CHAPTER - IV

THEORY OF DUE PROCESS OF LAW AS FOLLOWED IN

CERTAIN FOREIGN JURISDICTIONS

The theory of Due Process of Law had its origins in ancient Common Law of England but in course of time it received recognition in foreign legal systems, particularly in those of the United States of America, Australia, Canada and France. A study of the theory as adopted in foreign jurisdictions shows its salient features, particularly its dimensions with regard to the system of protecting the rights of the individuals against the authorities of the State.

In the legal system of the United States of America however it received a wider application and was known by two different names, namely, the theory of Substantive Due Process and the theory of Procedural Due Process. However, there was certain limitation also subject to which the theory was applied in the legal system of the United States of America.

This chapter has the object of highlighting the nature and scope of the theory of Due Process in relation to the legal systems of certain foreign countries starting with the legal system of England where the doctrine had originated. Reference is made to the provisions of law adopted in the foreign countries and the interpretation given by the courts with regard to the character and extent of the theory in its application to various situations. The status of the system of Due Process in the foreign jurisdictions is also highlighted.

The principle of Due Process of Law has since become a part of the international law of Human rights too. Various instruments lay down the rule of due process in their provisions. A reference is made to the understanding at the international level of the concept of Due Process.

The methodology followed in presenting the discussion on this subject to highlight first the theory as it was developed first in England, and then the legal systems of United States of America, Canada and Australia. Reference is made to the legal instruments of Due Process in the particular legal system.

2. Due Process of Law in English Legal System

Practice article 39 of the Magna Carta in England. John of England in article 39 of Magna Carta assure that the liberated human being shall not be trapped or jailed, held or struck out of their rights or ownership or still prohibited or underprivileged of his rank in any way, no power will be worn in excess of
him yet throughout others, except simply during the legal opinion of his generation or by the rule of the earth." 36

Appropriately the Magna Carta itself became the element of the rule of the earth where article 61 of that licence certified an chosen corpse of twenty five tycoons by popular ballot that choose the answer that the ruler must offer in case of damage reasoned by him in any esteem against any personality. Hence, In England Magna Carta recognized the regulation of rule by not only involves the kingdom to go after the rule of the earth, but also anticipatory how the kingdom can change the rule of the earth. although, in the thirteenth century these circumstances may perhaps have been referring simply to the human privileges of owners, and not to the villagers or common peasantry.38

British Monarch then brought up shorter reports for Magna Carta and article 39 thereof was renumbered ". The expression ‘owed practice of rule’ was initially initiated or came into force in A.D. 1354 in an necessary interpretation of Magna Carta as below:

"No man in whatsoever situation and from no matter what situation he is, shall not be unnerved out of his domain or lay of dwelling or dispossess, or put to loss, unless he is tried to reply by owed practice of rule.". 39

In the year 1608, the term Magna Carta was argued in thesis written by the English jurist Edward Coke. Coke clarified that no human being shall be underprivileged however by the rule of the earth (legem terrae), i.e. "by way of the act rule, ordinary rule, or practice of England...., (that is, to speak it once and for all) all the way through owed, along with practice of rule ....."

In the year 1704 (during the verdict of Queen Anne), both the articles specified in Magna Carta and the orders of 1354 were argued and specifically made clear again by the magistrates eminent as Queen's seat, in the case of Regina v. Paty. In the given casing, John Paty next to some previous confined were underprivileged to implement their right to ballot in an voting by the Home of ordinary, though had jailed them to Newgate Prison merely for captivating any lawful act alongside in the Tribunal. In an estimation by impartiality Powys, “The Queen’s seat” explicated the sense of "owed practice of rule" as mentioned below:

It is constrained, that by Magna Carta, no human being must be jailed or unavailable, apart from the rule of the earth. though to this I replied, that lex terrae is not reserved to the universal rule, other than takes in every other rules, which are passed in this territory; as the standard law and public law.... By the act of
Edward Ed. 3, c. 3, there the phrase lex terrae, which are practical in Mag. Char. are clarified by the appearance, owed practice it means, that all circumstances of penalty should be by a lawfully recognized power.[8]

In this casing, Chief Justice Holt opposed as he supposed that the pledged had not in declaration been given by a lawful power. The Home of ordinary legislated freely, without taking any support of the Home of rulers, in fact to manage and organize the voting of its connected associates.[10] However the Queen's Seat supposed that the Home of ordinary had not intrude the distorted or exact owed practice, Queen Anne prorogued assembly and at last John Paty was free.

3. Owed Practice of Law in American Legal System

Like various philosophies of English commandment the code of Owed practice of rule was accepted in the American charter through the initial alteration, which says, ‘assembly shall make no rule distressing the right to life, liberty and property without owed practice of rule.’ While the initial alteration brought in the protection of owed practice against the acts of the centralized system, the Fourteenth alteration to the charter initiated the protection of owed practice against the acts of the system of the States. In this way, the centralized have been nominated so the state establishment been, to the code of owed practice in order to safeguard the life, liberty and possessions.

Thus, the Fifth and the Fourteenth alterations to the United States Constitution each contains a owed practice article which proviso deals with the direction of fairness. The owed practice article guards from quirky denial of life, liberty, or possessions by the regime from the rules which aren't authorized supreme court there in The U.S has the articles for providing four protections:

- ceremonial owed practice in illegal and legal measures
- Substantive owed practice,
- A prevention against indistinct laws, and
- For the inclusion of the invoice of Rights. It works as a carrier:

The Supreme Court of the United States interprets the Clauses as providing fo ur protections:
procedural due process (in criminal and civil proceedings) substantive due process, a prohibition against laws, which aren't clear and as the vehicle for the incorporation of the Bill of Rights. An analysis of the principles arising from the theory of Due Process as adopted in the American Legal System may be presented as follows:

2. **Procedural due process**

Whether criminal or civil in nature all government procedures have a protection against any matter relating to individual's deprivation. Whereas considering not only contravention hearings but also the administrative hearings benefits in association along with full-blown criminal examination entitlements specified. Further, Judge Henry Friendly Written article named "Some Kind of Hearing" it mentioned the list of essential contents for basic due process rights. This list remains extremely significant to both content and relative priority. 43The list of rights, which are pertinent similarly to criminal due process and civil due process, as mentioned below

1. An tribunal which is unprejudiced.
2. Notice of the premeditated action and the reasons emphasized for it.
3. A person should be given opportunity to be heard in court to mention the reasons why action should not be taken against him.
4. A person should be given the right to call evidence in a trail and also present witnesses for proving the point.
5. The right to scrutinize and inspect the opposed evidence.
6. The power to cross questions the unfavourable witnesses.
7. The judgement should be given solely on the evidence submitted and shown in court.
8. A person has a right to represent itself by counsel.
9. The tribunal are compelled to maintain a record of the evidence which were presented in court.
10. The tribunal are compelled to maintain the records of written findings of piece of evidence and ground for its judgement.

b) Civil due process

Procedural due process at a preliminary level is fundamentally established on the ground of idea of "essential justice."

For instance, in the year 1934, the apex court i.e Supreme Court in US given the judgement that due process is dishonoured or violated "if a rule or practice affronts several principle or standard of integrity so entrenched in the conscience and customs of our citizens as to be ranked as essentially."44
As interpreted by the judges, it consists of every person power to be sufficiently informed of proceedings or charges, the authorised person or group of panel making the judgement should be fair enough to make the decision and should give opportunity to the accused person to be heard in the judicial proceeding.

However, In simple terms if an person is facing a deprivation of liberty, property, life or procedural due process construct it compulsory that he or she is permitted facilities which are impartial hearing, from a unbiased arbitrator.

The Apex (Supreme) Court has enacted an equilibrium examination to check the firmness of the given obligation of proceeding due process ought to be relevantly executed to a thorough deprivation, on the apparent grounds authorization of the specified privileges are generally generous on the type of the largely part insignificant deprivation shall be conveyed the apparatus of administration to a close down. The tribunal set up the examination as given below:

“Generally three distinct factors are taken into consideration while identifying of the particular requirements of due process i.e. foremost, the personal concern can be type of pretentious from the authorized act ; the next one, is threat of an incorrect deprivation of concern throughout the dealings employed, and it's feasible cost if mentioned of supplementary or replacement technical preserve; and, ultimately, the supervising administer of law interest, in addition to utility concerned and the financial and managerial encumberance extra or replacement technical obligation will be provided"46

In the expansion of the law of individual jurisdiction, procedural due process has also to play a significant role in such a way it shall be intrinsically inequitable or unjust for the legal apparatus of a country to obtain the assets from the individual which is not association with anything. An important segment of United States lawful rule is consequently focussed to which kind of associates to a country be an adequate for that status allegation of authority above a non-resident to by means of procedural due procedure.

The prerequisite an unbiased arbitrator or judge has set up a constitutional measurement into the enquiry of whether a judge must recue himself or herself from any liability. Exclusively, in certain conditions, the Supreme Court’s ruling is the Due procedure section of the Fourteenths Amendment obliges an arbitrator towards relieve on the ground of a latent or definite conflicting of concern. In the year 2009 June 8 in case, in Caperton v. A. T. Massey Coal Co. (2009), tribunal has passed a judgement ruling a fairness of the Apex Court of petition West Virginia it should not be participating in a judicial procedure trail about a main supporter who make a payment in a big way to his appointment to that court.

c) Criminal due process
In illegal cases quantity of these due procedure safeguard extend beyond, by means of modus operandi shield offered through the U.S Constitution passed in Eighth Amendment, which assurances reliable proceedings that defend innocent people from being effected, which would be an apparent illustration of unusual punishment and cruel.47 An instance In the case Vitek v. Jones states illegal due process rights is, 48

Fourteenth Amendment states that due process clause entails certain procedural safeguards for state prisoners there is a probability of transfer of the detainee unwillingly to a state mental hospital for healing of a mental disease or deficiency, such safeguarding including written notice of the transfer must be specified in advance such fortification are significant, an adversary trail before an self-governing decision maker, written conclusion by the exploration, and efficient and timely notice of such rights. As recognized by the district court and acknowledged in the case Vitek v. Jones, by the United States in the Apex Court in the matter of due process rights49

A written notice should be given to the person detained i.e. prisoner about its transfer to a mental hospital is granted:

1. In a trail, after giving adequately a proper notice to prisoner authorising to prepare disclosure list of evidence on the base of which prisoner is relied upon for the transfer along with the authority of presentation authority to be present documentary evidence and to be heard in person is given.

2. A prisoner is given opportunity in the trail present proof and evidence of witnesses also he has a allowed to confront and Interrogate witnesses through the state, apart from upon a finding, not illogically made, of superior cause for not sanctioning such arrangement, confrontation, or cross-examination;

3. In a trail person giving decision should be independent decision-maker;

4. The fact finder should submit a written declaration in relation to the evidence relied on the grounds for transferring the inmate;

5. If the prisoner is financial incompetent to appoint legal counsel for himself, the state should appoint on his behalf although number of Justices discarded this authority.

6. A prisoner has a right to receive each and every the timely notice for any of the foregoing rights.

ii) Substantive due process
The U.S. Supreme Court understood the meaning of "due process of law" by the time of middle of the 19th century that the power shouldn't be left at the discretion of parliamentary authority to force several procedure that can be invented. The legislative and executive and judicial power of the government is restraint to due process article, and it not able to so interpreted as to go away parliament gratis to formulate whichever procedure ‘due process of law’ with its simple determination”.

Generally The term "substantive due process"(SDP) under the Due Process Clause is employed in the following two ways: firstly a line action of case law is identified and next one is to indicate a specific approach to take court’s legal re-evaluate. In the year 1930 the expression "substantive due process" started in to obtain the outline of legal casebooks as a definite oddness of particular due process trails. According the data of 1950 it has recognised two times in Apex Courts decisions.

On the ground of Liberty due process challenges are involved in SDP due process challenges those search for several results in its place of merely challenging happening in addition to the result; as per the given trail the Apex Tribunal recognizes a legislatively on the "freedom" who deliver system in search of to boundary supposed "freedom" whichever incomplete in extent or can not be implemented. Opponents of SDP judgments are characteristically declare that individual freedom should be not here to the further politically accountable twigs of government.

Judicial tribunal and forum have examined the Owed method article, and occasionally other articles of the Constitution, as implementing individuals necessary privileges that are “implied in the perception of well-ordered freedom. The content of individuals privileges is not all the time definite, nor there is an authority given to Supreme Court to implement such unremunerated rights clear. In American society a few of those rights has a long histories or “are deeply rooted.”

When substantive due process the court has principally agreed to give up the Lochner era approach, it was used to nullify minimum labour laws and wage in order to safeguard freedom of contract. From the time when, the Supreme Court has stated that the several former free will is not noticeable in the pure book of the charter however Constitution protects it. If doctrine of substantive due process has not safeguarded these rights by the federal courts judgement, then it would be protected in other ways; for instance these rights could be protected by the legislatures and the other provision.

After the Fourteenth Amendment under substantive due process, the courts pays more attention on three types of rights, that initiated in United States of America v. Carolene Products Co, three types of rights are given below:

- In the Bill of Rights the first eight amendments (e.g. the Eighth revision);
• restrictions on the political practice (e.g. the privileges of voting, union, and liberated verbal communication); and

• “limited and isolated communities.” their rights

The Tribunal generally inspects original en route to determine condition is basically correct, with examination and investigating that in American history and traditions whether the right can be establish deeply rooted. The rational basis test is applied on the right if it is not a fundamental right proviso condition the contravention of the precise is reasonably connected towards a lawful administration function, subsequently the rule is upheld.

The Tribunal exercise judgment of strict scrutiny if the right being contravene is a fundamental and essential right.

This examination investigate keen on if suitable is an obliging situation importance person further by the contravention of the precise and if the regulation in subject is scarcely adapted to deal with the situation concern.

In the Constitution the term Privacy is not mentioned clearly & explicitly. It was discussed in the given case Griswold v. Connecticut (1965) the judgement was passed that for married couples illegal prevention of contraceptive devices contravene judicially and federal, enforceable privacy rights. In the "penumbras", or shadowy edges the right to contraceptives was established in the specific amendments that debatably refer to some of the specific privacy rights. The superlative Tribunal at this time apply the Owed practice article while establishment clause designed for diverse seclusion privileges un enumerated and the penumbra-based grounds were been discarded.

Even though it has under no circumstances been the widely held common view, a few had dispute that the Ninth Amendment the same as confered by fair dealing Goldberg in accord to Griswold resolving the problems of un-enumerated privacy rights should be used as essential sensibly empowered privileges, with a common exact to seclusion.53

The substantive aspect of due process is far less intuitive than its procedural counterpart. Key to understanding it is the concept of popular sovereignty and the associated notion of limited government. Constitutions in the American tradition do more than simply establish the institutions of government; they limit the powers of government and single out certain rights for special protection.

In its substantive branch, due process is necessarily involved with the meaning and extent of the rights of “life, liberty, and property,” as well as with the proper procedures for determining them.
rights enumerated in the constitutions are more specific, the emphasis of substantive due process has been on ‘un-enumerated rights,’ that is rights not expressly mentioned in the text. The very generality of the words “life, liberty, and property” has proved a useful reference when dealing with changes in economic organization and social priorities.

In Tumey v. Ohio\textsuperscript{54}, the Supreme Court of United States was called upon to review a state statute that gave a magistrate a share of the fines imposed in case of conviction; the court in this case worked without a specific constitutional text, and held that for a judge that has a monetary concentration within the result of a case surely breach the Fourteenth amendment as well as dispossession of a defendant in an illegal case of owed practice of act.” In civil cases, too, express guarantees have been supplemented by recourse to the general necessity of owed practice.

In Goldberg v. Kelly\textsuperscript{55}, the Tribunal ruled with the aim before a state could terminate welfare benefits there had to be a fair hearing, and provided a comprehensive summary of precisely what due process required;

(1) Adequate notice,

(2) An opportunity to be heard,

(3) The right to present evidence,

(4) Confrontation of opposing witnesses,

(5) The right to cross examine those witnesses,

(6) Disclosure of all adverse evidence,

(7) The right to an attorney if desired,

(8) A decision based solely on the evidence produced at the hearing

(9) A declaration of reasons for the decision and

(10) An impartial decision maker.

3. Due Process of Law in Australian Legal System
Early attempts to establish a constitutional procedural due process principle have relied upon the separation of judicial power and operated within the doctrinal framework provided by cases like R v Kirby; Ex parte Boilermakers’ Society of Australia etc.

Such attempts focused on developing a concept of ‘judicial power’ that included a minimum standard of procedural fairness. Although this conception was adopted by several members of the High Court in the 1990s, notably Gaudron J, it has failed to gain significant doctrinal traction, and the status of procedural due process principles under the Commonwealth Constitution remains unsettled.

Chapter III of the Constitution imposes restrictions on the ability of the legislature fundamentally to alter the character, functions and powers of the various courts capable of being invested with Commonwealth judicial power. The outer limits, and conceptual underpinnings, of such restrictions are, however, strongly in dispute. One of the most fraught topics of dispute is the status of ‘due process’ limitations under Chapter III of the Constitution.

4. Due Process Clause in Canadian Legal System

Canada’s lawful scheme is pedestal on a inheritance it comprises of the regulation of act, liberty in the act, self-governing ideology as well as due process. Due process is the standard in administration it should be deference every lawful privileges a individual has been authorised beneath the act.

Canada is administered through the planned scheme of act. These regulations printed in policy planned to show individuals in culture. It is prepared through designated legislative body. The judges resolve disagreements furthermore the constabulary implement the act. The rule in Canada is to be followed by each person, as well as arbitrators, politicians and the police force. Rules are implemented to all the extent as present command in culture as well as a still method to resolve disagreements, along with communicate the principles and attitude of Canadians.

The Canadian integrity organization pledge each one owed practice in the act. The integrity organization of Canada is created resting on the assumption of purity in unlawful subjects, sense each one is pure pending confirmed at fault. The next are the allegatios crop up in esteem of a mixture of associations of administration in the rule of Owed Practice.

i) **Tribunal** the Superlative Tribunal of Canada is our country’s chief Tribunal. The central Tribunal of Canada handles subjects related to the central administration. Mainly in districts there is a request Tribunal and a assessment Tribunal, for a times designated as the Tribunal of rulers counter or the Superlative Tribunal. Around we also refer local Tribunal for slighter crime, ancestors magistrates,
interchange Tribunal and miniature argues Tribunal for general casings concerning petite additions of funds.

**ii) constabulary** The constabulary be around to maintain citizens are protected and to impose the rule. We can ask the constabulary to facilitate in all types of circumstances—if an disaster occurs, if somebody has stolen incredible from us, if we are injured party of attack, if we notice an unlawful activity occurring or if somebody we are acquainted with has been mislaid. There are varieties of Constabulary in Canada. There are local Constabulary services in Ontario and Quebec and public Constabulary sectors in all zones. The Royal Canadian Mounted Constabulary (RCMC) implements centralized rules across Canada, and provide as the local Constabulary in all zones and terrain except Ontario and Quebec, in addition to some town. considering, the Constabulary are there to assist us.

solitary can also enquire the Constabulary on their facility or demeanour if one feels he needs to. Approximately all Constabulary army in Canada have a method by that each one can get their matters to the Constabulary and get deed.

Part 7 of the Canadian contract of privileges and Liberty states that “each one has the privilege to life, freedom and protection of the individual and the underprivileged thereof but in agreement with the doctrine of primary integrity.” The Charter sets out what these principles are and outlines the place of section 7 of the constitutional order; how courts decide whether a particular legal principle is so fundamental that it merits recognition under section 7; the conditions under which section 7 will apply to a legal dispute; the legal norms that have been recognized, or rejected, as principles of fundamental justice under section 7, and the very limited circumstances in which an infringement of section 7 will be justified under section

5. *Due Process of Law in French Legal System*

Any person or group of person can get remedy through ‘an impartial, independent and competent’ the chances of getting fair judgement is guaranteed only the tribunal should be renowned by Global Principles, as the American Convention along with ICCPR. The apparatus are being briefly consider as follows:

Liberty of the Judiciary is very important components. It should be independent in the context of both administrative and the parliament. If any case sovereignty did not survive, judgement from the tribunal is not of any utilize. Some of requirements formulated UN Basic Principles on the subject freedom of the judges has to be met by a tribunal or tribunal to be measured ‘sovereign’:

a) Circumstances of deal and term;

b) Process of meeting and release;
c) Extent of logistical safeguard and firmness in conflict exterior force as well as annoyance.

In different parts of the world problems related with the self-government of judges are various, both in quantity and quality, ranging from remuneration bargaining ideas to physical disappearances. The tribunal must be ‘established by law’ is the major Conventions expressly required. The survival of a court should not be depended the diplomacy is by the administrative division however be present on the ground of presentation by government. Only when exceptional circumstances are evolved special courts are only tolerated.

According to standard of fairness judge does not have private interest, he is reviewing. Manifestation of neutrality is a vital significance in any case in the intention intellect (scrutinizes the arbitrator presented procedure assurances sufficient to prohibit several legal hesitation of injustice), and the prejudiced intellect (there should not be some manifestation of fairness).

Other ingredients constituting the scheme of due process comprise of expertise of judges to sit in judgment in excess of the claims of the parties, public hearing, fair hearing, presumption of innocence, equality of parties before the law, etc.

6. Due Process of Law in Russian Legal System

In Russia in the year 1993 Constitution established in the political system, executive power considerable is wields by the president. Vice president is not appointed as well as executive is far stronger as compared to legislative. The uppermost country administrators are nominated by the president it also includes the parliaments, should be permitted through Duma. There is no need to take consent of Duma by the president to pass decrees. The President is also head of the of the national security councils and armed forces.

In the year 1999 nineteenth day December Duma elections held however in the year 2000 twenty sixth day March presidential elections took place. In the Duma a less numbers of votes as won by Communist Party and the significant figures of votes in the government were also won by the pro-administration agreement and the Primary nation Russia. After the resignation of Boris Yeltsin, on 31 December, Vladimir Putin in the presidential election was chosen in the foremost through 53% of the ballot. Generally, international observers judged freely and fairly both the parliamentary and presidential elections.

Although, Russia is an association, except the precise distribution of authority surrounded by the essential administration furthermore provincial and local establishment is immobile developing. Total 89 components are included in Russian Federation along with St. Petersburg and Moscow the two federal cities.
The federal government's exclusive powers are explicitly defined in the constitution, further it also defines the issues such as the Federation components and the federal government’s joint responsibility which are the most key local issues.

Further, the Russian judiciary is divided into three different branches: general jurisdiction courts (including military courts); under the High Court of Arbitration Courts the arbitration (commercial) court system; tribunal which are subordinated to the Supreme Court and the Constitutional Court (as well as constitutional courts in a number of administrative entities of the Russian Federation).

In higher courts, courts of appeal and courts of Primary jurisdiction public as well as unlawful cases, the municipal tribunal is the lowest level of court in The general court system's it serves rural district or every city and hears more than 90 percent of all civil and criminal cases.

The Local Courts are the subsequent level of courts of general jurisdiction. Supreme Court is at the top most level. Unless and until a constitutional issue is involved, lower trail courts judgement can be appealed just to the immediately superior court. The arbitration court system includes appellate circuit courts and city or local courts subsidiary to the High Court of Arbitration. The dispute among the state and legal entities and among the legal entities is resolved in Arbitration courts.

Judges after being nominated by the qualifying collegia, i.e. assemblies of judges are approved by the President. These collegia also have the power to rem over judges for misconduct, and to consent procurator's requirements to prosecute judges.

The legislature passed the new Criminal Procedure Code in March and it was scheduled to be phased in the year somewhat between 2002 and 2004. The fresh CPC offer for strengthening of responsibility of the judges in connection with the Procuracy by necessitating judicial consent of searches, arrest warrants, detention and seizures. Further in December the new Law on the Status of Judges was approved to strive to eradicate subjectivity in the selection of judges, to facilitate admission to the legal profession by reducing corruption in the appointment procedures, and by subjecting judges to disciplinary and administrative liability to improve the accountability and by introducing specific limitation on age. Moreover during the year judicial training is to be strengthened and mandated. The jurisdiction of Justices of the Peace was broadening up to all crimes the new Criminal Procedure Code by introducing maximum sentences of less than 3 years.

Although in the year 2001 the Russian Government normally esteemed the human rights of its people in various areas, but still severe problems remain in several areas. Its record was poor regarding the independence and freedom of the media. In Chechnya, its record were poor and the federal security forces demonstrated little respect for fundamental human rights in addition to this there were credible information
of serious contraventions, which includes several reports about the Government and Chechen fighters of extrajudicial killing. Number of deaths was result of the Hazing in the armed force. Moreover, in Chechnya there was information of government connection in politically motivated disappearances. There were credible reports that law enforcement personnel frequently beat, abused and otherwise tortured, suspects and detainees.

The main area of problem always remained are police corruption and arbitrary detention or arrest. The Government take legal action against various perpetrators of abuses, although several officials were not held responsible for their activities. One of the serious problems was a lengthy pre-trial imprisonment.

The conditions of prison were tremendously harsh and frequently life threatening and it continued to remain the same. Often the two branches of law keep on contradict with each other i.e. active rules lying on the military facility, the authorisation of facility association and military courts and the Constitution, presidential decrees and federal laws, raising random decisions of component leader more the regulation of law.

During the year the Government made a few progress by execution and implementation of constitutional stipulation for due procedures and timely and fair and trial; on the other hand, suffered from corruption, the courts lack the resources and remained subject to a few control from other different branches of the Government. Furthermore, during the year a series of so-called espionage cases continued and it raised concerns as regard to lack of due process and the control of security services in judicial cases or trails. Citizens personal rights were infringe by the Authorities.

Government increased its pressure on the restriction on media in spite of wide diversity of media; restriction was applied on the freedom of speech several restrictions were implemented on freedom of speech and press. Usually the Government appreciated and valued the freedom of assembly but at times this right at the local level was restricted. Constitutional stipulation for equality of religions is not always respected by the Government, in few cases some religious groups have to bear restriction implemented by the local authorities.

In spite of Fundamental right of citizen the right to movement is to be protected by the government, but still the government placed some restriction on this right by denying the permission for local residency to new shelters in some area for instance the city of Moscow such restriction were placed by the local authorities. Government institutions set up to protect the human rights are comparatively weak, but remained public and active.

As there was discrimination against women violence and abuses on women and children always remained the main problem. The government lack to support the persons with disabilities ant they faced
problem in societal attitudes and lack of support. Some religious minorities always faced a problem of harassment, violence and societal discrimination. At times of violence Ethnic minorities people including the people from Caucasus and Central Asia and Roma has to face a extensive societal and governmental discrimination. There were many reports about the child labour and forced labour, there were few restriction on workers’ rights. One more serious problem in the state as trafficking in persons, mainly with young girls and women.

Chechen fighters reportedly committed abuses to obtain a ransom by federal security forces, killing captured civilians and kidnapping individuals. In the year 1999 at beginning of September, throughout the country a series of bomb attack was carried out and government administrators blame rebel factions. In this blast hundreds of citizens were injured or killed. Several people were convicted during the year by the Government in the association with these bomb blast.

7. Due Process of Law in South Africa

In Constitution of South Africa second chapter contents the provision regarding Bill of Rights, it is a human rights charter that safeguard the rights of each and every person of South Africa on the basis of political, civil and socio-economic rights. All the branches of the government including the common law, Parliament, municipal bodies, the national executive, judiciary and governments are bind by the rights in the Bill. A few conditions which prohibits unfair discrimination, is also applicable to the actions of private persons.

In Chapter 3 temporary Constitution of 1993 South Africa's first bill of right was drawn up as part of the negotiations to end apartheid. On 27TH April 1994 "Interim Bill of Rights", came into force the date of the first election held non ethnically, was mostly partial to political and civil rights (negative rights).[1] On 4 February 1997 the current Bill of Rights was replaced and the date of commencement the final Constitution, retained all of these rights and added a number of new positive financial, societal and customs rights.

The section seven and eight defines the extent of the application and jurisdiction of the Bill of Rights which entails "Application" and "Rights" respectively .Section seven states the provision that the rights apply to "all citizens in our country" (although certain rights are limited to citizens) and entails the state (by which is meant government at all levels) to "protect, respect, fulfil and promote" the Bill of Rights. It also remarks that the rights in the Bill are subject to certain the boundaries stated in section thirty-six and somewhere else in the Bill;

In spite of section 2 states that the constitution is the superior to all the laws and government action actions, but still section 8 undoubtedly declares that the Bill of Rights is applicable to all law and it binds all
organs and branches of government. Furthermore it states that the rules and regulation of the Bill also binds to private parties to the amount that they are pertinently, depending upon the rights in question, and creates pressure on the judiciary tribunals to develop the common law to this effect.

Ultimately, section eight expands the benefits of the Bill of Rights to juristic persons, taking into consideration the character of the rights and the juristic persons in question. Hence, for occurrence, the authorisation to health care and the authorisation to human dignity evidently only apply to real human beings, whereas the authorisation to property and the authorisation to liberty of expression apply to corporations.

Bill of Rights Section 9 provides provision on social equality and legal. Section 9 of bill of rights is similar to internationally renowned human rights law, however it is further in detail provision as compared to Universal Declaration of Human Rights. For instance:

The section states that, “Every person shall be treated equally before the law moreover has the responsibility as well as right to get benefit and equal protection of the law. In Equality all rights and freedoms are enjoyed by every person fully and equally. The objective of this section is not only to promote the achievement of legislative and equality but also to designed such rules to protect from discrimination may be taken.”

The Section, similar to the General assertion of Human privileges forbids each plus every discrimination "on sole otherwise more grounds, comprising...", however exclusively lists the grounds as follows "race, sex, ethnic or social origin, conscience, marital status, gender disability, age, religion, pregnancy, culture, language sexual orientation colour, belief and birth."

This list is less equality than extensive. In most human rights instruments provisions are worth mentioning are the peculiarity between "colour" and "race", "sex" and "gender", the addition of "pregnancy", the inclusion of "age" and " disability".

Section 8 deals with the provision which indicates of both positive responsibilities and negative responsibilities, it provides that “Any person may not unjustly discriminate indirectly or directly against any person on any of the ground mentioned in provisions of subsection (3). To prohibit or prevent unfairdiscrimination among citizen National legislation must be enacted."

The discrimination mentioned in Section 8 subsection (3) on one or more grounds is unfair
unless and until it is recognized that the discrimination is fair. "The Government of South African took the step to influence and enforce the Empowerment program, which will try to reduce inequalities of Apartheid by providing preference behaviour in tenders, employment, etc. to groups of SA citizens like ethnic Africans, Indians and blackAfricans.

2. Right of Access to information

Section 32 provides Right to access to information, which is well known as “right to know”. This provision among human rights instruments is unique however it is, analogous with freedom of information legislation in several other countries. In South African Bill of Rights, right to know was enshrined in reaction to the restricted information policies by the Apartheid regime.

As per the provisions of Section 32 every person has the right to gain the information which is held by any other person or by the state and information that is

The provision of Section 32 also gives right to any person to gain information held by third party if the information is necessary for the implementation or protection of any rights.

Section 32 provisions are exclusive as it gives right and freedom to gain information from private bodies which includes companies as well as public bodies. Promotion of Access to Information Act, 2000 regulates the provision regarding limitation on kind of information to be released.

3. Just administrative action

Section 33 states that “Each and every person has the authority and power to perform administrative action that shall be reasonable, lawful, and procedurally fair.” This section is distinctive between human rights instruments in provisions of its fact on administrative due process.

4. Access to courts

Each and every person has the authority and power to bang the door of court whenever required by the circumstances. The obligation and provision of “Right to a fair trial” are stated in Section 34 effectively.
Section 34 says that Every person has a authority and power to apply to court or any other impartial and independent forum or tribunal for resolution of any dispute by the lawful procedure in a equitable and fair open hearing in a court

5. Arrested, detained and accused persons

A comprehensive list of obligation and rights to be followed in due process are given in Section 35. Section 35 deals with the provision and regulation regarding to court appearance, arrest, fair trail and detention.

6. Limitations

The rights which are limited by the way of specific limitation clauses excluding the absolute rights are provided in the Bill of Rights. Some of the individual rights, mentioned in the individual Sections are liable to some kind of restrictions, For instance: Section 9 On equality. Further General Limitation Clause was provided by the Constitution under Section 36 it says in Bill of Rights all rights should limited in provisions of rules and law of general application. The limitations in an open and democratic society should be justifiable and reasonable in based on equality, freedom and human dignity." Hence each and every limitation under this section must be reasonable and with good cause. The restriction imposed on limits should be less.

The rights of the citizen may be perpetually limited by the main three branches of law management of state i.e. the legislature, the judiciary and the executive to carry out their functions effectively. For instance, the freedom of a prisoner should be limited. Moreover, rights may be limited by the actions or decisions of other persons as of the horizontal application of the Bill of Rights,. In section 36, the courts are entitled to check the legality of the limitation.

According to Section 36, At the time of determining whether limitation is justifiable and reasonable some of the factors should be taken into consideration as follows:

- The nature of the right.
- The significance of the limitation
• The character and scope of the limitation

• The purpose of the limitation and its relation

• Less restricted ways to accomplish the purpose.

The factors above mention are not the only factors to be consider, the court may also consider compulsory other factors. The courts will comprise to acquire into account the content of the right. At the time the characteristic of the right is measured and the significance of the right and the interest which is secured. In the case S v Makwanyane Constitutional Court stated the judgement that it is relatively complicated to limit justifiably the right to life, in the given case Capital punishment was eliminated. However, at the time considering the purpose and its limitation the safeguard and promotion of a legal or allowable public interest will be essential. Furthermore, the Constitution obliged a less qualified or restrictive ways to be measured, slightly than restraining the rights of any person, in attaining that purpose.