

## BAIL PROVISIONS AND RIGHTS OF ARRESTED PERSONS IN INDIA

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*“Injustice anywhere is a threat to justice everywhere.”*

*– Dr. Martin King Luther Jr.*

Over the development of the Legal world over the years, many changes took place which made the law more directed and concerned towards the people's rights. Nevertheless, the law was created for the ease and betterment of society but statutory dominion is another aspect of it. Abuse and mistreatment of the powers given to public servants have taken a toll. Not just in India but globally, it has been observed that people in prisons have been victims of several kinds of brutality in either police custody or falsely implicated in a crime scene. Many international organizations like United Nations Human Rights Council have also raised concerns about prison violence. Therefore, it becomes vital to deliver justice fairly and impartially to all without denying anyone basic human rights and to prevent arrested persons from being exploited.

International Human Rights lays down the provision of uniform standards of rights which are equally available to every person irrespective of race, region, caste, country, and religion. These rights are also documented in the Universal Declaration of Human Rights in the form of Article 5 which explicitly and unambiguously focuses on granting protection to the people from cruel and inhumane treatment in prisons. Further, similarities have been drawn in Article 7 of the Universal Declaration of Human Rights and Article 14 of the Constitution of India, where both mentions that everyone is equal in the eyes of law and there should not be any discrimination or partiality in delivering justice.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) lays down the International Rights Standard for Law Enforcement which provides that all Law Enforcement Official, all officials of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest and detention<sup>1</sup>, are obligated to follow the provisions of International Human Rights and must not be contrary to it.

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<sup>1</sup> Code of conduct for law enforcement officials

United Nations Human Rights Council adopted several other resolutions and has spoken against the deliberate misuse of the powers conferred upon Law Enforcement Officials all over the world. In 1988, the UN General Assembly adopted the Universal Instrument called – “The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment” in its Resolution 43/173. This universal instrument contains principles that are binding and obligatory in nature, such principles were proposed in order to minimise the mistreatment and misuse of powers by Law Enforcement Officials.

***Principle 1 states that** – All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for All persons under any form of detention or the inherent dignity of the human person.*

***Principle 3 states that-** There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.*

***Principle 6 strictly mentions that** No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.<sup>2</sup>*

It has become a concerning issue globally with respect to the violation of Human Rights. Every country makes laws against the such globally challenged issue and India is no stranger to it. The whole Indian criminal jurisprudence functions upon the imminent legal maxim- *ei incumbit probatio, qui dicit, non qui negat*,<sup>3</sup> meaning, the burden of proof is on him who alleges and not on him who denies. In other words, a person is innocent until proven guilty. The general idea behind this theory is the ideology that says-

“ It is better that ten guilty persons escape than that one innocent suffer” – Blackstone’s Ratio.<sup>4</sup>

Every legislation in India takes its power from the “Fundamental Law of The Land” -that is, **the Constitution of India**. Any law that has been passed in contrary to the Constitution of India, shall not prevail. Although the Constitution guarantees fundamental rights to each

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<sup>2</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

<sup>3</sup> [bnblegal.com/ei-incumbit-probatio-qui-dicit-non-qui-negat/](http://bnblegal.com/ei-incumbit-probatio-qui-dicit-non-qui-negat/)

<sup>4</sup> Blackstone’s Ratio

and every citizen of India, some rights can be confiscated if a person has been accused of committing a crime. However, there are certain rights that cannot be curtailed. Through this Article, I would like to illuminate the light upon the rights that are given to accused persons and the provisions of bail- whether it's a matter of the right or whether it's arbitrary in nature on behalf of the courts.

## **RIGHTS OF ARRESTED PERSONS IN INDIA**

- Right to know the grounds of arrest

The police officer or any person arresting on behalf of the public servant is under the constitutional obligation to inform the accused about the offence and the reason for making such an arrest. It is the undeniable right of the accused to know the grounds of his arrest which are empowered by Article 22(1) of the Constitution of India that every person who is arrested shall not be detained in custody without being informed about the grounds for his arrest.

Section 50(1) of the Criminal Procedural Code, 1973 states that –“Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or the other grounds for such arrest.”

Section 75 of the Criminal Procedural Code, 1973 further provides that every police officer or any other person executing a warrant of arrest shall notify the person about the grounds of his arrest and shall show him the warrant if required.

- Right to information about the arrest

With regard to the section 50A. of the Criminal Procedural Code, 1973, it shall be the mandatory duty of every police officer or any person who is making any arrest shall give the information regarding the such arrest and the place where the arrested person is being held to any of his friends, relatives or any person nominated by the arrested person.

- Identification of the person arrested

Section 54A. of the Criminal Procedural Code provides that when a person is arrested on an offence, it shall be considered necessary to subject his identification for the purpose of investigation of such offence and for the judicial proceedings or as the Court may order. The other benefit of identification of the accused is that it facilitates in maintaining court records

about every person in the prison and is also useful in preventing the illegal police custody of any innocent person.

- Right to be produced before a magistrate without unnecessary delay

Article 22(2) of the Constitution of India secures the right of every arrested person or the person detained in custody shall be produced before the nearest magistrate within a period of twenty-four of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond twenty-four hours or without the order of magistrate.

In support of Article 22(2), Section 56 of the Criminal Procedural Code, 1973 clearly mentions that any police officer while making an arrest without a warrant shall produce the arrested person before the magistrate having jurisdiction without any unnecessary delay. Meanwhile, section 57 of the Criminal Procedural Code strictly adheres to detention time for not being exceeded for more than twenty-four hours.

- Right to be examined by medical practitioners

Every person when he is arrested shall undergo a medical examination by the medical officer recognised by govt. or by a registered practitioner. Provided that when the arrested person is a female, the medical examination shall be held only by a govt. the recognised female medical officer or under the supervision of a female medical officer or registered female medical practitioner.

- Right to consult and defended by a Legal Practitioner

The right to consult and be defended by the legal practitioner of choice is conferred by Article 22(1) of the Constitution of India, which ensures that it is a fundamental right of the accused or any arrested person that cannot be infringed.

In the case of, **State of Madhya Pradesh v. Shobharam And Ors.**, the hon'ble court declares any law null and void that deprives the accused of the fundamental right to consult and be defended by a lawyer of his choice.

- Right to get Free Legal Aid

Article 21 of the Constitution of India, guarantees the right to live with dignity and liberty to every individual. Although the scope of Article 21 is very broad through various rulings and judgements it has been defined from time to time. In the judgement of **Khatri v. State of Bihar**, the hon'ble Supreme Court held that right to free legal aid shall be protected under Article 21, and the State is under the constitutional obligation to provide free legal aid to the indigent accused. Not providing free legal aid to the accused shall be considered unconstitutional.

- Right against self-incrimination

The right to silence or right against self-incrimination is a guaranteed fundamental right secured under Article 20(3) that no person who is accused of an offence shall be a compelled witness against himself. Further Indian Evidence Act, of 1872 states that any confession made under undue influence, coercion, threat, or promise shall be considered invalid on behalf of the court. Section 25 and 26 of The Indian Evidence Act grants protection to the accused from making a forceful confession against himself either in front of the police or in the custody of the police.

- Right for a fair trial

A fair trial includes impartial and independent trial in court proceedings. It works upon the principle of presumption of innocence, meaning thereby, the accused is innocent until proven guilty and he has the right to prove his innocence by adducing authentic evidence in his favour.

The Constitution of India also enshrines the concept of a fair trial in Article 14, which explicitly mentions "Equality before the law" and makes an obligation upon the State to ensure that every person is given equal opportunity in the eyes of law to defend themselves.

In the case of **Maneka Gandhi v. Union of India**, the apex court expanded the scope of Article 21, Article 14, and 19 of the Constitution of India and held that a court proceeding should be without any arbitrariness or oppressiveness in nature.

- Right to be released on Bail

*"The issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process". – Justice V.R. Krishna Iyer*

Even though the term “Bail” has not been defined anywhere in the Criminal Procedural Code, 1973 but lays down several provisions concerning the conditions and circumstances in which an accused is entitled to bail. Black Laws’ Dictionary defines the term bail as procuring the release of an accused person by imposing conditions on him to cooperate with the judicial proceedings.

The Code of Criminal Procedure has classified offences broadly into two categories, bailable and non-bailable. Section 2(a) interprets the definition of bailable and non-bailable offences as mentioned in the first schedule of the code. Generally, **in bailable offences**, it shall be the duty of the police officer to inform the accused about the bail since, in section 436 of CrPC, bail is granted as a matter of right that cannot be denied. The scope of ‘Bail’ was widened during the Amendment in the year of 2005 to the Criminal Procedural Code when section 436A was incorporated into the bail provisions enabling the accused to seek bail if they have served half of their sentence in jail.

Section 437 provides the provisions related to seeking bail in non-bailable offences where it is the discretion of the court to either accept or dismiss the bail application of any arrested person. It further provides that it shall not be a matter of right in procuring bail in non-bailable offences.

#### **FACTORS INFLUENCING BAIL APPLICATION IN NON-BAILABLE OFFENCES**

- Nature and gravity of the offence - Offences with a serious degree of nature such as offences with punishment not less than life imprisonment or death are all grounds for cancellation of the bail application. It includes heinous offences like murder, rape, etc.
- Child or A Woman- If the applicant is a child or a woman then the court can consider a bail application.
- Infirmary or sickness- The court can accept a bail application applied by any accused having a serious life-threatening disease or infirmity, however, it is not a mandatory provision to grant bail.
- Tampering with evidence- The court may reject the application at any point if it feels that the accused would attempt to abscond or tamper with evidence or may cause in cooperation with judicial proceedings.
- Past track record- If the applicant is arrested for the first time and the offence is not heinous in nature, he may be released on bail but if the accused is a proclaimed offender, the court can reject the bail application.

- False Accusation- When there is a reason to believe that the accused is innocent or has been falsely implicated in an offence, then the court and at times, the Officer-in-charge of the Police Station can grant bail.

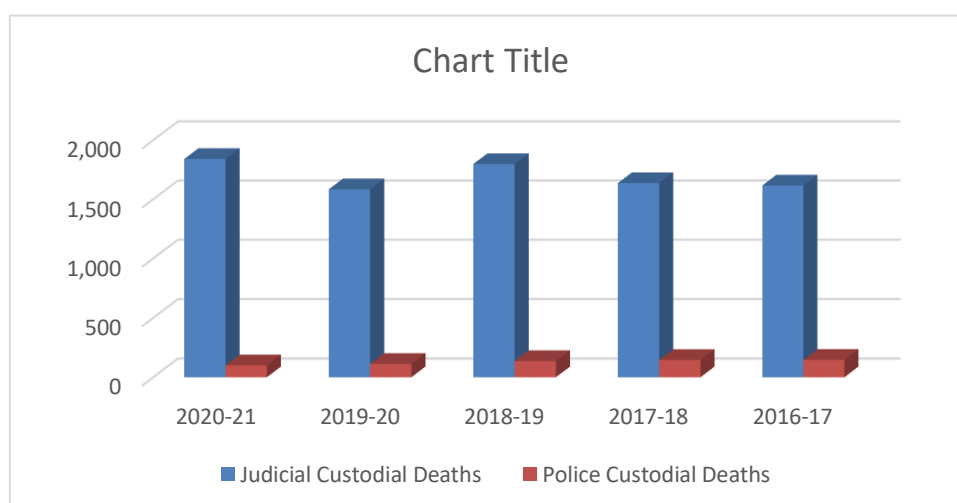
### Anticipatory Bail

The 41<sup>st</sup> report of the Law Commission directed the necessity for incorporation of section 438 of the Criminal Procedural Code, 1973, which deals with the provision of granting 'Anticipatory Bail'. Anticipatory bail is a special type of bail granted by the High Court or the Session courts to the appellant on having been in anticipation of being arrested for a non-bailable offence. Any person can apply for seeking anticipation bail before he is arrested or in the anticipation of being arrested but not afterward. However, it shall be the discretion of the court to either grant or reject the bail application.

### DATA ANALYSIS

National Human Rights Commission (NHRC) presented an official report to the Lok Sabha earlier this year. As per the recorded data, the total number of deaths recorded in judicial custody in 2021-22 till February is – 2,152.

Meanwhile, 1,840 cases of deaths were reported in Judicial custody and 100 were reported in police custody in the year 2020-21. Similarly, 1,584 in 2019-20, 1,797 in 2018-2019, 1636 in 2017-18, and 1,616 in 2016-17 were reported in judicial custody and 112 in 2019-20, 136 in 2018-19, 146 in 2017-18, and 145 in 2016-17 were reported in police custody.<sup>5</sup>



<sup>5</sup> National Human Rights Commission Report, 2022 March.

## CONCLUSION

Despite the Constitution of India empowering certain rights given to the accused and the Judiciary's indispensable attempt through various landmark judgements to eliminate the misuse of statutory powers conferred to Law Enforcement Officials, there are still deaths reported in both, judicial custody as well as police custody in India. Many times, the number of deaths is not even recorded. There should be strict monitoring in jails regularly, medical facilities should be availed to every person in the prison, and strict recording of data about every person in jail with their proper health details and identification in the official police register.

The government and judiciary can ensure that every arrested person is not deprived of his fundamental rights. The major role is played by legal practitioners and paralegals to increase their participation in providing free legal aid to the indigent accused. Collectively we can provide justice to every individual and all persons can enjoy their rights that are secured and guaranteed in the Constitution of India.

