RECENT TRENDS IN THE CRIMINAL JUSTICE SYSTEM CAUSING A SET BACK TO THE THEORY OF DUE PROCESS IN INDIA

In the previous chapter the recent trends affecting the system of due process of law were noted as far as foreign legal systems are concerned. Among these trends the important ones were those which the legislatures had introduced through their new laws for dealing with the law and order situation of the country. The legislature in most of such cases thought it fit to discard the safeguards that were normally provided to the accused when they were booked under the provisions of criminal law. Almost the same was the situation in our country too on account of which we noticed the impact on the safeguard of due process of law.

Therefore, the first thing that may be highlighted is the legislative measure which the authorities of the State had to take to deal with the problem arising from the political offences which were an organized attempt against the established government of our country. These offences were generally known as offences of terrorism and disruption. They were such that the peace and order of the country was very much disturbed, the individuals were targeted and political institutions were disrupted. The legislation that had been enacted to deal with the problem of terrorism naturally affected the rights and remedies of the persons and they contained peculiar features of their own. The legislation was so drastic that there was a hue and cry against the legislative measures, particularly from the Human Rights organizations; in order to improve the status of the existing law more than one commission and organization had occasion to deal with the problem of revising the laws.

The next important thing that affected the safeguard of due process of law was the rise in the incidence of crime because of which the authorities of the State considered it necessary to enact laws and provide for special procedures discarding the normal safeguards to the accused. In the context of these crimes what is noticed is the mistreatment of the accused by denying him the safeguards needed as an individual.

The excesses of the law enforcement agencies have been exposed by the individuals by taking the matter to the courts and by the human rights organizations by politicizing the issue.

These phenomena are discussed in this particular chapter, first the discussion is with regard to anti-terrorism legislation and then the discussion is with regard to the ill-treatment of the affected persons.

I. Anti-Terrorism Legislation
In India also the Union Parliament and certain State Legislatures have enacted laws on the lines of the laws enacted by other countries. Among the laws which have departed from the fundamental principle of Due Process Theory are the Central Laws like the Maintenance of Internal Security Act (MISA), the Terrorist and Disruptive Activities Prevention Act (TADA), the Prevention of Terrorism Act (POTA), UAPA, etc. Among the State Laws which have bypassed the principle of Due Process and adopted the Crime Control Theory are the State Laws like the Maharashtra Crime Control Act (MCOCA) enacted by the Maharashtra Legislative Assembly.

i. PREVENTIVE DETENTION LAWS SO FAR ENACTED IN INDIA

In the exercise of its legislative power the Union Parliament has been enacted the Preventive Detention Laws which have taken to the courts number of times questioning the very validity of such laws. The first preventive detention law was the Preventive Detention Act 1951 which was to be in force for one year and could be extended year after year. However, the validity of this law lapsed in 1966, and afterwards the Union Legislature enacted the Maintenance of Internal Security Act, 1971, which was followed by other preventive detention laws, like the National Security Act, the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, the Terrorist and Disruptive Activities Prevention Act etc. In all these cases controversies had arisen about the protection to the rights of the individuals, reference may be made to some of them as follows:

Article 22(4) of the Constitution of India elucidates the mandate to be followed in case of person arrested under preventive detention legislation existing in India. The word 'preventive' is used in contrast to the word 'punitive'. The intent behind the punitive detention is to punish a person for crime that has already committed in contrast to the concept of preventive detention where the intent is to prevent a person suspected to commit a crime before he tries to do it. No offences are proved nor are any charge formulated. The main and ultimate intent behind preventive detention is to detain a person suspected to commit crime which harms the society or cause threat to the government in contrast to the usual conviction to be proved by evidence in law.

(1) The Preventive Detention (PD) Acts: The first Preventive Act was enacted by the Parliament on 26th February 1950. The main intent behind this legislation was to empower State to detain a person in preventive manner from committing of an offence which will cause threat to the defence of India, India – Foreign relation, sovereignty of India and public order as well as the essential goods and services for the community at large. Section 3 empowered the Central and State Governments and certain officials under them to make orders of detention if they deemed fit in order to prevent a person from committing any act which would cause harm to the above mentioned factors, may preventively detain such suspected person.
(2) Maintenance of Internal Security Act (MISA), 1971:

But the Preventive detention law was revived in the form of Maintenance of internal Security Act, 1971 (MISA), in less than two years time after the lapse of the first Preventive Detention Act, 1950. This Act continued to be in operation until the year 1977. That Act was repealed by the Janata Government in 1978, which came to power after the defeat of the Congress Ministry headed by Smt. Indira Gandhi. But in less than two years time after the repeal of the MISA the caretaker Government headed by Mr. Charan Singh again revived the Preventive Detention Law in the form of Prevention of black-marketing and Maintenance of Supplies of Essential Commodities Act. Its object is to prevent black-marketing, hoarding of essential commodities. It requires the detaining authority to furnish grounds of detention within a period of 5 days from the date of detention, extendible to 10 days in exceptional cases. Within 3 weeks the Government is required to place grounds of detention with detenu's representation before the Advisory Board. The Board must submit its report to the Government within 7 weeks from the date of detention. The maximum period for which the Advisory Board could detain a person after the confirmation has been restricted to 6 months from the date of detention. The aggrieved person has right to move the courts under Articles 32 and 226 of the Constitution.

(3) Conservation of Foreign Exchange, and Prevention of Smuggling Activities (COFEPOSA) Act 1974:

Parliament has passed the COFEPOSA to provide for preventive detention for preventing smuggling and conserving foreign exchange. The constitutional safeguards embodied in Article 22(5) of the Constitution are available to a person detained under the Conservation of Foreign Exchange, Prevention of Smuggling Activities Act, and 1974 (COFEPOSA). Merely because obligation to forward the representation made by the detenu along with the reference to the 1950, and Section 10 of the MISA, 1971, it cannot be said that there is no obligation cast on the Government to consider the representation made by the detenu before forwarding it to the Advisory Board. The repeal of MISA and retention of the COFEPOSA does not imply that preventive detention can be freely used without any power of judicial review and without any checks and balance against persons engaged in anti-social and economic offences. The courts have always viewed with disfavor the detention without trial whatever be the nature of offence. The Court re-affirmed its view expressed in its earlier decisions that the Government is bound to consider the representation made by the detenu without waiting for the opinion of the Advisory Board.
In a landmark judgement in Attorney General of India v. Amrit Lal Prajivanda s a nine judge constitution Bench of the Supreme Court unanimously has held that during the period of emergency the President is empowered to suspend fundamental rights of detention. During that period the Presidential order suspending enforcement of certain executive action inconsistent with such rights.

The Court held the two enactment's of 1975 period as constitutionally valid. The Conservation of Foreign Exchange and Prevention of Smuggling Act (COFEPOSA) and (SAFEMA) as they were passed to deal with the Security of the country and had to be implemented effectively. The court also upheld Section 12-A of COFEPOSA which had done away with the requirements of supply of grounds of detention and the consultation with Advisory Board during the emergency. The court also upheld the provisions of such smugglers and foreign exchange manipulators (the detenues) in whosoever name they may have been held.

After the emergency was over on March 21, 1977 the detenues challenged the validity of their detention and seizure of their property on the ground both the Act violate Arts. 14, 19, & 22 of the Constitution.

The ruling of the court is as follows:

1. Union legislation was perfectly eligible to enact both the COFEPOSA & the SAFEMA.

2. As per sec 3 of COFEPOSA, order for detention is same as order under Section 2(2) of SAFEMA.

The detentions orders under the purview of section 12 as well as the orders which fall outside the purview of sec 12 are primarily eligible to determine the applicability of SAFEMA to the person under detention along with their accomplice including associates and relatives as well. The only exception to this are the orders to which the provisions under sec 2(2)(b) are applicable.

4. The person under the detention or his associates or relatives cannot challenge the detention in case the detention is considered to be the basis to apply SAFEMA where the person under detention did not challenge the detention in the court or already held to be unsuccessful by the court for such detention.

5. The definition of "illegally acquired properties" in clause (c) of section 3 OF SAFEMA is not invalid or ineffective.
(6) The main object and intent of SAFEMA is to cover under its ambit such person who are relatives or associates of the person detained in order to seize the property of the detenu which are held in the name of such persons. Thus the applicability of such legislation to relative or associates of the person detained is held to be valid. However it must be taken in consideration that such applicability shall not affect the property of such relative and associates.

(7) S. 5 clause A of COFEPOSA is not in consonance with and is vioaltive of Article 22 (5) of the Constitution of India and hence is not valid.

(8) However the petitioners did not prove the violation of Article 14, 19 and 21 of the Constitution of India by the SAFEMA.

This is a very important judgment of the Supreme Court. By upholding the validity of the above Acts the court has struck a heavy blow on economic offenders by depriving them of their ill-gotten gains. The object of the enactment of both the Acts was to have proper check on the activities of smugglers and foreign exchange manipulators aiming at violation of the regulations and restrictions on import and export by the government. The COFEPOSA aims at acting as a deterrent by empowering the authorities to preventive detention of the economic violators who are engaged in acquisition of property through themselves or through others.

(4) The National Security Act, (NASA) 1980:

Again in 1980 the President issued the National Security Ordinance providing for preventive detention of persons responsible for communal and caste riots and other activities prejudicial to the country’s security. The ordinance has become an Act now. It provides that a person may be detained for the period of 12 months maximum but at the same time allows the person detained to challenge his detention on various grounds inter alia including that of infringement of the guaranteed fundamental rights. The person detained must be informed the reason of his detention with the 10 days from his arrest. He must be provided with an opportunity to represent before the Advisory board in respect of the detention. It also provides that any person may be detained in prevention if he is suspect that he may commit any act detrimental to the security of the country, public order or supplies and services essential to the life of the community.
This Act was passed primarily with a view to dealing with specific situations of terrorism in Punjab, Kashmir and even parts of the north-east. The Act vests sweeping powers in the State Governments which in effect means local politicians and the Police - which is likely to be misused. There were widespread complaints of misuse of the provisions of the Act.

The Supreme Court in the famous case of Kartar Singh v. State of Punjab held that the accused shall be tried under the TADA strictly when he is accused of committing any terrorist act in true spirit and otherwise he shall be tried under ordinary penal laws by the courts of regular jurisdiction and thus narrowed down the scope of TADA. Regarding the applicability of section 3 the Court unanimously held that the provision of section 3 shall apply in cases where intention of the accused is to intimidate the government or spread terror among public inter alia as well as in case the accused used the arms and ammunition capable to cause death of the public and damages to the property. Alternatively it may be said that the person be treated as terrorist only when the three ingredients of intention, action to that effect and result of persists simultaneously.

Hence section 3 of TADA cannot be applied to the acts which affect the law and order merely but such act has to be dealt under the ambit of the ordinary penal law.

The validity of the Act was challenged by more than 500 under trials. Another safeguard laid down by the court against the misuse of the Act was that of speedy trial of accused as one of the fundamental rights guaranteed under the Constitution of India under art 21.

The Court held that S.22 is violative of the fundamental rights as guaranteed by the Constitution of India under art 21 and hence struck down. Section 22 permitted identification of an accused on the basis of his photograph.

The court in this regard unanimously said that these legislation are not in consonance of the human rights and humanitarian laws as well as it is utter violation of the fundamental rights guaranteed by the Constitution of India and hence ultimately led to infringement of human rights by the enforcement agencies.
The Court held that the Act did not provide a blanket power of unlimited detention without trial and a citizen shall be eligible for right to bail if the investigation is not completed within six months which can be extended to max one year as per the discretion of the Hon’ble court.

(6) Prevention of Terrorism Act (POTA), 2002:

The Prevention of Terrorism Act was enacted at a joint meeting of both Houses of Parliament on March 26, 2002. When the bill was introduced in Parliament there was a serious disagreement among the members. Government had failed to get the Bill passed by Rajya Sabha, therefore it used the enabling provision of the Constitution and called a Joint Session of the Lok Sabha and Rajya Sabha. The Members of Parliament stated that there was no categorical idea as to how the existing laws were insufficient to tackle the problem of terrorism and what new things the POTA is going to do.

The constitutional validity of the POTA was challenged by the People's Union for Civil Liberties (PUCL) pointing out several drawbacks in the legislation, the most important of them being that the legislation ignored the mandates of the Constitution and the Human Rights in regard to the safeguards to be afforded to the individuals by any law, particular the pre-trial or the preventive detention laws. A Bench of the Supreme Court comprising Justices S. Rajendra Babu and G.P. Mathur dismissed the writ petitions challenging its constitutional validity. The Bench based its observation on the Supreme Court's judgment in the Sanjay Dutt case in 1994. In that case, a presumption against the accused, Sanjay Dutt, under TADA arose on the basis of the fact of a mere possession of a firearm by him in a notified area. The Supreme Court in its judgment had said that the Police should 'prove conscious possession' of the firearm by the accused.

Protection of Witnesses:

In accordance with the dictates of International Organizations laid down in the form of Human Rights Law there has to be protection afforded to the witnesses. The following provisions of the statutory enactments in India contain the law on protection of witnesses in India:

1. Prevention of Terrorism Act, 2002:
The Prevention of Terrorism Act shortly called the POTA is based on the rationalization that the prevalent justice system did not prove proper effective mechanism to deal with the crime like terrorism which is existing since last 50 years in the country. This rationale however is not far from the actual truth. The so-called terrorism in the British India with the Independence is tackled by the British through the two legislations Cr.P. C and IPC by amending it time to time in lieu of the new criminal activity and techniques thereof.

There are various other laws in India to deal with terrorist activities in India such as Armed Forces Special Powers Act, 1958, National Security Act, 1890, the Unlawful Activities (Preventive) Act, 1967, Disturbed Areas Act, Prevention of Seditious Meetings Act, 1911 among others along with the traditional ones Criminal Procedure Code, 1973 and the Indian Penal Code 1860.

The Union Parliament has enacted special provisions in these Statutes with regard to various matters, such as, the rule regarding bail, arrest and detention, bail, evidence etc. One of the important provisions in the POTA is with regard to protection of witnesses. Sec. 12 of POTA dealing with Protection of Witnesses reads as follows:

**Protection of Witnesses:**

i) Notwithstanding anything contained in the Code, if the Special Court so desires, all or any of the proceedings to be taken under this Act, may, shall be held in camera for the reasons to be recorded in writing.

ii) A Special Court on its own motion, or on an application made before it by a witness in any proceeding, or through his Prosecution, is satisfied that the life of any such witness required, as it deems proper for maintaining the identity along with the address of such witness to be secret.

iii) Notwithstanding of Sub-Section (2), a Special Court may take the measures as required as follows:

a. Holding the proceedings at the place as per the Special Court discretion;

b. Avoid mentioning of the names and addresses of the witnesses in any proceeding, in the orders of judgements passed by it or in any records of the cases that are open to public;

c. The Special Court may take proper steps for protecting the identity and address of the
witnesses to be kept in concealment;

d. The Special Court may decide in the public interest not to publish any or all proceeding in any manner.

iv) A person infringing any decisions or directions of the Special Court under Subsection 3 shall be punishable with an imprisonment for a term which may be extended to one year and with fine that may be extended to rupees one thousand.

2. AP Control of Organized Crimes Act, 2001:

It is a well admitted fact that because of its vast resources and misuse of some of the legal provision, today organized crime is pretending to be a solemn threat to the society by nullifying the usual process of law by way of sub version of the enforcement agencies, and violent threat against the persons who are inclined to give any evidence against offence. It is supported and encouraged by black money and illegal gratification, which is produced due to the illegal activities, like extortion, smuggling, unlawful narcotic trading, ransom kidnapping, contracts killings, money laundering, inter alia. According to recent statistics, it is very clear that enormous wealth is being generated by carrying out such organized felony activities. This certainly can adversely affects and cause harm to the economy. The criminals of organized crime in support of the terrorist organization promote nacre terrorism that persist beyond the boundaries of nations, internationally.

There are numerous criminal syndicates whose evil influence is fast piercing into different class of current economy and society, thereof posing as an eminent threat to the safety and well-being of citizens. Recent incidences have clearly suggested that these organized criminal gangs and mafia that are functioning throughout the India along with their activities extended to Andhra Pradesh. The modern communication and technologies that are being used by these gangs are also quite superior to those resources that are available with law enforcement agencies.

Apart from this, as our persisting penal as well as procedural law and the adjudicating system are planned to deal with the customary crime only, it seems to be insufficient machinery required to control the power and activities of these organized criminal gangs.

Undeniably, our society directly and indirectly faces adverse effects due to the persisting and operative criminal syndicates throughout the country. And as the procedural laws, penal laws and the adjudicator system are insufficient to control the powerful challenges of organized crime in the State of Andhra Pradesh, this Bill is introduced to give effect to the above decision.
3. Application of Maharashtra Control of Organized Crime Act, 1999 to the Union Territory of Delhi:

This particular legislation is articulated on the lines of the Organized Crimes Control Act. This Act incorporates numerous special provisions regarding arrest, detention, bail, evidence and several significant matters pertaining to criminal justice. However, among all these, one important provision enacted in this legislation pertains to the protection of witnesses. Section 19 of the Act reads as under:

A Special Court either on its own motion or on an application made by any witness or even his Prosecutor, shall decide as it deem fit and take all such necessary steps so as to conceal the identity of any witness along with his address. Notwithstanding the provisions of Sub-Section 2, the measures which a Special Court may be take under that Sub-Section.

II. PROPOSALS TO AMEND THE CODE OF CRIMINAL PROCEDURE, 1973:

The crime referred in IPC is generally divided in various types of four kinds by the assistance of CRPC as follows:

(a) Crime which can be bailed and are not at all cognizable.
(b) Crime which are not bailed else are nor cognizable
(c) Crimes which can be bailed and are cognized as well
(d) Crimes which cannot be bailed and are not even cognized.
(e) Although, we can also mentioned the last type of additional crime, cognizable as well as surety capability or else cannot be surety capacity of the ahead major fault. S.116-120 Indian Panel Code instance crime reduces below preceding kind. These kinds shift by the side of the foremost fault as well as resolve agreement through.

The suggestion given through the NPC mentioned in the 3rd Report as well as part or else the strength fundamental verdicts of the admired suits resembling D.K. Basu and Joginder Kumar, along with in addition in each verdict given by Apex Tribunal as underlined the significance of private freedom offered in Article 21, furnish increase to single important query, that is it cannot be worthwhile to modify the CrPC offered:

(1) An individual cannot be detained for the any crimes which are stated as bailed furthermore not at all cognizable. To state in different language, any judge cannot pass any judgement detain certification related with the crime. Hence, it can be precisely be stated that in relation of whichever crime whichever is considered as bail-able in addition to which cannot be cognized, summon can be raised, it is given out via a tribunal procedure-server otherwise through different ways except a Police Official. The significance of
phrase "bail-able" might be a bit altered in support of this specific reason. The phrase "bail-able" is defined to understand as a mechanical security subsequent to detain through the constabulary/tribunal. Hence, unenviable ground to detain a human being blamed pro the crime that is defined as cognizable as well as non-cognizable crime.

As per the rules it is made up to mark that any police or other regulatory cannot detain the individual lacking the warrant.

No Police has a right to detain any person by not having warrant, i.e. in the example of non-cognizable crimes, (a). Although, there are many side of the S41 which empowers the police with the right. For Example, 41(b) states in the case that a person who is in the state of the in control of "a few apply of residence violation" which can be detained pending that established survival of legal justification intended for such crimes must be merely distinguish between according to cognizable crimes. The base of bail ability is not at all considered. It ought to be consequently specially said that detain will not be done in specific type of trails. The cases which are in relation to these crimes as well as still detain certification must not be passed via tribunals. The tribunal will pass such kind of summons that are not at all served by the above mentioned manner.

Discussion deed and Annexure III explains some kind of crimes, beside through its explanation. 2(2) detention can be done in relation to the crimes which are treated as crime s which are bailable as well as the cognizable, by the current circumstances (declared in AnnexureIV). Conversely, the individual will be hand out through an manifestation observe, through as well as convincing his manifestation at the law enforcement place or in the front of the Judge.

Although, in case applicable grounds to consider about the probability of blamed escaping plus that have been extremely frantic to catch or else he is usual type of criminal, for that purpose it is essential to abridged each and every such grounds through letters, plus to be guilty capable regulate official along that even by the judge. For instance blame is a usual criminal, yet the equipment in admiration of this floor will be traced. The expression "bail-able" will be omitted by the crime therefore plus they will be defined as easy as cognizable.

It is also recommended that suitable alteration will be done via crime recognized S41, which offers that detain of individual will not be completed for the crime as well as previous than the circumstances revealed. The barred crime as of annexure in that order will be constant cognizable crime. 23

It is suggested in respect of offences, which are punishable with imprisonment that may expand for 7years send to prison otherwise fewer, plus are stated in the Annexure V in addition to these currently measured as not at all -bail-able as well as cognizable crime by the CCrP), it will be measured as bailable as well as cognizable crime in addition its compulsory be therefore handled.
The prohibiting of some of the crimes through the kind are apprehensive as those carrying a punishment of in the S.124 as well as previous revealed plus every those crime will be carry on believed as not at all bailable nor cognizable, as active.

(4) No alteration is planned for such kind of crimes which are carrying a punishment of put in prison extra 7 years in the rule presently active.

The crimes which are not at all cognizable the penalty to them will be jail for the maximum term of 7yrs it has previously updated in the list of Anx V, taking into consideration the character of crime, rule has measured as the not at all cognizable.

**General principles to be observed in case of arrest:**

There are hardly any universal ethics that should be track in direction to create detain for crime else those crime which are jailed or life or put to death are then set penalty, moreover not given to those who were penalize expand till the life jailed. These universal values that will be assumed while creation seize are summed up in subsequent pointers:

Detain shall take place;
(a) in the circumstances, where it happen to be necessary to fetch the activities of the person who is guilty beneath self-control, in direction to set up intellect of defence and security for the sufferers of violence in the case there are probability of the person guilty to escape as well as evade the procedure of rule,
(b) where the lay blame on prevent his aggressive actions or renowned as a regular criminal moreover if there is probability to perform extra crime complimentary, in every such circumstances it is necessary to carry on his actions beneath control, by observance him in protection;
(c) where the security of the in prison person itself is obligatory; or
(d) where the detain of the individuals is compulsory for securing or protecting the evidence recounting the crimes
(e) At the times the safekeeping of individual is necessary for attaining the evidence in relation to any crime which is liable to been charged by the 7yrs or additional, by cross-examining the person.

On this ground this, building position S157 of CCrP is applicable that says what time a regulatory examining the trail repossessing each and every the applicable proof concerning the crime, will continue to create detain of person who is guilty simply "compulsory" to do so.

Sub- section (1) of S157 is pertinent furthermore it states as follow
"If, beginning sequence external or else, an official in accuse of a police force position has grounds to suppose the assignment of an crime which he is authorized below S156 to examine, will be immediately transmit a declaration of the similar to a judge authorized to obtain cognizance as crime ahead a constabulary account as well as shall continue in individual, and will be assign individual of his subsidiary representative less than such position as the country administration might, by universal or extraordinary command, recommend is related with, to continue, to the mark, to examine the truth in addition to situation trail, as well as, if essential, to obtain process for the detection as well as detain of the criminal..."

**Simply on Suspicion of involvement in an crime, No detain to be completed:**

It is recommended rule should now purposely offer to an individual must not be detained, simply on the argument of feeling of responsibility in the crime by building essential alteration by the S41 as well as previous. Since the substance recovered as well as obtainable prior to the examining constabulary official, it is vital for that person to prima facie be content, him in opposition to whom equipment are reclaim, is implicate in an crime. If the examining administrator is pleased past hesitation, forward as well as detain the individual lack of warrant.

In this orientation, it is relevant to declare the important judgment laid downstairs with the European court of human being privileges thirtieth August 1990, in Fox, Campbell and Hartley v. U. K. In this tribunal European trial of human being privileges had confirmed that division 11 of Northern Ireland (Emergency Provisions) Act, 1978, it authorizes constabulary representative to detain an individual "supposed of organism a terrorist", as violative of Art 5(1) of the ECHR. In the given trail, the Tribunal by popular assumed that simple misgiving, conversely genuine, couldn't be measured as an opinion intended for detain. This judgment is in agreement through the contemporary conception of individual privileges, which are in addition unreservedly preserved in Part III of Constitution of India. Along to this judgment, the abovementioned expressions (suspected of being a terrorist) were restored by the expressions "has been apprehensive in the assignment, research or commencement of take actions of violence."

**Statutorily integration of protects controlled in D.K.Basu's trail:**

In this context, it is similarly important to provide a parliamentary acknowledgment to the preserve lay downwards through the Apex Tribunal in their judgment in D.K.Basu’s trail. These preserve to be integrated (being No.1 to 11) set up in the law.

**Legislative body of Schedule NGOs to be permitted to holiday regulate posting:**

possibly the mainly universal grievance frequently seen in this scrupulous relationship is so as to
moderately repeatedly people are jailed in constabulary safekeeping lacking chronicle the unlawful crime in opposition to as well as lack of a few declaration before construction whichever confirmation in consider to this nature of confinement otherwise detain prepared by act administrative establishment. It is observed that the individual which are illegally arrested in police force charge may frequently reserved quantity of days plus are as well regularly bother through bad behaviour plus 3rd degree technique. Consequently, suggested there must be precise stipulation in the CCrP specially to have power over such prohibited way in addition to maintain and ensure on it. In addition this, for generating an responsibility ahead the administrator in accuse of the constabulary Station is in addition extremely necessary to draft the condition which gives authority to legislature of inventory not related to state associations to call the Police post whenever they want to call there is no time limit. These legislature must be remain a guarantee that no official by mistreatment his control arrest any human being in the Police post with no custody a evidence of detain as well as will give guarantee supplementary with the intention of the requirements preserved in our charter as well as the CCrP are person harshly experiential. In this is recommended modus operandi ought to be developing for record the authentic NGOs as well as intended for maintenance the confirmation of their governments.

**Requirement to raise composite skill of crime as well as incorporate the impression of Plea Bargaining:**

Moderately some crime detail beneath the IPC that are fundamentally national in environment, it be converted into similarly critical to amplify the amount of crime. It is consequently recommended that there must be an immense decriminalization of rule. In the Context, the rule assignment in their 154th Report scheduled CCrP, have suggested that the conception similar to request negotiate ought to be integrated in the Code. Certainly, untimely ladder must be engaged charming the supposed description. No detain must be completed below S.107 to 110 of CrPC as well as beneath comparable necessities. So far as procedures below S.107 to 110 of CrPC are apprehensive, no detain must be finished with examining official. It is suggested that police force representative reflect it essential, he must be authorized to obtain a individual temporary tie of good quality performance to maintain harmony as of individuals. This must be extensive to each parallel crime below the limited Police Law. It is not at each and every recommended or moreover planned that alter to be complete in S.151 of CCrP. Therefore, it is suggested that in confident conditions, bail must be approved to a few individual as a subject of track, apart from in several of the grave crime.

It is suggested by the stipulation of bail must be through moderate as well as surety must be approved in relation of crimes, previous than a few grave crimes for instance murder, rape plus crime in opposition to the country. Further bail, must as well be settled approximately as a substance of route excluding in anywhere it is detained guilty person might vanish in addition to escape detain or whilst it is required to avert him starting executing extra crime. Therefore, the necessities in CrPC recitation to allowance of security must be altered. There would not be seize or arrest of individual via police, merely for the motivation of inquiring before question. It understandable that needless capture or confinement give result to unnecessary and illegal
meddling by means of the individual’s private freedom certain through Article 21, it develop into decisively necessary to continue alteration in the conditions of CrPC. Despite, guarantee the security plus healthy creature of the prisoner is moreover the accountability of the arrest ability. Consequently, it is suggested to hand must also be an uttered stipulation in this concerned. Regulation must specifically complete it extremely apparent that formerly a individual is detained, it will be the accountability of such impressive as well as capturing power to guarantee his security as well as comfort, for the stage he is captive.

The suggestion given by the NPC in consideration to the compulsory remedial assessment of the arrested individual consequently warrants an immediate performance. In association to this, the verdict made by the Hon’ble A.P. Apex Tribunal in Challa Ramkonda Reddy v. State of A.P.\textsuperscript{106} will take into there knowledge. It was newly confirmed through the Apex Tribunal in many cases as well as the instance known there, where the status must be said legally responsible for reparation for the neglectful otherwise unresponsive behaviour of law enforcement or prison establishment must be reserved in psyche.

The scheme will be put temporarily, we able to obtain thought, where a individual is in detention for effortless robbery or riot, who yet although is having a weak heart; was not permitted to take tablets with him at the jail even no tablets were offered to him though he request to do so and ultimately he is death. As the case, an individual is permitted to continue his tablets except experienced a heart assault. In this circumstances, the worried establishment does not take a few rationally and punctual step, like only if facility of doctor are provided to him, which ultimately dies. Now we can raise the question that is will a person be left to die, simply since he has in detention and jailed for a slight crime. It is apparent to supposed powers that be accountable for it. It is since that has not been detained, his relatives would have engaged concern and he must be saved.

As a result, it will be very huge a penalty. In different cases, it will be defensible if the condition is assumed accountable for compensation. It is therefore not compulsory that the rule will be provide to safekeeping evidence is to be preserved at each and every police station. Such documentation must be reserved release to examination through for the inspection of component of Bar along with the representatives of the recorded NGOs concerned in individual Rights. This evidence must include the specific with others: 1 a) name as well as addressof the individual who is arrested; 1 b) the official detaining the person will give its basic information along with the badge; 2c) The point at which the person is arrested person 3d) cause and basis on which such detain took place; 4e) particulars concerning any possessions improved beginning or at the example of the individual in detention or jailed; and 5f) name of the individuals who were knowledgeable about his detain.

However, it is tremendously necessary to elucidate the defend referred to are in calculation with the offered through the judgment of the Apex Tribunal in D.K.Basu, essential in the parliamentary gratitude through building essential alteration.
Complicated responsibility of State:

Any more phases will be needed detect in the verdict of the Apex Tribunal in renowned Kasturlal v. State of U.P suit.\textsuperscript{107} In the given instance; the gold improved beginning the individual in detained reserved in the Malkhana of the regulatory. In the, form of time any individual detains unrestricted, his gold did not reinstate to back to him since the detained gold steal by one disturbed constabulary. However the individual raised the case against him improvement of his gold otherwise its price, however by the ultimate court on the view with the intention of no case in the favour of complicated action of administration which are relevant to independent authority of the circumstances.

It as stated in the Apex Tribunal through item 300 of the foundation. The section conserves the duty as well the responsibility for the nation to take legal action and be charged gain preceding inauguration establishment. In fact, S300 obviously mentioned that aforementioned law carry on awaiting the assembly otherwise State parliament set up a act in this context, instance might be rest on the circumstances in that the State must be supposed responsible through the complicated action dedicated through its workers in addition to as well anywhere not responsible on the view be active be through the country administrators in route of implement the independent influence of situation.

Now it is necessary to elucidate the precise peculiarity among supreme as well as non ruler meaning in vision of the disagreement among the decision of the extreme Tribunal. Severe fulfilment through S172, CCrP described intended for. S172 of the CCrP necessitates states "each regulate official building an examination in section is compulsory to sustain the evidence by assembly a gradually admission of his procedures in the examination surroundings onwards the occasion at in sequence the occasion at which underway as well as stopped his examination, the seats call through the direct enquiry as well as a declaration condition establish throughout his examination."

This police diary will be the evidence which will replicate the precise instance, position as well as conditions of detain. Although it is very critical necessities aforementioned must severely meet by the terms with, though, it will be pertinent to perceive several of the significant justification terminated through the Apex Tribunal in Shamshul Kanwar v. State,\textsuperscript{108} These explanations are stated by the subsequent to; anywhere the trial states the ambiguity popular in the nation in the topic of be relevant to preserve below S172.

The Apex tribunal in the case of Shamshul Kanwar v. State stated to the truth that will be Police policy in addition to its Standing instructions in all the States that are set the approach in that some of the diaries are necessary preserved through the regulator as well as it has not at all consistency amid. Moreover the tribunal as well took stand that in a few States similar to UP, the book preserved by the S172 is identified with a specific name. However the a number of regions as AP, etc which is recognised for the 'case diary.' The
tribunal did make some points of the foundation intended for difference among two types of dairies. The tribunals also stated that the source to the expression "police diary or else otherwise" happening in S62 CRPC. Beyond the tribunal did stated out where the term "case diary" can be mentioned as per A.P. Rules furthermore in the policy of a small number of different Regions together with Kerala, point towards somewhat dissimilar than a "general diary". Separate by it a few different Regions, where it shows the Standing Charges of the regulatory under S172 and which can be preserved in different two division ,foremost division evidence aspects which are the procedural steps took by representative for the duration of their option of through specific situation to occasion representative have arriving the in order as well as the additional procedure throughout the examination with the moment element should surround announcement of situation.  

These kind of alteration will in addition certify precise instance lying on, situate by as well as conditions in which blamed be detain through constabulary in charge, are punctually traced as well as replicate through the evidence, that is certainly a constitutional evidence established throughout the search that is clearly narrated to announcement traced through representative in conditions of S161 plus pertinent objects collected throughout the examination.

Considering it such dealings, the Apex Tribunal optional a constitutional alter to exact this irregularity as well as vagueness inside observed preservation of book beneath S172. It is consequently sensible to modify S172 suitably, representing the mode in which the personal organizer sustained, its contented is to evidence as well as the method in which these thorough is toward survive converse patio as well as the advanced executive, but one, below this specific part. Individual known as defend alongside injustice of regulate analysis, the consequence suit journal accurately has its significance

IV. Arbitrary enforcement of Penal Laws by the Law Enforcement officials:

With regard to the enforcement of laws also there have been cases affecting the rights of the individuals and preference has been given to the authority of the State. There have been cases of a serious nature like those of three celebrated personalities: 1) Dr. Binayak Sen 2) Arun Feriera 3) Muhammed Ahmed Kazmi. These three respectable citizens were arrested by police enraged by their sympathy towards oppressed poor people. In the democracy innocent citizens have to be protected against tyrannical laws and oppressive policing. The due process laws are those laws which authoritatively snatch the life and liberty of citizens. Police claims that if chaos and lawlessness is to be curbed then people of dubious background have to be arrested. Media and the Human Rights activists have been raising voice against police highhandedness and brutality. Unfortunately the Public Interest Attorneys and Human Rights’ Advocates do not raise objections when tyrannical laws are enacted which do not have safeguards for innocent suspects who wrongly get arrested under faulty suspicion perceived by police.
In the state of Manipur to which our Olympic Bronze Medalist Boxer Woman Mary Kom belongs the Armed Forces Special Powers Act 1958 is in Force. Several women have been raped by the army and several women have been murdered after rape. The voice of protesting civilians is choked by further torture. The height of a absurdity is that while the state is declared as troubled area, the elections are regularly held. The authors of this paper wish to cite the case of Thangjam Manorama Devi, woman aged 32 dragged out of bed from her house after midnight on 11th July 2004 by the soldiers of 17th Battalion of Assam Rifles and later found dead thrown in the streets of Imphal.110

It was disturbing for the entire nation that on July 15, 2004, around 30 women, aged between 45 and 73, walked naked through the city of Imphal to the Assam Rifles bastion at Kangla Fort. “Indian Army, rape us too,” they screamed at the astounded guards at the gates. “We are all Manorama’s mothers. Can a civilized nation do this to own women? is the question this author presents before the learned participants of this national seminar. It is also disturbing fact for the legal fraternity that over 20,000 civilians have been killed in Manipur after AFSPA 1958 was imposed on people of Manipur without ‘Procedure Established by Law’ They were simply gunned down. Is the Constitution of India held aloft in this country? Was the President of India who took Oath “I will protect preserve and defend the Constitution of India” rising to the occasion when article 21 was being trampled upon on every day basis?

Another case is about the excesses in the state of Jharkhand. The whole world stands in support of the woman teacher Ms. Soni Sori tortured in most disgusting and cruel manner.

Fake Encounters: Citizens are killed in encounters in all the nations. The most developed and rich nations also have triggered happy police.

Encounter is always done under plea that the felon was dangerous and police had to kill the felon in self defence. Due Process law does not allow any encounter under any circumstances but still when the judicial process starts the police officials get acquittal.

A fake encounter is where a person has been killed by police in cold blood and not in self defence. A genuine encounter is that in which a person has been killed by police or Para military force in self defence.111 Central Government and the State Governments use this word only as genuine encounter.

According Amnesty International’s Annual Report 2011, "Recent data disclosed by the National Human Rights Commission New Delhi (NHRC) on people killed in clashes with the police between 1993 and 2008, showed that of the 2,560 deaths reported, out of these deaths 1,224 (deaths) occurred in “faked encounters” implying that they were extra-judicial executions," adding, "By the end of the year, the NHRC had
The report mentioned, encounter deaths is an area wherein utter disregard for “due process” is shown by the front line police officials and the bureaucrats supporting them.

The case of Cherkuri Rajkumar and Hemchandra Pandey: On the night of 1st July and in the wee hours of 2nd July 2010 Andhra Pradesh Police killed Cherkuri Rajkumar alias Azad along with free lance journalist Hemchandra Pandey, in an encounter that took place in the forest in Aliabad district Democratic Rights Organization, a national coalition of human rights organizations in India probed the encounter killing of Cherkuri Rajkumar alias Azad and Pandey. Bhushan who was part of fact finding mission filed two petitions in the Supreme Court on behalf of Swami Agnivesh and Bineeta Pandey, widow of Hemchandra Pandey through noted lawyer Prashant Bhushan The matter came up for hearing on 14 January 2011 before the Bench comprising Justice Aftab Alam and Justice R.M.Lodha. After hearing the matter the judges observed “we can’t allow the republic, killing its own children” The observation of the Supreme Court put a big question mark on encounter killings going on all over India, in utter disregard of ‘due process. The media reported that the post-mortem report of Azad’s body mentioned blackening of skin due to burns around bullet holes on the chest. This can be the sign of firing point blank and cannot be an encounter at all. Hundreds are being killed in this manner every year by the state police and the Para military police. “You will die our police lock up or in one of our prison cells and we can also finish you in an encounter” is the attitude the frontline police has as in India.

3. Killing the minors in Encounter

One can understand encounter deaths claimed by police in regard to adult deaths. But media has come up with a story of killing 16 children between the ages 12 and 16 in encounter by the Central Reserve Police Force on the night of 28th June 2 012. In one of the operations against Maoists in Orissa-Andhra Pradesh border area 8 00 CRPF jawans were air dropped to attack villagers claiming that they were gathering to plan a big attack on police. While the Home Minister congratulated the paramilitary under him, the Minister for tribal affairs went public with his dismay over the mass acre.

CRPF Director General aggressively defended the police action without repentance for killing the children. Director General of Police CRPF Vijay Kumar said while admitting that children were killed in the attack “bullets are blind and therefore bullets cannot distinguish between adults and children” The DG CRPF forgot that guns cannot fire themselves unless someone aims at a target and triggers.

II. Problems which have arisen on account of mistreatment of Persons accused of offences
With regard to the enforcement of laws also there have been cases affecting the rights of the individuals and preference has been given to the authority of the State. There have been cases of a serious nature like those of three celebrated personalities:

1) Dr. Binayak Sen 2) Arun Feriera 3) Muhammed Ahmed Kazmi. These three respectable citizens were arrested by police enraged by their sympathy towards oppressed poor people. In the democracy innocent citizens have to be protected against tyrannical laws and oppressive policing. The due process laws are those laws which authoritatively snatch the life and liberty of citizens. Police claims that if chaos and lawlessness is to be curbed then people of dubious background have to be arrested. Media and the Human Rights activists have been raising voice against police highhandedness and brutalities. Unfortunately the Public Interest Attorneys and Human Rights’ Advocates do not raise objections when tyrannical laws are enacted which do not have safeguards for innocent suspects who wrongly get arrested under faulty suspicion perceived by police.

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The report mentioned, encounter deaths is an area wherein utter disregard for “due process” is shown by the front line police officials and the bureaucrats supporting them.

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attitude the frontline police have in India.

is the concept of Due Process of Law very much a part of the legal system. For example, the Preamble of the Constitution declares the high ideals for which the Constitution has been adopted.

These high ideals are to the effect that justice, liberty, equality and fraternity will be the goal of the new Republic. Among the specific provisions enacted in the Constitution are the provisions dealing with Life, Liberty and Property. And the State is prohibited from depriving the citizens of their invaluable rights without the due process of law. Thus, Due process is an aspect of Rule of Law and a very significant principle of our constitutional democracy.

The principle of Due Process of Law is applicable to several aspects of the State Administration. The laws that are enacted by the State, the implementation of the laws that is undertaken by the Executive and the judicial action in determining the rights and duties of the individuals must all conform to the principle of Due Process of law.

While substantive due process requires valid and reasonable laws to be enacted for application to the people in various circumstances, the procedural due process requires the methods of administering the laws also to be just, fair and reasonable. We have in our country Due Process of Law in both the forms, i.e., the substantive Due Process and Procedural Due Process.

For judicial process to be in place:

1) There must be procedural as well as substantive laws passed by legislature.
2) There must be courts comprising duly qualified judges,
3) There must be infrastructure and ministerial staff to keep record of every day steps and Progress
4) There must be some kind of technology to proceed with the procedure. The words Judicial Process and the Due Process need to be explained before proceeding further with the discussion. No Judicial Process in the world can work without laws. Therefore legal process or process of making laws must precede the judicial process. But here we are concerned with emergent trends in judicial process only. The trends are again classified in terms legal knowledge, technology of courtroom, electronic case management.

When it comes to due process law, it is police versus public. The police becomes the arm of the repressive state and the public becomes intimidated threatened oppressed mass of subjects. In words of Dr. S. Radhakrishnan even a democracy can be tyrannical at times when elected representatives get busy in
retaining power for long term. How to implement Programs, How to chalk out policies, and to retain power out of these three the last one precedes the other two. The state then has lesser and lesser regard for due process. Unfortunately India has reached this stage. We can say the emerging trend is India has such judicial process through which it is impossible to come out unscathed. There are two parallel judicial processes. First one is the routine courts and routine laws. The second one has special laws, special investigating agencies and special courts that mostly function from jails. On 17-11-2012 when condemned Ajmal Kasab was hanged, the celebrity criminal lawyer Ujwal Nikam said “for one decade I was functioning 9 AM to 5 PM from the premises of Arthur Road Prison.”

The concept of Judicial Process While delivering inaugural address at the National Conference on “Judicial Process Emerging Trends” on 29th September 2012 at Venkateshwara University Tirupati Justice L. Narsimha Reddy A.P. High Court dwelt elaborately on judicial process. Justice Reddy observed that Judicial Process is the complex procedure of hearing or trial of a case by the judge having jurisdiction to try and the litigant having locus standing to knock the doors of the court. The judicial process sets in when the state, the citizen, or the legal person created by law viz. an Institution registered under the Societies Act, a Public Trust registered under the Public Trust Act, a functioning Society index under the accommodating Act or a Corporation registered under the Indian Companies Act sets in motion the trial by filing a plaint/suit or complaint in the court of law. Judicial process is basically whole complex phenomenon of court working.

The judicial process is not confined to what the judges alone do but it includes what the clerical staff the bailiff and the advocates who are officials of the court together do. The logical question will arise as to whether the Quasi Judicial proceedings are also included in the judicial process. The argument of the research scholar would be that all quasi judicial process including arbitration, mediation and conciliation under respective laws must be brought in the arena of the Judicial Process.

What Due Process demands is that every action of the State authorities must be based on a valid law. It is necessary that the taking of somebody’s property in public interest may be there but it must be within the authority of law. While editorial of the instrument of administration of India takes care of Life and Liberty, Article 300-A. takes care of property.

Practice recognized by act reveal in Article 21 of the Constitution of India embodies “Due Process” Some jurists are of the opinion that American “Due Process” and Indian “Procedure established by law” are different in guarding life and liberty. For judicial process to occur:

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4) There must be some kind of technology to proceed with the procedure.