CHAPTER VI

CONCLUSION AND SUGGESTIONS

CONCLUSION

The right to enforce Human Rights as provided under the Constitution of India is Constitutionally protected. Article 226 empowers the High Courts to issue writs for enforcement of such rights. Similarly Article 32 of the Constitution gives the same powers to the Supreme Court. A new approach has emerged in the form of Public Interest Litigation (PIL) with the objective to bring justice within the reach of the poor and the disadvantaged section of the society. In the recent past the judges of the High Courts and the Supreme Court have from time to time given far reaching and innovative judgements to protect the Human Rights. Public Interest Litigation has heralded a new era of Human Rights promotion and protection in India. Police Officers are entrusted with wider powers of arresting a person without warrant. But this power of arrest must be in accordance with Law not otherwise. Arrest is undoubtedly a serious interference with the fundamental right of the personal liberty of the citizen, which includes an arrestee or an accused, guaranteed under Articles 21 and 22 of the Constitution of India and it has to be strictly in accordance with the Law so as to be escaped, the arresting authority, from punishment. In order to exercise effectively the power of arrest by a police officer, he must be well versed with legal provisions relating to arrest, Supreme Courts guidelines and its decisions on arrest up to date, particularly, when arresting women, children, judicial officers, M.L.A’s & M.Ps and public servants etc. Moreover, the police should enforce the provisions relating to arrest firmly and impartially without fear of favour, malice or vindictiveness. And also the police should project their image as the protector of Human Rights. States and other criminal justice jurisdiction should develop policies and procedures which will expedite criminal trials and minimize pretrial detention and all of its potential for unconstitutional confinement. Liberty of the
subject and the convenience of the police or any other executive authority is not to be weighed in the scales against each other. A man is not to be deprived of his liberty except in due process and course of law. It is the right of every citizen to be free from arrest unless there is in some other citizen. An examination of the common law understanding of an officer's authority to arrest sheds light on the obviously relevant if not entirely dispositive, consideration of the framers of The United States Constitution might have thought to be reasonable. Initially it should be noted that the common law rules of arrest developed in legal context that substantially differential the cases now before Indian. It's a fact that the police in India have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal riots, political turmoil, student unrest, terrorist activities, and among others the increasing number of underworld and armed gangs and criminal. Many hard -core criminals like extremists, the terrorists, drug-toddlers, smugglers who have organized gangs, have taken strong roots in the society. It is being said in certain quarters that with more and more liberalization and enforcement of fundamental rights, it would lead to difficulties in the detection of crimes committed by such categories of hardened criminals by soft peddling interrogation. Such criminals may go scot-free without exposing any element or iota of criminality with the result, the crime would go unpunished and in ultimate analysis the society would suffer. In view of the expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book those who are involved in the crime. The freedom of an individual must yield to the security of the State. The right of preventive detention of individuals in the interest of security of the State in various situations prescribed under different statutes has been upheld culprits or arrestees in the interest of the Nations, must take precedence over an individual's right to suprema lex (the safety of the people is the supreme law) and salus repubicae est suprema les( safety of the State is the supreme law) co-exist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an
individual must yield however, must be "right, just and fair". Using any form of torture for extracting any kind of information would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21. Such a crime- suspect must be interrogated Indeed subject to sustained and scientific interrogation determined in accordance with the provisions of law. He cannot, however, be tortured or subjected to third degree methods or would be qualitative difference in the method of interrogation of such a person like arrested person. The system of criminal justice Administration in India is grounded in the sound principles of English jurisprudence. Like the British system it incorporates the principle of presumption of innocence, the principle of the Rule of law, the principle of non-retroactivity of criminal statistics and the Rule against Double Jeopardy all of which ensure of fair trial to the accused.

Indian law has prohibited use of custodial Violence in unmistakable terms. The Indian penal code makes it an offence to voluntarily cause hurt to extract confession or to compel restoration of property. The confession or to compel restoration of property. The constitution of India gives the fundamental right against self- incrimination to the Citizens. The Indian Penal Code makes it an offence to wrongfully confine a person to extract confession or compel restoration of property. The Indian police Act under which the entire police organization in Indian Derives its legitimacy and the policeman derives his power, prohibits unwanted personal violence by police officers to any person in custody. The Supreme Court has expressed its deep concern regarding custodial torture " No police life style which relies more on fists than on wits, more torture than a culture can control crime because means boomerang on the ends and refusal the vice which it seeks to extinguish" The Indian Judiciary has become vanguard of human right in India It performs this function by innovative interpretation and application of the human rights provision under the constitutions. The Apex court in India has in fact declared that it has special responsibility to enlarge the range and meaning of the fundamental rights and to advance the human right Jurisprudence.
In India an entire network of safeguards within a democratic system are available to prevent the occurrence of human rights violations such as the torture of accused. These safeguards include free press, public awareness and the institutions of vibrant and healthy democracy.

"Sanctions against public officials for human rights violations exist in the general Criminal law (in India).

The development of post independence period have not made much of a dent in its opaque house. It continues to treat the citizens with hostility and even contempt. It has not succeeded in establishing itself as a democratic agency of social regulation and popular service dedicated to the protection and welfare of the masses. It has not yet been able to generate affection and respect or work and acceptability by the people ....The believe that members of the police force are incompetent, cruel, normless and even corrupt. They are bereft of moral values"

Justice A N Mulla had once commented, "I say it with all sense of responsibility that there is not a single lawless group in the whole country whose record of crime is anywhere near the record of that organized unit which is known as the Indian Police Force." Indeed the police force has gained much negative publicity for its lawlessness. Today, custodial deaths, rapes and tortures have drawn the attention of the media and the legislature. Efforts are being made to restrict the occurrence of such unfortunate incidents. The Human Rights Commissions are playing a great role in this aspect and they have partially succeeded in containing the violations of civil liberties by the state agencies like the police.

In my opinion the non-registration of cases by the police constitutes one of the most serious forms of violation of human rights. According to the National Police Commission (1978), the most important factor responsible for non-registration of complaints is the anxiety of the political executive in the state governments to keep the recorded crime figures low so that they can claim before
the public and the State Legislature that crime has been well-controlled and is going down because of the efficiency of the police administration under their charge. This type of a statistical approach of the political executive is largely responsible for understating the crime figures in states. Again it is noticed that subordinate officers try to avoid registration of cases by pointing out that the offence occurred in the jurisdiction of another police station. As a result, a complainant has to run from pillar to post to locate the particular police station and get the case registered. Under S. 154 Cr P C, the officer-in-charge of a police station has to register a case and draw up an FIR as soon as a complaint of cognizable offence is laid at the police station. There is no scope for non-registration of cases under the pretext of jurisdictional controversy.

Human rights activists alleged that police often committed human rights violations with impunity and that police corruption was pervasive and acknowledged by many government officials. The NHRC reported that the majority of complaints it received were against police. Although the Malimath Committee on Judicial Reform issued a report in 2003 proposing police reforms, measures had not been implemented at year's end. Some human rights activists maintained that the committee's main goal was to increase arrests and prosecutions instead of protecting the rights of the accused. Punjab Director General of Police A.A. Siddiqui reported that police had received 17 thousand complaints in 2004, including 6,261 from the Punjab State Human Rights Commission, 376 from the NHRC, and 46 from the NHRC for Scheduled Castes and Scheduled Tribes. The media reported that courts found 59 police officers guilty of violating human rights in Punjab in 2004.

Administration of criminal justice is a State matter. Fortunately, by reinterpreting Art. In Maneka .. Gandhi, and by giving up the sterile approach of Gopalan, the Supreme Court has found a potent tool to seek to improve matters, and to fill in the vacuum arising from governmental inaction and apathy to undertake reform, in the area of criminal justice. The Court has
now been seeking to humanize and liberalize the administration of criminal justice.

Accordingly, since Maneka, the Supreme Court has in a number of cases tested various aspects of criminal justice and prison administration on this touchstone. The protection of Art. 21 extends to all persons- persons accused of offences, under trial prisoners, prisoners undergoing jail sentences etc., and, thus, all aspects of criminal justice fall under the umbrella of Arts. 14, 19 and 21.

Arrest can cause incalculable harm to a person's reputation and self-esteem. Arrest should be made not merely on suspicion but only after a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of the complaint and a reasonable belief as to the person's complicity and even as to the need to effect arrest.

The arrested person has certain rights, viz., he has a right that a relative/friend of his be informed about his arrest and the place of his detention; he has a right to consult a lawyer privately.

The Criminal Procedure Code has brought about the separation of the Judiciary from the executive by requiring appointment of 'Judicial Magistrate' as distinct from "Executive Magistrate'. Further the Judicial Magistrates are, for all practical purposes, brought under the direct supervision and control of the High Court in each State and hence are freed from executive influence or control. This is necessary as in most criminal cases; the State is the complainant and the prosecutor.

This certainly is a violation of Articles 7 and 8 of UDHR as they speak about the equality of all before the law and everyone's right to an effective remedy by competent tribunals for violation of their fundamental rights.

The National Police commission in its third report referring to the quality of arrests in India mentioned power to arrest by the police in India as one of the
chief sources of corruption in the police. The report suggested that by and large, nearly 60 percent of the arrests were either unnecessary or unjustified and such unjustified police action accounted for 43.2 percent of the expenditure of the jails. Article 3 of the UDHR says, "Everyone has a right to life, liberty and the security of person." Article 9 too says," No one shall be subjected to arbitrary arrest, detention or exile." The police blatantly violate both these provisions. The Supreme Court in Joginder Kumar v. State of U.P.234 explained the powers of the police to arrest an accused. It laid down that no arrest can be made because it is lawful for the police officer to do so. The existence of power to arrest is one thing. The justification for exercise of it is quite another. The police officer must be able to justify the arrest apart from the power to do so. Arrest and detention in the police lock-up of a person can bring upon incalculable harm to the reputation and self-esteem of a person, sometimes even ending in suicides by such victims. It would be prudent for a police officer that no arrest is made without a reasonable satisfaction is reached after some investigation as to the genuineness and bonafide of a complaint. Denying a person of his liberty is a serious matter.

The right to be informed of the grounds of arrest is a precious right of the accused. It enables him to approach the court for bail or in appropriate circumstances for the writ of habeas corpus or make the expeditious arrangements for his defense. Hence, a duty is cast upon a police officer, arresting a person without warrant, to forthwith communicate to him full particulars of the offence and other grounds for such arrest. In bailable offences police officer is required to inform a person arrested that he is entitled to be released on bail. If this is not accomplished then the police officer is in violation of Article 9, which envisages that "arbitrary arrests" are not made.

The presence of a large number of under-trial and unconnected prisoners has continued to be a scandal for long. A mention of the state of under-trials and the victims of procrastination in trials is inescapable. The Mulla Corr.Tiittee again observed that the presence of an excessive number of under-trial, remand
and other unconvicted prisoners has created, and not wrongly, an increasing public and professional concern about the non-observance of human rights, as guaranteed in the UDHR, in these institutions. The plight of Dhananjoy Chatterjee (the infamous person guilty of raping and murdering a 14-year old) who languished in Alipore Jail awaiting his execution for 14 years because of the sheer amount of time taken in litigation is a case in point.

Justice Krishna lyer is right when he says, "these institutions and not the inmates are criminals." The situation could be summed up in one sentence: the human rights violations in custodial and correctional institutions (the kinds of which we have), are not stray phenomena, but widespread and deep-rooted in the system.

Hon’ble Justice Krishna lyer is right when he says, “these institutions and not the inmates are criminals." The situation could be summed up in one sentence: the human rights violations in custodial and correctional institutions (the kinds of which we have), are not stray phenomena, but widespread and deep-rooted in the system.

**SUGGESTIONS**

Let Hundred culprits escape from punishment but one innocent should not be punished is the motto of every Legal system. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

- Right to Compensation must be specifically be made fundamental right of every person arrested illegally. For illegal arrest police officer must be made accountable and disciplinary action must be taken against the guilty police officers.
- Effective measures must be taken for implementation and incorporation of right to bail, right against torture and speedy trail.
• As per sections 330 and 331 of IPC physical torture of an accused during interrogation is an offence and hence punishable from 7 to 10 years imprisonment. This should be implemented irrespective of the cadre of the official

• The researcher suggests implementing the scheme that is used in Ontario in Canada for reducing the use of arrest Viz., Enabling a police officer to issue an appearance notice which avoids arresting of a person and compels him to attend the police station without arrest. This provision also protects the person to be arrested from stigmatization.

• Establish a fully independent complaints mechanism to ensure prompt, independent and full investigations into allegations of torture, including numerous detailed allegations received from various NGO’s.

• Ensure that there is a legal prohibition to carry out interrogation of detainees without the presence of a defense counsel of his choice.

• Clarify and reconcile the sometimes contradictory provisions pertaining to the timing when a detained person has the right to a defense counsel and to ensure that this right is exercised from the moment of arrest

• The functions of the Judiciary in the course of investigation by the police should be complementary and full freedom should be accorded to the investigation to collect the evidence connecting the chain of events leading to the discovery of the truth i.e. the proof of commission of the crime

• The researcher suggests to provide frequent training programmes on Legal education and awareness to the police officers on the rights of the accused person.

• The working methods and procedures of different wings of Criminal Justice System should be made transparent. It is essential that police
custodial brutality for instance, can be checked to a great extent if relatives or well wishers of the accused persons are allowed to be in the visible distance when they are being interrogated. In order to ensure that those guilty of human rights violation the victim should be re examined by medical officers. Such officers should be independent and not connected with the working of custodial institutions

- Improve conditions of pre-trial detention centers, including space, facilities and sanitation, and establish a system of inspection of detention centers by independent monitors, whose findings should be published.

- The Inspection must be done every fortnight by a Committee consisting of well educated and reputed members of society, namely retired Judges, professors etc.

- Establish a procedure for providing redress for victims of torture, including fair and adequate compensation.

- Parliament should enact stringent provisions for enforcing the free legal aid provisions speedily to the illiterate and poor litigants (accused).

- The women's organisations, the government must prioritize women's rights and ensure that those responsible for crimes against accused women are brought to justice, and that women are treated fairly and with respect during legal proceedings.

- The police personnel carrying out the arrest and handling the interrogation of the accused should bear accurate, visible and clear in identification and name-tags with their designations. The particulars of all such police personnel who handle interrogation of the accused must be recorded in a register.

- A police control room should be provided at various levels, sub divisional, district and State Headquarters where information regarding the arrest and
the place of custody of the accused shall be communicated by the officer causing arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice-board. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of Court may be instituted in the High Court.

- The method of keeping the person behind the bar awaiting the trial must be highly minimized. The police brutality and torture in police station be minimized and serious departmental inquiry be implemented on those authorities who participates actively in torturing the innocent people irrespective of the cadre.

- Efforts to be made to provide lady constable for the custody of women arrestee.

Thus the entire journey from the Gopalan case to date, shows many high watermarks in the Administration of Criminal Justice system. The greatest contribution of the Indian Judiciary has been that it has reached to human sufferings, atrocities and helplessness in true spirit and meaning. Still on a few occasions the court erred and failed or sometimes the required result was not achieved. The rights of the accused must be protected in true spirit by making the police authorities aware of the rights as the accused also posses dignity and has a right to live a dignified life. Punish those who are criminals and save those who are innocent. To achieve the result the court must see that its order, direction and the judgment are implemented in toto. otherwise the court order will lose their credibility and the faith of the general public.