

# “Criminal Justice System in India with Special Reference to Punishment Theory”

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## I. INTRODUCTION

The criminal justice system is at the heart of any society, which aims to protect rights, to defend the imposition of duties and to establish a framework for the conduct of almost all social, political and economic activities. Penalizing criminals, securing and providing compensation to victims, witness protection are some of the tasks of a criminal justice system. Furthermore, it strives to achieve justice, promote freedom, uphold the rule of law and protect security.<sup>1</sup> It is also pertinent to mention that a country's criminal law mutates according to the ideology of its political power holders. This means that the change of governments either in the ideology or in the politics of the government will be reflected both in the recognition of an act as a crime and in the gravity of the penalty for the same crime. Historically, crimes were tightly woven into the fabric of religious sanctions and were considered both sins and crimes without any demarcation.<sup>2</sup>

Despite the importance of criminal law in society, its manifestations in the form of general codes first appeared only around 3000 BC. Before the advent of writing, laws existed only in the form of customs. Among the first written codes is that of Hammurabi, king and creator of the Babylonian empire. It appeared in about 1760 BC and is one of the first examples of a sovereign who proclaims a corpus of systematic laws to his people so that they were able to know their rights and duties. Engraved on a black stone slab, the code contains about 300 sections ranging from the punishment that must be imposed to a false witness, namely death, to the one that will be assigned to a builder whose house collapses, killing the owner. The code is completely devoid of defenses or excuses. The code echoes the customs that preceded the reign of this ancient monarch.<sup>3</sup>

## II. U.N CHARTER

The Charter is imbued with a profound concern for human rights. The Preamble of the Charter declares:

The Preamble

“We the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to making and to affirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations big and small.... Have resolved to combine our efforts to accomplish these aims”

Articles 1, 13, 62, 68 and 76 accord the highest place of importance to the object of encouraging respect for human rights and place it at par with the maintenance of international peace and security.

Apart from this, the U N Security Council in its first session in Jan. 1946 established a committee on Human Rights as per Art.68 of the Charter.

The Covenants: To give binding legal effect to the Universal Declaration of Human Rights, the U.N. General Assembly in 1966 adopted three other Covenants which defend and guarantee the protection of human rights. International Covenant on Economic, Social and Cultural Rights 1966, the covenant on Civil and Political Rights, 1966 and the Optional Protocol to the latter covenant. The covenant on Economic, Social and Cultural Rights recognizes the right to work, right to free choice of employment and to fair wages. The covenant on Civil and Political Rights recognizes the right of every human person to life, liberty and security of person; to privacy; to freedom from cruel, inhuman or degrading treatment and from torture; to freedom from slavery; to immunity from arbitrary arrest; to a fair trial; to recognition as a person before the law; to immunity from

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<sup>1</sup> Raymond Wacks, *Law: A Very Short Introduction*, Oxford University Press, New York, (2008), pp. 1-2.

<sup>2</sup> K.N. Chandrasekharan Pillai, *Essays on the Indian Penal Code*, Universal Law Publishing Co., (2005), p. 3.

<sup>3</sup> *Supra* Note 1, p. 3.

retrospective sentences; to freedom of thought, conscience and religion; to freedom of opinion and expression, to liberty of movement including the right to emigrate, to a peaceful assembly and freedom of association.<sup>4</sup>

Together with Universal Declaration, they constitute the four corners of the mighty edifice of International Human Rights and are called the International Bill of Human

Rights and are called the International Bill of Human Rights. According to U.Thant, they are a “Magna Carta” for mankind.<sup>5</sup>

The context of the administration of criminal justice assumes that the state or its agents are bound not to treat an individual in certain ways to exercise power over him in the name of crime control.<sup>6</sup> But the whole point of right is that respect for them is thought worthwhile in principle and when they are accorded recognition in the Constitution of a State, it surely implies that the right cannot be taken away merely because it would benefit a majority of the society by improving crime control. The Indian Constitution accords recognition to the human rights of an accused in Articles 20, 21, and 22. The aim of including them as fundamental rights is that certain elementary rights such as the right to life, liberty, freedom of speech and so on should be regarded as inviolable under all conditions and that the shifting majority in the legislation of the country should not have a free hand in interfering with these fundamental rights.<sup>7</sup>

**IMMUNITY FROM RETROSPECTIVE CRIMINAL LEGISLATION (ARTICLE 20) :** It has always been thought to be of primary importance that a man should be able to know in advance what conduct is and what is not criminal, particularly when punishments and penalties are involved. A conduct may not be an offence by the State.<sup>8</sup> Ex-post facto laws are laws which punish for what had been lawful when done. “There can be no doubt”, said Jagannath Das J., “as to the paramount importance of the principle that such ex-post facto laws which retrospectively create offences and punish them are bad as being highly inequitable.”<sup>9</sup>

An ex-post-facto law is a law that penalizes retrospectively and already done or increase the penalty for such acts. Article 20 (1) imposes a limitation on the law-making power of the legislature. C1 [i] of Article 20 runs as follows:

“No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted by the law in force at the time of the commission of the offence”.

Legislature can make prospective as well as retrospective laws but clause (i) prohibits the legislature to make retrospective criminal law. A law is said to be prospective when it affects acts done or omission made after the law comes into effect. The majority of laws are prospective in their operation. But sometimes the legislation may give retrospective effect to law by bringing within its operation not only in future acts but also acts or omissions committed even prior to the enactment of such law. Though ordinarily legislation can enact prospective as well as retrospective laws, according to the present clause legislation shall not be competent to make a criminal law retrospective so as to prejudicially affect persons who have committed such acts prior to the enactment of that law.<sup>10</sup> This article does not prohibit the imposition of a civil liability retrospectively.

This clause of Article 20 embodies the maxim “Nulla poena sine lege” which expresses the idea that no man shall be made to suffer except for a breach of the criminal law which shall be enacted before hand in precise and definite terms.

The first part of clause (1) lays down that no person shall be convicted of any offence except for the violation of a law in force at the time of the commission of the act charged as an offence. This means that a person can only be convicted of any offence only if the act charged against him was an offence in the law in force at the date of its commission. If on that date such act was not an offence no future legislation prohibiting that act with retrospective effect is not an offence at the date of its commission, no future law can make it an offence.<sup>11</sup> Thus where the rule made applicable from 1-7-1961 was published in the Gazette of 7-7-1961; it was held that the rule could not be applicable in respect of acts committed before 7-7-1961.<sup>12</sup> S. 304-B of the Penal Code which was inserted in the Code on 19-11-1986 creating a distinct offence of dowry death and providing a minimum sentence of seven years imprisonment does not apply to such death caused before the insertion of the

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<sup>4</sup> Subhas Chandra Khare, *Human Rights and United Nations*, Metropolitan Book Co., 1977, p.56.

<sup>5</sup> Justice E. S. Venkataramiah, *Human Rights in the Changing World*, Edition (1988).

<sup>6</sup> Wolfgang and Radzinowicz, *Crime and Justice*, Vol I, The Criminal In The Arms Of The Society, New York: Basic Books Inc, 1979, p.1-2.

<sup>7</sup> *A.K Gopalan v. State of Madras*, AIR, 1950 SC 27.

<sup>8</sup> K.D Chabra, *Rights of an Accused Under the Law*, 22 J.I.L.I, 371 (1980).

<sup>9</sup> *Rao Shiv Bahadur Singh v. State of Vindya Pradesh*, AIR 1953 SC 394.

<sup>10</sup> *Kedar Nath Bajoria v. State of West Bengal*, AIR 1954 SCR 30.

<sup>11</sup> *Chief Inspector of Mines v. K.C. Thapar*, AIR 1961 SC 838.

<sup>12</sup> *Govind Pillai v. Padmanabha Pillai*, AIR 1965 Ker 123.

section because of Article 20(1).<sup>13</sup>The accused can take advantage of the beneficial provisions of an ex-post-facto law. The rule of beneficial construction requires that an ex-post-facto law should be applied to reduce the sentence of the previous law on the same subject. Such a law is not affected by Article 20(1), for example, if for an offence committed on 16-8-1975 the law in the force makes it punishable with imprisonment for life and by an amendment made on 1-4-1976 the same offence is made punishable by three years jail, then the above exception says that the offender can take advantage of the amend ex-post-facto law as the latter reduced the punishment.<sup>14</sup>

**Protection against Double Jeopardy:** Clause (2) of Article 20 says “No person shall be prosecuted and punished for the same offence more than once.” The clause embodies the English Common Law Rule of “nemo debet bis vexari” which means no man should be put twice in peril for the same offence and if he is prosecuted again for it for which he has already been prosecuted he can take the complete defense of his former acquittal.”<sup>15</sup> Technically expressed as the plea of ‘autrefois acquit’ or ‘autrefois convict’ the plea avers that the defendant has been previously convicted or acquitted on a charge for the same offence as that in respect of which he is arraigned now.<sup>16</sup>

The corresponding provision in the American Constitution is embodied in that part of the Fifth Amendment which declares that no person shall be subject – for the same offence-to be put twice in jeopardy of life or limb.”

“...Nor shall any person subject to the same offence to be twice put in jeopardy of life or limb”;

“nor shall be compelled in any criminal case to be a witness against himself.”

“nor be deprived of life, liberty, or property without due process of law.”

The expression Double Jeopardy is used in American law but not in our Constitution. Under our law the principle has been recognized in Article 20(2) of the constitution along with S.26 of the General Clauses Act 1897 and S. 300 of the Cr.P.C 1973.

Although these are the materials which formed the background of the fundamental rights given in Article 20(2) of the Constitution, the ambit and the content of the guarantee are much narrower than those of Common Law in England or the “Doctrine of Double Jeopardy” in the U.S Constitution.

**Protection against compelling self-incriminating evidence:** Article 20 (3) runs as “No person accused of any offence shall be compelled to be a witness himself”.

This provision embodies one of the fundamental canons of Common Law on Criminal jurisprudence, that the accused is presumed to be innocent that it is for the prosecution to establish his guilt by collecting evidence from sources other than the accused and that the accused need not make any statement against his own will. These propositions emanate from an apprehension that if compulsory examination of an accused were to be permitted, then force and torture may be used against him to entrap him into fatal contradictions.

This provision emerged as a sharp reaction to the courts.

Although today’s police may not use the rack to induce incriminating statements, some of their methods are no less violative of the Constitutional rights of the accused.<sup>17</sup>

In America, the immunity is given by the Fifth Amendment which says, inter alia, that no person shall be compelled in any criminal case to be a witness against himself. In India, Article 20 (3) which embodies this privilege reads: “No person accused of any offence to a person ‘accused of an offence’; (2) it is a protection against ‘compulsion to be a witness’; (3) it is a protection against such ‘compulsion’ resulting in his giving evidence against himself.

Who is an Accused?

The protection of Art 20 (3) is available to a person ‘accused of an offence’. This means a person against whom a formal accusation relating to the commission of an offence has been leveled, which in normal course may result in his prosecution.

The privilege of Article 20(3) is undoubtedly at the trial stage in the court room. But it is available even at the pre-trial stage, i.e. during the course of police investigation if the person concerned can be regarded as an accused.<sup>18</sup> Nandani Satpathy<sup>19</sup> was directed to appear at the police station for being examined in connection with

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<sup>13</sup>*Soni Devrajibhai Babubhai v. State of Gujrat*, AIR 1991 SC 2173.

<sup>14</sup>*T. Barai v. Henry Ah Hoe*, 1983 ISCC 177.

<sup>15</sup> Halsbury’s, *Laws Of England*, Vol X, 1955, p.405-406.

<sup>16</sup> K. Gupteshwar, *The Rule Against Double Jeopardy Under The Indian Constitution*, Supreme Court Journal, 1956, p.53.

<sup>17</sup> Robert. D. Pursley, *Introduction to Criminal Justice*, Macmillan, 1980, p.177.

<sup>18</sup> A. R. Desai, *Violation of Democratic Rights in India*, Popular Prakasan, 1986.

<sup>19</sup> *Nandani Satpathy v. P.L. Dani*, AIR 1978 SC 1025.

a case registered against her under the Prevention of Corruption Act. On the basis of FIR, investigations were commenced against her and she was interrogated by the police with reference to a long string of questions, but she refused to answer, claiming protection of Art. 20(3). The Supreme Court held that Section 160(1), Cr. P.C, which bars of calling women to a police station, was breached in this case. But the court took the opportunity to dilate the length of the scope of Art. 20(3). K. Iyer J., delivery the court’s decision considered the question whether Art. 20 (3) applies only to the stage of court-trial or does it also apply to stages anterior thereto. Iyer J. ruled that Art. 20 (3) ought to extend to Police investigation also, since enquiries under criminal statutes with quasi-criminal investigations are of an accusatory nature and are sure to end in prosecution, if the offence is grave and the evidence gathered is good. To deny the protection of Art.20 (3) to a suspect because the enquiry is preliminary and may possibly not reach the court is to erode the substance. Art. 20 (3) is not confined merely to court trial. It extends to “any compulsory process for production of evidentiary documents” which is reasonably likely to support a prosecution against him. Not only the compelled testimony is obtained is excluded but “the preventive blow falls also on pre-court testimonial compulsion”. The court also ruled that the ban on self-accusation and the right to silence, while an investigation or trial is underway, goes beyond that case and protests the accused in regard to any other offence pending or imminent.

“He is entitled to keep his mouth shut if the answer sought has a reasonable prospect of exposing him to guilt in some other accusation, actual or imminent, even though the investigation underway is not with reference to that”. Further, the court held that the police must invariably warn, and record the fact, “about the right to silence against self-incrimination; and when the accused is literate, take his written acknowledgement.” What is compulsion?

Art. 20 (3) comes into operation only when the accused is compelled to give evidence against himself. Duress is where a man is compelled to do an act by an injury, beating or unlawful imprisonment. It also includes threatening, beating or imprisoning of the wife, parent, of child of a person.<sup>20</sup>

It is interesting to note that in the early years of judicial history, subsequent to the enactment of the Constitution, this point of protection against self-incrimination did not appear to be looked upon with favour by the courts. Judicial response to this protection tended to dilute it rather than strengthen it. Courts took a narrow view of compulsion. There was no presumption that a statement made by the accused while in police custody was involuntary. But in 1978, the privilege against self incrimination was, as it were, rediscovered and resurrected by the Supreme Court.<sup>21</sup>This decision breathed new life into this privilege which had otherwise become merely a paper protection.

The court speaking through Krishna Iyer J. advocated an expansive interpretation of the phrase “compelled testimony”. It is evidence procured “not merely by physical threats or violence” but also by psychological torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, over-bearing and intimidatory methods, and the like.” Any mode of pressure, “subtle or crude, mental or physical, direct or indirect, but sufficiently substantial”, applied by the police to obtain information from an accused strongly suggestive of guilt become compulsion.

Admission of the tape record statements of an accused taken without his knowledge but without any compulsion is not barred under Art.20 (3).<sup>22</sup>

The article enacts a measure of protection against testimony compelled through police torture, violence or overbearing methods. Art. 20 (3) is not violated when the accused volunteers evidence against himself. Since the article only gives a privilege, the accused may waive it if he so likes.<sup>23</sup>

The Meaning of “to be a witness”

To be a witness” means making of oral or written statements in writing, made or given in as court or otherwise. It means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing.

To be a witness” is not equivalent to ‘furnishing evidence’ in its widest significance, i.e. to say as including not merely making of oral or written statement, but also production of documents or giving materials which may be relevant at the trial to determine the guilt or innocence of the accused. Judicial opinion has wavered over the term ‘to be a witness’. The Supreme Court<sup>24</sup> said “to be a witness means to furnish evidence and this could be done through lips or by production of a thing or a document or by giving oral evidence but also by producing documents or making intelligible gestures as in the case of dumb witness.

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<sup>20</sup>*State of Bombay v. Kallu Ralu Oghad*, AIR 1961 SC 1808.

<sup>21</sup> *Supra* n19 at p.17.

<sup>22</sup>*Usufali Ismail Nagree v. State of Maharashtra*, AIR 1968 SC 147; *R.M. Malkan v. State of Maharashtra*, AIR 1973 SC 157.

<sup>23</sup>*Smt. Kalawati v. State of H.P.*, AIR 1953 SC 131.

<sup>24</sup>*M.P. Sharma v. Satish Chandra*, AIR 1954 SC 300.

Several types of evidence are excluded from the purview of Art.20 (3). This is done with a view to draw a balance between the exigencies of investigation of crimes and the need to safeguard the individual from being subjected to third degree methods.

Search of premises in possession of a person accused of an offence under a search warrant, and seizure of documents do not stand for the purpose of Art. 20 (3) on the same footing as compelled production of documents from whom they were seized. The reason is that a search warrant is issued to a police officer and so search and seizure cannot be regarded as the acts of the occupier of the premises in question; they are acts of another kind to which the occupier is obliged to submit and are, therefore, not his testimonial acts in any sense.<sup>25</sup> The Supreme Court has said that search and seizure under a search warrant do not have even the remotest testimony to compel the accused to incriminate himself.

Under Section 26 of the Evidence Act 1872, no confession made by a person while in police custody is to be used against him unless it has been made in the immediate presence of a magistrate. Section 27, however, says that the information furnished by an accused person after his arrest to the investigating officer, which leads to the discovery of incriminating articles like the weapon of offence, it is admissible in evidence and does not in any way offend Art.20 (3).

The Supreme Court held<sup>26</sup> that when a murder charge, 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 a witness, dug out the pit and took out the clothes belonging to the deceased which were identical to the clothes belonging to the deceased, the statement of the accused was held to be admissible.

**Administrative Proceedings:** Art. 20 (3) is not applied to administrative investigations, even though the primary aim of these proceedings may be to find out whether the individual has committed an offence or not. Under S. 45-g of the Banking Companies Act 1969, after an order for winding up of a banking company has been made, the official liquidator has to submit a report whether in his opinion any loss has been caused to the company by any act or omission of the directors, etc. and after considering the report, the High Court can publicly examine the directors. Section 45-G has been held valid because the object of the enquiry thereunder is to collect evidence and decide whether any act is to collect evidence and decide whether any act or omission have caused loss to the company. If as a result of the enquiry, the court comes to the conclusion that the acts or omissions did cause loss to the company, then some action might be taken against the persons examined. Thus, an accusation may or may not follow the enquiry, but there is no accusation at the time of the enquiry. The accusation of an offence is a condition precedent for the application of Art. 20(3) and this essential condition is lacking in cases covered by S. 45-G of the Banking Companies Act.<sup>27</sup>

From the above, it becomes clear that the immunity under Art. 20 (3) cannot be claimed by a person in proceedings before administrative bodies on the narrow ground that there is no criminal accusation. The aim of administrative investigations is not only to find out facts, but also to collect evidence upon which a prosecution may be based later. This means what cannot be achieved through formal criminal proceedings can easily be achieved through administrative proceedings, and evidence thus collected can be used against the person thus concerned when formally prosecuted later in a criminal court.

**RIGHT TO LIFE AND PERSONAL LIBERTY (ARTICLE 21) :** Of all the rights of an accused providing in our Constitution and the Criminal Procedure code, the most important one is enshrined in Article 21 of our Constitution<sup>28</sup> which goes as:

“No one shall be deprived of his life or personal liberty except according to procedure established by law”.

Art. 21 was for a long period of time lifeless incarnation of the right to life and personal liberty which had very little positive content. The Supreme Court had for almost twenty seven years after the enactment of the Constitution, taken the view that it merely embodied a facet of the Diceyan concept of the Rule of Law that no one can be deprived of his life and personal liberty by executive action unsupported by law. It was a protection against executive action which had no authority of law. If there was a law which provided some sort of procedure, it was enough to deprive a person of his life and personal liberty. Justice S.R. Das gave an illustration that if a law provided that the cook of the bishop of Rochester be boiled in oil, it would be valid in Art. 21.<sup>29</sup> but in famous declaration in *Maneka Gandhi*<sup>30</sup> which according to many jurists marks a watershed in the history of the Constitutional Law of the country, the Supreme Court for the first time took the view that Art. 21 affords

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<sup>25</sup>*V.S. Kuttan Pillai vs. Ramakrishnan*, AIR 1980 SC 185.

<sup>26</sup>*Pershad vs. State of U.P.*, AIR 1957 SC 211.

<sup>27</sup>*R. Joseph Angusthi vs. Narayan*, AIR 1964 SC 1552.

<sup>28</sup> *Supra* n16 at p.6.

<sup>29</sup> *Supra* n7 at p.14.

<sup>30</sup>*Maneka Gandhi vs. UOI*, AIR 1978 SC 597.

protection not only against executive action but also against legislation and no law can deprive a person of his life and personal liberty unless it prescribes a procedure which is reasonable, fair and just and if it is not, the court will strike down the law as invalid.

Art.21 was not written on a clear slate. Its birth in the World history can be traced back to 1215, as it was in that year that the Magna Carta saw the light of the day.<sup>31</sup> This great Charter of liberties was issued by King John under people’s threat of Civil War. It consists of 63 clauses. Clause 29 goes as:

“No freeman shall be taken and imprisoned or disseized of any free tenement or of his liberties or free customs, or outlawed, or exiled, or in any other way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.”<sup>32</sup>

It means that no member of the executive shall be entitled to interfere with the liberty of a citizen unless he can support his action with some provision of law. But in no country there be absolute freedom of the individual. The premise underlying the English common law is that it is people’s representatives assembled in the Parliament who shall determine how far the rights of the individuals should go and how far should they be curtailed in the collective interest or for security of the State itself according to exigencies of time. The Supreme Court, in Maneka Gandhi’s case, infused judgment review by holding that “procedure inherently meant a fair procedure, so that Art. 21 has been turned into a safeguard against arbitrary legislation. The history of this change in view is worthy of mention here:

Until the 1978 decision in Maneka’s case,<sup>33</sup> the view which prevailed in our Supreme Court was that there was no guarantee in our Constitution against arbitrary legislation encroaching upon personal liberty. Hence, if a competent legislation makes a law providing that a person may be deprived of his liberty in certain circumstances and in a certain manner, the validity of the law could not be challenged in a court of law on the ground that the law is unreasonable, unfair or unjust.<sup>34</sup> Under the “due process” clause of the American Constitution (5<sup>th</sup> and 14<sup>th</sup> Amendments), the court has assumed the power of declaring unconstitutional any law which deprives a person of his liberty other than in accordance with the court notions of ‘due process’ i.e. reasonableness and fairness.

**RIGHT TO BE INFORMED OF GROUNDS OF ARREST (ARTICLE 22):** The right to be informed of the grounds of arrest is a precious right of the accused person. Article 22 of the Constitution as well as Section 50 of the Code of Criminal Procedure, 1973 have adequately protected this aspect of personal liberty of an accused. Timely information of the grounds of arrest serves him in many ways. It enables him to move the proper court for bail or in appropriate circumstances for a writ of “habeas corpus” or to make expeditious arrangements for his defense.<sup>35</sup> Art.22 (1) guarantees that:

“No person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by a legal practitioner of his choice”.

Section 50 of the new Code which requires the arresting authorities to furnish forthwith the grounds of arrest for those arrested without warrants. According to Section 50 (1), every police officer or any other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. Section 50 (2) lays down that if arrest is made without warrant in a bailable case, the accused should be informed of his right to be released on bail after furnishing sureties.

In the leading case of Madhu Limaye, <sup>36</sup>the Supreme Court observed: “Art. 22(1) embodies a rule which has always been regarded as vital and fundamental for safeguarding personal liberty in all legal system where Rule of law prevails. The two requirements of clause (1) of Art.22 are meant to afford the earliest opportunity to afford the earliest opportunity to the arrested person to remove any mistake, misapprehension, or misunderstanding in the minds of the arresting authority and also to know exactly what the accusation against him is so that he can exercise the second right namely of consultancy a legal practitioner of his choice and to be defended him”

The words “as soon as may be” in Art.22 (1) would mean as early as is reasonable in the circumstances of the case, however, the word “forthwith” in Section 50 (1) of the Code creates a stricter duty on the part of the police officer making the arrest and would mean ‘immediately’. It appears reasonable to expect

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<sup>31</sup> Supra n17 at p.6.

<sup>32</sup> Supra n16 at p.6.

<sup>33</sup> Supra n30 at p.22.

<sup>34</sup> Supra n7 at p.14.

<sup>35</sup> S. P. Dwivedi, *Procedural Privileges of the Accused*, Indian Advocate, 1970, p.75.

<sup>36</sup> AIR 1969 SC 1014.

that the grounds of arrest should be communicated to the arrested person in the language understood by him; otherwise it would not amount to sufficient compliance with the Constitutional requirement.<sup>37</sup>

Arrest means the deprivation of a person of his liberty by legal authorities. In a free society like ours, law is quite protective of the person liberty of every individual and does not tolerate the detention of any person without legal sanction. Right to be informed of the grounds of arrest and detention, enshrined by Art.22(1), is an inviolable right of a person accused of an offence and it enables the accused to make an application for bail or for ‘habeas corpus’ and it also enables the accused to prepare for his defense.

There has been maximum transgression of this right primarily because of Section 60 of the Code of Criminal Procedure, 1898 which specifically did not provide for informing the arrested accused of the grounds of arrest; and partly it was because of the expression “as soon as may be” used in Art.22(1). The expression gave sufficient opportunity for causing delay in furnishing the grounds of arrest to the arrested person. In fact, the accused person was kept in secrets from the grounds of arrest until he was charge sheeted under Section 173 of the Code of Criminal Procedure. It can be filed in the Court only after the completion of the investigation into the case; and thereafter a copy thereof shall be furnished to the accused.

Arrest is an arrest whatsoever may be its reasons and causes. It is submitted that the right to know the grounds of arrest attaches not only to warrant less arrests but to all arrests and sentence or imprisonment passed by a competent judicial tribunal. Now no more transgression of this right is expected in view of the insertion of the new Section 50 of the new Code of Criminal Procedure which requires the arresting authorities to furnish “forthwith” the grounds of arrest to the warrantless arrestees. This section has opened a new vista in the field of the promotion of personal liberty with the recognition of the civil liberty of a person accused of an offence.

Conclusion and Suggestions: In recent years, the rising crime rate, particularly for violent crime, has made criminal justice system the subject of heated debate. Despite considerable effort and a heavy expenditure of funds, it is evident that the various components of the criminal justice system are not working effectively or fairly. There are prolonged trials, long distress of under trials and low conviction rate whereas there is increase in incidence of crimes particularly serious and organized crimes. It is now the responsibility of the stakeholders and the legislators to embark on the difficult and ambitious task of devising a new system, one that would serve both society and to provide fair opportunity to defend the accused and appropriate treatment to the offenders to reinforce faith of all concerned in the system. Its plan must embody the certainty of punishment of guilty as a central principle, which carries the promise of being much more effective and useful than the present array of capricious and irrational practices that have proved so damaging.<sup>38</sup>

**Need to repeal Provisions relating to Mandatory Death Sentence:** It is a settled law as laid down by the Apex Court that prescription of Death Sentence without alternative punishment is violative of Right to life as ensured under Article 21 of the Constitution. Therefore there is need to legislatively repeal Section 303 Indian Penal Code, 1860 and Section 27 (3) of the Arms Act, 2003 which have otherwise been struck down by the Supreme Court.<sup>39</sup>

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<sup>37</sup> *Harkishan vs. State of Maharashtra*, AIR 1962 SC 911.

<sup>38</sup> Report of The Twentieth Century Fund Task Force on Criminal Sentencing, Fair and Certain Punishment, McGraw-Hill Book Company, New York, (1976), p. viii.

<sup>39</sup> See *Mithu v. State of Punjab*, AIR 1983 SC 176 (S. 303 IPC) and *State of Punjab v. Dalbir Singh*, Criminal Appeal No. 117 of 2006, (S. 27 (3) of the Arms Act, 1957).

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