Special Rights of Persons Detained on Remand

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**Introduction**

From cradle to grave Human being carries within himself a bundle of rights by being virtue of human. Some of these rights are part of inalienable set of rights with are non-derogable except in extreme situations. Right to life and liberty are form part of this inalienable set of rights. Without guarantee of right of liberty and security the safeguard of other rights become susceptible and illusionary, yet we have plethora of examples at both national as well as international level where arrests and detention has been done without reasonable cause, without there being any effective legal remedy available.

There have been cases where arrests have been made and accused is kept on remand on flimsy grounds by the authorities, this further becomes a cause for another set of violation which is being perpetrated by the police authorities in the form of torture of the accused in the judicial or police custody. These set of violations in the police custody needs to be addressed and an effective remedy should be available to the victims, for this both the executive and the judiciary of the state machinery should adhere to the international and municipal laws. Further the state should try to formulate its municipal laws in consonance with the international standards.

The dictionary meaning of “Remand” is to send back into custody. Here, we send back the accused into the custody of police or that of the magistrate for collecting evidence and completion of investigation. The purpose of remand is to facilitate completion of investigation. In the entire Code of Criminal Procedure, 1973, the word remand is mentioned only in the Sections 209 and 309. The term has not been defined anywhere in the Criminal Procedure Code.

As far as international and regional conventions are concerned Article 9(1) of the International Covenant on Civil and Political Rights[[1]](#footnote-1), article 6 of the African Charter of Human and Peoples’ Rights, article 7(1) of the American Convention on Human Rights and article 5(1) of the European Convention on Human Rights guarantee a person’s right to “liberty” and “security”. Whereas Article 9 (3) of ICCPR specifically deals with the rights of arrested persons as well as persons on remand. [[2]](#footnote-2)

The Code of Criminal Procedure (CrPC) has provisions under section 57 and section 167 of IPC which deals with the custody of the accused once arrested. Section 41 of the CrPC is subject to Section 57 and Section 76 of the CrPC which state that an arrested person cannot be detained in police custody for a period longer than 24 hours. He has to be produced before a magistrate within 24 hours of his arrest. Further if the police is unable to complete investigation within 24 hours and needs the accused to be detained in custody further, then it can be done only by a special order of the magistrate under Section 167 of CrPC.

**1.1 Statement Of Problem**

A magistrate while deciding on remand plea should apply his judicial mind in a reasonable manner based on grounds put before him by the police. The non-application of mind by the magistrate while deciding the remand plea may lead to the violation of right to liberty and security of the accused. The grant of remand period based on limited grounds which may or may not be sufficient is always questionable.

**1.2 Hypothesis**

Deciding on remand plea on the basis limited reasonable grounds on initial stage without much investigation may directly lead to violation of right to liberty of the accused.

1.3 Key research questions

To understand the various provisions under CrPC with regard to remand of the accused.

To understand effectiveness of municipal laws for protection of rights of person detained on remand.

To analyse the protection provider under Indian criminal justice system in comparison with ICCPR and other international covenants with regard to person detained on remand.

1.4 Research objectives

The study includes the analysis of domestic laws and their implementation with regard to the right of accused in the custody. It also tends to make a comparison of between domestic laws and international provisions and how far the domestic laws are in consonance with the international provisions.

**1.5 Research methodology**

The method for research project includes the secondary data by referring the books, articles, journals, Manupatra, Westlaw and other sources.

**1.6 Tentative Chapterization**

Introduction

Various rights of person on remand

International provisions

Domestic provisions

'Relevant' and 'Sufficient' grounds for the continuation of the remand period

Right to be protected against torture other cruel, inhuman and degrading treatment

Limitation of time period

Conclusion

**International and Domestic provisions**

**Need for Protection of rights of Accused on Remand**

The need for protection of various rights of person detained on remand arises because without any such protection the accused would be devoid of liberty which is again violation right to life with dignity as enshrined under UDHR and ICCPR to which India is a party. The liberty of a person is one of the basic tenets of living life with dignity as a part of the society, without ‘liberty’ an individual’s life would not have much difference then that of an mere animal existence. It is the right of ‘liberty’ which is an essential pre-requisite of full utilization of freedom for an individual. Because of these reasons ‘liberty’ forms part of almost all major human rights legislations both at the national as well as international level. Thus it is very important to protect the dignity of the life of an accused which calls for use of provision of remand as a last resort available to the police authorities.

**International Provisions**

Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR)1976, article 6 of the African Charter of Human and Peoples’ Rights, article 7(1) of the American Convention on Human Rights and article 5(1) of the European Convention on Human Rights guarantee a person’s right to “liberty” and “security”. Moreover, as stated by the International Court of Justice in its *dictum* in the *Hostages in Tehran* case, “wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights”, article 3 of which guarantees “the right to life, liberty and security of person”. It follows that, notwithstanding that a State may not have ratified or otherwise adhered to any of the preceding human rights treaties, it is nonetheless bound by other legal sources to ensure a person’s right to respect for his or her liberty and security.

Though ‘liberty’ is a basic human right, like every other right it is also not absolute. State can put restrictions on the exercise of this right provided the restrictions are not unreasonable and arbitrary. Article 9(1)[[3]](#footnote-3) of ICCPR provides protection of life and security of person which cannot be taken away arbitrarily and without any reasonable cause. India is both signatory as well as ratified the 1976 convention. The liberty of an individual can only be deprived in accordance with the procedure established by law only and any arbitrary exercise of the said power is violative of provisions of Article 9(1) of ICCPR.

**2.3 Domestic Provisions**

Sections 56, 57, 167 and 309 of Cr.P.C. deal with the procedure related to the grant of remand. The difference between judicial and police custody is not simply the custodian, but under police custody, interrogation by the police is permitted, whereas under judicial custody interrogation is not permitted except in exceptional circumstances. Section 56 Cr.P.C. requires the police officer making the arrest without warrant to forthwith produce the person accused of an offence before a Magistrate, while section 57 prohibits the police officer from detaining the arrested person for a period exceeding 24 hours. Section 167 Cr.P.C provides for custody of a person by the police for a period of 15 days on the orders of a Magistrate.

The detaining authority may change during the pendency of the detention, provided that the total time period does not exceed 15 days. To extend the custody up to 60-90 days, a magistrate must be certain that exceptional circumstances exist. Remand must be requested when the investigation cannot be completed within the stipulated 24 hours under section 57 of Cr.PC and there are reasonable grounds to believe that there is a prima facie case or the accusation is well founded. The magistrate must ensure that there are rational and credible grounds to grant custody.[[4]](#footnote-4) While granting custody to the police, the Magistrate must believe that the granting custody will assist the police in some discovery of evidence and for such a discovery the presence of the accused person is indispensable. Explanation I to s. 167 (2) (c) of Cr.PC allows such accused to remain in custody until he is able to furnish bail. However, it was observed by Delhi High Court in Laxmi Narain Gupta v. State[[5]](#footnote-5) that where the accused person is in judicial custody, and is poor, direction must be passed for admitting him to bail.

The Supreme Court has frowned upon a mechanical attitude towards detention, and has clearly stated that if public justice is to be promoted, mechanical detention should be demoted,[[6]](#footnote-6) yet, casual approach to remand remains the norm. Bail hearings happen only when the person accused of an offence moves a bail application. If the accused does not have legal representation, or the lawyer does not move for bail, the person continues to remain in custody and is denied liberty without cause. Similarly, post-cognizance, the Court is empowered to remand the accused for periods not exceeding 15 days at a time.[[7]](#footnote-7) Normally, the trial should take place on a day-to-day basis, but since this is rarely the case, Courts grant adjournments and postponements to the next date of hearing and remand the accused person in the meantime.[[8]](#footnote-8) The section does require the court to record reasons for postponement or adjournment however, in cases where the court does record reasons, it is rather superficial and perfunctory.

Legislative authority for the detention of persons in prison for a suspected offence is provided under section 167 and 309(2) Cr.P.C. The Code, however, makes a clear distinction between detention in custody before and after taking cognizance. The former is covered by s. 167 of the Cr.PC, and the latter by s. 309 Cr.P.C. The two are mutually exclusive. In State through C.B.I v. Dawood Ibrahim Kaskar, the court elaborated upon the scope and extent of remand under sections 167 and 309 of Cr.PC: “*If Section 309(2) is to be interpreted… to mean that after the court takes cognizance of an offence it cannot exercise its power of detention in police custody under Section 167 of the Code, the investigating agency would be deprived of an opportunity to interrogate a person arrested during further investigation, even if it can on production of sufficient materials, convince the court that his detention in its (police) custody was essential for that purpose*.” [[9]](#footnote-9)

The scheme of the provisions in section 167, 209 and 309 is that while sec. 167 of the code provides for the detention of the accused during pendency of investigation, sec. 209 provides for detention of the accused during pendency of Committal proceedings and sec. 309(2) provides for detention of the accused during pendency of trial or inquiry.[[10]](#footnote-10)

**3. Relevant and Sufficient Cause for Detention**

The most common legitimate ground for deprivation of liberty is no doubt that a person is reasonably suspected of having committed an offence. *Liberty is the rule, to which detention must be the exception.* As stated in Rule 6.1 of the United Nations Standard Minimum Rules for Non-Custodial Measures, the so-called “Tokyo Rules”, “pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim”.[[11]](#footnote-11)

**3.1 The meaning of “reasonableness*”***

All human beings have the right to enjoy respect for their liberty and security. It is obvious that, without an efficient guarantee of the liberty and security of the human person, the protection of other individual rights becomes increasingly vulnerable and often illusory. Yet, as is evidenced by the work of the international monitoring organs, arrests and detentions without reasonable cause, and without there being any effective legal remedies available to the victims concerned, are commonplace. In the course of such arbitrary and unlawful deprivations of liberty, the detainees are frequently also deprived of access both to lawyers and to their own families, and also subjected to torture and other forms of ill-treatment.[[12]](#footnote-12)

The European courts on Human Rights (ECHR) has in a number of instances pointed out that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the validity of the continued detention, but, after a certain amount of time elapsed, it no longer suffices: the court must then establish whether the other grounds cited by the authorities continued to justify the deprivation of liberty. Where such grounds were ‘relevant’ and ‘sufficient’, the court must also ascertain whether competent national authorities displayed ‘special diligence in the conduct of the proceedings’.[[13]](#footnote-13)

The European Court in  *Campbell and Hartley v. the United Kingdom[[14]](#footnote-14)* has held that the “‘reasonableness’ of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention, which is laid down in” article 5(1)(c) of the European Convention, and that the fact of “having a ‘reasonable suspicion’ presupposes the existence of facts or information which would satisfy an *objective observer* that the person concerned may have committed the offence, however, what “may be regarded as ‘reasonable’ will depend upon all the circumstances.”[[15]](#footnote-15)

In connection with arrests and detention under criminal legislation enacted to deal with *acts of terrorism* connected with the affairs of Northern Ireland, the European Court has explained that “in view of the difficulties inherent in the investigation and prosecution of terrorist-type offences, the ‘reasonableness’ of the suspicion justifying such arrests cannot always be judged according to the same standards as are applied in dealing with conventional crime. Nevertheless, the exigencies of dealing with terrorist crime cannot justify stretching the notion of ‘reasonableness’ to the point where the *essence* of the safeguard secured by Article 5(1)(c) is impaired.”[[16]](#footnote-16)

The human rights committee in its general comment no. 35[[17]](#footnote-17) on article 9 of ICCPR clearly states that the pre-trial detention of person in custody should be an exception rather than a rule; it must be used only as a last resort when all other options during the investigation are exhausted. The detention must be reasonable and necessary which takes into account all the circumstances such as to prevent recurrence of offence, tampering with the evidence etc. further the relevant should be specified in law and should not include vague and expansive standards such as “public security”.

Under Cr.P.C. it has been specifically provided that no Magistrate shall authorize detention in any custody under Section 167 unless the accused is produced before him.[[18]](#footnote-18) The object of requiring the accused to be produced before the Magistrate is to enable the Magistrate to decide judicially whether remand is necessary and also to enable the accused to make any representation to the Magistrate to controvert the grounds on which the police officer has asked for remand.[[19]](#footnote-19)

In the case of *Manubhai Ratilal Patel* v. *State of Gujarat and others*,[[20]](#footnote-20) Hon'ble Apex Court observed that, remand is a fundamental judicial function of the Magistrate. While performing this judicial function, Magistrate has to satisfy himself that there are reasonable grounds therefor and that materials placed before him justify remand of accused. While remanding accused it is obligatory on part of Magistrate to apply his mind to facts and not to pass remand order automatically or in a mechanical manner. Thus an investigating officer can ask for remand only when there are grounds for believing that the accusation or information is well founded and it appears that the investigation cannot be completed within the period of 24 hours.[[21]](#footnote-21)

But the apex court in *Kanti Bhadra Shah and Another v. State Of West Bengal*[[22]](#footnote-22) held that “it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial.” The court’s reasoning was that lower courts are already burdened with backlog of cases and if they have to write detailed interlocutory orders at every stage the situation will get more worsened.

The Hon'ble Supreme Court, has in the case of *Arnesh Kumar* vs. *State of Bihar and another,****[[23]](#footnote-23)*** held as follows: “Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorize detention casually and mechanically”. Thus the order authorizing the detention of the accused in the custody is a judicial order and it has to be passed after applying the judicial mind. In any way it does not amount to interference with the investigation of the case.[[24]](#footnote-24)

4. Right to be protected against torture other cruel, inhuman and degrading treatment

The mere thought of remand in the police custody is enough to generate the well founded fear of being tortured by the police authorities in the mind of the accused. Police custody is a place where accused when send on remand may have to go through immense police atrocities as a part of the investigation process. These atrocities within its ambit include wide range of hardships for the accused in the form of both physical as well as mental injuries for a long period of time. There are numerous movies and documentaries made on the issue of police torture which is enough to show a glimpse of the level of atrocities the accused has to go through while he is on remand.

The importance of this right can be ascertained through the recommendation Of National Commission to Review the working of the Constitution (2002) which was set up by the Law Ministry, it specifically recommended for ‘prohibition of torture and cruel, inhuman or degrading treatment or punishment’ as one of the additions to the fundamental rights chapter as Article 21(2) on the basis of the dicta laid down in various Supreme Court judgments in recognition of torture in our constitutional jurisprudence.[[25]](#footnote-25)

In *D.K. Basu v. State of West Bengal* the Supreme Court observed that: “*Torture has not been defined in the Constitution or in other penal laws. 'Torture' of a human being by another human being is essentially an instrument to impose the will of the 'strong' over the 'weak' by suffering. The word torture today has become synonymous with the darker side of the human civilisation*”.[[26]](#footnote-26)

The right to liberty and security guaranteed by article 9 of ICCPR has much wider scope, the right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained. For example, officials of States parties violate the right to personal security when they unjustifiably inflict bodily injury.[[27]](#footnote-27)An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. For example, remand in custody on criminal charges must be reasonable and necessary in all the circumstances.[[28]](#footnote-28)

The human rights committee further explains “unlawful” detention as something which is incompatible with both the domestic law as well as article 9 para 1 or with other relevant provisions of the covenant. Article 7 of ICCPR prohibits torture, cruel, inhuman and degrading treatment of any person, its aim is to protect both the dignity and the physical and mental integrity of the individual. The text of this article offers no limitation as it prohibits torture under any circumstances as it is a part of non-derogable right under article 4 of the convention. Thus state under no circumstances can derogate from this right available to the accused on remand. Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant.[[29]](#footnote-29)

Thus a combined reading of all the three general comments on article 7, 9 and 10 leads to the conclusion that the violation of provision of one article may lead to the violation of other two. In the present case as contemplated by the human rights committee the detention under article 9 para 1 would be unlawful if it violates provisions of article 7 and 10 of the covenant. The torture or cruel and inhuman degrading treatment of the accused on remand by the police authorities in their custody would lead to violation of article 7 and 10 at the first stage. The violation of these provisions would certainly lead to further violation of article 9 because violation of first two articles would render the detention as an “unlawful” one.

Since India has ratified the convention it is bound by its provisions, the ratification of iccpr made the torture and cruel treatment of the accused on remand by the police as something which is in violation of the provisions of the covenant. The remand of accused under CrPC though seems to be a valid remand if its follows the procedural requirements but it would not stand the test of validity under ICCPR if the accused on remand is subjected to torture and inhuman treatment.

Though India has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984 it is bound by the provisions of ICCPR to respect the dignity and personal safety of the accused in the custody. In the recent Universal Periodic Review[[30]](#footnote-30) which India filed in early 2017 it has given the commitment to ratify the CAT, as before that it is preparing itself to bring necessary amendment in its domestic laws.

In the review India has taken stand that till the time ratification is done in the domestic law the acts of torture remain punishable under various provisions of the Indian Penal Code i.e. section 330 and section 331 of Indian Penal Code. But the convictions under these sections remains very low as the Supreme court in *State of MP v. Shyam Sunder Trivedi*[[31]](#footnote-31) observed that Section 330, 331 of the Penal Code make it punishable for persons who cause hurt for the purpose of extorting the confession by making the offence punishable with sentence up to 10 years of imprisonment but convictions, in such cases, are fewer because of the difficulties in proving evidence.

Further In D.K. Basu’s after perusing several reports on custodial violence Supreme Court held that, “*Custodial violence including torture and death in lock ups strikes a blow at the rule of law which demands that the powers of executive should not only be derived from law but also that the same should be limited by law*.”[[32]](#footnote-32)

**5. Duration of Detention**

Remand must be a “term”, i.e., a fixed period and not the *sine die* and initially the term cannot exceed fifteen days in all. The term must be limited as much as possible to what is necessary for the object in view.[[33]](#footnote-33)The task of assessing the reasonableness of the length of detention on remand is often a particularly difficult one. The interests of the detainee have to be weighed against the interests of the effective prosecution of crime, which may be a particularly onerous task especially in cases of white-collar crime, organized crime, crimes against humanity, or terrorism.

In *Nuemeister v. Austria* ECHR observed that the requirement of the length of detention on remand be limited is closely related to the presumption of innocence –there is a clear danger that this detention will be misused.[[34]](#footnote-34)

The time limit of 15 days is applicable both to the Magistrate with or without jurisdiction in the case.[[35]](#footnote-35) The limit for police custody prescribed under section 167(2) for a period not exceeding 15 days in the whole for investigation applies to a single case and is not attracted when the accused is involved in a series of different cases.[[36]](#footnote-36)

 **Police Custody vs. Judicial Custody**

In Black’s Law Dictionary,[[37]](#footnote-37) the expression “custody” has been explained to be the term very elastic and may mean actual imprisonment or physical detention and does not necessarily mean actual physical detention in jail or prison but rather is synonymous with restraint of liberty.

[In *C.B.I., Special Investigation Cell - I, New Delhi v. Anupam J. Kulkarni*](https://indiankanoon.org/doc/244622/)[[38]](#footnote-38) the Supreme Court considered the ambit and scope of Section 167 and held that there cannot be any detention in police custody after the expiry of the first 15 days even in a case where some more offences, either serious or otherwise committed by an accused in the same transaction come to light at a later stage. The Bench, however clarified that the bar did not apply if the same arrested accused was involved in some other or different case arising out of a different transaction, in which event the period of remand needs to be considered in respect to each of such cases.

Following the above mentioned judgment, the Supreme Court in *Budh Singh* v. *State of Punjab,****[[39]](#footnote-39)***where an order of 7 days police remand after the expiry of 15 days police remand was given, the Apex Court held that the impugned order of the High Court violates the statutory provisions contained in Section 167 Cr.P.C. Since it authorises police remand for a period of seven days after the expiry of the first fifteen days period.

**5.2 On the Expiry of the Specified term under Section 167.**

After expiry of 60/90 days as the case may be, it becomes a right of the accused to get bail. Magistrate cannot keep the Application pending, it is an absolute right.

In *State of U.P.* vs. *Laxmi Brahmananda,****[[40]](#footnote-40)***it was held that on the expiry of sixty days from the date of the arrest of the accused, his further detention does not *ipso facto* become illegal or void, but if the chare-sheet is not submitted within the period of 60 days, notwithstanding anything to the contrary in s. 347(1), the accused would be entitled to an order for being released on bail if he is prepared to and furnishes the bail.

In *Mantoo Majumdar* vs. *State of Bihar,[[41]](#footnote-41)*the Supreme Court ordered the release of the petitioners on their own bond. The court found that the undertrial prisoners were imprisoned for more than seven years without any investigation or laying any challan. The Magistrate had been authorising detention mechanically, thus violating Article 21 of the Constitution and Section 167(2) of the Code.

In the case of *Uday Mohanlal Acharya* v. *State of Mahatrahstra*,**[[42]](#footnote-42)** the Honourable Apex court has held that where a charge sheet is not filed within requisite period of 60 days the accused is entitled to indefeasible right to be released on bail.

Thus provisions related to the term of remand of accused in the custody is specifically given under CrPC to which courts in India strictly adheres to. CrPC has specified period of time and duration and thus leaves no scope for the judiciary extend the remand period on its whims and fancies.

 **6. Conclusion**

The law relating to remand is clearly defined in the Cr.P.C. But as is the case with most of the Indian laws, the provisions on paper look impeccable but there is a need bring the practice in conformity with what is supposed to be practiced as per the legal provisions. India has ratified ICCPR which makes it obligatory upon it to make its domestic legislation in consonance with the provisions of the convention. India has incorporated the provisions related to rights of person in custody as a result of its obligation in the form of section 167 (2)A whereas provisions dealing with reasonableness and time period were already existing under the code. In fact it would not be wrong to say that India has specific codified provisions under Cr.P.C. which are step ahead of what has been prescribed under article 9 para 3 of the convention. As section 167 clearly mentions the time period which should be adhered to while sending the accused on remand.

Further though India is neither a signatory nor a member of European Union but the judiciary in india can took help from the decisions passed by ECHR to remove any anomaly if any arises under the domestic law. Its rulings should be considered by courts in India though they are having only persuasive value as while deciding the issue of plea of remand the court should pay much wider respect to the liberty and dignity of the accused.

It becomes clear that the while the law provides for safeguards against abuse, it need to be amended to remove all obscurities and contradiction. The magistrates must also see to the background of the victims before passing orders. Section 167 must also be expanded so that remedies must be available for past illegal detentions or arrest even if in the present case custody is legal. Lastly, the executive must also play a role by ensuring that more and more people are aware of their right.

The void which exists in relation to provision regarding remand is the violation of accused’s right live with dignity and protection from bodily harm even in custody. The use of torture by the authorities especially in police custody is flagrant violation of both international conventions such ICCPR along with the constitutional provisions. India must ratify the Convention against torture(CAT) and bring necessary amendments in its domestic laws in consonance with the convention, then only the accused on remand would be capable of protection from physical and mental injury.

The role of a magistrate is of prime importance with reference to remand of an accused. He has to strike a balance between the rights of an accused and the need for an expeditious and impartial investigation. A magistrate should apply his judicial mind and should not merely mechanically order remand in every case, only then this beautifully drafted provision of the Cr.P.C. can serve its purpose of ensuring a fair investigation and ultimately upholding the ideals of justice.

1. “1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” [↑](#footnote-ref-1)
2. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement. [↑](#footnote-ref-2)
3. “1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure

as are established by law.” [↑](#footnote-ref-3)
4. *Raj Pal Singh v. State of U.P*., 1983 Cr.LJ 1009 [↑](#footnote-ref-4)
5. 2002 Cr.LJ 2907 [↑](#footnote-ref-5)
6. *Babu Singh v. State of U.P*., AIR 1978 SC 527. [↑](#footnote-ref-6)
7. Section 309 (2) proviso, Cr.P.C. [↑](#footnote-ref-7)
8. Section 309 (1) and (2), Cr.P.C. [↑](#footnote-ref-8)
9. (2000) 10 SCC 438. [↑](#footnote-ref-9)
10. *Benimadhava v. State of Rajasthan*, 1983 CrLJ 633 [↑](#footnote-ref-10)
11. http://www.ohchr.org/EN/ProfessionalInterest/Pages/TokyoRules.aspx [↑](#footnote-ref-11)
12. UN doc. E/CN.4/1999/63, *Report of the Working Group on Arbitrary Detention*. [↑](#footnote-ref-12)
13. *W v. Switzerland*, 30; *Tomasi v. France*, 84; *Toth v. Austria*, 67 [↑](#footnote-ref-13)
14. *Eur. Court HR, Case of Fox, Campbell and Hartley v. the United Kingdom, 30 August 1990, Series A, No. 182*, p. 16, para. 32; emphasis added. [↑](#footnote-ref-14)
15. *Id.* [↑](#footnote-ref-15)
16. *Id*. [↑](#footnote-ref-16)
17. Human rights committee, General comment no. 35, 16th December, 2014 available at : http://www.ohchr.org [↑](#footnote-ref-17)
18. Proviso (b) to S. 167(2). [↑](#footnote-ref-18)
19. *Bal Krishna vs. Emperor*, (1932) 33 Cri LJ 180. [↑](#footnote-ref-19)
20. (2013) 1 SCC 314. [↑](#footnote-ref-20)
21. *G.K. Moopanar v. State*, 1990 Mad LW (Crl) 113 (DB). [↑](#footnote-ref-21)
22. (2000) 1 SCC 722, para 12. [↑](#footnote-ref-22)
23. (2014) 8 SCC 273. [↑](#footnote-ref-23)
24. *Sanual Haquev. State of U.P.*, 2008 CrLJ 1998 (2002) All [↑](#footnote-ref-24)
25. http://lawmin.nic.in [↑](#footnote-ref-25)
26. AIR 1997 SC 610 [↑](#footnote-ref-26)
27. Human rights committee, General comment no. 35, adopted 16th December, 2014 [↑](#footnote-ref-27)
28. *Id*. [↑](#footnote-ref-28)
29. Human rights committee, General comment no. 21 on article 10, adopted on 10th April, 1992, available at : http://www.ohchr.org [↑](#footnote-ref-29)
30. http://www.ohchr.org [↑](#footnote-ref-30)
31. (1995(4) SCC 262) [↑](#footnote-ref-31)
32. AIR 1997 SC 610 [↑](#footnote-ref-32)
33. Bal Krishna, AIR 1931 L 99; Jai Singh, AIR 1932 O 11 [↑](#footnote-ref-33)
34. App no 1936/63 (A/8), [1968] ECHR 1, IHRL 2 (ECHR 1968) [↑](#footnote-ref-34)
35. AIR 1949 Cal 143 [↑](#footnote-ref-35)
36. *State v. Abdul Kareem Tyagi*, 2004 (3) Crimes 90 (98) (Kant) [↑](#footnote-ref-36)
37. Henry Campbell Black, M.A. (Sixth Edn.). [↑](#footnote-ref-37)
38. (1992) 3 SCC 141: 1992 (Cri) 554. [↑](#footnote-ref-38)
39. (2000) 9 SCC 266. [↑](#footnote-ref-39)
40. AIR 1983 SC 439. [↑](#footnote-ref-40)
41. (1980) 2 SCC 406. [↑](#footnote-ref-41)
42. AIR 2001 SC 1010. [↑](#footnote-ref-42)