest is unjustified. Since then, the principle has been reiterated and affirmed in various judgments of the Supreme Court.<sup>10</sup>

Emphasizing the fundamental right of an arrested person to seek legal counsel, the Apex Court in *Nandini Satpathy v. P. L. Dani*<sup>11</sup> declared that the right to consult the legal practitioner cannot be denied during the police investigation. Nandini Satpathy, a former Chief Minister of Odisha, arrested under the Prevention of Corruption Act 1947, was not allowed to consult her lawyer during the police investigation. The Court held that the right to legal counsel was a fundamental right guaranteed under Article 22(1) of the Constitution. It cannot be waived and the arrested person must be allowed to consult a lawyer in the police custody. The judgment in this case significantly impacted the criminal justice system in India. It clarified that the arrested person has the right to consult a lawyer. It laid down guidelines for the police to ensure that a detained person gets an opportunity to consult a lawyer. Besides, the court also held that the police could not detain a person beyond the period prescribed under Article 22. It emphasised the rule of law enshrined in Article 22 to produce within 24 hours an arrested person before the nearest magistrate. In another historic decision, *Hussainara Khatoon v. State of Bihar*<sup>12</sup>, the Supreme Court interpreted an implicit law in Article 21 that guarantees the right to a speedy trial. The court directed the state to take necessary measures to ensure the trial was expedited and justice was delivered within a reasonable time. In *Kishor Singh Ravinder Dev v. State of Rajasthan*<sup>13</sup>, the apex court took note of a telegram sent to it complaining about solitary confinement and the use of iron fetters to the petitioner and other accused in custody. The court ordered to set them free from solitary confinement and produce them before it. In *Sheela Barse v. State of Maharashtra*<sup>14</sup>, the court treated the letter addressed to it by the petitioner, a journalist, regarding assault and torture meted out by women prisoners. At the same time, they were in the police lock-up as a writ petition. They disclosed it in an interview given to the petitioner whom the petitioner interviewed in Bombay Central Jail. The Supreme Court found that they had no access to legal assistance besides those allegations. The court directed that affording legal assistance to an arrested or accused person, who is poor or incapable of accessing justice, is a

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<sup>9</sup> 1977 AIR 2447.

<sup>10</sup> *Dataram Singh v. The State Of Uttar Pradesh*, (2018) 3 SCC 22; *Satender Kumar Antil v. Central Bureau of Investigation*, AIR Online 2022 SC 956.

<sup>11</sup> (1978) 2 SCC 424.

<sup>12</sup> 1979 AIR 1369.

<sup>13</sup> (1981) 1 SCC 503.

<sup>14</sup> 1983 SCR (2) 337.

constitutional necessity as mandated by Article 39-A. It is also a fundamental right under Articles 14 and 21.

In *Joginder Kumar v. State of U.P.*,<sup>15</sup> the apex court stated that the police officer is empowered to exercise the power of arrest in a mere allegation of the commission of a cognizable offence under the Code of Criminal Procedure. Although lawful, the police officer should not arrest an accused routinely as that would cause harm to the reputation of the person arrested. While arresting a person, except for heinous crimes, the police officer should be reasonably satisfied that the person has committed a crime. His arrest should not be avoided and is necessary. The Court laid extensive guidelines for enforcing the rights guaranteed under Articles 21 and 22(2). The impact of the case has been significant in reducing custodial violence and torture. The guidelines laid in the case have led to greater accountability and transparency in police investigations. The procedural requirement inserted by the 2009 Criminal Law Amendment substituting Section 41B (b) (i) in the 1973 Code of Criminal Procedure for the arresting officer to prepare a memorandum of arrest and its attestation by at least one witness will have the effect of reducing the cases of illegal detention and false arrests.

The *D K Basu* case<sup>16</sup> is a landmark judgment where the Supreme Court expressed deep concern and pain over the growing custodial torture and deaths. It laid down guidelines that would serve as a check and control on the cases of custodial violence and in turn would protect the rights of arrested persons. The Court directed that it was incumbent on the police officer to inform the person arrested of the grounds of the arrest and the right to seek legal advice. Besides, the court directed the police office to prepare the arrest memorandum attested by at least one family member or a local person as a witness. It added that the police must produce the arrestee, as stipulated in Article 22(2), before the nearest magistrate, whether executive or judicial, within 24 hours of arrest. Medical examination at the time of arrest and after 48 hours has been specified therein. The case has led to greater awareness of the rights of arrested persons, though instances of custodial violence and human rights violations have not ended altogether. The death of two traders: a father and his son, at Sathankulam Police Station, Tamil Nadu, after police torture during COVID-19, is another example of custodial violence.<sup>17</sup>

In *Manubhai Ratilal Patel v. State of Gujarat*<sup>18</sup>, the apex court held that the fundamental right as enumerated in Article 20(3) which extends to protection against self-incrimination, gives an accused a right to stay silent and speak nothing during the trial. The court further held that the right to stay silent and not to be forced to be a witness against himself is a fundamental right available to the arrested person as well.

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<sup>15</sup> 1994 AIR 1349.

<sup>16</sup> *Dilip K. Basu v. State of West Bengal and Ors.* (1997) 1 SCC 416.

<sup>17</sup> ETB Sivanpriyan, Father-son duo died due to torture in police custody: CBI, *Deccan Herald* (Sept. 26, 2020, 19:27 IST) <https://www.deccanherald.com/national/south/father-son-duo-died-due-to-torture-in-police-custody-cbi-893435.html>

<sup>18</sup> (2013) 1 SCC 314.

In *Siddharth v. State of Uttar Pradesh*<sup>19</sup>, the Supreme Court, while interpreting S. 170 of the Code of Criminal Procedure, held that arrest should not be made routine as it is not mandatory. The power of arrest is discretionary unless the investigating officer believes that the accused would abscond or disobey the summons. It may be necessary to be exercised when either the offence alleged is heinous or when the possibility of the accused absconding exists. S.170 does not contemplate arrest to keep the accused in police or judicial custody. Instead, it expects the presentation of the accused by the investigating officer before the court when filing the chargesheet.

The judiciary has been very instrumental in safeguarding the rights of arrested persons guaranteed under Part III of the Constitution. By emphasising the importance of various rights to arrested and detained persons, including the right to be informed of the grounds for arrest, fair trial, protection against custodial violence, bail, etc., the judiciary has widened the scope of fundamental rights afforded to the arrested persons.

### **CRIMINAL PROCEDURE CODE AND ARRESTED PERSONS**

The 1973 Code of Criminal Procedure provides various rights to arrested persons that are essential to protect the dignity and ensure fair investigation and trial of such persons. The judiciary has played a role in interpreting and enforcing the provisions of the Code through liberal interpretation of its various provisions vis-à-vis the fundamental rights enshrined in the Constitution of India. Section 41 D of the Code guarantees legal counsel's consultation during interrogation, though not during the entire period of interrogation. However, the right is often violated, which is evident from various decisions of the courts. The court stipulated the abovementioned right in *Hussainara Khatoon* and *Sheela Barse's* cases. While interpreting the freedom of choice of appointing a lawyer to represent and defend an accused arrested does not give any right to the state to compel them to accept a state-appointed lawyer.<sup>20</sup> Section 50(1) of the CrPC imposes a duty on the police officer arresting without a warrant to explain the particulars of the offence for the commission of which the accused is arrested. Besides, informing the accused of the grounds of arrest is a sine qua non to make the arrest legal. In case of non-compliance, the arrest becomes illegal.<sup>21</sup> Additionally, the arrest made on warrant would become unlawful if made without notifying the substance of the alleged offence committed by the accused person.<sup>22</sup> The basis for affording the right is that it gives ample time to the arrested person to apply for bail or seek other remedies, including the writ in the nature of habeas corpus under Articles 32 or 226 of the Constitution. Various other provisions also recognise this right under sections 55 and 75 of the Code. The rules established in *Joginder Kumar* and *D K Basu* cases now find a mention in Section 51-A<sup>23</sup> that makes the police accountable by mandatorily requiring the arresting officer to inform the relative or friend of the arrested person besides making an entry of the arrest in a register to be maintained according to the State rules. Moreover, the duty of the arresting police officer to inform the arrested person to be released on bail in a bailable offence is another safeguard

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<sup>19</sup> (2022) 1 SCC 676.

<sup>20</sup> (2011) 7 SCC 547.

<sup>21</sup> *Ajit Kumar v. State of Assam*, 1976 CriLJ 1303 (Gau).

<sup>22</sup> *Satish Chandra Rai v. Jodu Nandan Singh* ILR (1899) 26 Cal 748.

<sup>23</sup> Inserted by the 2005 Criminal Law (Amendment) Act that came into effect from 23-6-2006.

provided under Section 50(2). Based on the protection afforded in Article 22(2) of the Constitution, unless released on bail, Sections 56, 57, and 76 of the Code also ensure the production of the arrested person before a Magistrate without unnecessary delay within 24 hour time period to ascertain the lawfulness or justification for deprivation of liberty of such a person. In *Khatri (2) v. State of Bihar*<sup>24</sup>, the apex court stated that the constitutional safeguard in Article 22 and the legal requirement under the Criminal Procedure Code are enabling provisions that empower the magistrates to check the misuse of powers by the police during investigation and also ensure obedience. They also empower the court to hold the police officer guilty of wrongful detention where he violates the law. However, the court went a step further by categorically laying down in *Suk Das v. UT of Arunachal Pradesh*<sup>25</sup> that the failure of the accused to apply for the right would not disentitle him from availing the right. It would invalidate the trial, which may require the proceedings, conviction, or sentence to be set aside or de novo conduct the trial.

The judicial approach has also been very significant in interpreting the rights of arrested persons. In *Khatri's* case, while analysing the constitutional mandate implicit in Article 21, the court highlighted the state's duty to provide free legal aid to persons who cannot afford legal representation. It held that the right to legal assistance arises when the trial of the accused begins. It is available to him when he is produced before the magistrate or sent to judicial custody. It further said that the right of the indigent would be surreal if the court failed to give information about it when produced before it. Section 54 of the Code also empowers the court to order the medical examination of the accused, as he has a right to defend himself. When a medical examination is necessary to establish innocence against the charge framed or when he is subjected to physical injury, Section 54 gives him the right to demand medical examination.<sup>26</sup> Not only that, the court in *Sheela Barse's* case laid that the magistrate must inform the accused about the right to be medically examined. The Delhi High Court took note of the non-compliance of the provision by the magistrates in the case of *Mukesh Kumar v. State*,<sup>27</sup> where it issued directions for the magistrates to mandatorily ask the arrested persons regarding complaints of torture or maltreatment in police custody. It also laid a duty on the magistrate to enquire if the accused was aware of his right of examination by a medical practitioner as such ignorance would affect his right to defend his cause effectively. The frequent atrocities by the police and custodial deaths in police stations impelled the Supreme Court in *D K Basu's* case to review its earlier decisions and issue directions to be followed in all arrest cases. These directions now exist as various provisions incorporated by various criminal law amendments in the Code.

It is clear from the above discussion that the judiciary has been paramount in performing the role of a watchdog and the protector of the rights of persons, including the arrested. Though the safeguards to the arrested and detained persons exist in Constitution of India and the Code of Criminal Procedure, their implementation lacks in the true spirit. Judicial activism has, however, led to the enforcement of the rights of arrested to a greater extent and ensured their

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<sup>24</sup> (1981) 1 SCC 627.

<sup>25</sup> 1(986) 2 SCC 401.

<sup>26</sup> K. N. Chandrasekharan Pillai, "R. V. Kelkar's Criminal Procedure" 83 (EBC Publishing (P) Ltd. 2021)

<sup>27</sup> 1990 Cri LJ 1923 (Del).



availability and exercise by the arrested persons, however, a great need to be done to prevent their violation.

## **CONCLUSION**

The protection of the rights of arrested persons is a fundamental tenet of a democratic society where the rule of law is a *sine qua non*. Nonetheless, it remains the responsibility of the state to ensure that these rights are protected by training the police officers executing the laws. There is an urgent need to address the shortcomings and fill the gaps that prevent the effective administration of the criminal justice system in India. It is also needed to provide greater protection for the rights of arrested persons. The judicial activism and principles devised through it by the courts would go a long way in upholding the rights of these persons and would ensure equality of treatment. They have increased awareness, accountability, and transparency in police investigations and government actions. They have also emphasised the importance of protecting the fundamental rights of citizens, including the right of arrested persons to seek legal counsel and the right to a fair trial. While there is still a long way to go in implementing these guidelines effectively, these cases have played a crucial role in ensuring that the right of arrested persons is safeguarded and protected in India.

There is a need to improve legal aid services in India to ensure that arrested persons have access to legal advice and representation, particularly for those who have no means to afford a legal counsel. To reduce instances of police misconduct, and abuse, police accountability through establishing an independent oversight mechanism needs to be set. Besides, the overuse of pretrial detention should be curtailed, and alternatives such as bail, release on personal recognisance, etc., should be done. Also, overcrowding, solitary confinement and poor living conditions in prisons must be addressed, and steps should be taken to ensure that the fundamental rights of inmates are respected.