ABSTRACT

“Injustice anywhere is a threat to justice everywhere” -

Dr. Martin Luther King (Jr)

Of late, it has become a fashion to talk of rights, rights and only rights by every strata of human thinking. But there is a need to peruse much deep into and beyond the labyrinth of rights. Therefore, in a welter of rights, the rights of an accused form a kernel of entire human rights discourse at the infanical beginning of 21st century. Rights of the accused and transgression thereof are pervading all the geo-political entity jurisdiction ever since the inception of human habitation on this beautiful planet. No doubt there have been certain jurisdictions wherein the rights of accused have been preserved, promoted and protected. All the revealed regimes and divine discourses have been utopian, unanimous and united on the basic rights of an accused. As early as in 1215, Magna Carta under Section 37 had provided a brolly of protection of an accused regarding his rights and against any arbitrary arrest, detention and confinement contrary to the procedure established by law.

The expression ‘Human Rights’ denotes all those rights, which are inherent in our nature without which we cannot live as human beings. Among all species of human rights, right to life receives precedence and is a sine qua non for the enjoyment of other rights – which only supplements and extends the complete meaning and content to the right to life. In the event of any invasion to this right, other rights which are subsidiary to this right becomes meaningless, since the entire edifice of human rights jurisprudence is raised on the bedrock of right to life.

Human rights are neither privileges nor gifts given at the whim of a ruler or a government. Neither can they be taken away by any arbitrary power. They cannot be denied nor can they be forfeited because an individual has committed an offence or broken any law. If we look at the concept of human rights from the Indian point of view we find that the concept of human rights is not alien to the Indian Political thinkers and philosophers. They have expressed concern to secure human rights and fundamental freedoms for all human beings everywhere since the very early times of Vedic age. The Indian philosophy characterizes the foundation of Human rights in ancient conception of Dharma and Danda which regulated the governance of State and its citizens.
Kautilya in his famous and immortal work "Arthashastra" has defined and described the human rights of war prisoners. The human rights were reformed to as civil rights, political rights, personal rights, legal rights, natural or divine rights, economic and social rights in ancient period. Moreover, Kautilya in his Arthashastra, which depicted political, social economic Codes of Conduct, laid down certain principles of the law of punishment as the foundation of social existence. Likewise the legendary King Ashoka in the post-Kalinga regime had sown the seeds of a humanitarian society and made various provisions to ensure equality, fraternity and happiness for all his subjects.

Akbar, the great Mughal ruler brought about the basic changes in the style of Mughal Administration, particularly the judicial administration which contained all the basic elements of modern doctrine of due process of law, fair trial and independent judiciary. He also adopted a policy of tolerance and non-discrimination and saw to himself that no injustice was committed in his regime.

The modern version of human rights jurisprudence took a firm root during the British rule in India. The reformist movement of human rights and dignity from Bengal slowly but steadily spread, over to the other parts of India. For instance, In Maharashtra, Mahadev Govind Ranade, who was one of the founding members of Indian National Congress, set up an all India Organizations, the Indian Social Conference in 1887, to campaign against human rights abuses. Ranade was such a visionary that he could be able to see the interdependence and indivisibility of what is now known as two generations of human rights - civil and Political right, and economic social and cultural rights. What Ranade thought hundred of years back, has finally found its expression in the provisions of Universal Declaration of Human Rights in 1948.

The quality of a nation’s civilization can be largely measured by the methods it uses in the enforcement of its criminal law. Custodial violences, deaths, rapes, and torture – physical or psychic – in the investigatory process are the real telling facts of the methods employed by the police quite frequently in the detection of crimes. Such methods are contrary to any norms of a civilized society. The Constitution of India guarantees to every person life and liberty, freedom and equality and all the more makes human dignity the basic principle in the enforcement of its laws meant for securing life or liberty.
In India, the misuse of power and process in the hands of law-enforcing agencies is quite rampant. In the words of Lord Acton “power corrupts and absolute power corrupts absolutely”. It can be said that the words of Lord Acton quite aptly suits our country as well.

Protections of human rights are of cardinal importance in the process of criminal justice at all stages of investigation, trial and punishment. An accused person cannot be condemned merely because a charge is leveled against him, rather a large number of Constitutional and procedural rights have been given to him for his due protection. As a matter of fact the laws of India specially the Constitutional, evidentiary and procedural laws have made elaborate provisions for safeguarding the basic rights of the accused with a view to protecting his dignity as a human being and giving him the benefit of a just, fair and impartial trial.

Once a person has been trapped in the net of arrest, the law creates certain important rights in his favour. The first right to which the accused is entitled is the right to be informed of the grounds of arrest. Article 22 (1) of the Indian Constitution guarantees that a person arrested has a right to be informed of the grounds of arrest while under Article 22 (2) the right to be produced before a nearest Magistrate within twenty four hours of his arrest. The basic purpose of these two rights is that in the matter of life and liberty, judicial authority should be brought into picture at the earliest to decide the authority of State in depriving the liberty of a person. This Constitutional principle has been translated into legislative mandate under Sections 50 and 57 of the Criminal Procedure Code. The right to be informed about the grounds of arrest is made valuable by the Amendment Act 2005 that every police officer or other person making any arrest shall forthwith give the information regarding such arrest and place where the arrested person is being held, to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested persons for the purpose of giving such informations. The police officer shall inform the arrested person of his rights as soon as he is brought to the police station and shall also make an entry of the fact as to who has been informed of the arrest. Violation of these rights renders the arrest / detention illegal.

As in every administration of criminal justice, a trial is conducted which revolves around the accused, an important question may be asked as to who can be called as an “accused”. The word ‘accused’ has not been defined in the Code of Criminal Procedure which contains the procedure to be adopted in trial.
Simultaneously, this term has not been even used in the International Covenant on Civil and Political Rights, 1966. For this, the terms ‘prisoners awaiting for trial’, ‘undertrial prisoners’, and also ‘untried prisoners’ have been used so far. The Supreme Court of India in the Leading case D. K. Basu case the expression ‘arrestee’ has been used. Thus, the use of various expressions compel a person to think about the proper meaning of the word “Accused”.

As per **Black Law Dictionary** the term accused is defined as “the generic name of the defendant in a criminal case”. In the **Law Lexicon’s Dictionary** the word ‘Accused’ has been defined as “A person against whom an allegation has been made that he has committed an offence, or who is charged with an offence”. It further explain that the “Accused of an Offence” means where evidence whether oral or circumstantial points to the guilt of a person and he is taken in the custody and interrogated on that basis, he becomes a person accused of an offence. Therefore, an ‘accused’ is a person against whom an allegation has been made by way of FIR, private complaint or otherwise that he has committed an offence. For the purposes of the present study, the expression “accused” has been used to cover a person from the date when a formal accusation or allegation is made till he is finally convicted and punished by the highest judicial authority.

It must be borne in mind that by virtue of being suspects, accused and undertrial prisoners they do not cease to be human beings. Rights of the Accused, suspects and undertrial prisoners, whether they are in police custody or prison are so fundamental that no one can violate them. The word ‘torture’ usually denotes intense suffering, physical, mental and psychological, aimed at forcing someone to do or say something against his or her will. Physical torture in varied forms is inflicted on the arrestees to extract confession, extort money, settle scores and to teach a lesson. This includes abusive language accompanied by the threat of use of force intended to cause bodily harm, loss of faculty, disfiguration of face, fracture of dislocation of any bone, tattooing ignominious word on the forehead, emasculation, handcuffing, stripping and parading in public places.

In pursuance to the direction enshrined in Article 51 of the Constitution as well as in response to the United Nations recommendations for setting up of national institutions for the better protection, promotion and realization of human rights, the Government of India, enacted The Protection of Human Rights Act,
1993. This enactment has paved a new era of concern for preventing human rights violations. It also provides an elaborate procedure for reporting of human rights violations, their investigations, enquiry and action in respect of such rights violations. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. An accused is presumed to be innocent till he is proved guilty. The alleged accused is entitled to full fairness, true investigation and fair trial whereby the prosecution is expected to play a balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure full compliance with the basic rule of law. These are the basic fundamental cannons of our criminal jurisprudence and they are quite in conformity with the Constitutional mandates contained in Articles 20 and 21 of the Indian Constitution.

The Hon’ble Supreme Court of India had also in the cases of Prem Shankar Shukla and Sunil Batra et.al reaffirmed the principle that persons in custody should be treated with respect for the inherent dignity of the human being. Unfortunately, human rights of the persons languishing in prisons / jails are often blatantly disregarded and violated rampantly. Indian law provides certain basic rights to the prisoners / suspects / accused persons while they are under custody. Those rights are so fundamental that no one can lawfully violate them. The Constitution of India is a document rich in human rights jurisprudence. The fundamental rights guaranteed in Part III of the Constitution of India cover substantially the wide spectrum of rights enshrined in U.N. Charter and International Covenants to which India is also a signatory. The right to life, liberty and security of persons guaranteed in International treaties is enforceable as fundamental right under Article 21 of the Indian Constitution. Personal liberty is a sacred right under the Constitution.

In post-independence era, judicial approach is best reflected from the illustration given by Hon’ble Justice S.R. Dass to convey the meaning of ‘procedure established by law’ occurring in Article 21 in the famous A.K. Gopalan’s case that if a law provided that the cook of the Bishop of Rochester be boiled in oil, it would be valued under Article 21. Procedural prescription as a legislative mandate was recognized as the only requirement of procedure established by law. The dynamics of judicial interpretation in Maneka Gandhi’s
case added life to and brought a revolution in the criminal jurisprudence of this country where it read just, reasonable and fair in the words 'procedure established by law' as the necessary concomitants of such procedure. This procedural due process was applied in a series of famous cases like Hussainara Khatoon’s case, Sunil Batra’s case, Sheela Barse’s case and Khatri’s case to vindicate the rights of under trial prisoners, humanizing incarceratory system and outlawing practices of handcuffing or fettering the prisoners which have the effect of animalizing the human being. The dynamic role of writ jurisdictions was rediscovered to secure human rights to those whom the society has branded them as criminals.

In the landmark judgments of Joginder Kumar v. State of U.P. and D.K. Basu v. State of W.B., the Supreme Court of India has laid down detailed guidelines to be followed by the Central and State investigating and security agencies in all the cases of arrest and detention of persons during investigation.

Right against self-incrimination has been recognized in the criminal jurisprudence of every civilized country. In England, it originated as a sharp reaction against the State Chamber acquisitorial proceedings. In America and India, it has been recognized as Constitutional right. It prohibits the use of coercion, physical or psychic, as a means to elicit incriminatory information from the accused. The Criminal Procedure Code by virtue of Sec.54 specifically entitles the accused to get himself medically examined by the medical practitioner at his request. Such a right is one of the important safeguards against the application of third degree methods in the interrogatory process by the police.

In Smt. Selvi & Ors. v. State of Karnataka, the Hon’ble Supreme Court of India has held that nobody can be compelled to undergo narco analysis, brain mapping, or lie detector tests and that any statements made during those procedures are not admissible as evidence further and made it clear that forcible use of these tests is unconstitutional. The compulsory administration of the impugned techniques violates the ‘right against self-incrimination’.

Right to human dignity is a Constitutional edifice of criminal jurisprudence of our country. In Sunil Batra’s case, the Hon’ble Supreme Court had held that a prisoner does not shed his fundamental rights at prison gates.
rather they are diluted due to circumstances of imprisonment. Thus Custodial incarceration does not reduce human being to non-human. Even the prisoners have the right to be treated with full human dignity. Practices of putting handcuffs and fetters on the prisoners are inhuman which animalise not only the prisoner but all the viewers. Therefore, in a series of cases, the Hon’ble Supreme Court of India outlawed the use of handcuffs and fetters except in cases in which their use is extremely necessitated by reasons of the possible escape of the prisoner from custody or due to his dangerous propensities.

The concept of human rights is a changing one with the time and the analysis of the historical development of human rights reveals that there is a continuous expansion in the scope and content of human rights. Any system that is not keeping pace with the changing society cannot survive for a long time. Indeed, Indian Judiciary has realized the changing situation and has shed the garb of traditional method of administering justice by evolving a new kind of jurisprudence known as "Judicial Activism". The Supreme Court of India, in order to protect human rights of the persons revolutionised the criminal justice system, and it has liberalized various doctrines and technicalities, invented new methods and techniques; gave expansive interpretation to the provisions in the Indian Constitution such as Article 21; invented new means to make the executive accountable. Of course this needed a combination of courage and judicial craftsman skill on the part of judges.

The turning point came in 1978 in Maneka Gandhi’s case where the Supreme Court held that any State action affecting the life and liberty of the people assured under Article 21 of the Constitution has to be “right, just and fair and not arbitrary, fanciful and oppressive”. Thereafter, there was progressive judicial activism for the protection of human rights of the accused person. To vindicate the rights of prisoners, the American Supreme Court has made use of the writ of Habeas Corpus and held that the Constitutional rights did not desert convicts but dwindle in scope and Courts cannot abdicate their Constitutional responsibility to delineate and protect those fundamental liberties which make the life of the prisoners meaningful. Following the American approach, the Supreme Court of India in Sunil Batra’s case, Prem Shankar Shukla’s case, Hussainara Khatoon’s cases, Khatri’s case, Kishore Singh’s case, Frances Coralie’s case and Citizen for Democracy’s case has strictly enforced the basic rights of prisoners and through dynamic interpretation of Constitutional
provisions introduced an element of human treatment based on human dignity in the criminal jurisprudence of this country.

**Statement of the Problem**

Among all species of human rights, right to life and personal liberty receives precedence and is sine qua non for the enjoyment of other rights-which only supplement and extend complete meaning and content to the right to life. Right to life and personal liberty is the most precious, sacrosanct, inalienable and fundamental of all the fundamental rights of the accused person. Right to life includes protection against torture or cruel, inhuman and degrading treatment in any form. Therefore, in the event of any invasion to the right to life, other rights-which are subsidiary to this right-becomes meaningless, since the entire edifice of human rights jurisprudence is raised on the bedrock of the right to life.

In spite of 63 years of independence having a democratic form of government, the police remain virtually a ghost of terror to the people and almost absolutely unaccountable for its blatant and frequent violations of human rights of people in its custody. It is heart rending to note that we come across with the news of blood-curdling incidents of police brutalities / atrocities alleged to have been generally committed, in utter disregard of humanitarian law and universal human rights as well as the total negation of the Constitutional guarantees and human decency.

After the arrest of the accused person, investigation of the case is the important function which starts right from filing of the FIR to the submission of the case in the court of law and involves various important steps such as the detention of the accused, collection of evidence, interrogation etc. The power of investigation affords the police the occasion to perpetrate the third degree torture of suspects in order to detect the crime as a matter of routine. While dealing with the question of torture during police investigation, the National Police Commission had observed:

“We note with concern the inclination of even some of the supervisory ranks to countenance this practice in a bid to achieve quick results by short cut methods. Even well meaning officers are sometimes drawn towards employing third degree methods”.
During arrest, detention or other investigatory process, wide powers are vested to the police with regard to the investigations, interrogations, searches etc. These powers are often blatantly abused by the police to torture the suspects / accused persons either physically or mentally in order to solve a crime or to gain sadistic pleasure. These tortures are inflicted on the accused person in varied forms such as to extract confession by all means, to extort money or to teach a lesion. This includes abusive language accompanied by the threat of the use of force intended to cause bodily harm, loss of faculty, disfiguration of face, fracture or dislocation of any bone, tattooing ignominious word on the forehead,emasculating, handcuffing, stripping and parading in public places. These types of torture meted out to the accused person during investigations or interrogations are an affront to the concept of life and personal liberty.

In recent years, custodial torture has become common phenomenon and a routine police practice during interrogations. Police officers who are supposed to be the protectors of civil liberties of the citizens themselves become violators thereby violating precious rights of the citizens. It is committed under the shield of uniform and authority within the four-walls of a police station or lock up, while the victim being totally helpless. Over fifty percent of all complaints to National Human Rights Commission are concerning criminal behaviour by the police. Custodial torture is perhaps one of the worst kinds of crimes in a civilized society governed by the rule of law and poses a serious threat to the very foundation of civilization. Torture in State custody flouts the very purpose of the Statehood and the minimal human rights guaranteed to its subjects. It is an insult to the human dignity and to the state of affairs of the governance of the nation. Protection of human rights of the accused in India is not only proclaimed by general laws but also by the Constitution which is the Supreme law of the land, because protection of human rights is indispensable in the struggle against injustice and sufferings of the accused persons. The Human Rights Protection Act, 1993 which was enacted to protect the rights of the citizens defines “human rights” as the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution and embodied in the International Covenants and enforceable by the Courts in India.
Hypothesis

In the pursuit of making an exhaustive study on the subject, the researcher has formulated the following hypothesis:

1. Human Rights are fundamental to all human beings which cannot be taken away just because one has violated the law.
2. Torture is a well recognized tool of investigation of the Indian Police. Moreover, physical or mental torture in police custody or lock-up by using unjustified force for the purposes of extracting confessions are very common.
3. The accused person must be treated as a human being at every stage of investigatory process by the law enforcement agencies. His life, liberty and human dignity must be preserved, protected and duly respected at all cost.
4. All wings of Criminal Justice System most strictly follow the principles of natural justice. Adjudication of guilt of an accused should remain only with the judiciary and not with the police / law enforcing agencies.
5. Media Trial is a threat to the Constitutional right of fair trial of the accused and a blow to the sanctity of the judicial system.
6. Police feel normally themselves to be immune from law and that they cannot be held accountable for whatever they do. Use of third degree methods is considered by them as their service right and an accepted part of their profession.
7. The present Indian Criminal justice system is infested with multiple maladies like time consuming, expensive and lengthy procedures, inordinate delays, faulty investigations, etc. by the law enforcing agencies. Because of these inherent drawbacks the basic human rights of the accused person are often denied.

Aims and Objectives of Research

The researcher in the present study dwells into the dynamics of analysing deep at the basic concept and dimensions of human rights in general and the accused persons in particular. The researcher further probes to find out that how far the procedural mandate is capable of securing these rights to such accused persons, while analysing the shortcomings of the existing criminal justice system leading to the infringement of the rights and what possible remedial
measures can be taken to ensure due protection to their basic human rights which the Statutory laws as well as the Constitutional law confer on such accused persons. Moreover, the role of NGO’s, Media and press in the protection of human rights of the accused has been extensively highlighted. Further pro-active and commendable judicial approach towards securing and protecting the human rights of an accused person have been thoroughly analysed and incorporated during the study. At last, certain humble suggestions for securing fair justice to the accused persons while protecting them from the arbitrary use of power by the law enforcing agencies have been put forth.

**Methodology**

Keeping in view the nature of research problem and the hypotheses formulated in this regard, the present research has been carried out on the subject by adopting the Doctrinal Methods of Research.

**Scheme of Chapterisation**

Based on the theme of research work, the present study has been divided into seven chapters:

**Chapter-I ‘Introduction’** This chapter gives an acquaintance with the present study within the framework of law and the human rights.

**Chapter-II ‘Conceptual Analysis of Human Rights: Meaning and Dimensions’**. This chapter extensively deals with the basic concept of human rights encompassing its meaning and dimensions. It gives an outline of the origin and development of human rights during the freedom movement. Further, it makes a comparative study of the rights of the accused in different International Charter, Covenants and Conventions.

**Chapter-III ‘Criminal Justice System in India: Problems and Prospects’**. This chapter gives a detailed overview of the existing Indian Criminal justice System along with its integral organs. It gives an account of the investigatory methodology employed by police and the protective laws against torture at National and International level.

**Chapter-IV ‘Human Rights and the Law of An Accused.**

In this chapter, an humble attempt has been made in analysing the concept of the term ‘accused’ with the help of various judicial pronouncements and to examine the rights of the accused against legally unwarranted investigations
and illegal arrests and detentions and its remedies in the light of human rights at
the pre-arrest and post-arrest stages.

Chapter-V ‘Judicial Approach towards the Protection of Human Rights of
an Accused’ deals at length with the pro-active role of the judiciary in
protecting the human rights of accused through judicial activism and writ
jurisdictions. It also provides the adequate safeguards to the accused from
Media Trial.

Chapter-VI ‘Role of NGOs and NHRC in India as a Saviour of Human
Rights of an Accused’. In this chapter, the researcher has tried to highlight the
historical sketch of NGOs at National and International levels and their
commendable role in human rights movement in India.

Chapter-VII ‘Conclusion and Suggestions’ recapitulates the entire research
study followed by humble suggestions as to how effective the criminal justice
system can be established in which human rights of life, liberty and dignity of
an accused be duly preserved, secured, respected and honoured by the law
enforcing agencies at all cost.

Conclusion and Suggestions

The Constitution of India as well as the International Commissions,
Treaties and Covenants on Human Rights attaches great importance to the
protection of life and personal liberty of an individual and emphasis on the
respect for human dignity. The basic laws i.e. substantive and procedural stress
the need to strictly observe the human rights in the administration of criminal
justice in its true letter and spirit.

The Courts in India have formulated and established a plethora of rights,
such as, right to privacy, right to travel, right to livelihood, right to medical care,
right to live with human dignity, right to speedy trial, right to free legal aid, right
against in human, cruel and degrading treatment, right against solitary
confinement, right against handcuffing, bar-fetters, right to live in unpolluted
environment etc., the latest judicial trends reveal that Indian Courts are quite
enthusiastic in using the laws as a tool of social revolution. Thus the task of a
judge in human rights area is acute rather than deferential; creative rather than
mechanical; evolutionary rather than status-quoits; humanist rather than formalist.
The Indian Constitution guarantees justice to all. It includes the guarantee of equal rights of life and personal liberty. Rule of Law envisages that all men are equal and have equal rights before the law. These rights are of no avail if an individual has no means to get them enforced. The enforcement of the rights has to be through the courts, but the judicial process is very complex, costly and dilatory putting the poor persons at a distance. The Constitutional promise of securing justice-social, economic and political as promised by the Preamble of the Constitution cannot be achieved unless all the three organs of the State i.e. Legislature, Executive and Judiciary join together to find out ways and means for providing to the indigent person equal access to its justice system. However, the Indian judiciary has played a majestic role and tried to do this through Public Interest Litigation Movement. The increase in Lok Adalats, Nyaya Panchayats, and Alternative Dispute Resolution Mechanisms will surely help easy access to justice.

In spite of the Constitutional and legal safeguards, established procedural law, judicial verdicts, International Covenants and treaties against the tortures and deaths in police lock-up, the menace is on the increase and nothing seems to have substantially changed on the ground level. The torture leading to lock-up deaths is a fundamental violation of human rights and extreme misuse of powers by the State law enforcing agency. Therefore, immediate steps are required to eradicate this growing menace. Otherwise the Constitutional provisions assuring justice, liberty and dignity of the individual will remain only on paper. Thus, it becomes quite essential to enact specific law against ‘torture’ and to further strengthen the existing provisions in various laws like Criminal Procedure Code, Indian Penal Code, and Evidence Act etc., to make the right against torture a more effective right with effective remedies. Personal accountability of policemen and strict action for any misuse of power will definitely ensure respect for human rights. It should also be ingrained in the minds of policemen during training and through proper education that no exceptional circumstances whatsoever can be invoked as a justification for torture or for misuse of their powers.

In the Indian perspective, Non-Governmental Organizations (NGOs) are playing commendable roles in responding to the mass voices of weak, meek, poor,
suppressed, downtrodden and exploited people and has emerged as a powerful protective shield of assistance in the field of legal battle to the needy persons. It is remarkable to note that the positive role which the Non-governmental organization (NGOs) in India can play in furthering the cause of human rights has been duly recognised both by the protection of Human Rights Act, 1993 and the National Human Rights Commission (NHRC).

**Suggestions**

After making an indepth analysis of the present research study the following humble suggestions are being made by the researcher.

1. The accused has various rights at pre-arrest stage as well as at the post arrest stage which are very much valuable. Some of them are specifically mentioned in the Criminal Procedure Code, while others are the results of the judicial pronouncements which are implicit in the Constitution. At both these stages, an accused has the right to know about all the rights he has, how to enforce them and whom to approach when there is a denial of those rights. Therefore, it is humbly suggested that all the rights of the accused flowing from the laws as well as the judicial pronouncements should be collected at one place and be put in a schedule to the Code for their better understanding and easy accessibility. They should be possibly translated in the regional languages of each State in the form of pamphlets for free distribution to the accused and the general public at large.

2. In a country like India, while the majority of the people suffer from legal illiteracy and poverty and the courts are situated at far off places beyond the reach of ordinary person. Therefore, for the effective enforcement of the rights and to make the writ jurisdictions more efficacious, relevant provisions should be made to empower the District and Session judge to exercise such jurisdiction similar to the writ of Habeas Corpus to pass any order which may be expedient in the circumstances of the case to secure the ends of justice, such an object can be achieved either by passing a separate legislation or alternatively by amending the provisions of the Code.

3. The classification between cognizable and non-cognizable offences under the Code of Criminal Procedure should be removed while making it
obligatory on the police officer to investigate all offences in respect of which a complaint is made.

4. Criminality has undergone a tremendous change qualitatively as well as quantitatively. Therefore the prompt and quality investigation are the need of the time. Police are employed to perform multifarious duties and quite often the important work of expeditious investigation gets relegated in priority. To meet the existing challenges of crime and its effective control, the investigators have to be trained in the latest advance technologies, knowledge of changing economy, new dynamics of social engineering, modern scientific forensics and methodologies etc. Therefore, the Investigative Wing should be separated from Law and Order Wing with clear mandate that it is accountable only to the Rule of law.

5. Under Indian Criminal Justice system various Constitutional, Evidentiary and Procedural rights have given to an accused with a view to protect his dignity as a human being and giving him the benefit of just, fair and impartial trial. The protection of these rights from the abuse by the law enforcing agencies will be confirmed only when there will be an awareness about these rights amongst the people. Moreover the State should not be allowed to play with the law according to its will. Unless these rights are not brought into action in letter and spirit the rights of accused will be a mere slogan.

6. Promoting a human rights culture is directly related to justice, constitutional empowerment and development of democracy. Human rights and justice have a profound relationship. They mutually complement each other and support the development of good governance. Hence, efforts ought to be taken, in particular by the media and the wider civil society, to ensure that a human rights culture is duly promoted and sustained in the society.

7. If the police wants to win the confidence of the community at large, it has to act as guarantor of human rights and not its violator. It has to shed its traditional mind-set against the public at large. If the rule of law is upheld by the police, human rights of accused persons would be automatically
protected and honoured. For preservation of human rights an upright and law-abiding police force is necessary.

8. For ensuring adherence to human rights norms by the police, it is necessary to build up an organizational culture that frowns on abuse or misuse of force and authority. Human rights training to the police personnel, particularly of the subordinate rank, is extremely necessary to make the police more professional, responsible and people-friendly. Appropriate training in human rights principles will have an elevating impact. Police academies should have regular courses on human rights in its curriculum.

9. The Constitution of India should be possibly amended for incorporating a specific right against ‘torture’ of accused person.

10. The police must bear faithful allegiance to the Constitution of India and respect and uphold the rights of the citizens as guaranteed by it.

11. The police Act, 1861 should be amended, as recommended by the National Police Commission suitably and the duties of the police in respect of the human rights should be redefined and incorporated in the Act.

12. High powered vigilance squads comprising of judges, lawyers, journalists, medicos and representatives of the human rights observants should be constituted at the District and State levels to conduct surprise visits to the police stations so that early detection of unauthorized detentions and custodial tortures becomes possible. Arrest on the grounds of suspicion should be banned.

13. The Evidence Act should be amended in consonance with the 113th Report of the Law Commission of India by inserting a new section in the Act providing for a rebuttable presumption against the police officer as to how the person in his custody received injuries or met with his death. Therefore, when death occurs in custody, it should be presumed that it was not due to natural causes and it should be accorded statutory recognition. Moreover, ‘Custodial Death’ should be defined and made a crime providing stringent punishment under Indian Penal Code.

14. Torture, police misbehaviour, violations of basic human rights of the arrestee, custodial violence and crimes, corruption in the police force
should be dealt with strictly and effectively. Senior police officers / administrators must constitute a Committee to investigate into such basic issues/ problems whereby guilty policemen be sternly punished and strict disciplinary proceedings be initiated against them. Moreover, they must be, in such cases, made liable personally to pay adequate compensation to the victims of their atrocities.

15. Our Criminal justice system in order to be more effective has an urgent need of an independent Investigative agency. Delay in police investigations in one of the prime reasons due to which huge number of cases linger on for decades. It is too good to create and independent wing of police force, fully incharge of crime investigation and functioning under the direct control of independent prosecutor and that wing would be directly accountable to judiciary.

16. The institutions involved in the justice system like Police, Prosecution, Courts and Prisons etc. are required to be thoroughly revamped in terms of their organizations, procedures and accountability so that nowhere the common citizens feel uneasy and insecure.

These above humble suggestions, if properly implemented by the concerned law enforcement agencies in their true letter and spirit would undoubtedly go a long way in securing and protecting the life, liberty and dignity of the accused persons, thereby rebuilding the lost confidence of the people in the functioning of the present criminal justice system.