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**ANALYSIS OF THE PROTECTION OF RIGHTS OF ACCUSED UNDER
INDIAN CONSTITUTION**- Tanya Gupta & Abhiranjan Dixit¹**ABSTRACT**

Making readers aware of their rights in the event of arrest or detention is the primary goal of this research paper. Additionally, this research paper encourages researchers to delve deeper into issues pertaining to this right. It occurred to me to embody this topic in people's lives, even though there are multiple perspectives on it. The Indian Constitution guarantees the rights of accused individuals and citizens alike, including a fundamental right to freedom, as stated in Articles 20, 21, and 22. The researcher has reviewed numerous relevant case laws and conducted research using a variety of secondary sources. The researcher has benefited from this case law in their analysis of the topic. From a humanistic point of view, the researcher also investigates sections of the Criminal Procedure Code that pertain to accused persons.

Keywords: Criminal, Arrest, Constitution, Procedure

INTRODUCTION

Individuals facing criminal charges are guaranteed certain protections and fundamental rights in Article 20². Furthermore, the Constitution states that no one may be deprived of life or personal liberty unless in accordance with the processes set forth by law. It follows that a person can be deprived of their life or personal liberty as long as the legal process was followed. The foundation of our constitution is the idea that

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² The Constitution of India, 1950

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“Let Hundreds Go Unpunished, but Never Punish an Innocent Person”³

One component of the Right to Equality is the right to a fair trial in criminal proceedings (Article 14). This ensures that the accused is treated fairly, on par with any other citizen. Equal protection under the law is accorded to the accused, the most fundamental of these being guaranteed by the Indian Constitution. While the investigation, inquiry, or trial into the charges against him progresses, the accused has specific rights, including the right to be free from unlawful or arbitrary arrest. In a broader sense, the Judiciary Authority of India lays out the rights of accused persons in Article 22, which states that no one may be held in custody without being promptly informed of the reasons for their arrest and that they have the right to consult with and be represented by a lawyer of their choosing. Part III of the Indian Constitution addresses these themes and difficulties.

Parts of the Indian Constitution that guarantee individual liberties are known as the Rights and Fundamental Rights. All citizens, regardless of gender, caste, religion, creed, etc., are believed to have fundamental rights to these things. The Constitution of India was drafted between 1947 and 1949 and contains these essential provisions.

Human rights are a set of fundamental protections that every person has just by virtue of being born into this species. Nobody is immune to it; it's a part of being human that transcends race, religion, gender, sexual orientation, and nationality. As stated in the Protection of Human Rights Act, 1993, "human rights" refer to the individuals constitutionally guaranteed or embedded international covenants' rights to life, liberty, equality, and dignity, as well as any such rights that may be enforced by Indian courts.

Ensuring the preservation of human rights is crucial for a nation's progress since it helps its people grow, which in turn benefits the country overall. All citizens of India are guaranteed fundamental human rights in the country's constitution. Efforts were made by the framers of the Constitution to include all relevant clauses. Human rights have, however, broadened their scope

³ Sim Kaur, “Rights of Accused Persons”, Legal Service India (June 13, 2024), <http://www.legalserviceindia.com/legal/article-219-rights-of-accused-persons.html>

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in tandem with ongoing changes. Recognizing people's rights and passing legislation, changing provisions, etc., as needed is now a major duty for MPs.

PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES

We will go over Article 20 in this chapter. Please explain Article 20. What protections does an accused person receive? In what ways does Article 20 safeguard the Accused?

There are countless news headlines of crimes and offences that someone is being arrested or held for on a daily basis. This is why the Indian Constitution lays out the procedures for apprehending a suspect as well as the rights and protections the suspect is entitled to.

Article 20 is a cornerstone of the Fundamental Rights; it primarily addresses the defence of certain rights in the context of criminal convictions; for example, if someone is detained for a crime, Article 20 will preserve their rights. That this Article shall remain in full force and effect notwithstanding any and all Emergency Period suspensions is its most noticeable aspect. Those facing criminal charges in India have some protections guaranteed by the constitution, namely Article 20:

- Ex-Post Facto Law Clause (1) of Article 20
- Double Jeopardy Clause (2) of Article 20
- Self-Incrimination Clause (3) of Article 20

(A) Protection against Ex-Post Facto Law

No one can be found guilty of a crime in India unless the law that was in effect when the alleged offence was committed was violated, and the punishment cannot be harsher than what could have been imposed under that law. This is stated in Clause (1) of Article 20 of the constitution. The Latin phrase "ex post facto," meaning "after the fact" or "out of the aftermath," is another name for rules that apply from a previous period. A law that enhances the penalty for an offence that has already occurred is known as an ex-post facto statute. What this means is that laws can be "ex post facto" (enacted after the fact) and make an activity criminal even though it was

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lawful at the time it was committed. Taking it at face value, it's a statute that makes illegal what was formerly within the law. Only criminal offences, and not civil ones, are covered by this law.

PROVISIONS IN OTHER CONSTITUTIONS

- U.S Constitution: Article I, section 9 of the United States Constitution frames ex post facto law in the country. The Supreme Court has, in past decisions, cited its 1798 decision in *Calder v. Bull*⁴, in which Justice Chase classified four types of ex post facto laws as unconstitutional.
- Irish Constitution: In Ireland, the Ex-Post Facto Law is frame in the Article 15.5.1°.
- Japanese Constitution: Applying legislation from a previous period is forbidden by Article 39 of the Japanese constitution. More specifically, Article 6 of Japan's Criminal Code states that the lighter punishment shall be applied if a new law is enacted subsequent to the commission of the act.
- U.K Constitution: While the concept of parliamentary sovereignty allows for the passage of laws after the fact, it is highly disapproved of in the UK. Because they took effect on the first day of the session in which they were passed, all acts of Parliament before to 1793 were considered ex post facto legislation. A law passed in 1793 by the House of Commons (Commencement) addressed this issue⁵.

When deciding on a punishment for a criminal act, the Hon'ble Supreme Court of India noted in the case of *Kedarnath v. State of West Bengal*⁶ that the decision must be prospective in nature and can be applied retrospectively. This signifies that the crime was done in 1947, and the accused should be subject to the laws of that year. The court has previously noted in *Ratan Lal v. State of Punjab*⁷ that a retrospective implementation statute that reduces the punishment or penalty for a particular offence will be governed by the court's decision. Upholding law and order and safeguarding unlawful detention are, thus, the primary objectives. Article 20(1), in its

⁴ U.S. 386 (3 Dall). 386; 1 L. Ed. 648; 1798 U.S. LEXIS 148

⁵ Nikita Vaidya, "Protection Against Ex-Post Facto Laws, Legal Services India (June 13, 2021) available at <http://www.legalservicesindia.com/article/267/Protection-against-Ex-Post-Facto-Laws.html#>

⁶ AIR 1954 SC 660

⁷ 91965 AIR 444, 1964 SCR (7) 676

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first section, deals with the matter that an accused person is liable for an offence when the legislation is in place for it. Article 20(1), second part, deals with the application of the offence and the lack of retrospective operation in cases where punishment was meted out in a coercive manner.

(B) Immunity from Double Jeopardy

No one shall be tried and punished for the same crime more than once, according to Clause (2) of Article 20 of our Constitution. The law known as "Double Jeopardy" protects the accused by stating that, in the event of prosecution, he or she will not face prosecution for the same offence and that no further prosecutions will be initiated against him or her. If a person is already facing charges or penalty for the same crime, this legislation shields them from further prosecution. It will be the basis for the court's decision if the same charge is brought against the defendant again.

Several Arguments in Favour of Double Jeopardy Prevention include:

1. Keeping the government from abusing its power against powerless citizens.
2. Second, shielding the accused from the monetary, social, and economic fallout of a successful prosecution
3. The legal system's potential imposition of cumulative punishment is eliminated.

As a result, it protects people's rights to avoid being subjected to more than one penalty or criminal process for the same crime.

PROVISIONS IN OTHER CONSTITUTIONS

1. U.S. Constitution: The similar provision of this law is framed in The Double Jeopardy of Clause Fifth Amendment to the United States Constitution:"[N]or shall any individual be subjected to the threat of life or limb twice for the same offence.

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2. U.K. Constitution: The aforementioned clause in the US Constitution is based on the 'nemo debet bis vexari' rule of English common law. It allowed a defendant to enter a plea of either "autrefois convict" or "autrefois acquit" prior to the Criminal Justice Act of 2003.

3. Germany: In Germany, also principle of double jeopardy is stated in Article 103(3) of the Germany's Constitution: "In accordance with general legislation, no one shall face punishment for the same offence more than once."

4. Japan: The Constitution of Japan states in Article 39 that "A person cannot be put in double jeopardy for an illegal act that was lawful when it was done or for which he has already been acquitted."⁸

Maqbool Husain v. State of Bombay⁹ is a seminal case because it concerns the arrest of an appellant at an airport for unlawful possession of foreign-origin gold in violation of the Sea Customs Act of 1878. The appellant was also served with an order to seize the gold and take action under Section 167 (8). Following the appellant's prosecution by the Sea Customs Authority, charges were brought against him under the Foreign Exchange Regulation Act, 1947, for the same crime. While the appellant argued that the court should evaluate the petition for constitutional support, the court rejected their arguments and noted that the Double Jeopardy Law provisions should only be addressed in judicial proceedings. An investigation under the Public Security Act, 1960 led to the appellant's dismissal from service in the case of Venkataraman v. Union of India¹⁰. Subsequently, the appellant faced fresh charges and prosecution under the Indian Penal Code and the Prevention of Corruption Act. The court ruled that the appellant's previous actions for the identical crime should be dismissed. Therefore, the appellant's second prosecution does not meet the requirements of Double Jeopardy and is thus not entitled to the protections afforded by Article 20 (2). Therefore, the primary goal is to uphold the honour of the nation by ensuring that all citizens have access to justice. If someone commits an offence, the court will hear their case, but if they repeat the same offence again, the court will

⁸ Sonakshi Verma, "Guarantee Against Double Jeopardy", Lawctopus (June 13, 2021) available at <https://www.lawctopus.com/academike/double-jeopardy/>

⁹ AIR 1953 SC 325

¹⁰ AIR 1954 SC 375

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declare it null and void, ensuring that no one is punished twice for the same crime. An accused individual has the right to plead under the doctrine of double jeopardy in order to avoid being penalized for the same crime twice.

(C) Immunity From Self-Incrimination

Article 20, Clause 3, of the Indian Constitution states that "no person accused of any offence shall be compelled to be a witness against himself." The legal maxim of this provision is "nemo tenetur prodere accusare seipsum," which translates to "no man should be bound himself." According to this law, no one can be coerced into giving evidence against themselves. The Supreme Court has expanded this term to mean that an accused person cannot be compelled to testify against himself or compel the taking of his written or oral testimony. The accused also has a fundamental right to remain silent, and this article forbids the taking of his thumbprint or specimen-signature. The three components of self-incrimination are:

1. The person must be accused of an offence.
2. The protection is compulsion forcibly to be a witness.
3. The witness evidence should be given against himself.

PROVISIONS IN OTHER CONSTITUTIONS

1. U.S. Constitution: The Fifth Amendment of the American Constitution declares that "It is against the law to force an individual to testify as a witness against himself in a criminal proceeding."
2. U.K. Constitution: Under Common Law, this law states that "No one has the right to force an accused individual to turn over evidence that could implicate them in a crime."

The appellant in the case of *Nandini Satpathy vs. Dani (P.L.)*¹¹ was Nandini Satpathy, and the respondent was Dhani PL. In this case, the respondent entered a plea against Nandini Satpathy, and the appellant was charged with corruption. The police want to move forward with prosecution and investigation, so they summoned Nandini Satpathy to answer a series of

¹¹ 1978 AIR 1025, 1978 SCR (3) 608

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questions pertaining to the case. The same officers conducting the investigation have also filed Section 179 charges. The appellant failed to address this matter and simultaneously sought protection from self-incrimination from the Supreme Court. The court decided that the accused should not be subjected to Section 179 because of this protection.

The court in the case of *State of Bombay v. Kathi Kalu Oghad*¹² further noted that the pieces of evidence that cannot be considered as "witnesses" include the thumb impression, writing sample, and signatures. The accused cannot reject the same, and neither can they claim that Article 20(3) does not apply in this case.

PROTECTION OF LIFE AND PERSONAL LIBERTY

“No person shall be deprived of his life or personal liberty except according to procedure established by law” (Article 21, Constitution). The most organic and progressive provisions are established in Article 21, which is sometimes termed the Heart of the Constitution. The right to life, liberty, and personal security is guaranteed to all citizens according to this article. Article 21, which guarantees one of our most basic human rights—the right to exist—is thus the supreme law of the land. Along with the Rights for Accused Persons, i.e., the Arrest and Detention of a Judgement Debtor, the Constitution has outlined the Rights for Livelihood, Health, Dignity, Pollution-Free Air, International Travel, Privacy, Sleep, Education, Legal Aid, and many other Rights pertaining to Our Lives and Personal Liberty. With this statute in place, the court can grant relief to a decree holder and make a commitment that the judgment debtor, in the event that he is not paid in full, will pay the amount due as damages. Additionally, it safeguards Honest Debtors in cases where there is a valid reason for their inability to pay. For justice to be served, the debtors must be granted the opportunity to be heard by the court.

OTHER RIGHTS FROM CODE OF CRIMINAL PROCEDURE

- If an accused person claims that a medical examination will reveal evidence that disproves his or someone else's guilt for an offence, the court can grant the accused

¹² 1961 AIR 1808, 1962 SCR (3) 10

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person's request for a medical examination under Section 54 of the Criminal Procedure Code, as long as the court is not convinced that the accused is trying to thwart justice.

- It is the responsibility of the person in charge of the arrested person's custody to ensure their health and safety, as stated in Section 55A of the Criminal Procedure Code.
- The person who has been arrested must not be subjected to any kind of brutal or inhuman treatment.
- An individual who has been unjustly detained has the right to compensation under Section 358 of the Criminal Procedure Code.
- A police officer may serve notice on a suspect for a cognizable offence under Section 41A of the Criminal Procedure Code, requiring the suspect to appear before the officer at the specified date and location.
- Arrest procedures are outlined in Section 46 of the Criminal Procedure Code. such as being physically touched, being subjected to imprisonment, or being near a body. The arrestee must not be charged with a crime that carries a death penalty or life sentence in prison before an officer may initiate an arrest.
- Additionally, according to Section 49 of the Criminal Procedure Code, the officer must not use more force than is required to prevent the arrestee from escaping. Without an arrest, it is unlawful to restrain or detain someone.

SAFEGUARDS AGAINST ARBITRARY ARREST AND DETENTIONS

Among the Golden Fundamental Rights, the Right to Freedom (Article 22) is a crucial protection for the accused. The two primary parts of Article 22 are the provisions pertaining to arbitral arrest and arbitral detention.

- **Arbitrary Arrest:** A person is considered to be "arrested" when a police investigation officer restrains them for the purpose of determining the offender's maximum permissible sentence, at which point the offender is required to reside in law custody and be subject to the supervision of the investigating officers.

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• **Arbitrary Detention:** The arrest of an individual and subsequent confinement of that person's liability to national laws or internationally recognized standards constitutes a fundamental right violation; the prosecution of that individual is also illegal; and the victim's lack of ability to defend themselves against torture, extrajudicial execution, other cruel and degrading treatment, etc., constitutes an additional human rights violation.

• **Punitive Detention:** What this means is that the commission or attempted commission of a criminal offence triggers the imposition of custody. This kind of incarceration, which is also known as punitive custody, safeguards the victim's right to remain free. "Detention as a Punishment for the Criminal Offence" is one possible name for it.

• **Preventive Detention:** It specifies that the purpose of a person's incarceration is to deter the commission of crimes inside a nation. When an administrative authority takes an action that could harm a state, it could be because they are worried about the consequences for a specific individual. The objective of Preventive Detention;

1. Security of the State.

2. Maintaining Public Order.

3. Maintaining Foreign Affairs.

4. Securing Services Essential to the Community

- Article 22's clauses are categorized as either Ordinary Laws or Preventive Detention Laws.
- An individual who is detained for any offence under ordinary law is given four rights in the first part of Article 22, which deals with a right of a person under ordinary laws, clauses (1) through (4).
- Article 22's second part addresses laws pertaining to preventative detention; specifically, a person arrested in accordance with such a statute is guaranteed three rights in paragraphs (5) through (7).

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- Right to be Informed "As soon as May be" Ground of Arrest: Anyone taken into police custody has the right to know the specifics of their arrest, and the investigating officer should do so without delay.
- Right to be Consult and to be Represented by a Lawyer of his own choice: The right to consult with an attorney of one's choosing and the ability to do so at any time are fundamental rights of every person facing arrest. The Hon'ble Supreme Court ruled in the case of Joginder Kumar vs. State of U.P.¹³ that a person cannot be detained without being notified of the grounds for the arrest, even though it is within the law for police officers to do so. The suggestions made by the Honourable Supreme Court to the Police Commission and subsequently to police officers mirror the essence of the Constitution, namely the Golden Fundamental Right of Humans to Life and Personal Liberty. The Constitution of India upholds the right to reasonable suspicion as a necessary condition for an official to make an arrest of a person.
- Right to be Produce before a Magistrate within 24 hours: The immediate and unconditional transfer of an arrested individual to the Magistrate is a mandatory legal requirement.
- No person shall be arrested or held prior to a Magistrate or Judicial Order, following any Judicial Proceedings, the Police Investigation, or the Arresting Officer may take any action for additional prosecution, and the aforementioned period shall not be exceeded unless by order of the Magistrate.

In the case of State of Punjab v Ajaib Singh¹⁴, a non-accused individual was granted compensation as a constitutional remedy after the police apprehended him without a warrant or judicial proceedings.

Article 22, Clause 3, discusses the exceptions to Clauses (1) and (2), which are believed to apply to enemy aliens apprehended under Preventive Detention, and states that a person's detention cannot exceed three months unless an Advisory Board reports sufficient grounds for extended detention.

¹³ 1994 AIR 1349, 1994 SCC (4) 260

¹⁴ 1953 AIR 10, 1953 SCR 254

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• Grounds of Detention should be Communicated to the Detenu: When a person is taken into custody by law enforcement for any reason, it is the responsibility of the officer to inform the accused of all grounds for detention.¹⁵

CONCLUSION

From a fundamental rights perspective, it is unacceptable that police officers have abused their authority to make an arrest despite the numerous protections afforded by the Constitution and the Code of Criminal Procedure. They made a plethora of reports and limited his maximum responsibilities, and they also arrested someone needlessly. It is the responsibility of the police to notify the public of the reasons for an arrest and detention, to protect the rights of the arrested person, to refrain from using handcuffs needlessly (i.e., to harass an accused person), and to bring the suspect before a magistrate within twenty-four hours.

Regarding the protection or safeguards and the provision of particular rights to accused persons for conviction of offences, Article 20 serves as the primary pillar of Fundamental Rights. Based on the interpretation of Article 20 (1), an act that was not illegal when it was committed cannot be made so by a law with retroactive effect, nor can a punishment that is higher than what is stated in the law be applied to an act that was committed at a specific time by a later law with retroactive effect. This is known as the Doctrine of Ex-Post Facto Law.

The doctrine of double jeopardy states that a person cannot be tried or punished again for the same crime, and it is a fundamental principle of criminal law. It follows that no guy should ever face the same penalty for the same crime.

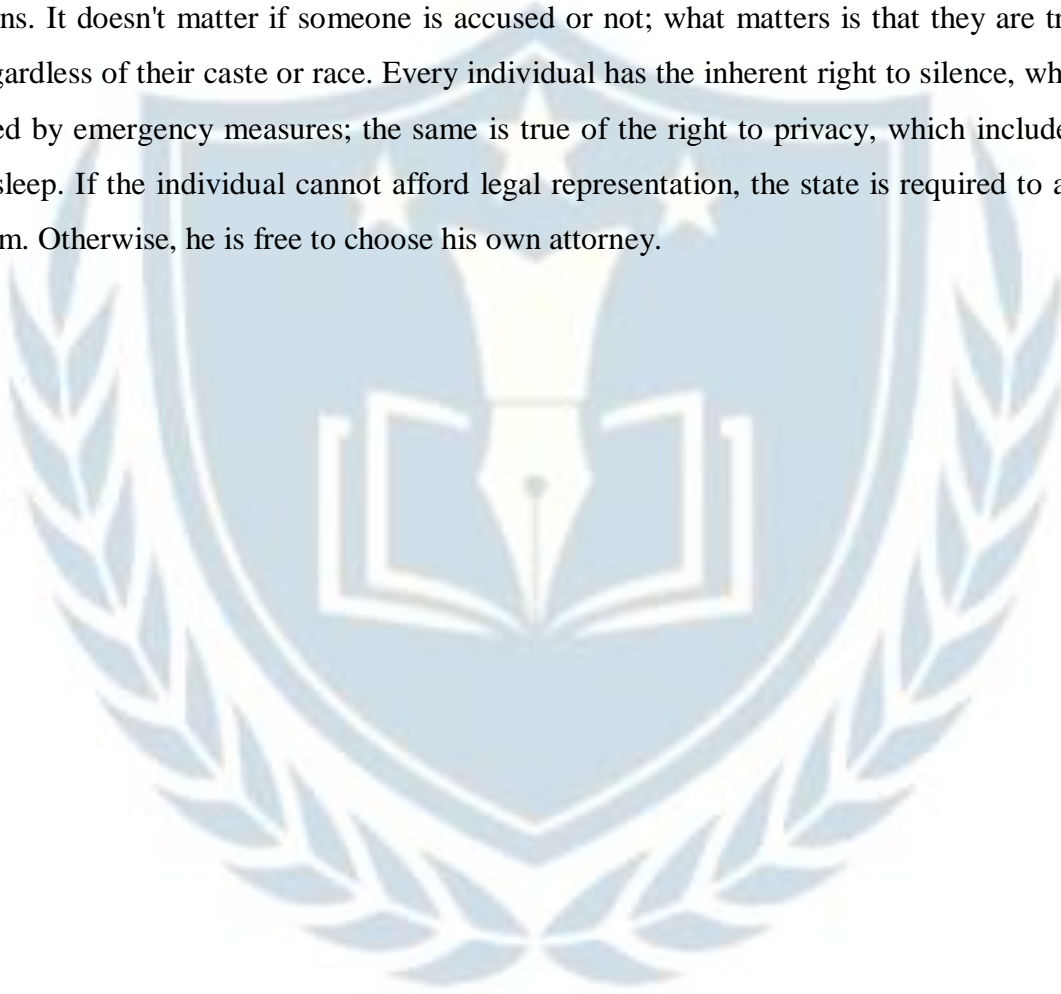
No official has the authority to coerce or torture an accused person into making a confession in violation of Article 20(3), which deals with the right to stay silent during prosecution. Article 22 establishes both the right to accuse and the duty of a police officer. The officer is required to bring the suspect before a magistrate within twenty-four hours of the suspect's arrest

¹⁵ Richa Goel, "Rights of an Arrested Person", Ipleaders (March 30, 2021) <https://blog.ipleaders.in/rights-of-an-arrested-person/>

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or detention. The accused person has the right to know the reasons for his arrest, and no action can be taken without a court order.

In addition to guaranteeing basic rights to all Indian citizens, the Right of Accused Person enshrines human rights such as the right to life, liberty, dignity, and the pursuit of happiness. This means that those found guilty of a crime should also have access to appropriate legal protections. It doesn't matter if someone is accused or not; what matters is that they are treated fairly regardless of their caste or race. Every individual has the inherent right to silence, which is unaffected by emergency measures; the same is true of the right to privacy, which includes the right to sleep. If the individual cannot afford legal representation, the state is required to assign one to him. Otherwise, he is free to choose his own attorney.



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