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**"A Critical Study on The Laws Relating to The Powers Given to The Police Authority in The Criminal Justice System."**

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**ABSTRACT**

This research study seeks to assess how police authorities not performing their duties can affect the general public in the criminal justice system and seeks to assess the solutions or safeguards relating to the same. This research study aims to find adequate safeguards and measures preventing the general public from infringing on fundamental rights and human rights. This research paper is completely based on the doctrinal method of study as it deals with the study of existing laws, related cases, and authoritative material. It is based on the primary source of data as well as secondary sources of data. The research study mainly relies on quantitative and qualitative research methods as the study will be done by textual analysis, surveys, and analysis based on the texts and the cases. This research paper will focus on the areas of police powers when it comes to maintaining order and peace. The aim of this research paper is to conduct a systematic review of decisions in order to trace evolving judicial techniques for determining the actual duty of police officers and their use of power for the protection of the general public. It is asserted that there is an ambiguity in the legislation governing the use of power by police officers. It should have safeguards for the

general public as it will to the infringement of fundamental and human rights.

**KEYWORDS:** Fundamental rights, Infringement, Judicial techniques, Police powers, Public, Safeguards.

**RESEARCH QUESTIONS.**

1. To what extent do police authorities use their power under chapter 5 of the code of criminal procedure and Articles 21,14, and 22 of the Indian constitution?
2. How do the rules and provisions keep in check the use of power by the police authorities?

**I. INTRODUCTION**

This Research paper covers the problem of the unethical use of powers given to police authorities in regard to the arrest of a person or while arresting a woman under custody, and the Abuse of power given to them under chapter 5 of the criminal procedure code and the constitution of India with the brief analyzation of supreme court and high court case laws as the powers given to the police authority tends to be violative in nature by its unethical use or non-performance of duties and finding out the relevant safeguards for the prevention of general public. There have been numerous instances of security forces violating the basic human and fundamental rights of the general public, even when there is no existing threat to public order.<sup>48</sup> Instances of killings of innocent people could be observed in India. Although the number of extremist killings has decreased subsequently over time, the issue of death in police custody or induced by fake encounters persists.<sup>49</sup> The duty of the police in a state is to protect people's lives, personal freedom, and protection. However, the

<sup>48</sup>Abuse of power by the Security Forces Under the Garb of Law and Order Maintenance, 9.1 NULJ 79 2019.

<sup>49</sup>Police Custodial Death: A Growing Abuse to Human Rights in India, 36 JILI 372 (1994).



protectors are frequently found to be lawbreakers.

The police commit a significant number of human and fundamental rights violations, despite the fact that current law attempts to prevent such violations. The problem is exacerbated by the failure to properly implement existing legislation.<sup>50</sup>

This research paper will allow for a comprehensive critical analysis of the Supreme Court's current position on the issue, which, it is contended, undermines the legislative intent behind the provision and is, therefore, invalid. It is asserted that the only solution is an unequivocal statement of legislative intent through an amendment.<sup>51</sup>

## II. THE LEGAL SIGNIFICANCE OF ARREST AND DETENTION LAWS.

The police authorities are considered one of the most critical components of an advanced and civilized country. Its origin can be seen in the ancient period of India and the Vedic and medieval periods of Indian history. The phrase Police can be defined broadly as the purposeful maintenance of law and order, the safety of people's lives, personal liberty, and safety from the hazard of public collisions, and the adequate supervision of criminal conduct. The fundamental disciplines of policing have diverged significantly. However, the dominance of the police, the use of force, and the supervision of breach of the peace varied from the late twentieth to the early twenty-first century in several cases.<sup>52</sup> the arrest was made following the Criminal procedure Code 1973,<sup>53</sup> which includes two main methods: arrest without warrant and arrest with the warrant. Arrests with warrants occur when a person commits a non-cognizable offense, meaning the offense is less severe.

Furthermore, an arrest without a warrant occurs when a person commits a cognizable offense, which means the offense is more severe. Then it was addressed the arrested person's rights, such as the right to consult a legal practitioner, the right to understand the reasons for their arrest and the charges against them, and the right to be obtained before such a magistrate without postponement. The police should be restricted in their ability to arrest without a warrant in the specific instance of a cognizable offense based solely on suspicion. Before making such an arrest, the magistrate's permission should be obtained. If a prompt arrest is required to prevent the accused from escaping, it should be made in the presence of at least two reputable locals. Section 41<sup>54</sup> of the code of criminal procedure should be changed to reflect this.

The provisions for "arrest of persons" are found in Chapter 5, that is, from Sections 46<sup>55</sup> to 60A<sup>56</sup> of the Criminal Procedure Code, 1973. This chapter delves into the specifics of a reasonable arrest. The scope and ambiguity of the sections of the criminal procedure code allow abuse of power. In India, words like rational, reliable, reasonable, and if it would seem to such officer in Sections 41, 42<sup>57</sup>, and 151<sup>58</sup> are objective, but their usage is entirely subjective. Because of the risk of repercussions, police officers who manipulate these sections are rarely prosecuted. Numerous cases have provided us with various guidelines for arrest and the arrested person's rights. However, there were several points where this process was critiqued, and several concerns were raised about how this judicial system in India worked. One of the most severe disadvantages is the extent of corruption and related misconduct in India, which primarily affect the arrest of the

<sup>50</sup> Human Rights v. Police — A Probe From Human Rights Perspective, 62 NULJ 51[2017].

<sup>51</sup> Police Officers and § 25 of the Indian Evidence Act, 1872, 7 NUJS L Rev 55(2014).

<sup>52</sup> Model police Act, 2006: A Step Towards the Modern police Laws, KIIT Student L Rev 167 (2015).

<sup>53</sup> The code of criminal procedure, 1973, NO. 2, Acts of Parliament OF 1974 (India).

<sup>54</sup> The code of criminal procedure, 1973, § 41, NO. 2, Acts of Parliament OF 1974 (India).

<sup>55</sup> The code of criminal procedure, 1973, § 46, NO. 2, Acts of Parliament OF 1974 (India).

<sup>56</sup> The code of criminal procedure, 1973, § 60A, NO. 2, Acts of Parliament OF 1974 (India).

<sup>57</sup> The code of criminal procedure, 1973, § 42, NO. 2, Acts of Parliament OF 1974 (India).

<sup>58</sup> The code of criminal procedure, 1973, § 151, NO. 2, Acts of Parliament OF 1974 (India).



appropriate people and the rights of the accused person.

### III. INFRINGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL RIGHTS.

"HUMAN RIGHTS are those rights that are intrinsic in our core and without which we cannot live as human beings."<sup>59</sup>

In India, the majority of human rights issues that come before the National Commission for consideration and interference are related to malicious acts committed by Police and the army and Police, including summary executions, sexual abuse, brutality, and Corruption at every level of government. Corruption is the improper use of power for personal benefit. It is the process of giving, offering, obtaining, or propositioning anything of value, either explicitly or indirectly, in order to improperly impact the actions of the general public.<sup>60</sup> Human rights are undoubtedly relevant and significant because they are required for a worthwhile life. The State is obligated to protect human and fundamental rights, and the most important Apparatus of the State for protecting people's rights is the Police. However, the protectors are repeatedly detected to be violators, and a huge proportion of violations of human rights by Police are identified.<sup>61</sup> It has consented that there is a conflict between the accused's rights and the interests of society in general. When it comes to societal interests, the fundamental rights of the accused are not given much importance. It is suggested that due to the recent increase in crime, Indian legal authority cannot be unconditional and must be comparative. It is really essential that to maintain a woman's modesty, even if she is charged with a crime. As a result, arrested women have been granted certain general rights as well as some specific rights.

As seen in the case of *Gandharba Rath vs. Apariti Samal* (1959)<sup>62</sup>, the Orissa High Court ascertained that Section 56<sup>63</sup> requires police officers to arrest a written request clarifying the person to be arrested and the infringement as well as another effect for which the arrest is to be made, mainly when a police officer has delegated arrest without a warrant to a junior officer.

### IV. THE SUPREME COURT AND HIGH COURT CASES.

This research paper will also depict examples of the case laws of the supreme court and high court where fundamental and human rights are seriously violated and infringed by the police officers and the judgment or decision by the honourable court stating the need to protect the fundamental rights of the people.

#### 1. **Kulvir Singh Barapind vs Government of the Republic India.**

The case is about the Human Rights Watch analysed accusations that the Punjab Police mistreated Kulvir Singh Barapind after arresting him on charges of explosives trafficking, rebellion, and starting a war against the government in this case law. According to Kulvir's advocate, he had earlier protested to the court that the police "gave electric shocks to his ears, thrashed him, and humiliated him." On June 17, 2006, the United States extradited Barapind to India on murder charges after receiving assurances from India that he would not be tortured. In 2008, an Indian court cleared Barapind of all allegations of murder and other felonies and discharged him. According to the example above, "it emphasizes the necessity for India to implement the Prevention of Abuse act and put its provisions into prompt attention." The case of Barapind serves as an elevated

<sup>59</sup> Police Custodial Death: A Growing police to Human Rights in India, 36 JILI 372 (1994).

<sup>60</sup> Combating Corruption in Power Sector, PL (EL) December 77 (2019).

<sup>61</sup> Human Rights v. Police — A Probe From Human Rights Perspective, 62 NULJ 51[2017].

<sup>62</sup> *Gandharba Rath vs. Apariti Samal* (1959), AIR 1960 Ori 33.

<sup>63</sup> The code of criminal procedure, 1973, § 56, NO. 2, Acts of Parliament OF 1974 (India).



reminder to the Indian government to deal with the lengthy issue of torture in imprisonment."<sup>64</sup>

## 2. Joginder Kumar v State of U.P.

The case of Joginder Kumar vs. state of UP<sup>65</sup> is regarded as the 'arrest guidelines case.' In view of the increasing crime rate and accusations of human rights breaches due to indiscriminate arrests throughout the years, the Supreme Court sought to achieve a balance between the rights of people and the rights of collective persons as a society. In a landmark judgment, the hon'ble Supreme Court declared that no arrest could be made routinely based on a mere accusation of the commission of an offense made against a person.

## 3. D.k. Basu v. State of West Bengal.

In this case, DK Basu, the Executive Chairman of Legal Aid Services, Bengal, an organization for human rights, appealed to the Supreme Court of India on August 26, 1986, seeking the interest of various news publications in the Times Newspaper concerning deaths in police custody and detention. He urged that the letter be recognized as a Writ Petition under the context of the "Public Interest Litigation."

The Supreme Court has considered this fully and emphasized worry about the increasing number of cases of in-custody violence and death. However, the statute takes neither an ethical nor a juridical element into account. The Court's primary objective should be "to apply balm to the wounds rather than punish the transgressor or the offender" because receiving an adequate penalty for the crime, regardless of compensation, must be left to the law trials in which the violator is brought to trial, which the State is legally obligated to do.<sup>66</sup>

## 4. Sheela Barse v. State of Maharashtra (1983).

In this case of Sheela Barse vs. State of Maharashtra 1983, Sheela Barse, a journalist submitted a letter protesting custodial abuse against female detainees in Mumbai police lock-ups, which was eventually treated as a Writ Petition. In this instance, the State of Maharashtra has issued several directives providing safety to women detained in police cells.<sup>67</sup>

## 5. Ahmed Noor Mohammad Bhatti v. State of Gujarat

In this case, The Supreme Court affirmed the constitutionality of Section 151<sup>68</sup> of the Code of criminal procedure, 1973, which gives a police officer the authority to arrest and apprehend a person without a warrant to prevent a cognizable offense, stating that the abuse of this power by the police officer cannot render this provision ambiguous and unfair. The Supreme Court further stated that the administrative detention legislation was a vital tool for preventing the commission of any cognizable crime or conduct.<sup>69</sup>

## 6. Bharati S. Khandhar v. Maruti Govind Jadhav.

The Police general of Maharashtra, and the Police Commissioner of Mumbai, were instructed to issue directions to all concerned departments within two weeks to pursue the obligation of Section 46(4)<sup>70</sup> of the Code of Criminal Procedure, 1973, which indicates that arresting any woman accused of any offense after sunset and before sunrise is prohibited.<sup>71</sup> Section 176(i)<sup>72</sup> of the Criminal Procedure Code, 1973, mainly requires the magistrate responsible for examining incidents of police custody death in order to determine the reason for death so

<sup>64</sup> Kulvir Singh Barapind V. Government of Republic of India.

<sup>65</sup> Joginder Kumar vs. State of U.P., 1994 AIR 1349.

<sup>66</sup> D.k. Basu vs. State of west Bengal, 1997 1 SCC [416].

<sup>67</sup> Sheela Barse v. State of Maharashtra (1983), 1983 AIR 378 1983 SCR (2) 337 1983 SCC (2) 96 1983.

<sup>68</sup> The Code of criminal procedure, 1973, § 151, NO. 2, Acts of Parliament OF 1974 (India).

<sup>69</sup> Ahmed Noor Mohammad Bhatti v. State of Gujarat.

<sup>70</sup> The code of criminal procedure, 1973, § 46(4), NO. 2, Acts of Parliament OF 1974 (India).

<sup>71</sup> Bharati S. Khandhar v. Maruti Govind Jadhav (2012), WP-453-08.

<sup>72</sup> The code of criminal procedure, 1973, § 176(i), NO. 2, Acts of Parliament OF 1974 (India)



that any culpable individuals can be penalized. An inquiry was launched into a prison death case, and the Gokulpuri Police Station (Delhi) team was suspended due to its findings. The suspect was apprehended at Purkazi, Muzaffarnagar (U.P.), in connection with an abduction case. He died due to abuse while in police detention, and his body was thrown into the Hindon River by the cops. In one case, a 22-year-old man died in police custody at Delhi's Patel Nagar Police Station. An inquiry into the case was ordered, and two station policemen were suspended. The suspect was arrested at his home by police officers on suspicion of theft. With the analysis of some instances, we have come to know there has been misuse of the power by the police officers given under the code of criminal procedure, 1973 and the Indian constitution, and certain amendments and safeguards should be there to protect the general public.

#### V. THE GUIDELINES AND SAFEGUARDS PROVIDED.

This research also discusses the guidelines provided by the court in certain cases of the unethical use of powers by the police authorities and which needs to be followed while arresting a person.

##### 1. Prabhu Dayal Deorah v. District Magistrate, Kamrup.

To avoid abuse, all preventative arrest legislation should be subject to court review in order to limit their application. If a person is arrested, adequate evidence must be presented to warrant the arrest. The Supreme Court affirmed a similar approach in the case of Prabhu Dayal vs. District Magistrate.<sup>73</sup>

##### 2. D.k. Basu v. State Of West Bengal.

These standards were enacted in response to an upsurge in unlawful convictions and detention deaths. In this case, specific guidelines were issued by the court to prevent

misuse of powers by the police authorities, which needs to be stopped and also focus on the rights of the arrested accused. The court prescribed the following guidelines that are the right of the accused person to approach his lawyer, the right to be medically examined every 48 hours, the right to have his/her subordinate notified about the arrest, to be generated in front of the Magistrate within 24hrs, written statement to be prepared in front of a witness, the accused person to be recorded in a journal and the letter addressed and the diary to be shown to the Magistrate.

##### 3. State of Maharashtra v. Christian Community Welfare Council of India.

To protect the dignity of women, the Bombay High Court ruled that no female person shall police arrested or detained without any of the supervision of a lady constable, and in no case after sunset and then before morning.<sup>74</sup>

##### 4. Nilabati Behera vs. State of Orrisa.

The court held in Nilabati Behera vs. State of Orrisa (1993)<sup>75</sup> that any torturing or brutal, barbaric, or degrading mistreatment is covered by the provisions of article 21<sup>76</sup>, irrespective of whether it occurs during an inquiry, interrogation, or other. The rights provided by article 21 cannot be refused to juvenile offenders, convicts, detainees, and other offenders in detention unless done thus following the process specified by the Law and according to such reasonable regulations as are allowed by Law.

The government's accountability for a tort committed by its public servants was generally limited. The person harmed could exercise his legal right by filing a lawsuit, where the argument of state immunity could again be claimed. However, for infringements of the life fundamental right or basic human rights, this

<sup>73</sup> Prabhu Dayal Deorah v. The District Magistrate, Kamrup, [1974] 1 S.C.C. 103.

<sup>74</sup> State of Maharashtra v. Christian Community Welfare Council of India, AIR 2004 SC 7 2004.

<sup>75</sup> Nilabati behera vs. State of Orrisa, AIR 1993 SC 1960.

<sup>76</sup> INDIA CONST. art. 21.



Law had already held that the State does not have a defensive system of constitutional protections for the tortious acts of public officers and the established infringement of the rights assured by Article 21 of the Indian Constitution.

## VI. CONCLUSION.

To conclude, safeguarding the rights of the accuser even while protecting social interests is a difficult task. The detention regulations enshrined in the Code of Criminal Procedure provide the police extreme and excessive power, which is still used for personal gain today. Illegal arrest not just to violate the law, but also infringe Articles 14<sup>77</sup> and 22<sup>78</sup>, that guarantee basic rights to every citizen under the Indian Constitution.

The reason for this is the extensive authority that the police have under the country's current legal system. They gain access to police records because they are the custodians of the law. As a consequence, establishing their guilt in cases of police custodial killings is incredibly difficult. As a result, they can simply avoid prosecution in this kind of instances. In recent times. The frequent discussions and debates regarding women's issues resulted throughout many amendments to the Code of Criminal Procedure 1973<sup>79</sup>, relating to women's rights both during and after the detention procedure. It is critical for a convicted to know the standard protocol, guidelines, and right when being arrested. It is even more critical if the accused is a woman, since women are more susceptible to social injustices.

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<sup>77</sup> INDIA CONST. art. 14.

<sup>78</sup> INDIA CONST. art. 22.

<sup>79</sup> The criminal procedure code, 1973, no. 2, Acts of Parliament, OF 1974 (India).