CHAPTER – I
INTRODUCTION

“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 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 infancial 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 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.

We are living in a pluralistic society in which abuses of powers are of vital importance; if any abuse is made by any person entrusted with powers, its impact directly affects the entire society, which consists of common men including the accused person. 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. In our society, it has been observed since long time, that the people who were entrusted with powers had vehemently abused it. 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.

Human Rights are those minimal rights that every individual must have against the State or other public authority by virtue of being a member of the human family irrespective of any other consideration. These are the rights that are inherent in all the citizens, because of their being human ones. These are the rights that are inalienable because the enlightened conscience of the community would not be permitted to surrender those rights by any individual even of his / her own volition. These are the rights which are inviolable because they are not only vital for the development and efflorescence of human personality and for ensuring dignity, but also because without them people would be reduced to the mere level of animals. 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.

Prisons constitute a critical area of human rights concern. A person in custody in any civilized society cannot be reduced to the status of non-person, because he is in the prison. Therefore, prison system must offer these conditions that are compatible with the human dignity and conducive to social mainstreaming. Article 10 of the International Covenant on Civil and Political Rights (ICCPR) mandates that- “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. Likewise the United Nations Standard Minimum Rules for Protection of Prisoners also provided basic guidelines for the treatment of prisoners and reaffirmed the tenet that prisoners do retain their fundamental rights even while in custody.
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.

In protecting the principles of the Rule of Law, the judiciary has been playing a very vital role while standing as a ‘watch tower’ above all the other limbs of the State. Although Articles 20, 21 and 22 do provide the basic human rights, the Indian Constitution has not provided a specific right against torture. Therefore, the burden has fallen upon the judiciary to design a right against torture through the process of interpretation.

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 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. While Article 22 of the Constitution guarantees four significant rights to a person who is arrested for any offence under any ordinary law: the right to be informed as soon as possible regarding the grounds of arrest; the right to consult and to be represented by a lawyer of his own choice; the right to be produced before a Magistrate within 24 hours.; the freedom from detention beyond the said period except by an order of Magistrate. Under Article 20 of the Constitution, the safeguards provided are the right against conviction or enhanced punishment under an ex-post facto law; the right to protection against double jeopardy and the right against self-incrimination. Articles 32 and 226 of
the Indian Constitution empower the Supreme Court and High Courts of India respectively to act as the protector of individual’s liberty and freedoms.

As far back as in 1978, K.F. Rustamji, Member of the National Police Commission, had observed compassionately in his report on undertrials that prisons are “a system which is slowly grinding thousands of people into dust”. He found hundred of undertrials to be “dumb, simple persons, caught in the web of law, unable to comprehend as to what has really happened, what the charge against them is, or why they have been sent to jail. These are the people without a calendar or a clock, only a date in a court diary and extended hearings. There are many charged with ticketless travel, Possession of unlawful weapons, or illicit liquor or some minor infraction of the law”. He found to his dismay that “several of them have been undertrials for more than five years”.

The quality of a nation’s civilization can be largely measured by the methods it uses in the enforcement of its criminal law. Custodial violence, 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 a country like India, where the police culture is authoritarian and people infested with legal illiteracy and indigency, burden of upholding human rights squarely falls upon the shoulders of judiciary. 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 jurisdiction was rediscovered to secure human rights to those whom the society has branded them as criminals.

At the pre-arrest stage the accused has the right against legally unwarranted investigations. Where the first information report does not disclose a cognizable offence or discloses only a non-cognizable offence or no offence at all, such investigations are without jurisdiction and are unwarranted by law. An accused has remedies against such investigations. He can move the High Court by invoking writ jurisdiction under Article 226 or the inherent powers under Sec. 482 of the Criminal Procedure Code and can get such investigations quashed. Secondly, the accused has the right against legally unwarranted arrest and pre-arrest illegal detentions. To arrest a person, the police officer arresting him must have a legal justification under the law. Arrest not in consonance with such requirements will be illegal. Similarly pre-trial illegal detentions are not in accordance with law and hence illegal. Accused has a right to legal remedies against such arrests and detentions. He can surely invoke the writ jurisdiction of the Supreme Court or the High Court to get his release. In case of illegal detentions, ordinary remedy of search for person illegally detained can be ordered by the Magistrate under Sec. 97 of the Criminal Procedure Code. 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 cases of arrest and detention of persons during investigation till legislative measures are taken which definitely are welcome steps for the protection against illegal arrests and detentions and custodial deaths.
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 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 Ss. 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 fact as to who has been informed of the arrest. Violation of these rights renders the arrest / detention illegal.

Article 22(1) of the Constitution further mandates that no person who is accused shall be denied the right to consult and be defended by a legal practitioner of his own choice. In Hussainara Khatoon’s case, Khatri’s case and Sheela Barse’s case, this right has been duly recognized as fundamental rights of the accused under Article 21 of the Constitution. For the first time in Nandini Satpathy’s case, and recently in the Smt. Selvi’s case, the Supreme Court of India has emphasized the need to allow the accused to have his counsel by his side during interrogation as a safeguard against testimonial compulsions.

Beginning with Hussainara Khatoon’s case to Madan Lal v. State of Rajasthan, the right to speedy trial has been recognized as a fundamental right as if written with pen and ink in the words of Article 21 of the Constitution of
India which is similar in content as the right to speedy trial in America. Judicial approach in this respect has been much encouraging. Inordinate delays in investigations have not been favoured by the Courts. Inordinate delays in the investigation goes to create in favour of accused a right to be released from custodial incarceration and in appropriate cases, even to get the investigations quashed. In this field, judicial dynamism has gone a long way and has done commendable job in protecting the liberty of people.

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’.

Arrest and detention deprives a person of his life or liberty. Restoration of liberty is essential for the existence of society and also to guard the society from repetition of the same crime. Therefore, the system of bail, pending trial is the compromise between these two competing social interests. In bailable offences, bail is a matter of right. While in the non-bailable cases, it is a matter of discretion. However, even in non-bailable cases, the bail may be taken as a matter of right where a person has, during the period of investigation, inquiry or
trial under this Code or under any law undergone detention for a period extending up to one half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties. The newly added section also provides that no such person shall in any case be detained during the period of investigation, enquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law. Judicial discretion is governed by judicially recognized principles and not on whims and caprice. In the exercise of such discretion, the nature of offence and punishment it will entail in case of conviction; chances of accused fleeing from justice; probabilities of repetition of offence and chances of retribution against accused are the determining factors which have to be considered. Even discretion of the Court can be exercised in granting bail at pre-arrest stage called anticipatory bail in anticipation of arrest of a person in a non-bailable offence.

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 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. Similarly, the punitive sanctions of separate or cellular confinements are the torturous practices to be resorted to only in exceptional cases with all procedural safeguards. Moreover the community association is extremely essential to keep up the morale of the prisoner. Therefore, the prisoners have the right to community association, to live together, dine together, sleep together and have mutual conversations with one another. Similarly liberal interviews with family and friends often go to
make the life of prisoner less burdensome, hence they are entitled thereto. These are the basic rights which are necessary to uphold the human dignity in incarceratory conditions. 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. However, in a country like India where people are quite poor suffering from legal illiteracy, the Constitutional remedies are beyond the reach of ordinary persons. It is therefore, absolutely necessary that the scope of writ jurisdictions should be enlarged and a legal mechanism should be devised to make this remedy available at the door steps. To achieve this end, it is further necessary that such powers should be conferred on the District and Sessions Judges so that such rights may become an enforceable reality. Apart from this, there is an urgent need to check the procedural deviance on the part of police officers and necessary provisions should be made in the Criminal Procedure Code so that the Courts may take cognizance of the procedural deviances and take suitable actions as per the law. Such provisions will certainly go a long way in protecting legal and Constitutional rights of the person against whom criminal law has been invoked.

1.1 **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 a democracy, the police is considered to be the custodian of law and order in the society and is responsible for upholding civil liberty and human dignity. Therefore, any act on the part of police which violates the basic dignity and liberty of an individual guaranteed by our Constitution invokes scathing criticism from conscious and alert citizens. The Media also has become resonant with voices of protests whenever there is any encroachment on individuals liberty and violation of basic human dignity. Police atrocities have long been widespread across India. 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 remain almost absolutely unaccountable for its blatant 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 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 investigation, interrogation, 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, emasculation, handcuffing, stripping and parading in public places. These types of torture meted out to the accused person during investigation or interrogation are an affront to the concept of life and personal liberty.

In modern democratic societies, the police are vested with authority to use legitimate and situationally justified force against law-breakers and offenders. There are laws, rules and various instructions laying down norms for the use of justified force by the police in various Police Manuals which expressly prohibit excessive or disproportionate use of force. However, abuse and misuse of authority and disproportionate use of force by the police frequently occur in our country. National Human Rights Commission is inundated with the complaints of abuse of force and outrageous violations of human rights by the police.

In recent years, custodial torture has become common phenomenon and a routine police practice during interrogation. 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 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.

Various Commissions such as Law Commission of India, the Human Rights Commission and the National Police Commission etc. have been offering suggestions as to how best the system can be improved to meet the growing challenges of the present time. The Central Government or State Governments have been adopting Schemes after Schemes to improve the criminal justice system in India. The criminal justice system is a complex one and the reformatory measures call for an overall approach to the grave problem. The Central Government had appointed a review committee called the Criminal Justice review committee under the Chairmanship of Justice V.S. Malimath, formerly Chief Justice of Karnataka and Kerala High Courts to look into the problems of criminal justice system so that a thorough change may be effected in the substantial and procedural law, to honour and to preserve, protect and respect the dignity and to secure the life and liberty of the accused person as a human being.
1.2 Review of Literature

The researcher humbly ventures into the dynamics of finding out the basic human rights of accused persons at various stages of investigatory process and the possible reforms in the existing criminal justice system in order to preserve, protect and respect their dignity while securing their life and personal liberty. Criminal justice system has assumed great significance now-a-days with relation to individual’s life, liberty and personality. In the humble attempt of making an indepth study of the subject, the researcher has extensively reviewed a plethora of original literature, books, etc. of which some of them may be worth mentioning.

Dr. S. Subramanian, in the book entitled “Human Rights: International Challenges”, published by Manas Publication, New Delhi, deals with extensively the law of human rights of the accused person mentioned in the Constitution of Indian and various procedural enactments. For an effective administration of criminal justice in India, the author has provided the various basic principles of natural justice and fundamental human rights which must be followed by the law enforcing agencies while dealing with the accused person.

B.P. Singh Sehgal, edited the book entitled “Human Rights in India: Problems and Perspectives”, published by Deep & Deep Publications, New Delhi, (1995). This book visualizes the system of justice which accepts and respects the basic rights of the individuals. This book aptly provides an effective machinery for protecting human rights of accused person and also highlights the major contributions made by the Hon’able Supreme Courts of India in safeguarding the human rights of the accused person in police lock-up.

Dr. Sreenivasulu N.S, in his book entitled “Human Rights: Many Sides to a Coin”, published by Regal Publication, New Delhi, has provided the Constitutional Measures for the enforcement of human rights of accused person against arbitrary arrest and detention, torture, disappearance, through writs jurisdiction of the Hon’able Supreme Court and High Courts of India.

Girraj Shah and K.N. Gupta, in the book entitled “Human Rights Free and Equal”, published by Anmol Publications Pvt. Ltd., New Delhi, has dealt with at length regarding the torture of the prisoners in the prisons and police custody. This book also highlights the shortcomings of the Indian Prison System such as overcrowding, lack of proper accommodation and sanitation, inadequate health service, ill equipped personnel etc.

SAHRDC, the book entitled “Handbook of Human Rights and Criminal Justice in India: The System and Procedure”, published by Oxford University Press (2005), under auspices of the South Asia Human Rights Documentation Centre (SAHRDC). This book provides the teaching materials as text for students, a guide for journals and even for lay men. Its excellent documentation and citation of cases makes it a useful reference for lawyers, judges, academicians and activists in the field. This book has emphasised on the criminal procedure and criminal justice in the context of human rights and is useful for essentials of a fair trial and safeguards against custodial torture.

Ralph A. Rossum & G. Alan Tarr, in the book entitled “American Constitutional Law” Published by Wadsworth/Thomson Learning Belmont, USA, 2003, deals thoroughly about the criminal procedure and the principles of natural justice which must be followed without curtailing the personal liberty of the persons.

S. P. Verma, edited the book entitled “Indian Judicial System: Need and Directions of Reforms”, published by Kanishka publishers, New Delhi, (2004) dealing with particular themes of judicial reforms in criminal justice system, the topic is of great contemporary interest and relevance to all academics, policy makers and citizens due to its importance in judicial administration at various levels.
Khawaja M. Muntaquim, in the book entitled “Protection of Human Rights National and International Perspectives”, published by Law Publishers (India) Pvt. Ltd, Allahabad (2009). In this book the protective cover to the accused persons has been given under various International and Regional Treaties, Conventions, Covenants and of course in the Indian Constitution. Apart from this, it also tries to ensure and secure opportunities of justice – economic, social and political, through the legal aid process to the weaker sections of society on the basis of equal opportunity.

B. L. Arora, in the book entitled “Law of Speedy Trial in India”, published by Universal Law Publishing Co. Pvt. Ltd. New Delhi, has deal extensively with the law of speedy trial in India. This book examines thoroughly the provisions of Criminal Procedure Code with reference to the speedy trial and case laws to save the accused persons from languishing in jails indefinitely.

Janusz Symonides, in the book entitled “Human Rights: International Protection, Monitoring, Enforcement” Published by Ashgate Unesco, 2003 deals with the role of NGO’s in the protection and enforcement of human rights at national and international level, along with the role played by Amnesty International and Human Rights Watch Groups.

Dr. Bhanwar Lal Harsh, in the book entitled “Human Rights in India: Protection and Implementation of the Human Rights Act 1993”, published by Regal Publications, N. Delhi, 2008, has deals with extensively the issues of human rights and their historical origin and development at National and International level. The basic human rights of a human being which are mentioned in the Preamble and Part III of the Constitution of India are considered as the founding pillars of Indian democracy in this book. The history of human rights struggles and establishing the Constituent Assembly for framing the Constitution of India during the freedom struggle are dealt with exhaustively.

Dr. K. I. Vibhute, edited the book entitled “Criminal Justice A Human Rights Perspective of the Criminal Justice Process in India”, published by Eastern
Book Company, Lucknow (2004). The author in the present anthology, ‘Criminal Justice’, endeavours to dwell deep into the ‘human rights perspective’ of individuals-accused, prisoners and victim of crimes who come in contact with vital state functionaries the police, prosecution, courts and peno-custodial-correctional institutions that are responsible for ensuring criminal justice. Professor Vibhute’s attempt to push a human rights discourse to the central current of criminal justice administration is indeed a praiseworthy attempt.

**Dr. K. N. Chandrasekharan Pillai**, in the book entitled “R.V. Kelkar’s Criminal Procedure” published by Eastern Book Company, Lucknow (2008). The author in this book highlights the object of the Code of Criminal Procedure to ensure a full and fair trial of an accused in accordance with the principles of natural justice. Therefore, the author has made a critical appraisal of the criminal procedure in the lights of various judicial decisions. The book also provides a detailed case law relating to the accused human rights at the various stages such as arresting, interrogation, investigation, searches till the final disposal of the case.

**M.P. Jain**, in the book entitled “Indian Constitutional Law”, published by Wadhwa and Company, Nagpur (2008), has made a critical appraisal of criminal justice process and its effective implementation in the protection of the rights of accused persons. This book also deals with the creative and active role of the Supreme Court and High Courts in the administration of criminal justice system through writs jurisdiction.

**Keir Starmer**, in the book entitled “Human Rights in Investigation and Prosecution of Crime” Published by the Oxford University Press, 2010, is concerned with the investigative methodology by the law enforcement agencies like police, prosecution etc.

**Mahendra P. Singh**, in the book entitled “V.N. Shukla’s Constitution of India”, published by Eastern Book Company, Lucknow (2010), extensively has provided the safeguards against the legislature in respect of laws relating to
deprivation of life and personal liberty protected by Article 21 of the Constitution of India. The book also highlighted the various directions issued by the judiciary as well as the Law Commission of India to safeguards the rights of the prisoners and persons in police lock-up, particularly of women and children against sexual abuse and for their early trials.

**Kaushlendra Mishra**, in the book entitled “NGO’s in Human Rights Movement”, published by the Navyug Publishers and Distributors, New Delhi, (2008), has narrated the pro-active role of NGO towards the human rights movement and activism while explaining the historical development of NGO’s movement at National and International level.

**Durga Das Basu**, in the book entitled “Human Rights in Constitutional Law”, published by Wadhwa and Company, Nagpur, (2008), has made a comparative study of various Declarations, Covenants and Conventions with the Indian Constitutional mandates such as UDHR, ICCPR, ICESCR so that these International Documents can easily be understood.

### 1.3 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 must 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 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 persons are often denied.

1.4 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 protection of 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 proactive 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 made.
1.5 Methodology

Law is a normative science that is a science which lays down norms and standard for human behavior in a specified situation or situations enforceable through the sanctions of the state. Research in general varies considerably in scope, style and procedure depending upon its theme. This research is basically concerned with an evaluation of the policies and procedures, especially the scope of fundamental norms of our justice system namely, the principles embodied in the Constitution of India, which are applicable to the law enforcement agencies in the criminal justice system.

Doctrinal research of course, involves analysis of case laws, arranging, ordering and systematizing legal propositions. The present study is based on doctrinal method of research. Hence in the pursuit of this work, the Researcher has dealt at length with the original books, law reports, law journals, articles, magazines, newspapers, reports of Law Commissions and committees, Conventions and Covenants. This research work is further enriched with the study of the various judicial pronouncements in the process of protecting and securing the basic human rights of the accused persons.

1.6 Scheme of Chapterisation

Based on the theme of research work, the 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. It describes the area of research and the reasons for conducting such research study. It contains the research design, the hypothesis formulated for the purpose, the methodology followed and aims and objectives pursued in this regard.

**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. It also gives an overview of the Protection of Human Rights Act, 1993 while discussing the Constitutional, Statutory and other Conventional provisions at national and International levels regarding human rights.

**Chapter-III ‘Criminal Justice System in India: Problems and Prospects’** gives a detailed overview of the existing Indian Criminal justice System along with its integral organs such as the police, the prosecution, and the courts. It gives an account of investigatory methodology of police where the torture by police is often meted out to the accused persons along with the protective laws against that torture both at National and International level. This chapter also probes into the various impediments in the effective functioning of the Indian criminal justice system leading to the denial of justice to the needy ones.

**Chapter-IV ‘Human Rights and the Law of An Accused: A Socio- Legal Study’**. In this chapter, an humble attempt has been made by the Researcher in analysing the concept of the term ‘accused’ with the help of various judicial pronouncements while examining the rights of the accused against legally unwarranted investigations and illegal arrests and detentions and its remedies in the light of human rights laws at the pre-arrest and post-arrest stages. It also tries to ensure and secure the various Constitutional and Procedural safeguards to be provided to the accused persons so that this life, liberty and human dignity at the hands of investigatory authority may be duly respected and honoured.

**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 further provides the adequate safeguards to the accused from the Media Trial, before the fair trial commences in the court of law, where his reputation and human dignity is put in peril.

**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 level and their commendable role in the human rights movement in India particularly to save the individuals from long incarceration in jails without trials. It also deals at length with the powers and functions of NHRC, especially its commendable and assertive role in providing possible safeguards against custodial crimes.

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 the life, liberty and dignity of an accused be duly preserved, secured, respected and honoured by the law enforcement agencies in India at all cost.