THIRD DISTRICT LEVEL WORK SHOP FOR THE YEAR 2025

Held on 27-09-2025

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PROTECTION OF LIFE & PERSONAL LIBERTY – CAUTIOUS APPROCH BY COURT OF MAGISTRATES AND SPECIAL SESSION JUDGES.

Introduction

• Article 21 of the Constitution says that: "***No person shall be deprived of his life or personal liberty except according to procedure established by law***".

•The right guaranteed in Article 21 is available to 'citizens' as well as 'non-citizens'.

•**GOLDEN TRIANGLE** (Constituents) =Articles 14 19 and 21 are not mutually exclusive and they jointly aim at reasonableness and fairness

•A law or administrative action challenged under Article 21 has to satisfy the requirements of reasonableness and fairness guaranteed by As 19 & 14.

In A.K. Gopalan (A.21 & A.19)

•The petitioner challenged the validity of his detention under the Act on the ground, that it was violative of his right to freedom of movement under Art. 19(1)(d) which is the very essence of personal liberty guaranteed by Art. 21 of the Constitution. ***He argued that the words "personal liberty" include the freedom of movement also and therefore the Preventive Detection Act, 1950 must also satisfy the requirement of Art. 19 (5***). In other words, the restrictions imposed by the detention law on the freedom of movement must be reasonable under Art. 19(5) of the Constitution. **It was argued that Art. 19(1) and Art. 21 should be read together because *Art. 19(1) dealt with substantive rights and Art. 21 dealt with procedural rights*.(*The State under clause(5) of Article 19 impose reasonable restrictions on the freedom of movement on 2 grounds (1)in the interests of the general public (2)for the protection of the interests of the Scheduled tribes*).**

In A.K. Gopalan v. State of Madras(1953)

•In *Gopalan*the Supreme Court interpreted the 'law' as "state made law" and rejected the plea that by the term 'law' in Art. 21 meant not the state made law but jus natural or the principles of natural justice.

•Supreme Court by the majority held that the ***'personal liberty' in Art. 21 means nothing more than the liberty of the physical body, that is, freedom from arrest and detention without the authority of law.***

•***Freedom guaranteed by Art. 19 can be enjoyed by a citizen only when he is a freeman and not if his personal liberty is deprived under a valid law***

Maneka Gandhi v. Union of India(1978)

•In Maneka Gandhi v. Union of India(1978), the ***Supreme Court has not only, overruled Gopalan'scase but has widened the scope of the words 'personal liberty'*** considerably. ***Bhagwati, J. (as he then was) observed:***

"The expression 'personal liberty' in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights."

•The Court lays down great stress on the procedural safeguards. ***The procedure must satisfy the requirement of natural justice, i.e. it must be just, fair and reasonable.***

Maneka Gandhi v. Union of India(1978)

•The order withholding reasons for impounding the passport was therefore not only in breach of statutory provisions (Passport Act) but also in violation of the rule of natural justice embodied in the maxim "audi alteram partem". ***Although there are no positive words in the statue (Passport Act) requiring that the party shall be heard, yet the justice of the Common Law will supply this omission of Legislature.*** The **power conferred under Section 10(3)(c) of the Act on the**

passport authority to *impound a passport is a quasi-judicial power.* The rule of natural justice would therefore, be applicable in the exercise of this power. ***A provision requiring of such opportunity to the affected person can and should be read by implication in the Passport Act, 1967.*** If such provisions were held to be ***incorporated in the Act by necessary implication, the procedure prescribed for impounding passport would be right, fair and just and would not suffer from the vice of arbitrariness or unreasonableness***.

Protection from Legislative action:

•Prior to Maneka Gandhi's decision, ***Article 21 guaranteed the right to life and personal liberty to citizens only against the arbitrary action of the executive, and not from legislative action. The State could interfere with the liberty of citizens if it could support its action by a valid law.*** But after the Maneka Gandhi decision Article 21 ***now protects the right to life and personal liberty of citizen not only from the Executive action but from the Legislative action also***. A person can be deprived of his life and personal liberty if two conditions are complied with, first, there must be a law and secondly, there must be a procedure prescribed by that law, provided that the procedure is just, fair and reasonable.

Due process:

•Due process has two aspects. **Substantive due process envisages that** the substantive provisions of a law should be reasonable and not arbitrary. **Procedural due process envisages** a reasonable procedure, i.e., the person affected should have fair right of hearing which includes four elements;

•Notice

•Opportunity to be heard

•An impartial tribunal

•An orderly procedure

Due Process of Law

•**Due Process of Law = Procedure Established by Law + The procedure should be fair and just and not arbitrary.**Other Fundamental Right's recognized (implicit in A.21)

1.Right to livelihood

2.Right to live with human dignity

3.Right to health and medical assistance

4.Right to education

5.Right to free legal aid

6.Right to privacy

7.Right to pollution free environment

8.Right to speedy tria

Gang Rape on Bangladeshi woman -Compensation given under Public Law

• In Chairman, Railway Board Vs Chandrima Das(2000), the Supreme Court has held that where ***a foreign national***, a Bangladeshi woman ***was gang raped compensation can be granted under Public Law (Constitution)*** for violation of fundamental rights on the ground of Domestic Jurisdiction based on constitutional provisions and Human rights jurisprudence. In this case a practising advocate of the Calcutta High Court filed a petition under Art. 226 of the Constitution against the various Railway authorities of Eastern Railway claiming compensation for the victim. Smt. HanuffaKhatoon, a Bangladesh national was ***gang raped by the employees of Railways in a room at Yatri Niwasof Howrah Station of the Eastern Railway.*** The Court awarded a sum of Rs. 10 lakhs as compensation to the victim.

Compensation for violation of Art. 21

•In Rudal Shah Vs. State of Bihar(1983), the Supreme Court has held that the Court has power to award monetary compensation in appropriate cases where there has been violation of the constitutional right to citizens. In the present case the Supreme Court directed Bihar Government to pay "Compensation" of Rs. 30,000 to RudalShah who had to remain in the jail for 14 years because of the irresponsible behaviour of the State Government Officers even after his acquittal. He was acquitted by the Sessions Court on June 30, 1968 but was released from jail only on Oct. 16, 1982 when the Court intervened. Describing this state of affairs as "sordid and disturbing" the Court asked the Patna High Court to find out if there were any other detenuessuffering a fate similar to RudalShah. Thus it is clear from this ruling that the Court can order payment of compensation to victims of State violence.

Bhim Singh v. State of J.K (1985)

•The Court awarded a sum of Rs. 50,000 to the petitioner as compensation for the violation of his constitutional right of personal liberty under Art. 21 of the Constitution. **The petitioner an MLA was arrested and detained in police custody and deliberately prevented from attending Session of the Legislative Assembly .*The police officers acted deliberately and mala fide and Magistrate and the Sub-judge aided them either by colluding with them or by their casual attitude.*** When the constitutional right of personal liberty is invaded the invasion is not washed away by his being set free. In appropriate cases the Supreme Court has jurisdiction to ***award monetary compensation by way of exemplary costs*** or otherwise.

Justice K.S.Puttaswamy Vs Union of India

• In a historic decision delivered on August 24th 2017, the Bench unanimously recognised a fundamental right to privacy of every individual guaranteed by the Constitution, ***within Article 21 in particular and Part III on the whole***. The decisions in*M.P. Sharma*and*KharakSingh*were overruled.

• Since the 2017 judgment, the fundamental right to privacy has been ***cited as precedentin various landmark judgments, such as theNavtejJohar(377IPC) & Joseph Shine (Adultery)judgments***

Government Steps to Protect Privacy:

• ***Draft Personal Data Protection Bill 2019*** regulates how government and private organizations in India and overseas process the personal data of individuals. If the individual gives consent, or if there is a medical emergency, or if the state is giving benefits, the processing is permitted.

• ***Committee chaired by B. N. Srikrishna***: Under the chairmanship of Justice B. N. Srikrishna, the government created a committee of experts on data protection, which submitted its report in July 2018.

• ***The Information Technology Act 2000 (IT Act)*** establishes protections against certain data breaches from computer systems. It includes precautions to prevent unwanted access to computer systems and data stored on them.

Virginity Test violates Right to privacy under Article 21:

•In Surjit Singh Thind Vs Kanwaljit Kaur (2003) the Punjab and Haryana High Court had held that medical examination of a woman for her virginity amounts to violation of her right to privacy and personal liberty enshrined under Article 21 of the Constitution.

Husband tapping conversation of his wife with others seeking to produce in Court, violates her right to privacy.

•In RayalaM.Bhuvaneswari Vs Nagaphanender Rayala(2008) the petitioner ***filed a divorce petition in the Court against his wife and to substantiate his case sought to produce a hard disc relating to the conversation of his wife***

recorded with others. She denied some portions of the conversation. ***The Court held that the act of tapping by the husband of conversation of his wife with others without her knowledge was illegal and amounted to infringement of her right to privacy under Article 21of the Constitution. These talks even if true cannot be admissible in evidence.***

Right to health and Medical Assistance :

•In Parmananda Katara Vs Union of India(1989), it has been held that **it is the professional obligation of all doctors**, ***whether government or private***, to extend medical aid to the injured immediately to preserve life **without waiting for legal formalities to be complied with by the police** under Cr.P.C.***(medico-legal cases)*** It is submitted that if this decision of the Court is followed, in its true spirit it would help in saving the lives of many citizens who die in accidents because **no immediate medical aid is given by the doctors on the ground that they are not authorised to treat *medico-legal cases.***

Punjab v. Mohinder Singh Chawla(1997)

•The Court has held that the right to life in Art. 21 of the Constitution includes the right to health and, therefore, the ***Sate employees are entitled*** to medical reimbursement of expenses for treatment and ***room rent charges even in approved specialized hospitals outside the Government hospitals.*** In this case the respondent a State employee had heart ailment which required replacement of two valves in the heart. **Since the facility of the treatment was not available in the State, permission was given by the Director, with the approval of the Medical Boards to get the treatment outside the State. He was sent for treatment in the AIIMS at New Delhi. When the bill for expenses incurred towards room was submitted the Government rejected it. It was held that the employee was entitled to reimbursement of actual room rent**

charges paid by him. The Government was not entitled to take the stand that the reimbursement could not be allowed as per rate charged by AIIMS.

Arrest and detention of a judgment debtor

•In Jolly George Varghese v. Bank of Cochin(1980):-The question involved in this case was that whether a person can be imprisoned on the ground that he has failed to discharge his contractual obligations and whether such imprisonment amounts to deprivation of his personal liberty enshrined in Article 21 without fair and reasonable procedure? ***Article 11 of the International Covenant provides that "No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation."***

• It has been held that the arrest and detention of an honest judgment-debtor in civil prison, who has no means to pay the debt *in absence of mala fide and dishonesty*, violates Article 11 of the International Covenant on Civil and Political Rights and Article 21 of the Constitution.

Free Legal Aid at trial &appellate stage

•Ramakant v. State of MP(2012) The appellant in a gang rape case convicted by the trial court preferred an appeal to the High Court but there he remained unrepresented. The High Court did not inquire the appellant whether he needed legal assistance and upheld his conviction. ***The case records were remitted back to the High Court for a fresh hearing as the High Court had not provided the appellant an opportunity of obtaining legal assistance. The Court held that Legal aid is available both at trial and appellate stage***

Right against solitary confinement.

•In Sunil Batra Vs Delhi Administration (1978), the important question raised before the Supreme Court was ***whether 'solitary confinement' imposed upon prisoners was violative of Article 14, 19 and 21 of the Constitution.*** In this case the two convicts who were confined in Tihar Central Jail filed two petitions

under Article 32, challenging the validity of Section 30 of the Prisons Act. Sunil Batra was sentenced to death by the District and Sessions Judge.

Right to speedy trial

•In Hussainara Khatoon Vs Home Secretary State of Bihar(1979),. Supreme Court held that ***"right to a speedy trial" a fundamental right*** is ***implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution.*** Speedy trail is the essence of criminal justice. In United States speedy trial is one of the constitutionally guaranteed right under the Sixth Amendment. Bhagwati, J., (as he then was) held that although, unlike the American Constitution speedy trial is not specifically enumerated as a fundamental right, ***it is implicit in the broad sweep and content of Article 21 as interpreted in Maneka Gandhi's case.***

Conversion of death sentence into life imprisonment

•In Triveni Ben Vs State of Gujarat(1989), a five judge Bench of the Supreme Court has held that **undue long delay in execution of the death sentence will entitle the condemned person to approach the Court for conversion of death sentence in to life imprisonment**, but before doing so the Court will examine the nature of delay and circumstances of the case. ***No. fixed period of delay could be held to make the sentence of death in executable.*** In the present case the death penalty of the accused was converted into life imprisonment.

Madhu Mehta v. Union of India(1989)

•The **mercy petition of the petitioner who was sentenced to death was pending before the President of India for about 9 years**. This matter was brought to the notice of the Court by one Madhu Mehta, the National Convenor of Hindustani Andolan. **Following Triveniben's decision the Court directed the death sentence to be commuted to life imprisonment** as there were no sufficient reasons to justify such a long delay in disposal of the convict's mercy petition.

Protection of Ecology and Environmental Pollution:

• In Rural Litigation and Entitlement Kendra v. State of U.P(1985***)., the Court ordered the closure of certain lime stone quarries.***The Court had appointed a committee for the purpose of inspecting certain lime stone-quarries. The Committee had suggested the closure of certain categories of stone quarries having regard to adverse impact of mining operations therein. A large scale pollution was caused by lime stone quarries adversely affecting the safety and health of the people living in the area.

Magistrates and sessions judges play crucial roles in safeguarding personal liberty and the right to life in Article 21 of the Constitution.

Magistrates handle initial investigations and detentions, ensuring arrested individuals are produced before them within 24 hours and that their detention is lawful. Sessions judges, as part of the sessions court, handle more serious criminal cases and appeals from lower courts, ensuring fair trials and adherence to due process.

Magistrate's Role:

Initial Detention and Production:

When a person is arrested, the police must produce them before a magistrate within 24 hours.

Remand and Custody:

The magistrate decides whether to grant bail or remand the accused to police or judicial custody.

Ensuring Legal Rights:

The magistrate ensures the arrested person is informed of the reasons for arrest and their right to consult a lawyer.

Preventive Detention:

Magistrates may also handle cases related to preventive detention, where a person is detained to prevent them from committing a crime.

Magistrate's Inquest:

In cases of suspicious deaths, magistrates conduct inquests to investigate the cause of death.

Session Judge's Role:

Trial of Serious Offenses:

Sessions judges preside over trials of serious criminal offenses, ensuring a fair and impartial trial.

Appeals:

They hear appeals from lower courts, reviewing decisions and ensuring justice is served.

Sentencing:

Sessions judges impose sentences on those convicted of crimes, balancing the severity of the offense with the need for justice and rehabilitation.

Ensuring Due Process:

Sessions judges ensure that all legal procedures are followed during trials, protecting the rights of the accused and the victims.

Interpreting Laws:

They interpret and apply laws, ensuring consistency and fairness in the application of the law.

Article 21 and the Judiciary:

Article 21 of the Indian Constitution guarantees the right to life and personal liberty, stating that no person shall be deprived of these rights except according to the procedure established by law. The judiciary, including magistrates and sessions judges, is entrusted with the responsibility of upholding this fundamental right. They ensure that any restrictions on personal liberty are lawful, reasonable, and justifiable. The judiciary also plays a vital role in interpreting the scope of

Article 21, which has been expanded over time to include rights like the right to privacy and the right to a fair trial.

In essence, magistrates and sessions judges act as vital safeguards in the Indian legal system, ensuring that the fundamental rights to life and personal liberty are protected through due process, fair trials, and adherence to the law.

Role of Judiciary in upholding the rule of law :

For the role of Judiciary in upholding the rule of law, kindly see the following leading decisions of the Supreme Court reported in

(i) K.S. Puttaswamy (Aadhaar Case) Vs. Union of India, (2019) 1 SCC 1 (Five Judge Bench)(Para ZV)

(ii) State of Gujarat Vs. Mohan Lal, AIR 1987 SC 1321

(iii) State of MP Vs. Sri Ram Singh, SLP (Cr) No. 1295/1997 (SC)

(iv) Vineet Narayan Vs. Union of India, (1998) 1 SCC 226

Right to life and personal liberty :

In the case of (i) Unnikrishnan J.P. Vs.State of A.P., AIR 1993 SC 2178, (ii) Aadhaar Case reported in AIR 2017 9 SC 4161 (Eleven-Judge Bench) and in other cases, noted below, the Hon'ble Supreme Court has enumerated following rights as the rights relating to 'right to life' and the 'right to personal liberty' :

(1) Right to go abroad : AIR 1967 SC 1836

(2) Right to privacy : AIR 2015 SC 3081 & AIR 2017 SC 4161

(3) Right against solitary confinement : AIR 1978 SC 1675

(4) Right against bar fetters : AIR 1978 SC 1514

(5) Right to legal aid : AIR 1978 SC 1548

(6) Right to speedy trial : AIR 1979 SC 1369

(7) Right against handcuffing : AIR 1980 SC 1535

(8) Right against delayed execution : AIR 2015 SC 715

(9) Right against custodial violence : AIR 1983 SC 378

(10) Right against public hanging : AIR 1986 SC 467

(11) Right to medical assistance : AIR 1989 SC 2039

(12) Right to shelter : AIR 1990 SC 630

(13) Right to sleep : (2012) 5 SCC 1

(14) Right against noise pollution, (2015) 4 SCC 801

(15) Right to healthy environment : 1955 AIR SCW 306

(16) Right to compensation for unlawful arrest : AIR 1983 SC 1086

(17) Right to freedom from torture : AIR 1978 SC 1675

(18) Right to earn livelihood : AIR 1986 SC 180

(19) Certain other rights also as declared by the Hon'ble Supreme Court in it's subsequent decisions.

Presumption of innocence ends with the conviction and sentence by the lower court and does not continue there after:

When a lower courtconvicts an accused and sentences him, the presumption that the accused is innocent comes to an end. The conviction operates and the accused has to undergo the sentence. The execution of the sentence can be stayed by an appellate court and the accused released on bail. If the appeal of the accused succeeds the conviction is wiped out as cleanly as if it never existed and the sentence is set aside. But that is not to say that the presumption of innocence continues, after the conviction by the trail court.The conviction and the sentence it carries operate against the accused in all their rigour until set aside in appeal, and a disqualification that attaches to the conviction and sentence applies as well. See : B.K. Kapur Vs. State of T.N., (2001) 7 SCC 231 (Five-Judge Bench) (para 40 .

Presumption of innocence of accused :

Presumption of innocence is a human right. Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure.

Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor.

(i) Shabnam Vs. Union of India, (2015) 6 SCC 702.

(ii). Kailash Gour Vs. State of Assam, (2012) 2 SCC 34(Three-Judge Bench)

(iii). Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra, (2005) 5 SCC 294

(Three–Judge Bench)

(iv). Narendra Singh Vs. State of M.P., (2004) 10 SCC 699.

Presumption of innocence continues even up to the appellate stage :

Every accused is presumed to be innocent unless proved guilty. Presumption of innocence of accused starts in the trial court and continues even up to the appellate stage.

See-

(i) Sunil Kumar Shambhu Dayal Gupta Vs. State of Maharashtra 2011 (72) ACC 699 (SC).

(ii) Jayabalan Vs. U.T. of Pondicherry, 2010 (68) ACC 308 (SC)168.

Right to privacy whether or not a fundamental right, question referred to larger bench :

Right to privacy whether or not a fundamental right, question has been referred to larger bench by a Three-Judge Bench of the Supreme Court. See K.S. Puttaswamy Vs. Union of India, (2015) 8 SCC 835.

Mandatory provision directing installation of CCTV camera in Dance Bars held violative of right to privacy under Article 21: Mandatory provision directing installation of CCTV camera in Dance Bars has been held by the Supreme Court to be violative of right of privacy under Articles 21 and also violative of Articles 14 and 19(1)(a) of the Constitution of India. See: Indian Hotel and Restaurant Association Vs. State of Maharashtra, AIR 2019 SC589.

FIR & powers of police to arrest without warrant a person having committed cognizable offence :

Sections 41 to 60A of the CrPC empower the Police Officers to arrest without warrant a person having committed cognizable offences. Sections 41 to 60A of the CrPC are as under Section 41 : Power of Police Officer to arrest without warrant a person having
committed cognizable offence.

Section 41A : Notice of appearance before Police Officer and arrest thereafter.

Section 41B : Procedure of arrest and duties of officer making arrest.

Section 41C : Control room at districts.

Section 41D : Right of arrested person to meet an advocate of his choice during interrogation.

Section 42 : Arrest on refusal to give name and residence 14

Section 43 : Arrest by private person and procedure on such arrest.

Section 44 : Arrest by Magistrate.

Section 45 : Protection of members of the Armed Forces from arrest.

Section 46 : Arrest how made.

Section 47. Search of place entered by person sought to be arrested.

Section 48 : Pursuit of offenders into other jurisdictions.

Section 49 : No unnecessary restraint.

Section 50 : Person arrested to be informed of grounds of arrest and of right to bail.

Section 50A : Obligation of person making arrest to inform about the arrest, etc., to a nominated person.

Section 51 : Search of arrested person.

Section 52 : Power to seize offensive weapons.

Section 53 : Examination of accused by medical practitioner at the request of police officer.

Section 53A : Examination of person accused of rape by medical practitioner.

Section 54 : Examination of arrested person by medical officer.

Section 54A : Identification of person arrested.

Section 55 : Procedure when police officer deputes subordinate to arrest without warrant.

Section 55A : Health and safety of arrested person.

Section 56 : Person arrested to be taken before Magistrate or officer in charge of police station.

Section 57 : Person arrested not to be detained more than twenty-four hours.

Section 58 : Police to report apprehensions.

Section 59 : Discharge of person apprehended.

Section 60 : Power, on escape, to pursue and retake.

Section 60A : Arrest to be made strictly according to the Code.

Arrest not mandatory as per Section 41(1)(b) CrPC in cognizable offences punishable with imprisonment upto 07 years :

Sections 41(1)(b)and 41-A CrPC place check on arbitrary and unwarranted exercise of powers of arrest by police. Arrest is not mandatory as per Section 41(1)(b) and 41-A CrPC in cognizable offences punishable with imprisonment upto 07 years. Writ Court under Article 226 of the Constitution can in appropriate cases grant relief against pre-arrest but such power is not to be exercise in the State of UP liberally so as to bring back the provisions of Section 438 CrPC by back door. See : Km. Hema Mishra Vs State of UP, AIR 2014 SC 1066.

Arrest of accused on registration of FIR u/s 154 CrPC not mandatory :

It is incorrect to say that mandatory registration of FIRs will lead to arbitrary arrest,which will directly be in contravention of Article 21 of the Constitution. While registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. In fact, registration of FIR and arrest of an accused person are two entirely different concepts under law, and there are several

safeguards available against arrest. Moreover, an accused person also has a right to apply for "anticipatory bail" under the provisions of Section 438 of the Code if the conditions mentioned therein are satisfied. See : Lalita Kumari Vs Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench).

Duty of Arresting Officer & guidelines of the Supreme Court : Arrest of a person by the police and the treatment with him thereafter have always been the area of concern for the courts. In the case of Joginder Kumar v. State of U.P., (1994) 4 SCC 260, the Hon'ble Supreme Court has clarified that an accused named in a FIR should not be arrested soon after the registration of the FIR. He should be arrested by the investigating officer only after collecting some evidence showing his involvement in the commission of the offence.

Guidelines of the Supreme Court on arrest etc. in the case of D.K. Basu Vs State of West Bengal, (1997) 1 SCC 416 & A.K. Jauhari Vs State of UP, (1997) 1 SCC 416 : In the famous cases of D.K. Basu Vs State of West Bengal, (1997) 1 SCC 416 and A.K. Jauhari Vs State of UP, (1997) 1 SCC 416, the Hon'ble Supreme Court has issued following guidelines for the arresting officers to be observed at the time of arrest of a person and treatment thereafter with him :

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) The police officers carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable member of the locality from where the arrest is made. It shall be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one

friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at a particular place unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district and the police station of the area concerned telegraphically within a period of 8 to 10 hours after the arrest.

(5) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requires, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and it's copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of 18 approved doctors appointed by Director Health Services of the state or union territory concerned. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the Memo Of Arrest referred to above should be sent to the Illaka Magistrate for his record.

(10) The arrestee may be permitted to meet his Lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all District and State Headquarters, where information regarding the arrest and the place of custody of

the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and the police control room it should be displayed on a conspicuous notice board.

Arrest of accused must before submission of charge-sheet : If the IO submits charge-sheet without arresting the accused person (unless he is on bail) it can be submitted only if he has been declared absconder and the case under Section 174-A of the IPC has also been registered as a result of such proclamation. Compliance with the provisions of Section 170 & 173 CrPC by the investigating officer is mandatory. If police report submitted u/s 173 CrPC falls short of above compliance, court will be justified in insisting on compliance before accepting the charge-sheet for cognizance or otherwise. IO is duty bound to inform the Magistrate whether the accused in jail or on bail or is being forwarded with the charge-sheet. If charge-sheet is submitted after declaring the accused as absconder, a case under Section 174-A of the IPC has to be registered. The IO is also duty bound to inform the complainant of the FIR about the result of the investigation whether he submits charge-sheet or final report. See – Iqbal Vs State of UP, 2013 CrLJ 1332 (All)(LB)(by Hon'ble Sudhir Kumar Saxena, J.)

12(K). Arrest of accused not necessary before submission of charge-sheet :

Arrest of accused is not necessary before submission of charge-sheet. See :

Judgment dated 14.05.2015 of the Supreme Court delivered in Criminal Appeal No. 789/2015, State of UP & Others Vs. Anil Kumar Sharma.

NBW when to be issued ? :

Where in a complaint case, the Magistrate had out right issued NBW against the accused persons, interpreting the scope of Article 21 of the Constitution in relation to the rights of personal liberty of a person, it has been held by the Supreme Court that the attendance of the accused could have been secured by issuing summons or at best by a bailable warrant. Detailed guidelines have been issued by the Hon'ble Supreme Court in this regard for observance by the courts and the Police

Officers. A format of Register for entering therein the details of issue etc of NBWs has also been provided by the Hon'ble Supreme Court at the end of its judgment. See :

Raghuvansh Dewanchand Bhasin Vs State of Maharashtra & Another,AIR 2011 SC 3393.

Free Legal Aid —

Article 39-A of the Constitution & Legal Services AuthorityAct, 1987 : The Parliament has passed the Legal Services Authority Act, 1987to give effect to the provisions of Art. 39-A of the Constitution to provide freelegal aid to the poor and the needy. The District Legal Services Authoritiesconstituted under the aforesaid Act have been specially required to provideassistance to the poor litigants, convicts, under trials and the litigants belonging to the poor sections of the society in the form of court fees, expenses of thelitigations and the Advocates fee etc. A litigant belonging to the aforesaidcategories may apply to the Secretary of the DLSA to avail the free of cost

Compensation in case of custodial tortures & deaths : Torture of an accused in police custody, custodial deaths and atrocities on prisoners in jails have also been one of the major area of concern as regards the human rights. The Hon'ble Supreme Court has in a plethora of cases (noted below) clarified that if a person in the custody of police is subjected to any torture, inhuman treatment or violence or custodial death takes place then courts can not only take appropriate action against the responsible police officer but can also provide compensation to the dependents of the deceased or the victim of the illegal torture or violence

1. Amol Vitthalrao Kadu Vs. State of Maharashtra, AIR 2019 SC 218.
2. Ravindra Nath Awasthi vs. State of U.P., 2010 (68) ACC 61 (All) (DB)
3. Shakila Abdul Gafar Khan (Smt.) v. Vasant Raghunath Dhoble, (2003)7 SCC 749

4. Raghbir Singh v. State of Haryana, (1980) 3 SCC 70
5. Gauri Shankar Sharma v. State of U.P., AIR 1990 SC 709
6. Bhagwan Singh v. State of Punjab, (1992)3 SCC 249
7. Nilabati Behera v. State of Orissa, AIR 1993 SC 1960
8. Pratul Krishna v. State of Bihar, 1994 Supp. (3) SCC 100
9. Kewalpati v. State of U.P., (1995) 3 SCC 600
10. Inder Singh v. State of Punjab, (1995) 3 SCC 702
11. State of M.P. v. Shyam Sunder Trivedi, (1995)4 SCC 262
12. D.K. Basu v. State of W.B., (1997) 1 SCC 416
13. Sheela Barse v. State of Maharashtra, (1983) 2 SCC 96
14. State of Maharashtra v. Christian Community Welfare Council, (2003) 8 SCC 546
15. Sube Singh v. State of Haryana, 2006(54) ACC 873 (SC)

20(A-3).State/Court are duty bound to award compensation to the victims of custodial torture whether during arrest, detention, investigation or trial:

Custodial death is perhaps one of the worst crimes in a civilised society governed by the rule of Law. The rights inherent in Articles 21 and 22 (1) of the Constitution require to be jealously and scrupulously protected. Court cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government became law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. No civilised nation can permit that to happen. Does a citizen shed off his **Article 20(3) of the constitution as bar against forced scientific tests like DNA, Narco-analysis & Polygraph etc**. : In view of the bar of constitution contained under Article 20(3), an accused person can not be compelled to undergo scientific tests like Narco analysis, Polygraphy, Brainfinger

printing etc., as it amounts to self-incrimination of the accused. See : Smt. Selvi Vs. State of Karnataka, AIR 2010 S.C. 1974 (Three-Judge Bench)

41. DNA Test not violative of Art. 20(3) of the constitution : DNA profiling technique has been expressly included among the various forms of medical examination in the amended explanation to sections 53, 53-A and 54 of the CrPC DNA Profile is different from a DNA sample which can be obtained from bodily substances. The use of material samples such as finger prints for the purposes of comparison and identification does not amount to testimonial act or compulsion for the purpose of Article 20(3) of the constitution. Hence, the taking and retention of DNA Samples which are in the nature of physical evidence does not face constitutional hurdles in the Indian context See : Smt. Selvi Vs. State of Karnataka, AIR 2010 S.C. 1974 (Three Judge Bench)