

A Brief Overview on Arrest, Procedure for Arrest and Rights of the Arrested Person

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Abstract: *This Article is based on the study of Arrest, procedure of arrest and the rights of the arrested person. Initially the article addressed the meaning of Arrest, which propounded that it means seizing and detaining a person from his personal liberty and right to move freely. Then it discussed how the arrest was made under the code of criminal procedure 1973, which includes two methods- one is arrest with warrant and second one is arrest without warrant. Arrest with warrant takes place when the person has committed a non-cognizable offence, which means the offence is less serious in nature. Moreover, Arrest without warrant takes place when the person has committed a cognizable offence, which means the offence is more serious in nature. Then it discussed the rights of the arrested person, that is, right to consult a legal practitioner, right to know the grounds of their arrest under which they have been charged, right to be taken before a magistrate without any delay and so on. There are multiple case laws, which provide us with several guidelines of arrest and the right of the arrested person. However, there were several cracks where this process has been criticised and several questions have been raised in the functioning of this procedural system in India. One of the biggest drawbacks is the scope of corruption and connected malpractices in India, which primarily affect the detention of the correct person and the rights of the arrested person. The total responses were collected was 210 responses which was collected in and around Chennai. It was collected through both online and offline mode. The statistical tool used was simple chart, cluster bar chart, chi-square test, correlation and ANOVA test.*

Keywords: CRPC, Detention, Offence, Police Officer, Warrant

I. INTRODUCTION

Every person at the first instance is treated as a human being, irrespective of the fact that he can be a criminal. Even an accused is considered as an innocent person until and unless he has been proven guilty in the court of law. Indian law and regulations are always careful towards an individual's personal liberty and henceforth it does not permit any detention or arrest without any legal sanction. It is provided in our Indian Constitution under Article 21 that no individual shall be deprived of his life or personal liberty until and unless they are deprived according to the procedure. In several stages the scope of corruption and connected malpractices increased in everyday activities of the Police Officers. One of the most important powers of the police officers is to arrest a person who has committed a crime, hence it also becomes an important source for the police officer to corrupt and extort. The police officer can arrest a person when a case is registered against a person who has been concerned of committing a cognizable offence. They can also arrest a person on receiving any credible information regarding the commission of any cognizable offence by any person. Article 21 of the Indian Constitution states that the procedure, which is followed, should be in a 'right, just and fair' and should not in any wrongful, arbitrary, fanciful or offensive manner. It is expected and predicted that the detention not only should be based on legal grounds but it should also be well justified. The Constitution also acknowledged the rights of the arrested person as Fundamental Rights.

1.1 OBJECTIVES

- To identify the rights of arrested person
- To find out without informing the reasons violates the arrested persons rights.
- To analyse the fundamental rights available to the arrested persons.
- To find an arrested person you can claim free legal aid.

II. LITERATURE REVIEW

Akkas, Dr Sarkar Ali (2009) in the book entitled “Law of Criminal Procedure” highlights that section 54 of CrPC gives wide power to the police to make an arrest without warrant in certain circumstances. The philosophy behind this power is that prevention is the most effective approach to control crime. The object is to give widest powers to the police in cognizable cases subject to the limitation that the powers be used cautiously and reasonably.

Halim, Md Abdul (2011) in his book named “Text Book on Criminal Procedure ” points out that section 54 deals with general power of arrest and section 55, 56, 64 and 65 deal with special powers of arrest. The special powers under these sections cannot override the general powers of arrest in cases provided for in section 54. Thus a police officer while under a special power of arrest may use his general power of arrest under section 54 and this is not affected by the empowerment of his special power of arrest.

According to **FIDH (International Federation of Human Rights), (2011)** Bangladesh has failed to keep promises in key issues of human right before the international human rights council as human rights violation continues unabated here including extra judicial death, torture and cruel in law enforcement custody, act of violence perpetrated on women and children.

Islam (2011) focuses on the human rights violation in Bangladesh through preventive detention and also puts some recommendations in this regard.

Mahmud, Taucif (2011) studies the role of police to prevent crime in Bangladesh and he finds out various forms of crimes including gross violation of human rights in the name of police remand, filing false cases etc.

Handling encounters involving persons with mental illness (PMIs) has become an increasingly important part of routine police work (**Deane et al., 1999; Borum et al., 1998**).

Police-citizen encounters that end in violence are highly controversial and can have long-term devastating consequences (**Fyfe, 1988; Klinger, 2004**) – consequences that are aggravated when PMIs are involved.

Abramson (1972) described a process whereby the untreated individuals with mental illness come into contact with the police and are arrested. In jail, they become treatment compliant and are subsequently released to the community; but the cycle starts again once these individuals are released to the community.

Dupont and Cochran (2000) found that the CIT program in Memphis reduced injuries to both police and citizens while successfully diverting PMIs into treatment.

Several studies have shown that police use of force is more likely in encounters with suspects who are impaired, but much of this work has not specified the type of impairment (**Crawford and Burns, 1998; Engel et al., 2000; Garner and Maxwell, 2000; Garner et al., 2002; Terrill and Mastrofski, 2002**).

Johnson (2011, p. 141) examined two measures of force, any force used and serious force only, and found, “no evidence to suggest that mentally disordered individuals receive harsher treatment at the hands of officers than do non-disordered persons.”

Terrill and Mastrofski (2002) examined 3,116 police-citizen encounters in two cities (from 1996 to 1997) and found that a number of factors were associated with increased coercive behaviour by police, including suspect sex, race/ethnicity, class, age, and drug/alcohol impairment.

Bail is a practice used by police and the courts whereby a person charged with an offence can be released from custody on their signed undertaking that they will appear in court to answer charges at the required time (**Anderson 2014; Fitzroy Legal Service 2015; Thomson Reuters 2015**).

It essentially involves deciding whether an accused person should be at liberty between the time of their arrest and the delivery of a verdict on the charges against them (**ALRC 2010**).

For minor offences requiring a court appearance, police usually issue a charge and a summons to appear in court (**Bamford, King & Sarre 1999; Fitzroy Legal Service 2015; Thomson Reuters 2015**).

The CAHABPS is a statewide after-hours service provided through police by the Department of Human Services. A CAHABPS worker will assess the young person’s suitability for bail and provide advice and support to assist the young person obtain bail **(Richards & Renshaw 2013)**.

A scheme in Yorkshire and Humberside, the Execve Bail Scheme, cited the benefits of centralised monitoring to improve the operation, implementation and governance of the scheme **(Hucklesby, Jarrold & Kazantzoglou 2010)**.

In the case of bail support, this finding intersects with findings from developmental research that suggest release on bail is an ideal me for interventions that address pending and antisocial behaviours **(Kubiak et al. 2006)**.

Bail support programs should be collaborative, involving intergovernmental and interorganizational responses to ensure the individual’s needs are met across different service systems **(Denning-Coer 2008; Henderson & Henderson 2008)**.

The National Standards for Bail Supervision and Support Schemes established in the UK are a good example of a highly detailed and structured set of operating standards and processes for running a bail support program **(Thomas & Goldman 2001)**.

III. METHODOLOGY

The researcher obtained the primary source of data by conducting an empirical study on seeking responses from the general public based on a questionnaire and also relied on secondary sources of data such as books, journals, e-sources, articles and newspapers. The current study is conclusive, descriptive, and empirical in nature. To evaluate the research hypothesis, qualitative data was collected. A research instrument was created in order to collect data on study dimensions. This research paper used the empirical type of research which is done by the survey method. The sampling size of the paper is 250. Statistics is on percentage analysis. The independent variables are age and gender and income and occupation. The sampling method is a simple sampling method. SPSS software was used to analyse and show the data from the frequency table, cross tabulation, chi-square tests, and ANOVA. The primary sources are taken from the general public in the form of survey methods. The information was collected from secondary sources from journals, articles, books and reports of the presidency and non-governmental organisations. .

HYPOTHESIS:

NULL HYPOTHESIS:

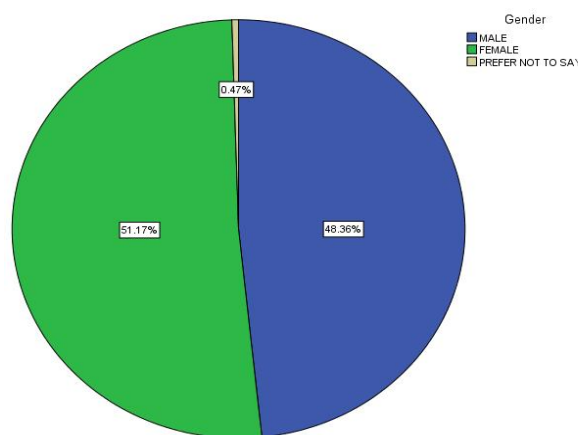
There is no significant difference among different age groups, levels of education and people’s opinion on the rights of the arrested person.

ALTERNATE HYPOTHESIS:

There is a significant difference among different age groups, and levels of education and people’s opinion on the rights of the arrested person.

IV. SPSS AND DATA ANALYSIS

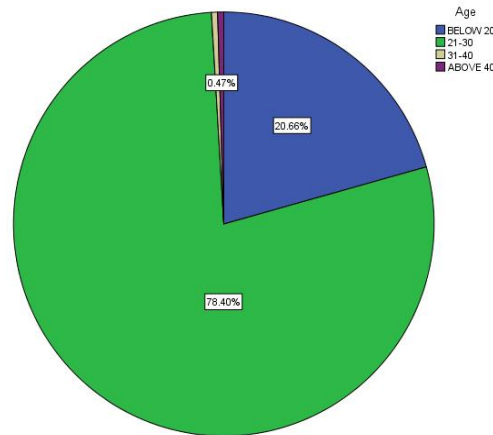
FIGURE 1



LEGEND

This pie chart shows the frequency of the independent variable gender of the respondents which includes 48.36% of the male respondent and 51.17% of the Female respondent and 0.47% have chosen not to say.

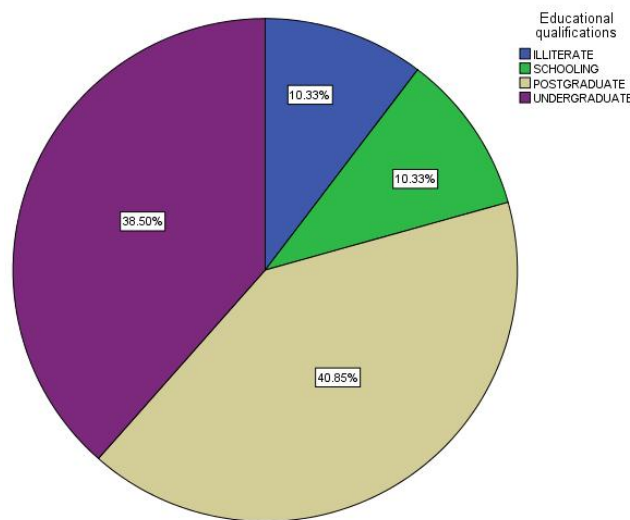
FIGURE 2



LEGEND

This pie chart shows the frequency of the independent variable age of the respondents which includes 20.66% of the respondents below 20, 78.40% of the respondents of 21-30 years, 0.47% respondents of 31-40 years and of above 40 years.

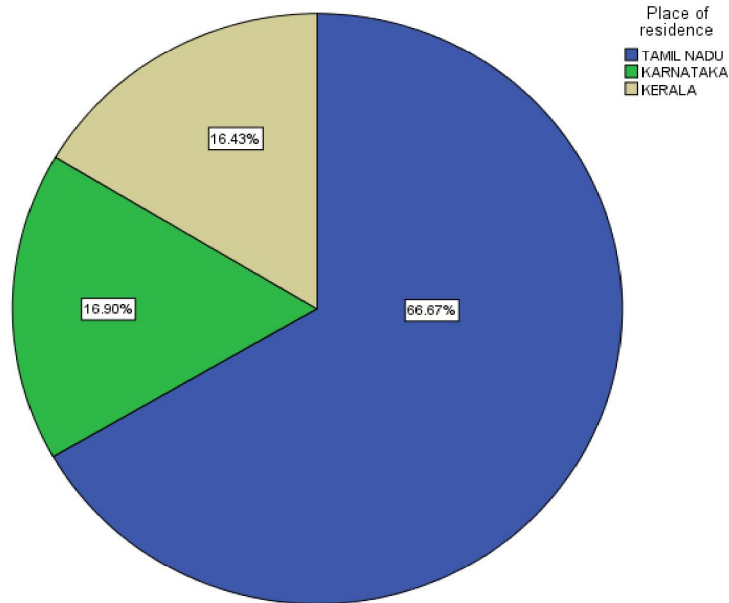
FIGURE 3



LEGEND :

This pie chart shows the frequency of the independent variable educational qualification of the respondents which includes 10.33% of illiterate respondents, 10.33% of schooling respondents, 38.50% of undergraduate respondents and 40.85% of post graduate respondents.

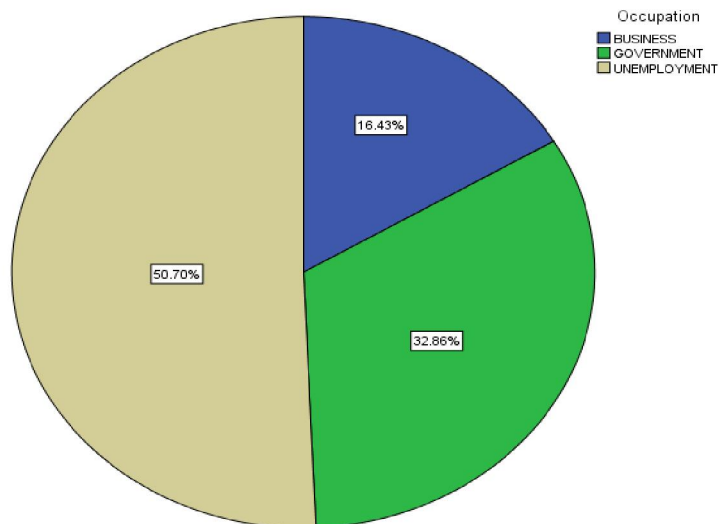
FIGURE 4



LEGEND ;

This pie chart shows the frequency of the independent variable geographical area which includes 66.67% responded in Tamil Nadu, 16.43% responded in Kerala and 16.90% responded in Karnataka.

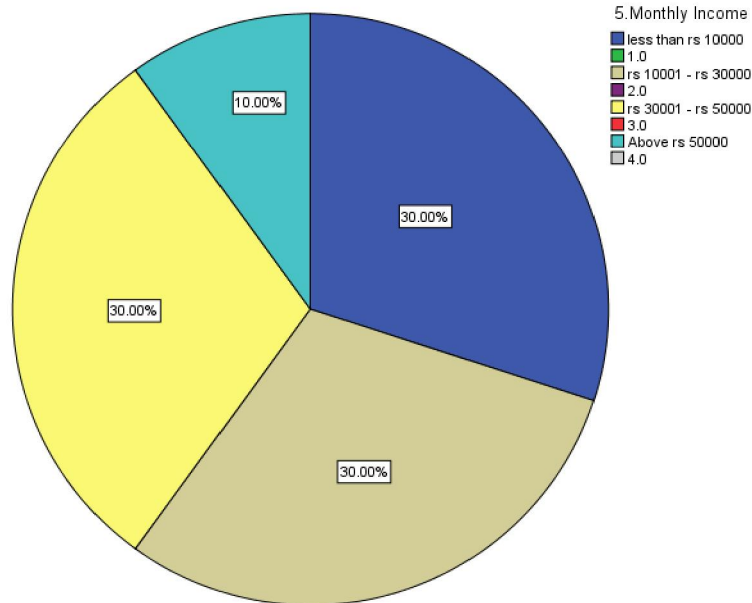
FIGURE 5



LEGEND;

This pie chart shows the frequency of the independent variable occupation of the respondents which includes 16.43% of respondents in business, 32.86% of the respondents in Government, and 50.70% of the respondents is unemployed .

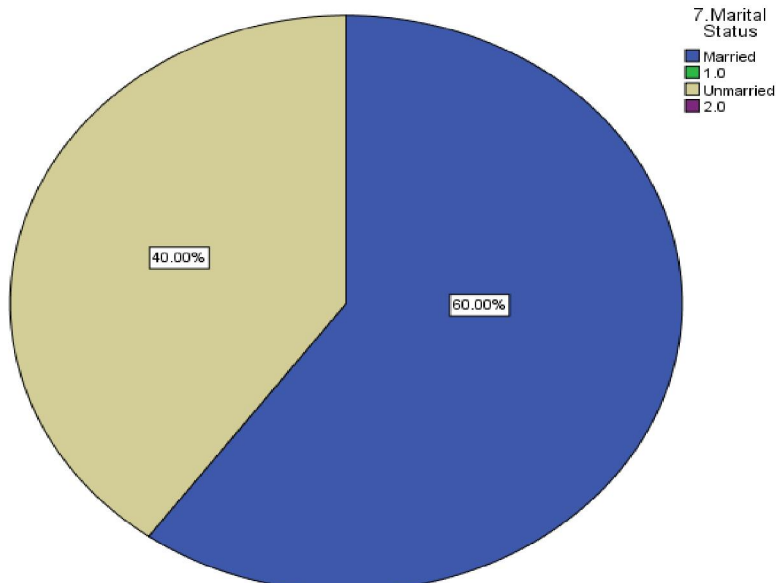
FIGURE 6



LEGEND ;

This pie chart shows the frequency of the independent variable monthly income of the respondents which includes 30.00% for less than RS 10,000 and 30.00% for RS 10,001 - RS 30,000 and 30.00% for RS 30,000 - RS 50,000 and 10.00% for Above RS 50,000.

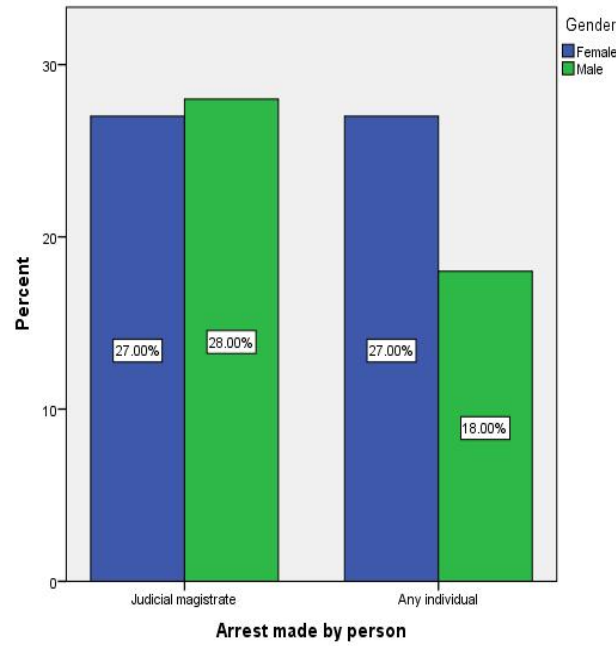
FIGURE 7



LEGEND ;

This pie chart shows the frequency of the independent variable marital status 60.00% for married and 40.00% for unmarried.

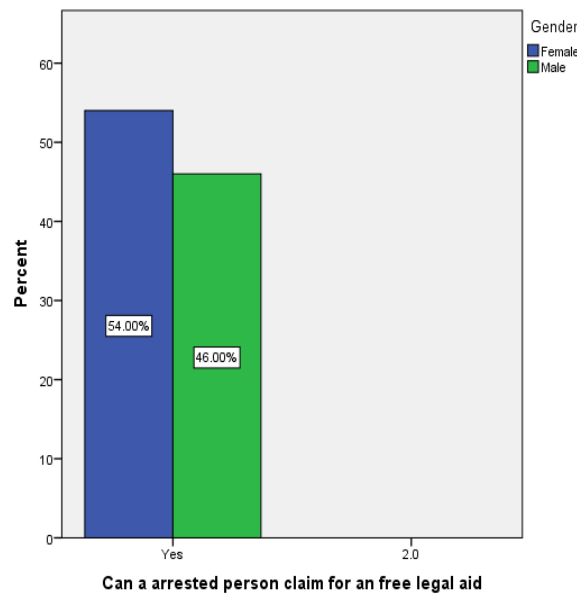
FIGURE 8 ;



LEGEND;

Figure 8 represents the arrest of a person made by whom.

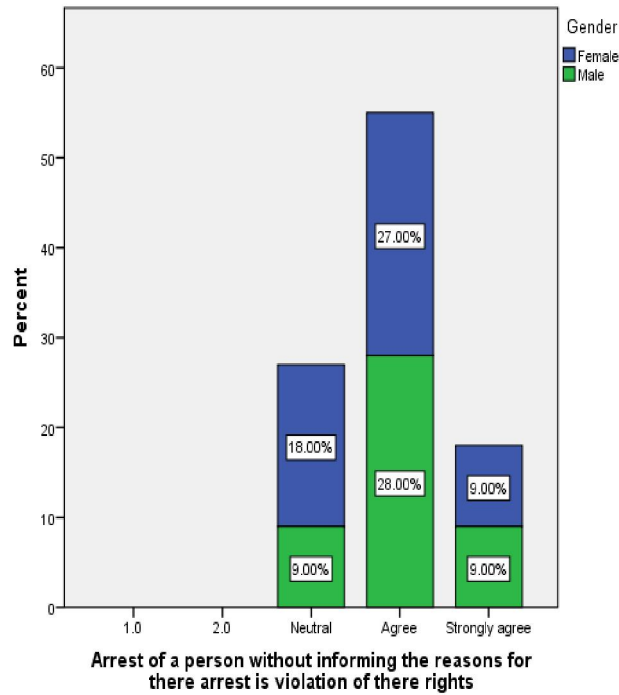
FIGURE 9



LEGEND;

Figure 9 represents that an arrested person can claim for any free legal aid.

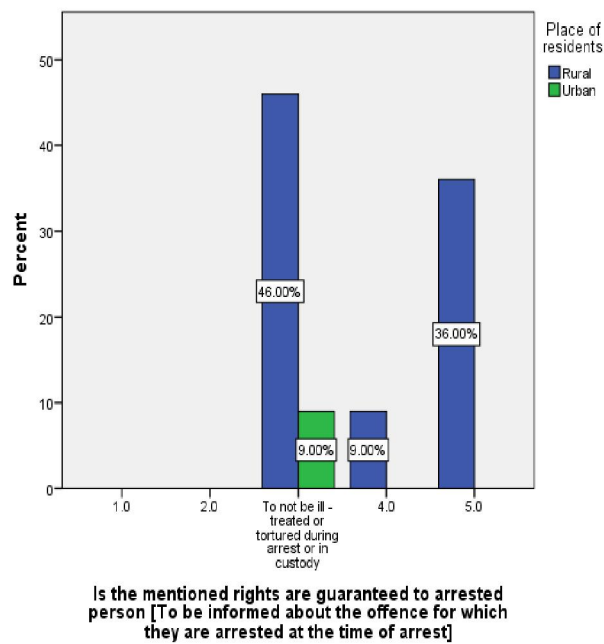
FIGURE 10 ;



LEGEND;

Figure 10 represents the arrest of a person without informing the reasons for their arrest is violative of their rights or not.

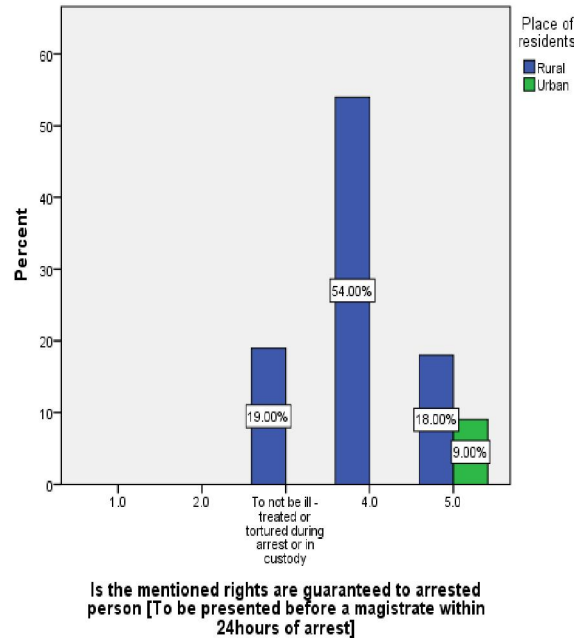
FIGURE 11



LEGEND ;

Figure 11 represents one of the rights guaranteed for an arrested person to be informed about the grounds they have arrested.

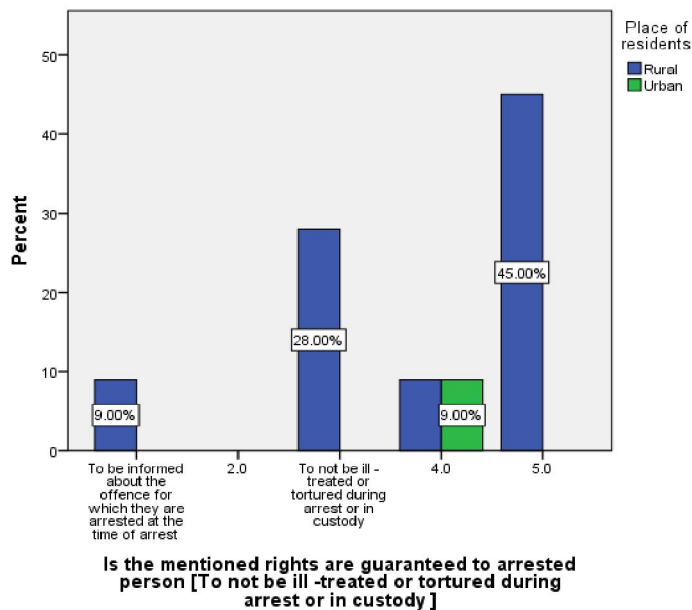
FIGURE 12



LEGEND ;

Figure 12 represents the rights guaranteed to an arrested person to be produced before the magistrate within 24 hours.

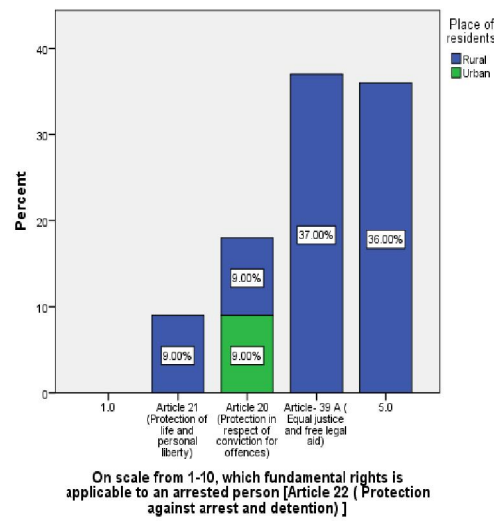
FIGURE 13



LEGEND ;

Figure 13 represents rights guaranteed to an arrested person to not be ill treated or tortured during arrest or in custody.

FIGURE 14



LEGEND ;

Figure 14 represents the fundamental rights that are applicable to an arrested person.

TABLE 1 ;

Crosstabs

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Arrest made by person * Age	100	100.0%	0	0.0%	100	100.0%

Arrest made by person * Age Crosstabulation

Count		Age			Total
		18 - 25	26 - 35	36 - 45	
Arrest made by person	Judicial magistrate	0	55	0	55
	Any individual	9	18	18	45
Total		9	73	18	100

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	45.205 ^a	2	.000
Likelihood Ratio	56.081	2	.000
N of Valid Cases	100		

a. 2 cells (33.3%) have expected count less than 5. The minimum expected count is 4.05.

LEGEND ;

Table 1 represents the chi square test compared with the arrests made by whom and the age.

TABLE 2 ;

Correlations

		Correlations	
		Is the mentioned rights are guaranteed to arrested person [To be informed about the offence for which they are arrested at the time of arrest]	Occupation
Is the mentioned rights are guaranteed to arrested person [To be informed about the offence for which they are arrested at the time of arrest]	Pearson Correlation	1	. ^a
	Sig. (2-tailed)		.
	N	100	0
Occupation	Pearson Correlation	. ^a	. ^a
	Sig. (2-tailed)	.	.
	N	0	0

a. Cannot be computed because at least one of the variables is constant.

LEGEND ;

Table 2 represents the correlation test compared with the guarantee to the arrested person and the gender.

TABLE 3;

Correlations

		Correlations	
		Is the mentioned rights are guaranteed to arrested person [To be presented before a magistrate within 24hours of arrest]	Occupation
Is the mentioned rights are guaranteed to arrested person [To be presented before a magistrate within 24hours of arrest]	Pearson Correlation	1	. ^a
	Sig. (2-tailed)		.
	N	100	0
Occupation	Pearson Correlation	. ^a	. ^a
	Sig. (2-tailed)	.	.
	N	0	0

a. Cannot be computed because at least one of the variables is constant.

LEGEND ;

Table 3 represents the correlation test compared with the guarantee to the arrested person and age.

TABLE 4;

Correlations

		Is the mentioned rights are guaranteed to arrested person [To not be ill - treated or tortured during arrest or in custody]	Occupation
Is the mentioned rights are guaranteed to arrested person [To not be ill - treated or tortured during arrest or in custody]	Pearson Correlation	1	^a
	Sig. (2-tailed)		.
	N	100	0
Occupation	Pearson Correlation	^a	^a
	Sig. (2-tailed)	.	.
	N	0	0

a. Cannot be computed because at least one of the variables is constant.

LEGEND;

Table 4 represents the correlation test compared with the guarantee of the arrested person and with the age.

V. RESULTS

Figure 1 to Figure 7 represents the Independent variable. Most of the people have responded as Judicial magistrate as 28.00% (Fig 8). Most of the respondents have answered as yes 54.00% (Fig 9). Most of the respondents have answered as much as 28.00% (Fig 10).Most of the respondents have answered as 3 out 5 in the rating scale (Fig 11). Most of the respondents have answered 4 out of 5 in the scale (Fig 12).Most of the respondents have answered as 5 out 5 in the rating scale (Fig 13). Most of the respondents have answered as Article39 A equal justice and free legal aid as 37.00% (Fig 14).

Most of the people have responded as Judicial magistrate as 28.00% (Table 1).Most of the respondents have answered as to be informed about the grounds they have arrested (Table 2). Most of the respondents have answered as to be presented within 24 hours (Table 3). Most of the respondents have answered as not to be ill-treated or torture during the arrest or in custody(Table 4).

VI. DISCUSSION

Figure 1 to Figure 7 represents the independent variable. Judicial magistrates are responsible for ensuring that the arrest and detention of individuals are conducted lawfully and in accordance with due process. After a person has been arrested by law enforcement, they may be brought before a judicial magistrate within a specified period (usually within 24 to 48 hours) to determine if their detention is lawful and if there are sufficient grounds to continue holding them. The judicial magistrate may conduct a hearing, review the evidence, and make decisions regarding bail, remand, or further legal proceedings (Fig 8). Yes, in many jurisdictions, an arrested person has the right to claim free legal aid if they are unable to afford their own legal representation. In some cases, the arrested person may need to demonstrate their inability to pay for legal representation and meet certain criteria, such as income thresholds or the nature of the offence they are charged with. Legal aid may be provided by government-funded agencies, public defenders, or assigned counsel. These entities are responsible for providing competent legal representation to individuals who qualify for assistance (Fig 9). Yes, you are correct. Arresting a person without informing them of the reasons for their arrest is generally considered a violation of their rights. Most legal systems recognize the importance of notifying individuals about the grounds and reasons for their arrest as a fundamental aspect of due process and the protection of individual

rights (**Fig 10**). Arresting a person without informing them of the reasons for their arrest is generally considered a violation of their rights. Most legal systems recognize the importance of notifying individuals about the grounds and reasons for their arrest as a fundamental aspect of due process and the protection of individual rights (**Fig 11**).The right to be produced before a magistrate within 24 hours is a common legal provision in many jurisdictions. This right is intended to protect the arrested person from arbitrary or prolonged detention and ensure that they are promptly brought before a judicial authority to review the legality of their arrest (**Fig 12**).The rights of an arrested person to not be ill-treated or tortured during arrest or in custody are fundamental and universally recognized human rights. These rights are enshrined in various international and domestic laws, and their protection is essential for upholding human dignity and preventing abuse (**Fig 13**).Article 39A emphasises the right to equal justice and mandates the provision of free legal aid to ensure that individuals, particularly those who are economically disadvantaged, have access to justice. This includes the right to be provided with legal representation if the arrested person is unable to afford it (**Fig 14**). Judicial magistrates are responsible for ensuring that the arrest and detention of individuals are conducted lawfully and in accordance with due process. After a person has been arrested by law enforcement, they may be brought before a judicial magistrate within a specified period (usually within 24 to 48 hours) to determine if their detention is lawful and if there are sufficient grounds to continue holding them. The judicial magistrate may conduct a hearing, review the evidence, and make decisions regarding bail, remand, or further legal proceedings (**Table 1**).Arresting a person without informing them of the reasons for their arrest is generally considered a violation of their rights. Most legal systems recognize the importance of notifying individuals about the grounds and reasons for their arrest as a fundamental aspect of due process and the protection of individual rights (**Table 2**).The right to be produced before a magistrate within 24 hours is a common legal provision in many jurisdictions. This right is intended to protect the arrested person from arbitrary or prolonged detention and ensure that they are promptly brought before a judicial authority to review the legality of their arrest (**Table 3**).The rights of an arrested person to not be ill-treated or tortured during arrest or in custody are fundamental and universally recognized human rights. These rights are enshrined in various international and domestic laws, and their protection is essential for upholding human dignity and preventing abuse (**Table 4**).

VII. CONCLUSION

The process of arrest, the procedure involved, and the rights of the arrested person is crucial for ensuring fairness and upholding the principles of justice. Arrests are made based on reasonable grounds and, in some cases, require an arrest warrant. During the arrest process, law enforcement officers must adhere to certain guidelines, such as identifying themselves and informing the individual of their arrest. Once arrested, individuals have several rights that protect them, including the right to remain silent, the right to legal representation, the right to be informed of the charges against them, and protection against unreasonable searches and seizures. The principle of habeas corpus also grants the arrested person the ability to challenge the legality of their detention. It is important to note that arrest procedures and rights may vary depending on jurisdiction, so it is advisable to consult local laws for specific details. Ultimately, the aim is to balance the interests of law enforcement with the protection of individual rights, ensuring a fair and just legal system. Lastly, it can be conclude that even though there are certain provisions regarding how the arrest should be made and regarding the rights of the arrested person but this were somehow violated and not been utilised accordingly. The police officers misuse their powers and also they failed to do their duties properly. Moreover, the main reason behind it was the unawareness of the people about their rights. We somehow console ourselves that these protectors of law and order must be doing right but there are several cases where we witness how they misuse their power.

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