CHAPTER – 4
RECENT JUDICIAL APPROACH TOWARDS THE RIGHTS
OF ACCUSED IN INDIA

4 INTRODUCTION

An integrated and independent judicial system has been established by the Indian constitution. The Supreme Court stands at the top of the integrated judicial system of our country. The High Courts are below it. There exists hierarchy of Subordinate courts in the high courts. The Supreme Court is said to be the guardian of the constitution. It is the essence of a federal constitution that there is division of powers between the Central and state Governments. The written constitution which is the supreme law of the land provides for such a division. It is natural that disputes might arise between the centre and its constituent units regarding their respective powers as the language of the constitution is not free from ambiguities and its meaning is likely to be interpreted differently at different times. There must be an independent and impartial authority to decide disputes between the centre and the states or the states inter se in order to maintain the supremacy of the constitution and the said function can only be entrusted to a judicial body. The Supreme Court is the final interpreter and guardian of the constitution as well as that of the fundamental rights of the people. It is the highest court of appeal in civil and criminal matters.²⁹⁰

The assumption on which judiciary of India is based is that the constitution is the supreme law of the land and all governmental organs owe their origin to the constitution and derive their powers from its provisions and must function within the framework of the constitution and must not do anything inconsistent with the provisions of the constitution. Consequentially, an impartial and independent judiciary is needed whose basic function is to act as an arbiter in a dispute arising between the centre

and the states. Under the Indian constitution, there exists a specific provision in Article 13(2)\textsuperscript{291} that the states shall not constitute any law made in contravention of this provision as an abundant caution because the courts can be approached for the enforcement of the fundamental rights even in the absence of such a provision. One of the outstanding features of the constitution is that a person has a fundamental right to approach the Supreme Court. Furthermore, wide original and appellate jurisdiction\textsuperscript{292} has been given to the Supreme Court and high courts to adjudicate on the constitutionality of any action. Wider interpretation to the Articles, provisions and Section etc is given by the judiciary as and when required to do so. Article 21 is the best example in which Supreme Court has included Right to live with human dignity, Right to health, Right to Shelter, Right to free legal aid, Right to speedy trial, Right against solitary confinement, Right to fair trial, Right to free education up to 14 years which all are part of protection of life and personal liberty.\textsuperscript{293}

Many guidelines have been given by the judiciary in a number of cases for the protection of accused which work as safeguard for the accused. Like guidelines issued in Sunil Batra’s case, Hussainara Khatoon’s case, Jagmohan Singh’s case and hence it is not only the legislature who can make provisions for the safety of the accused but there is judiciary also who issues the guidelines necessary for the protection of the accused.

4.1 ROLE OF THE JUDICIARY

Only provision for the fundamental rights does not fulfill the objective of ‘protection of dignity of an individual’, but free enjoyment of the rights has to be ensured. Therefore, Article 32

\textsuperscript{291} Laws inconsistent with or in derogation of the fundamental rights: The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall to the extent of the contravention be void.

\textsuperscript{292} It is explain in the previous chapter under Article 134.

\textsuperscript{293} Shukla, V.N., Constitution of India, 10th edn. (Reprinted Oct., 2004), p. 52.
guarantees right to constitutional remedies, i.e. right to move to Supreme Court to enforce fundamental rights.

It is constitutional mandate of judiciary to protect human rights of the citizens. Supreme Court and High Courts are empowered to take action to enforce these rights. Machinery for redress is provided under Articles 32 and 226 of the constitution. An aggrieved person can directly approach the Supreme Court or High Court of the concerned state for the protection of his/her fundamental rights, redress of grievances and enjoyment of fundamental rights. In such cases Court are empowered to issue appropriate order, directions and writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari.

Judiciary is ultimate guardian of the human rights of the people. It not only protects the rights enumerated in Constitution but also has recognized certain un-enumerated rights by interpreting the fundamental rights and widened their scope. As a result people not only enjoy enumerated rights but also un-enumerated rights as well.

Supreme Court is said to be the guardian of the constitution. The essence of a federal constitution is the division of powers between the Central and state Governments. The division is made by a written constitution which is the supreme law of the land. The division is made by a written constitution which is the supreme law of the land. Since language of the constitution is not free from ambiguities and its meaning is likely to be interpreted differently at different times, it is but natural that disputes might arise between the centre and its constituent units regarding their respective powers. Therefore, in order to maintain the supremacy of the constituent units regarding their respective powers. Therefore in order to maintain the supremacy of the constitution there must be and independent and impartial authority to decide disputes between the centre and the states or the states inter se. This function can only be entrusted to a judicial body.
The Supreme Court under our constitution in such arbitration. It is the final interpreter and guardian of the constitution. The addition to the above function of maintaining the supremacy of the constitution, the Supreme Court is also the guardian of the fundamental rights of the people. Truly the Supreme Court has been called upon to safeguard civil and tribunal which has to draw interpreter of the general law of the country. It is the highest court of appeal in civil and criminal matters.

Judiciary in India is based on the assumption that the Constitution is the supreme law of the land, and all governmental organs, which owe their origin to the Constitution and derive their powers from its provisions, must function within the framework of the Constitution and must not for anything which is inconsistent with the provisions of the Constitution. In a federal system, it is necessary in consequence to have an impartial and independent judiciary whose basic function is to act as an arbiter in a dispute arising between the centre and the states. Under the Indian Constitution there is a specific provision in Article 13(2) that the states shall not Constitution and any law made in contravention of this provision appears to be due to abundant caution, because even in the absence of such a provision the courts can be approached for the enforcement of the fundamental rights. One of the unique features of the Constitution is that a person has a fundamental right to approach the Supreme Court. Moreover, wide original and appellate jurisdiction has been given to the Supreme Court and high courts to adjudicate on the constitutionality of any action.

The framers of the Indian Constitution, as we have already noted, adopted the parliamentary form of government as it obtains in England. But the Union Parliament and State Legislatures unlike the English parliament owe their origin to the constitution and derive their powers from

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295 Related to the definition of “Law” which is given constitution.
297 It is explain in the previous chapter under Article 134.
its provisions and therefore function within limitations prescribed in the constitution. There is thus a necessary implication that the constitution confers on the courts the power to scrutinize a law made by a legislature and to declare it void if it is found to be inconsistent with the provisions of the constitution. Judiciary courts have endowed themselves with the power to declare a law unconditional if it is found not to be conformity with provisions of the Constitution\(^\text{298}\). Judiciary widely interpreted the law according to the needs of the society and time to time given guidelines for the benefit of the accused as required. Supreme Court gives number of guidelines in number of cases which are as follows:-

In *Arnesh Kumar v. State of Bihar*\(^\text{299}\) Supreme Court held that, arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police have not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of independence; it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to checked it. Not only this, the power of arrest is one of the lucrative sources of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of the police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

Law Commissions, Police Commissions and this court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power the arrest.

\(^{299}\) 2014 8 SCC 273
Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power of arrest, the police officers must be able to justify the reason thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, Parliament had to intervene and on the recommendation of the 177th Report of the Law commission submitted in the year 2001, section 41 of the code of Criminal Procedure (For Short "CrPC"), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest.

As the offence with which we are concerned in the present appeal, provides for a maximum punishment of imprisonment which may extend to seven years and fine, Section 41(1) (b) CrPC which is relevant for the purpose reads as follows:

In *Maneka Gandhi v. Union of India* the meaning and content of the words ‘personal liberty’ again came up for the consideration of the supreme court. In that case the court has given the widest possible interpretation to the words ‘personal liberty’. In that case the petitioner’s passport was impounded by the central government under Section 10 (3) (c) of the passport act, 1967. The act authorized the government to do so if it was necessary ‘in the interest of the general public’. The Government of

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300 Ibid.
India declined ‘in the interest of the general public’ to furnish the reasons for its decision. The petitioner challenged the validity of the said order on the following grounds that I Section 10(3)(c) was violative of Article 14 as conferring an arbitrary power since it did not provide for a hearing of the holder of the passport before the passport was impounded.

Section 10(3)(c) was volatile of Article 21, since it did not prescribe ‘procedure’ within the meaning of that Article 21(3) Section 10(3)(c) was violative of Article 19 (1) (a) and (g) was violative of Article 19(1) (a) and (g) since it permitted imposition of restrictions not provided in clause (2) or (6) of Article 19. The reasons for order were, however disclosed in the affidavit filed on behalf of the government which stated that the petitioner’s presence was likely to be required connection with the proceedings before a commission o inquiry. Regarding the opportunity to be heard the attorney – general field a statement that the petitioner could make a representation in respect of impounding passport that the representation would be dealt with expeditiously in accordance in law.

The Supreme Court held that the government was not justified in withholding rage reasons for impounding the passport from the petitioner. Delivering the majority judgement, Bhagwati.J (as he then was) asked – is the prescription of some sort of procedure enough or must the procedure comply with any particular requirement. He then held that the procedure contemplated in Article 21 could not be unfair or unreasonable. And the principle of reasonableness which was an essential element of equality or non arbitrariness, pervaded Article 14 like a brooding omnipresence and the procedure contempt in Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. hence, any

301 19 (6) (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.
303 Equality before law- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
304 Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.
procedure which permitted impairment of individual’s right to go abroad without giving him a reasonable opportunity to be heard could not but be condemned as unfair and unjust. The order withholding reasons for impounding the passport was therefore not only in breach of statutory provisions but also in violation of the rule of natural justice embodied in the maxim “audi alteram partem”. Although there are no positive words in the statute (passport act) requiring that the party shall be heard, yet the justice of the common law will supply this omission of legislature. The power conferred under Section 10(3)(c) of the act on natural justice would therefore be applicable in the exercise of the power. Natural justice is a great humanizing principle intended to invest law with fairness and to secure justice. Fairness in action, therefore demands that an opportunity to be heard should be given to the person affected. A provision requiring of such opportunity to be affected person can and should be area by implication in the passport act, 1967. If such provisions were held to be incorporated in the act by necessary implication, the procedure prescribed for impounding passport would be right, fair and just and would not suffer from the vice of arbitrariness or unreasonable. It must, therefore, be held that the procedure ‘established’ by the act for impounding a passport is in conformity with the requirement of Article 21 and is not violative of that Article.\textsuperscript{305}

In the case of Hussain and Others vs. Union of India,\textsuperscript{306} the S.C. held that an accused is entitled to statutory bail(default bail) under Section 167(2)(a) of Code of Criminal Procedure if the police failed to file the charge sheet within 60 days of his arrest for the offence punishable with imprisonment up to 10 years.

In the case of Langpoklakpam vs. The State of Manipur,\textsuperscript{307} the Manipur High Court held that accused has a right to be furnished with

\begin{thebibliography}{9}
\bibitem{306} Criminal Appeal No. 509 of 2017 arising out of Special Leave Petition(CRL) No. 4437 of 2016.
\bibitem{307} Civil Petition No. 21 of 2017
\end{thebibliography}
Questions to be asked during Section 313 CrPC Examination.

In *Sunil Batra (No 2) Delhi Administration*[^308], it was held that the practice of keeping under-trials with convicts in jail offended the test of reasonable in Art. 19[^309] and fairness in Art 21[^310]. The under trials are presumably innocent until convicted and if they are kept with criminals in jail it violates the test of fairness of Art 21. Krishna Lyer, J delivering the majority judgment, held that integrity of physical person and his mental personality is an important right of the prisoner and must be protected from all kinds of atrocities. In that case the petitioner did not seek his release from the jail because he was undergoing a sentence of life imprisonment but he did not seek protection from inhuman and barbarous treatment in jail. The petitioner was subjected to physical torture by the warden of the tihar jail as means to extract money from the petitioner batra, a convict came to know this act and brought the incident to the knowledge of the court through a letter. The court converted this letter into the habeas corpus petition and approved and reiterated the specific guidelines laid down by this court in Sunil Batra case (No. 1)[^311] before punishing a prisoner. The court gave following directions to the central and state governments and the jail authorities –

1. *that the petitioners’ torture was illegal and he shall not be subjected to any such torture until fair procedure is compiled with.*[^312]
2. *No corporal punishment or personal violence on the petitioner on the petitioner shall be inflicted.*
3. *Lawyers nominated by the DM session judge, High Court and the Supreme Court will be given all facilities to interview right to confidential communications with prisons, subject to discipline and security considerations. Lawyers shall make periodical visit and*

[^308]: AIR 1980 SC1579.
[^309]: Protection of certain rights regarding freedom of speech, etc.
[^310]: Protection of life and personal liberty.
[^311]: AIR 1978 SC 1675
report the concerned court the result of their visits.

4) Grievance deposit boxes shall be maintained in jails which shall be opened by DM and the session’s judges frequently. Prisoners shall have access to such assess to such boxes.

(5) D.M. sessions judges shall inspect jails once every week, shall make enquiries into grievances remedial, and take actions.\(^{313}\)

(6) No solitary or punitive cell no hard Labour or dialatory charge, denial of privileges and amenities, no transfer to other poison as punishment shall be imposed without judicial approval of the session’s judge.\(^{314}\)

4.1.1 Right Against Solitary Confinement

In *Sunil Batra (No.1) v. Delhi Administration*\(^{315}\) the important question raised before the supreme court was whether solitary confinement imposed upon prisoners who were under sentence of death was violative of Articles 14, 19, 20, and 21\(^{316}\) of the constitution. In the case of two convicts who were confined in Tihar central Jail filed two petitions under Article 32\(^{317}\), challenging the validity of Section 30 and Section 56 of the prison act. Sunil Batra was sentenced to death by the district and session judge and his sentence was subject top he confirmation by the High court and to a possible appeal to the Supreme Court. Batra complained that since by date by his conviction by session court intervened on 24\(^{th}\) Feb., 1978

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314 Ibid., p. 240.
315 AIR 1978 SC 1575
316 All the articles already explain in detail in chapter 2.
317 Remedies for enforcement of rights conferred by this part:

1. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
2. The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
3. Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may be law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clauses (2).
4. The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.
superintendent of jail putting him into bar fetters. He was arrested on 6th July 1976 and detained under Section 3 of MISA. Since the timer he was lodged in Jail he was put in bare fetters notwithstanding of the recommendation of the jail doctor that bar fetters be removed. It was contended that Section 30 did not authorize prison authorities to impose the punishment of solitary confinement. The Supreme Court accepted the argument of the petitioners and held that Section 30 of the prison act did not empower the prison authorities to impose solitary confinement upon a prisoner under sentence of death. Under Section 73\textsuperscript{318} and Section 74\textsuperscript{319} IPC solitary confinement is itself a substantive punishment which can be imposed by a court of law. It cannot be left within the caprice of prison authorities. The court held that the expression “prisoner under sentence of death” in the context of Section 30(2) could only mean the prisoner whose sentence of death had become final and could not be annulled or violated by any judicial or constitution procedure. Thus a prisoner was not under sentence of death till he had the right to appeal against this sentence or to appeal mercy. If by imposing solitary confinement there is total deprivation of comraderie amongst co-prisoners commingling and talking and being talked to, it wood offend Article 21 of the constitution. The liberty to move, mix, mingle, talk, share company with co-prisoners if substantially curtailed would be violative of Article 21 unless curtailment has the backing of law. Although solitary confinement was held to be violative of

\textsuperscript{318} Solitary confinement: Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say-

- a time not exceeding one month if the term of imprisonment shall not exceed six months,
- a time not exceeding two months if the term of imprisonment shall exceed six months a (shall not exceed one) year,
- a time not exceeding three months if the term of imprisonment shall exceed one year.

\textsuperscript{319} Limit of solitary confinement: In executing a sentence of solitary confinement shall in no case exceed fourteen days at a time, with intervals between the period of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.
Article 21, Section 20 was held to be valid because the procedure prescribed under it for the curtailment of prisoner’s liberty in jail, was fear and just with in the meaning Article 21. if Section 30 in this manner its obnoxious element is removed and it cannot be said that there is deprivation of personal liberty without the authority.320

4.1.2 Protestation Against Arrest Detentions And Custodial Death

In Joginder Kumar v. State of UP321 the Supreme Court has laid down guidelines governing arrest of person during investigation. This has been done with a view to strike a balance between the need of police on the one hand and the protection of human rights of citizens from oppression and injustice at the hands of law enforcing agencies. The court has held that a person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the police officer affecting the arrest that such arrest was necessary and justified.322

In the instant case a practising lawyer who had been called to the police station in connection with a case under inquiry on 07.01.19694. On not receiving any satisfactory account of his whereabouts the family members of the detained lawyer filed a habeas corpus petition before the Supreme Court and in compliance with the notice, the lawyer was produced on 14.01.1994 before the court. The police contended that the lawyer was not in detention but was only assisting the police to detect some cases. The court held that though at this stage the relief in habeas corpus could not be granted yet the Supreme Court laid down certain requirements to be followed by the police before arresting a person.

Following are the guidelines laid down by the court

1. An arrested person being held in custody is entitled if he so requests to have one friend, relative or other person who is known to him or

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likely to have an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

2. Police officer shall inform the arrested person when he is brought to be police station of this right.

3. An entry shall be required to be made in the diary as to who was informed of the arrest.\numberedref{323}

These protections from power flow from Art. 21\numberedref{324} and Art. 22 of the Constitution and therefore they must be enforced strictly.\textit{Hussainara Khatoon v. Home Secretary,}\numberedref{1980 SCC 81, 91, 93, 98, 108, 115} Bihar, I to VI

This right came up in a series of cases involving undertrials, who were in jail for a period longer than the maximum sentence that could be imposed on conviction. In \textit{Hussainara Khaton (I) v. Home Secretary, Bihar}\numberedref{(1980) 1 SCC 81:AIR 1979 SC 1360}, it was held that the procedure which keeps such large numbers of people behind bars without trial so long cannot possibly be regarded reasonable, just or fair so as to be in conformity with the requirement of Article 21. Bhagwati, J. observed that although the right to speedy trial is not specifically mentioned as a fundamental right, it is implicitly in the broad sweep and content of Article 21. In \textit{Hussainara (II)}\numberedref{(1980) 1SCC 91}, the Court re-emphasized the expeditions review for withdrawal of cases against undertrials for more than two years. In \textit{Hussainara (III)}\numberedref{(1980) 1SCC 93:AIR 1979 SC 1360}, the Court reiterated that the investigation must be completed within a time-bound programme in respect of undertrials and gave specific orders to be followed for quick disposal of cases of under trials. In \textit{Hussainara (IV)}\numberedref{(1980) I SCC 98}, in continuation of Hussainara (I) and Hussainara (III), the Court considered for affidavits filed in response to its earlier orders and passed further directions. Dissatisfied

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\item \numberedref{323} Panday, J.N., Constitution of India, 39 edn., (Reprinted 2003), p. 258.
\item \numberedref{324} Supranote \numberedref{325} 1980 SCC 81, 91, 93, 98, 108, 115.
\item \numberedref{325} (1980) 1 SCC 81:AIR 1979 SC 1360
\item \numberedref{326} (1980) 1SCC 91
\item \numberedref{327} (1980) 1SCC 93:AIR 1979 SC 1360
\item \numberedref{328} (1980) I SCC 98
\end{thebibliography}
with the compliance of its earlier direction, the Court ordered release of undertrials held for periods more than the maximum term imposable on them on conviction. It was held that continuance of such detention is clearly illegal and in violation of that fundamental right under Article 21. The Court went one step further and after making a reference to the Hoskot case, recognised the right to free legal services to the poor and the needy as an essential ingredient of reasonable, fair and just procedure implicit in the guarantee of Article 21, and directed the State to provide a lawyer at its own cost for making a bail application to an undertrial: (i) charged with bailable offence on the next remand date, or (ii) held for non-bailable offence after having spent half the term of maximum sentence imposable on him were he convicted. In Hussainara(V)\textsuperscript{330}, the Court considered the extent to which direction in Hussainara (IV) had been complied with, passed further directions and gave more time where necessary. In Hussainara(VI), in the pending cases to ensure speedy trials, the Court requested further details from the High Court and directed the State Government to file affidavit in reply.\textsuperscript{331} The sum and substance of the decisions in the Hussainara cases is the recognition of the right to speedy trial, and the right to legal aid services under Article 21. It was pointed out that the present legal and judicial system denied justice to the poor and the needy because the system of bail with its misdirected emphasis in furnishing financial security operated adversely against the accused.

Since Hussainara in a large number of cases involving accused charged with serious and non-serious offences, mentally retarded persons and others have come up before the Court and it has held that all persons awaiting trial for long can approach the Supreme Court which will give necessary in the matter. In several cases the Court has

\textsuperscript{331} Shukla, V.N., Constitution of India, 10th edn. (Reprinted Oct., 2004), p. 128.
given such directions. Specifically in the two Common Cause cases, the court has held that if the trial of case for an offence which is punishable with imprisonment upon 3 years has been pending for more than two years and the trial has not commenced, the court is required to discharge and acquit the accused. But whether a case deserves such directions will depend on a number of factors relevant for the determination of the fact if there has been any unfairness in the administration of criminal justice i.e. where in spite of most effective steps on the part of the State because of the complex nature of a case trial could not be held expeditiously the Court may not give any relief beyond asking the State that the trial should be started soon and proceeded from day to day. The right to speedy trial encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.  

Prosecution pending for 14 years without even a single witness examined and without any fault of the accused was quashed. Thus following are the main guidelines are carved out from above discussion:-

(A)  *The period of the remand and reconviction detention should be as short as possible. In other words the accused shall not be subjected to unnecessary or unduly long detention point of his conviction.*

(B)  *The worry, anxiety, expense and disturbance to his vocation and peace resulting from an unduly prolonged investigation, inquiry or trail shall be minimal; and*

(C)  *Undue delay may result in impairment of the ability of the accused to defend himself whether on account of death, disappearance or non-availability of witnesses or otherwise.*

In the case of Smt. Selvi & Ors. v. State of Karnataka & Ors., wherein the question was- Whether involuntary administration of scientific techniques namely Narcoanalysis, Polygraph (lie Detector) test and Brain Electrical Activation Profile (BEAP) test violates the ‘right against selfincrimination’ enumerated in Article 20(3) of the Constitution. In answer, it was held that it is also a reasonable restriction on ‘personal liberty’ as understood in the context of Article 21 of the Constitution. Following observations were made in this landmark case:

(i) *No individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty.*

(ii) *Section 53, 53-A and 54 of Criminal Procedure Code permits the examination include examination of blood, blood-stains, semen swabs in case of sexual offences, sputum and sweat, hair samples and finger nail dipping by the use of modern and scientific techniques including DNA profiling. But the scientific tests such as Polygraph test, Narcoanalysis and BEAF do not come within the purview of said provisions.*

(iii) *It would be unjustified intrusion into mental privacy of individual and also amount to cruel, inhuman or degrading treatment.*

(iv) *Voluntary administration of impugned techniques are, however, permissible subject following safeguards, but test results by themselves cannot be admitted in evidence.*

### 4.2 RATIONALE FOR RIGHTS AND PUNISHMENT

Any system of public governance will have to address the question of the administrative relationship of the individual with the community. The community norms of behaviour may sometime come into conflict with the individual norms. In such a situation the individual may be pitted...
against the organized power of the society, which is represented by the state. In order to regulate the relationship between the state and the individual the society goes for a set of code of conduct in terms of law because what the society wants to achieve is not rule of men but rule of law. It is particularly so in the case of democracies. However, the unpredictable and uncertain perceptions of the individuals constituting the society may make some dominating groups in the society to impose their norms on the society in the name of law. In order to obviate this chance they may enunciate fundamental principles in a document commonly referred to as Constitution. In the modern world almost all the societies have opted for framing constitutions incorporating the fundamental rules to govern the society - individual relationship.

The question whether the arrest was justified might also gone into by the judicial officer. Searching his body or premises as part of the investigation might involve infringement of his right to privacy. Indeed, it is also a constitutional right of the individual accused. His right to bail is spelt out in the Criminal Procedure Code. At the operational level it has been our experience that investigation officers, indiscriminately violate these rights. This situation has led us to adding on to some more rights to the arrested person. Today it is possible for him to get compensation for illegal arrest and torture. He is entitled to get a memo explaining the reasons for his arrest. He is entitled to get a list of articles taken from his body when he is searched incidentally to his arrest. When produced before the magistrate he is entitled to explain the treatment meted out to him by the police before the magistrate. The Magistrate can take action against the police officers.

At the trial stage also with a view to afford him a fair trial the Indian legal system gives out a number of rights to the individual accused of crime. Till he is proved guilty he is presumed innocent. The judge does not take any side in the trial. The accused can remain silent. He can seek legal assistance as a matter of constitutional right. Ultimately at the end of his
evidence he is given a chance to enter into a dialogue with the judicial officer direct. It is also the right of the accused to get a speaking order from the court as to his guilt and punishment or acquittal.

It is a matter of record (i.e. in Vedas, Upanishad, Sruti etc.) that the concept of equal rights of men and women, impartial treatment of human beings in society and humanitarian consideration of accused etc. were age old concepts in India which are prevailing since “Vedic Age”. The developments on Human Rights starting from Magna Carta - 1215 AD to Universal Declaration of Human Rights 1948 have further enriched the concept. “Today in India Human Rights like Fundamental Rights are “paramount”, sacrosanct, eternal and transcendental in nature and ought to be treated as inalienable and inviolable for preserving the dignity of the people. In India courts are regarded as custodians of Human Rights and common man always looks upon the trial Court as his protector.335 Till the 1970s the Indian legal system has been dealing with prison administration as the prerogative of the executive. The dynamic posture the Supreme Court assumed in the later part of 1970s helped the legal system to constitutionalize the rights of the accused and assume jurisdiction on the strong ground that it is the duty of the judiciary to safeguard the constitutional rights of the accused/convicted. The court came out with the theory that constitutional right of the individual accused do not get extinguished as a result of the imprisonment. The rights simply get suspended so long as they do not get extinguished. So long as they are there the court will have jurisdiction and it is entitled to interfere with prison administration to safeguard the rights of the prisoners - under trial or convicted. Not only in India over the years the California Supreme Court has in a variety of ways interpreted more liberally than has the U.S. Supreme Court the rights of those accused of having committed crimes. The rights are expanding day by day. Both the state and federal high courts

have adopted “exclusionary rules” preventing illegally obtained evidence from being used in court, but the U.S. Supreme Court has allowed exceptions not permitted by the California Court. In June 1982, voters approved Proposition 8, an initiative dubbed as the “Victims’ Bill of Rights.” The measure included a number of provisions, including a “right to truth-in-evidence,” which provided that: “Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal hearings.”

This theoretical springboard helped the court to constitutionalize the issues and add on new rights as part of article 21 of the Constitution. Today prisoners’ rights are also included as part of the rights of the accused. It may also be appropriate for the legal system to advise some modes of rehabilitation of the person accused/convicted of crimes.

The role of the Indian judiciary dealing with the rights of the accused and the method adopted by it to achieve them deserves in-depth study. Its churning of rights out of the constitutional provisions in the context of procedural law that got invigorated by the universal norms evolved by the international bodies like the United Nations and its agencies needs to be explored and explained for the benefit of posterity. This is particularly important when the modern leviathan shows the tendency to become the frequent violator of human rights of the citizens. Though the courts have the discretion to impose punishments, their discretion it must be exercised judicially and appropriate punishment should be awarded in accordance with the circumstances of the case. Because of this-flexibility which is facilitating the judges to prescribe the punishment in individual cases the Supreme Court of India has been giving emphasis on reformation in contrast to its earlier adherence to retribution. Its approach was not uniform though. It differed from case to case depending upon the

nature of the offence, offender and the statutes. It emphasized reformation in *Sunil Batra v. Delhi Administration*.\(^{338}\) It repudiated retribution in *Rajendra Prasad v. State of U.P.*\(^{339}\) thus:

The retributive theory has had its day and is no longer valid. Deterrence and reformation are the primary social goals which make deprivation of life and liberty reasonable as penal panacea. The court emphasized deterrence for white-collar offences in *Mohammad Giasuddin v. State of A.P.*\(^{340}\) thus:

Modern penology regards crime and criminal as equally material when the right sentence has to be picked out. It turns the focus not only on the crime, but also on the criminal and seeks to personalize the punishments so that the reformation component is as much operative as the deterrent element. It is necessary for this purpose that facts of a social and personal nature, sometimes altogether irrelevant if not injurious at the stage of fixing the guilt may have to be brought to the notice of the court when the actual sentence is determined.

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the judge in arriving at a sentence that reflects more subtle considerations of culpability that are raised by the special facts of each case.\(^{341}\) Punishment ought always to fit with the crime.\(^{342}\) Regarding socio-economic offences or white-collar crimes the Supreme Court has warned against showing any leniency while awarding punishment to such offenders. In *Eknath Mukhawar v. State of Maharashtra*\(^{343}\) the court observed:

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\(^{338}\) AIR 1978 SC 1675.

\(^{339}\) (1979)3 SCC 646. (Para 8).

\(^{340}\) (1977) 3 SCC 287.


\(^{342}\) Ibid.

\(^{343}\) (1977) 3 SCC 25.
Courts have to give due recognition to the intent of legislature in awarding proper sentence including the minimum sentence in appropriate cases described under the Act (Prevention of Food Adulteration). Such offences cannot be treated in a light-hearted manner. Even so justice has to be done in accordance with law. The prevention of Food Adulteration Act, itself, permits for some leniency in an excepted category of cases.

While sentencing the sex offenders and juvenile offenders, the court says in *Phul Singh v. State of Haryana*.\textsuperscript{344}

We must, however, direct our attention in a different penological direction. For sentencing efficacy in cases of lust loaded - criminality cannot be simplistically assumed by award of long incarceration, for often that remedy aggravates the malady. Punitive therapeutics must be more enlightened than the blind strategy of prison severity where all that happens is sex starvation, brutalization, criminal companionship, versatile vices through bio-environmental pollution, dehumanized cell drill under zoological conditions and emergence at the time of release, of an embittered enemy of society and its values with an indelible stigma as convict stamped on him - a potentially good person “successfully” processed with a hardened delinquent thanks to the penal illiteracy\textsuperscript{A} of the prison system. The court must restore the man. Emphasizing correctional aspect of the punishment court observed in *Satto v. State of U.P.*:\textsuperscript{345}

Correction informed by compassion not incarceration leading to degeneration, is the primary aim of this field of criminal justice. Juvenile justice has constitutional roots in the Arts. 15(3) and 39(e) and the pervasive humanism which bespeaks the super-parental concern of the state for its child citizens including juvenile delinquents. The penal pharmacopoeia of India in time with the reformatory strategy currently prevalent in civilized-criminology has to approach the child offender not as a target of harsh punishment but of humane nourishment this is the central

\textsuperscript{344} 22 (1979) 4 SCC 413 (Para 3).
\textsuperscript{345} (1979) 2 SCC 628. (Para 4).
problem of sentencing policy when juveniles are found guilty of delinquency.

Judicial approach towards accused has undergone a change. Generally speaking, the courts have been giving more important to the sentences to the seriousness of crime and they seem to be in favour of awarding severe punishment for serious crimes like rape. It does not consider delay as a mitigating factor and it appears that retribution is preferred. In Dhananjoy Chalterjee v. State of WB, the Supreme Court stressed the retributive aspect of punishment. The court said; ‘Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime’. The court further observed:

In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime: the conduct of the criminal and the defenseless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society’s cry for justice against the criminals. Justice depends that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of victim and the society at large while considering imposition of appropriate punishment.

The dictum laid down by the court in abovementioned case was subsequently followed in Ravji v. State of Rajasthan. The social interest will suffer if strong deterrent punishment is not given. If a large number of criminals go unpunished this encourages criminals and makes justice system weak. If, for an extremely heinous crime of murder perpetrated

348 1994(2) SCC 220.
349 Ibid
350 AIR 1996 SC 787; 1996 (2) SCC 175.
in a very brutal manner without any provocation, most deterrent punishment is not given, the choice of deterrent will lose its relevance.\footnote{\textit{State of Rajasthan v. Kheraji Ram}, (2003) 8 SCC 224.} The court ruled that there should be no leniency in punishing offenders convicted in dowry death cases.\footnote{\textit{Stat of Karnataka v. M.U. Manjunathagowd}, (2003) 2 SCC 188. See also \textit{State of Karnataka v. Krishnappa}, 2000 Cri LJ 1793 (SC).} In \textit{Lehna v. State of Haryana},\footnote{\textit{(2002) 3 SCC 76; see also Ramashraya Chakravarti v. State of MP AIR 1976 SC 392; 1976 Cri LJ 334.}} the court reiterated the concept of just desert' as the basis of punishment. The court said thus:

Punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence; sometimes the desirability of keeping him out of circulation, and sometimes even the terrific results of his crime. Inevitably these considerations cause departure from a just desert as a basis of punishment and create cases of apparent injustice that are serious and widespread.

In this context it is interesting to note that depending on the stress one gives to the purpose of punishment the location of authority for imposition of punishment could also change. Acceptance of retributive theory makes it obligatory to fix punishment proportionate to the crime. In other words, the quantum of punishment would be subject to limitation. And the authority could be traced to the legislature. On the other hand if one accepts the theory of reformation, the authority for imposition could be located in the court and the punishment would be subject to limitation. The court could give punishment to suit the personality of the offender. The flexibility given to the courts in fixing the punishments whether suiting the crime or the personality of the offender has resulted in disparity in sentencing. The issue of disparity in sentencing is most apparent in death penalty cases.\footnote{\textit{Suresh Chandra Bahri v. State of Bihar, AIR 1994 SC 2420.}}
The change in the outlook in the matter of punishments with the emphasis being shifted from the offence to the offender will naturally lead to recasting of the provisions of substantive law relating to definitions of offences as well as responsibility. The Penal Code today provides for a gradation of punishments according to specific criminal acts and the criminal intent demonstrated by them. The meticulous setting down of supposedly appropriate dosage of punishments based upon degrees of vicious will lose most of its significance. The new approach to punishments would necessitate a reexamination of the splitting up of offences into degrees. This will have the added advantage of the reduction of the size of the Penal Code.

To protect human right of the accused, the apex court in *D.K. Basu v. State of West Bengal* has held that transparency of action and accountability are perhaps the two possible safeguards which courts must insist upon. In this judgment more concrete and specific guidelines concerning arrest have been laid down by the Supreme Court.

In *Shiv Bahadur v. State of U.P.*, a minister of industries and secretary to the Government in the Department of Commerce and Industries were charged under sections 120-B, 161, 465 and 466 of the Indian Penal Code.

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356 On the question of responsibility, Friedman observes “Clearly the development of modern psychiatry which between the fully normal and the fully abnormal person recognizes an infinite variety of shades of disturbances lessening to a varying degree the emotional powers and capacities of self-control rather than intellectual discernment calls for a corresponding elasticity in the legal approach to and problem of responsibility. But this very development makes it obviously very difficult to devise precise legal formulate by either statutory or judicial legislation.” Friedman, Law in a Changing Society 171 (1959).

357 “Over elaboration has been the besetting sin of the entire Code. Sections have been multiplied beyond necessity. Different circumstances of the commission of a single offence have been considered for new sections although they are really to be considered in each case by the trying court for apportioning the punishment under the original offences”. Abul Hasanat: “Crime and Criminal Justice” (Appendix B) at 124. The revision of two codes recently, the Canadian Criminal Code (1955) and the Criminal Code of Louisiana (1942) proceed chiefly on the principle of reduction of the size of the code by eliminating such distinctions. See A.J. McLeod and J.C. Martin “The Revision of the Criminal Code” 33 Canadian Bar Review .3 (1955); J. Denton Smith “How Louisiana prepared and Adopted a Criminal Code” 41 Journal of Criminal Law and Criminology at 125.

358 AIR 1997 SC 610.

359 AIR 1953 SC 394.
as adapted by the V.P. Ordinance No. 48 of 1949. They were convicted and sentenced under sections 120-B and 161, Indian Penal Code.

The appellants contended that the alleged act when committed was not a crime and became criminal only when the Indian Penal Code was adopted by the adaptation of laws ordinance and by the Ordinance No. 48 of 1949 issued on 11-09-1949 making it effective from Aug 9, 1948.

The Supreme Court held that the ordinance could be effective retrospectively, i.e., from 9-8-1948 by virtue of section 2 of the ordinance expressing the intention of the legislature. The Supreme Court repelled the contention that the fundamental right conferred by article 20(1) was not available for acts committed before the Constitution which was not retrospective. As far as the expression, ‘a law in force’ is concerned in contradistinction to ‘deemed to be in force’ the Court observed:

The phrase ‘law in force’ as used in Art. 20 must be understood in its natural sense as being the law in fact in existence and in operation at the time of the commission of the offence as distinct from the law ‘deemed’ to have become operative by virtue of Ordinance No. 48 of 1949 which has admittedly been passed subsequent to the omission thereof when they should be entitled to the benefit of Article 20 of the constitution and to have their conviction set aside.

In England, the sovereign is competent to enact both retrospective and ex post facto law but the judges show reluctance in accepting a. construction of law which gives rise to an ex post facto law. The Constitution of U.S., like India, by its article 1 prohibits the legislature against enacting an ex post facto law which was distinguished for the first time by Chase, J., in Colder v. Bull and observed:

Every ex post facto law must necessarily be retrospective; but every retrospective law is not an ex post facto law. The former only are

361 (1798) 3 Dallas 386 at 391.
prohibited. Every law that takes away, or impairs, rights vested agreeably to existing laws in retrospective and generally unjust, and may be oppressive; it is a good general rule that a law should have no retrospect, but there are cases in which the laws may justly and for the benefit or the community, and also individuals, relate to a time antecedent to their commencement; as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law ex post facto within the prohibition (of Art. 1, S. 9, Cl. 3), that mollifies the rigour of the criminal law, but only those that create, or aggravate the crime, or increase the punishment, or change the rules of evidence for the purpose of conviction. There is a great and apparent difference between making an unlawful act lawful; and the making an innocent action criminal, and punishing it as a crime.

The Supreme Court of India has taken the above approach of chase, J., in *Ratan Lal v. State of Punjab* when it observed:

Every law that takes away or impairs a vested right is retrospective. Every ex-post facto law is necessarily retrospective. But on ex post facto which only mollifies the rigour of a criminal law does not fall within the said prohibition [Art. 20(1)].

In *Maqbool Hussain v. State of Bombay*, the appellant was found to have gold weight 1072 tolas by the customs authorities. This was in contravention of the government notification. The gold was confiscated by an order dated 19-12-1949 under section 167(8) of the Sea Customs Act, 1870. The appellant was given an option to pay in lieu of such confiscation a fine of Rs. 12,000 within a period of four months from the date of the order. The appellant did not exercise this option and hence the custom authorities filed a complaint against the appellant in the court of the Chief Presidency Magistrate, Bombay, Charging him with having committed an

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362 AIR 1965 SC 444.
363 Ibid
364 AIR 1953 SC 325.
offence under section 8, Foreign Exchange Regulation (Act No. 7). The appellant alleged violation of his fundamental right guaranteed by article 20(2) of the Constitution and filed a petition under 228 in the High Court of Bombay alleging the same. The case came before the Apex Court which observed:\(^{365}\)

Even though the customs officers are invested with the power of adjudging confiscation, increased rates of duty or penalty, the highest penalty which can be inflicted is Rs. 1000/-. Confiscation is no doubt one of the penalties which the Customs Authorities can impose but that is more in the nature of proceedings in rem than proceedings in personam, the object being to confiscate the offending goods which have been dealt with contrary to the provisions of the law and in respect of the confiscation also an option is given to the owner of the good to pay in lieu of confiscation such fine as the officer thinks fit. All this is for the enforcement of the levy of and safeguarding the recovery of the sea customs duties. We are of the opinion that the sea customs authorities are not a judicial tribunal, and the adjudging of confiscation, increased rate of duty or penalty under the provisions of the Sea Custom Act do not constitute a judgement or order of a court or judicial tribunal necessary for the purpose of supporting a plea of double jeopardy.

. In *Narayanlal Bansilal v. M.P. Mistry*,\(^{366}\) Gajendragadkar, J., held that a “prosecution” in article 20(2) meant a proceeding either by way of indictment of information in a criminal court so as to put an offender on his trial. The underlying idea is that the coercive power of the state may not be used against an individual for harassment through multiple prosecutions for a wrong which was committed only once. However, where the trial of the accused was found abortive because of certain irregularities or any other defect or incompetence of jurisdiction of the court of a retrial was ordered, such retrial does not come under the protection of Article 20(2) as was held

\(^{365}\) Ibid.

\(^{366}\) AIR 1961 SC 29.
in *Upendra Chandra v. State*.\(^{367}\) Similarly, it does not protect an accused from prosecution and punishment for an offence under which he was previously prosecuted and was acquitted\(^{368}\) since the expression used is “prosecuted and punished”. Moreover, the principle of double jeopardy has no application to an alternative punishment\(^{369}\) and is also not applicable to continuing offences\(^{370}\).

In *State of Bombay v. Kathi Kalu Oghad*\(^{371}\) it was held that an accused person cannot be said to have been compelled to be witness against himself simply because he made a statement while in police custody without anything more .... The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not ‘compulsion’.

As far as the term ‘witness’ is concerned, it is to be understood in its natural sense in reference to a person furnishing evidence and the Apex Court has held in *M.P. Sharma v. Satish Chandra* that\(^{372}\) every positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude to silence or submission on his part .. The phrase used in Article 20(3) is ‘to be a witness’ is not merely in respect of testimonial compulsion in the court room but may well extend to compelled testimony previously obtained from him. *State of Bombay v. Kathi Kalu Oghad*\(^{373}\) held that every positive volitional act which furnished evidence was testimony. In this case the police during the course of investigation in order to show that exhibit 5 which was a chit was in the handwriting of the accused. The High Court of Bombay held that the handwritings obtained as such were inadmissible in

\(^{367}\) 1954 CrLJ 851 (Assam).
\(^{368}\) M. Dev. v. Tripura, AIR 1959 Tri 51
\(^{369}\) See Loomchand v. Official Liquidator, AIR 1953 Mad 595.
\(^{370}\) See Saharanpur Municipality v. Krippa Ram, Air 1965 All 160; Ramendra Nath v. Union of India, AIR 1965 Cal. 434.
\(^{371}\) AIR 1961 SC 1808 at 1816-17.
\(^{372}\) (1954) SCR 1077 at 1088.
\(^{373}\) Supra .
evidence; the Supreme Court reversed the decision of the High Court on the point and held that the specimen writings were admissible in evidence.

4.3 EXPANSION OF PERSONAL LIBERTY THROUGH JUDICIAL ACTIVISM

The judiciary has expanded these rights enormously. Personal liberty includes rights attached to the person and also includes right to live with human dignity and not mere animal existence. The accused has a right to privacy and any encroachment upon it without support of law is violative of Article 21 likewise, he also has a right not to be compelled to be a witness against himself. Right to an appeal against conviction held to be a right flowing from Article 21 and the practice of indiscriminate hand-cuffing and parading of prisoner held to be violative of it. Right to claim compensation for contravention of human rights and fundamental rights held flowing from this article. Right to free legal aid for poor or for indigent accused persons who are incapable of engaging lawyer. Detenu’s right to consult with legal advisor and to meet his family members and friends is held to be within his rights in Articles 14 and 21.

Right to speedy trial is held to flow from Article 21. The injured even if an accused has a right to be treated by the doctor immediately without waiting for police formalities and instant medical aid is held to be the right flowing again from article 21. Use of third degree method by police and any form of torture or cruel inhuman or degrading treatment of accused

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374 In Maneka Gandhi v. Union of India, AIR 1978 SC 579.
383 In Paramanda Katara v. Union of India, AIR 1989 SC 2039.
Police atrocities—illegal arrest and torture by police are held to be violative of Article 21. Supreme Court said in *Moti Ram v. State of M.P.* that the release on bail is crucial to the accused as the consequences of the pre-trial detention are grave. If release on bail is denied to the accused, it would mean that though he is presumed to be innocent till the guilt is proved beyond reasonable doubt he would be subjected to the psychological and physical deprivations of jail life. The jailed accused loses his job and is prevented from contributing effectively to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family. In *Hussainara Khatoon v. State of Bihar*, Supreme Court also said that it is the duty of the Magistrate to inform the accused that he has the right to be released on bail under the proviso to Section 167(2) of the Criminal Procedure Code. Thus, the laws for prevention of the activities of terrorists are different from the original law of the land.

Capital punishment or life imprisonment is also prescribed by terrorist activities prevention laws, thus not to release to the terrorists up to one hundred eighty days under the Unlawful Activities (Prevention) Amendment Act 2008 is contradiction of the Section 167 of Criminal Procedure Code 1973. In this reference, it is also relevant to quote here that murder and threat to State is a same category of offence, whether the offender commits it under the Indian Penal Code or Terrorists Prevention laws. Thus laws should not provide the different legal provisions for the bail. Hence different treatment of trial can be said legal discrimination; therefore it is violation of human rights jurisprudence.

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387  AIR 1978 SC 1594.
388  1979 Cr. LJ. 1052 (SC).
Second controversial aspect of the law in Unlawful Activities Prevention) Amendment Act 2008 is that according to Section 43D (4) of the said Act, bail provisions as prescribed under Section 438 of the Code shall not apply in the matters of terrorists activities and arrested person under the Unlawful Activities (Prevention) Act. Human rights protection law provides that “no one shall be subjected to arbitrary arrest, detention or exile.” Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a Court in order that Court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful, henceforth, only on the basis of apprehension of involvement in terrorist activities bail cannot be denied. Such provision can also be in violation of human rights of human being, because proviso of Section 43 D (5) of Unlawful Activities (Prevention) Amendment Act 2008 provides that accused who involves in terrorist activities and accusation against such person is prima facie true shall not be released on bail. The meaning of this provision clearly indicates that person against whom the prima-facie case is lodged, he cannot be released on bail.

In the same manner the bail shall not be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorizedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

4.4 SOME OTHER PROVISIONS FOR HUMAN RIGHTS OF ACCUSED

The above said rights are not the exhaustive rights of accused/arrested persons, other rules have also been made in the

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389 Article 9, Universal Declaration of Human Rights, and Article 9(1) to (5) of the International Covenant on Civil and Political Rights.
390 Ibid.
consideration of interest of them. Some of them have been created by the judiciary and later on incorporated in the concerned laws. The idea underlying is to protect the basic human rights of accused in all circumstances. Some of these are as following.

4.4.1 Rules for Bail

‘Bail not Jail’ is the celebrated dictum of Justice Krishna Iyer. The law of bails “has to dovetail two conflicting demands, namely, on one hand, the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence, viz., the presumption of innocence of an accused till he is found guilty. The quality of a nation’s civilisation can be largely measured by the methods it uses in the enforcement of criminal law.

The Apex Court recently in Dr. Subhash Kashinath Mahajan vs. The State of Maharashtra\textsuperscript{391} held that:

(i) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.

(ii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

(iii) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the
Atrocities Act and that the allegations are not frivolous or motivated.

(iv) Any violation of direction (ii) and (iii) will be actionable by way of disciplinary action as well as contempt.

Recently the Apex Court in *Rajesh Sharma and Others v. State of U.P. and Anr.*\(^{392}\) to protect the rights of accused, against whom offence u/s 498A of Indian Penal Code has been registered, issued the following guidelines:

(1)  
(a) In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.

(b) The Committees may be constituted out of para legal volunteers / social workers / retired persons / wives of working officers / others / other citizens who may be found suitable and willing.

(c) The Committee members will not be called as witnesses.

(d) Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee may have interaction with the parties personally or means of telephone or any other mode of communication including electronic communication.

(e) Report of such committee be given to the Authority by whom the complaint is referred to it latest within

\(^{392}\) AIR 2017 SC
one month from the date of receipt of complaint.

(f) The committee may give its brief report about the factual aspects and its opinion in the matter.

(g) Till report of the committee is received, no arrest should normally be effected.

(h) The report may be then considered by the Investigation Officer or the Magistrate on its own merit.

(i) Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.

(j) The Members of the committee may be given such honorarium as may be considered viable.

(k) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.

(ii) Complaints under Section 498A and other connected offences may be investigated only by a designated Investigating Officer of the area. Such designations may be made within one month from today. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from today;

(iii) In cases where a settlement is reached, it will be open to the District and Sessions judge or any other senior Judicial Officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily to matrimonial discord;

(iv) If a bail application is filed with at least one clear day's notice to the Public Prosecutor / complainant, the same
may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife/minor children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations, requirement of further arrest / custody and interest of justice must be carefully weighed;

(v) In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be routine;

(vi) It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the Court to whom all such cases are entrusted; and

(vii) Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trail.

(viii) These directions will not apply to the offences involving tangible physical injuries or death.*

In Hussain & Ans. v. Union of India and Ashu v. State of Rajasthan. Supreme Court directed courts to dispose of bail pleas within 1 week. It also issued directions to tackle pendency of criminal cases, reiterating that speedy trial is a part of reasonable, fair and just procedure as guaranteed by Article 21 of the

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* A larger bench has decided to re-consider these directions.

393 AIR SC 2017.
Constitution of India.

In *Rakesh Kumar Paul v. State of Assam*\(^{394}\) Settling the conflicting views of various High Courts, the Supreme Court in a 2:1 majority held that an accused is entitled to statutory bail (default bail) under Section 167(2)(a) (2) of Code of Criminal procedure if the police failed to file the charge-sheet within 60 days of his arrest for the offence punishable with 'imprisonment up to 10 years.'

In Re-inhuman conditions case\(^ {395}\) A two Judge Bench of the Supreme Court comprising Justices Madan Lokur and Dipak Gupta has issued a set of landmark direction on prison reforms.

The Court took into account the data on unnatural deaths in prisons available from the National Crime Records Bureau (NCRB) website and the data provided by National Human Rights Commission (NHRC) on suicide in prisons.

Highlighting several such facts and statistics available at hand, the Court highlighted the need for an overhaul, in order to ameliorate the conditions of prisoners across the country and thereby reduce the number of unnatural deaths.

"What is practiced in our prisons is the theory of retribution and deterrence and the ground situation emphasizes this, while our criminal justice system believes in reformation and rehabilitation and that is why handcuffing and solitary confinement are prohibited. It is this 'rejection' of the philosophy of our criminal justice system that leads to violence in prisons and eventually unnatural deaths,"

The Supreme Court in *Nandini Satpathy v. P.L. Dani*\(^ {396}\) quoting Lewis Mayers and stated:

To strike the balance between the needs of law enforcement

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on the one hand and the protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery on the other is a perennial problem of statecraft. The pendulum over the years has swung to the right. We have earlier spoken of the conflicting claims requiring reconciliation. Speaking pragmatically, there exists a rivalry between societal interest in effecting crime detection and constitutional rights which accused individuals possess. Emphasis may shift, depending on circumstances, in balancing these interests as has been happening in America. Since Miranda there has been retreat from stress on protection of the accused and gravitation towards society's interest in convicting law-breakers. Currently, the trend in the American jurisdiction according to legal journals, is that 'respect for (constitutional) principles is eroded when they leap their proper bounds to interfere with the legitimate interests of society in enforcement of its laws...'. (Couch v. United State). Our constitutional perspective has, therefore, to be relative and cannot afford to be absolutist, especially when torture technology, crime escalation and other social variables affect the application of principles in producing humane justice.

4.4.2 Maximum detention of undertrial person

In Hussainara Khatoon (II) v. Home Secretary\textsuperscript{397}, the Supreme Court came to know that there were many prisoners who were in jail and had spent more time than punishment would entail to them. On this our legislature took a serious view and added Section 436-A in the Criminal Procedure Code by 2005 Amendment Act.

In case titled Common Cause v. Union of India & others\textsuperscript{398} decided on 01-05-1996, it was held as under:

(a) Where the offences under IPC or any other law for the time being

\textsuperscript{397} AIR 1997 SC 1369.
\textsuperscript{398} AIR 1996 SC 1619.
in force for which the accused are charged before any criminal Court are punishable with imprisonment not exceeding three years with or without fine and if trials for such offences are pending for one year or more and the concerned accused have not been released on bail but are in jail for a period of six months or more, the concerned criminal Court shall release the accused on bail or on personal bond to be executed by the accused and subject to such condition if any, as may be found necessary, in the light of Section 437 of the Criminal Procedure Code.

(b) Where the offences under Indian Penal Code or any other law for the time being in force for which the accused are charged before any Criminal Court are punishable with seven years or less, with or without fine, and if the trials for such offences are pending for two years or more and the concerned accused have not been released on bail but are in jail for a period of six months or more, the concerned Criminal Court shall release the accused on bail or on personal bond to be executed by the accused and subject to the imposing of suitable conditions, if any, in the light of Section 437 Criminal Procedure Code.

(c) Where the cases pending in Criminal Courts under Indian Code or any other law for the time being in force pertain to offences which are non cognizable and bailable and if such pendency is for more than two years and if in such cases trials have still not commenced, the Criminal court shall discharge or acquit the accused, as the case may be, and close such cases.

(d) Where the cases pending in Criminal Courts under Indian Penal Code or any other law for the time being in force are pending in connection with offences which are punishable with fine only and are not of recurring nature, and if such cases trial have still not commenced, the Criminal court shall discharge or acquit the accused, as the case may be and close such cases.
(e) Where the cases pending in Criminal Courts under Indian Penal Code or any other law for the time being in force are punishable with imprisonment up to one year with or without fine, and if such pendency is for more than one year and if in such cases trials have still not commenced, the Criminal court shall discharge or acquit the accused, as the case may be and close such cases.

(f) Where the cases pending in Criminal Courts under Indian Penal Code or any other law for the time being in force are punishable with imprisonment up to three years with or without fine, and if such pendency is for more than two years and if in such cases trials have still not commenced, the Criminal court shall discharge or acquit the accused, as the case may be and close such cases.

(g) The aforesaid judgment was clarified by the Hon’ble Supreme Court in the subsequent case, also titled Common Cause v. Union of India399, decided on 28-11-1996) wherein it was held as under:

(h) The time limit mentioned regarding the pendency of criminal cases in paragraphs from 2(a) to 2(f) of our judgment shall not apply to cases wherein such pendency of the criminal proceedings is wholly or partly attributable to the dilatory tactics adopted by the concerned accused or on account of any other action of the accused which results in prolonging the trial. In other words, it should be shown that the criminal proceedings have remained pending for the requisite period mentioned in the aforesaid clauses of paragraph 2 despite full cooperation by the concerned accused to get these proceedings disposed off and the delay in the disposal of these cases is not at all attributable to the concerned accused, nor such delay is caused on account of such

399 AIR 1997 SC 1539.
accused getting stay of criminal proceedings from higher Courts. Accused concerned are not entitled to earn any discharge or acquittal as per paragraphs 2(a) to 2(f) of our judgment if it is demonstrated that the accused concerned seek to take advantage to their own wrong or any other action of their own resulting in protraction of trials against them.

(i) The phrase ‘pendency of trials’ as employed in paragraphs from 1(a) to 1(c) and the phrase ‘non-commencement of trial’ as employed in paragraphs from 2(b) to (f) shall be constructed as under:

(a) In case of trials before Sessions Court, the trials shall be treated to have commenced when charges are framed under Section 228 of the Code of Criminal Procedure, 1973 in the concerned cases.

(b) In cases of trials of warrant cases by Magistrates if the cases are instituted upon police report, the trials shall be treated to have commenced when charges are framed under section 240 of the Code of Criminal Procedure, 1973 while in trials of warrant cases by Magistrates when cases are instituted otherwise than on police report such trials shall be treated to have commenced when charges are framed against the concerned accused under section 246 of the Code of Criminal Procedure, 1973.

(e) In cases of trials of summons cases by magistrates, the trials would be considered to have commenced when the accused who appear or are brought before the Magistrate are asked under section 251 whether they plead guilty or have any defence to make.

It is further directed that in criminal cases pertaining to offences mentioned under the above additional categories (n) to (r) wherein accused are already discharged or acquitted pursuant
to our judgement dated 1st May, 1996 and they are liable to be proceeded against for such offences pursuant to the present order and are not entitled to be discharged or acquitted as aforesaid, the concerned Criminal Court shall suo moto or on application by the concerned aggrieved parties issue within three months of the receipt of this clarificatory order at their end, summons or warrants, as the case may be, to such discharged or acquitted accused and shall restore the criminal cases against them for being proceeded further in accordance with law. It is however made clear that in trials regarding other offences which are covered by the time limit specified in our earlier order dated 1st May 1996 wherein the concerned accused are already acquitted or discharged pursuant to the said order, such acquitted or discharged accused shall not be liable to be recalled for facing such trials pursuant to the present clarificatory order which qua such offences will be treated to be purely prospective and no such cases which are already closed shall be reopened pursuant to the present order.

Subsequent thereto, in the case titled Raj Deo Sharma v. The State of Bihar\(^{400}\) the Apex Court issued the following supplementary directions:

(i) In cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail, or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not, within the said period and the court can proceed to the next step provided by law for the trial of the case.

\(^{400}\) 1999 (4) RCR (Crl.) 600.
(ii) In such cases as mentioned above, if the accused has been in jail for a period of not less than one half of the maximum period of punishment prescribed for the offence, the trial court shall release the accused on bail forthwith on such conditions as it deems fit.

(iii) If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next step provided bylaw for the trial of the case, unless for very exceptional reasons to be recorded and in the interest of justice the court considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time limit.

(iv) But if the inability for completing the prosecution evidence within the aforesaid period is attributable to the conduct of the accused in prolonging the trial, no court is obliged to close the prosecution evidence within the aforesaid period in any of the cases covered by clauses (1) to (3).

In the case titled *Dharam Pal v. State of Haryana*\(^{401}\) reported in decided on 08-09-1999, it has been held by a Division Bench of our own Hon’ble Punjab and Haryana High Court that the under mentioned category of convicts who apply for bail during the pendency of the hearing of their appeals against convictions ordered by the trial courts are entitled to be released on bail.

\(^{(i)}\) *Life convicts who have undergone five years of*
imprisonment, of which three years should after conviction, should be released on bail pending hearing of their appeals.

(ii) Same principles ought to apply to those convicted by court martial.

(iii) Period of five years should be reduced to four years for females and minors, with at least two years imprisonment after conviction. It was however held in the aforesaid judgement that the above referred directions will not apply in cases where grant of bails is forbidden by law and nor to those who are convicted of heinous offences such as dacoity with murder, rape with murder or murder of a child below 14 years of age.

The Court rightly emphasized that right to bail is not to be denied merely because of the sentiments of the community against the accused. This admonition was necessary because of the media frenzy surrounding hearing of bail applications of corporate honcho and which reflected the public misconception that when bail is granted, the accused is acquitted and is set free. The reason for granting bail is that there is no justification for depriving an accused of his fundamental right to personal liberty guaranteed under Article 21 of the Constitution unless the prosecution by cogent evidence establishes that the accused when temporarily set free by grant of bail will thwart the criminal trial.

4.4.3 Right Against Solitary Confinement

Although, one of the mode of punishment is solitary confinement, but certain restrictions have imposed on the type of punishment to protect the right of convict to mingle with other convicts. In Sunil Batra (1) v. Delhi Administratio\textsuperscript{402}, it was held 'if by imposing solitary confinement there is total deprivation of

\textsuperscript{402} AIR 1978 SC 1575
camaraderie (friendship) among co prisoners commingling and talking and being talked to, it would offend Article 21 of the Constitution. The liberty to move, mix mingle, talk, share company with co-prisoners if substantially curtailed would be violative of Article 21 unless curtailment has the backing the law. The Court held that continuously keeping a prisoner in fetters day and night reduces the prisoners from a human being to an animal and that this treatment was cruel and unusual that the use of bar fetters was against the spirit of the Constitution.

4.4.4 Right Against Inhuman Treatment

The accused and convict in criminal system of the country have the rights to live with dignity. Therefore, they should not be subjected to the inhuman treatment. In *Kishore Singh v. State of Rajasthan* the Supreme Court held that the use of third degree method by police is violative of Article 21 and directed the Government to take necessary steps to educate the police so as to inculcate a respect for the human person. The Court also held that punishment of solitary confinement for a long period from 8 to 11 months and putting bar fetters on the prisoners in jail for several days on flimsy ground like loitering in the prison, behaving insolently and in an uncivilized manner, tearing of his history ticket must be regarded as barbarous and against human dignity and hence violative of Article 21, 19 and 14 of the Constitution Krishna Iyer, J. declared, "Human dignity is a clear value of our Constitution not to be bartered away for mere apprehension entertained by jail officials.

Similarly, torture and ill treatment of women suspects in police lockups has been held to be violative of Article 21 of the Constitution. The Court gave detailed instructions to concern authorities for providing security and safety in police lockup and

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403 AIR 1981 SC 625
particularly to women suspects. The female suspects should be kept in separate police lockups and not in the same in which male accused are detained and should be guarded by female constables. The Court directed the I.G. prisons and State Board of Legal Aid Advice committee to provide legal assistance to the poor and indigent accused male and female whether they are under trials or convicted prisoners404.

4.4.5 Fair Trial

The fair trial is the foremost requirement of criminal proceedings and it is utmost right of an accused. In the recent case titled as Dr. Rajesh Talwar and another v. C.B.I. and another405 the Supreme Court observed that Article 12 of the universal declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of Criminal jurisprudence and, in a way, an important facet of democratic polity and is governed by rule of law. Denial of fair trial is crucifixion of human rights.

Fair Trial is the main object of criminal procedure and such fairness should not be hampered and threatened in any manner. Fair Trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general. In all circumstances, the Courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the majesty of the law and the Court can not turn a blind eye to

405 2013 (4) R.C.R.(Criminal) 687.
vexations or oppressive conduct that occurs in relation to criminal proceedings.

Denial of fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a fair trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seen to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of Constitution. In so many judgment the Supreme Court has expressed the importance of fair trial to accused.

4.4.6 Curative Petitions

The Supreme Court has ruled in *Rupa Ashok Hurra v. Ashok Hurra*408 that while certainly of law is important in India, it cannot be at the cost of justice. The court has observed in this connection that in the area of personal liberty for sometime now, this is the manifestation of the “dynamic constitutional jurisprudence” which the Supreme Court is evolving in this area. A curative petition can be filed by accused himself or on his behalf by any other person in the Supreme Court to review the earlier order of the Supreme Court itself.

4.4.7 Right to Information under Right to Information Act, 2005

Even when a person is convicted and deprived of his liberty

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406 Ibid
407 State (Govt. of N.C.T. Delhi) AIR 2012 SC 750
in accordance with the procedure established by law, a prisoner still retains the residue of constitutional rights. Article 14, 19 and 21 “are available to prisoners as well as freemen. Prison walls do not keep out Fundamental Rights.” The arrestee has a right to submit an application through Superintendent Jail for receipt of documents/information as permissible under the Right to Information Act, 2005.

Supreme Court in *Maneka Gandhi v. Union of India*,409 interpreted the right to life and to widen its scope and deduced un-enumerated right such as “right to live with human dignity”. Supreme Court propounded the theory of “emanation” to make the existence of the fundamental right meaningful and active. Thereafter, in many cases court such as *People's Union for Civil Liberties and another v. State of Maharashtra and others*,410 *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*411 held that right to life includes right to live with human dignity. Therefore, through the judicial interpretations various rights have been recognized though they are not specifically provided in Part III of the Constitution.

The rule of locus standi, i.e. right to move to the court, whereby only aggrieved person can approach the court for redress of his grievances has been relaxed by the judiciary. Now court through public interest litigation permits public spirited persons to file a writ petition for the enforcement of rights of any other person or a class, if they are unable to invoke the jurisdiction of the Court due to poverty or any social and economic disability. In *S.P. Gupta v. Union of India and others*,412 Supreme Court held that any member of the public can approach the court for enforcing the Constitutional or legal rights of those, who cannot go to the court because of poverty

409 AIR 1978 SC 597.
410 2014 (10) SCC 635.
412 AIR 1982 SC 149
or any other disabilities. Person can even write letter to the court for making complaints of violation of rights. Public interest litigation is an opportunity to make basic human rights meaningful to the deprived and vulnerable sections of the community. To assure vulnerable section social, economic and political justice, any public spirited person through public interest litigation can approach the court to protect their rights on behalf of aggrieved persons who cannot approach the court themselves due to their vulnerable conditions. Similar observations have been made by Supreme Court in various judgments such as in *Bandhua Mukti Morcha v. Union of India*, Ramsharan Autyanuprasi and another v. Union of India and Others, Narmada Bachao Andolan v. Union of India. Therefore, public interest litigation has become the tool for the protection of human rights of the people in India.

The oppressed sections of the society are more prone to the violation of human rights. Most vulnerable sections of society are children, women and socially and educationally weaker sections of society. Judiciary has taken many steps to ensure protection of human rights of these sections. Children are more prone to exploitation and abuse. The rights of the children are needed to be specially protected because of their vulnerability. For this reason United Nations Convention on the Rights of the Child was adopted in 1989. This convention brings together children’s human rights, as children require safety and protection for their development. Judiciary is playing a commendable role in protecting the rights of children from time and again.

There are various instances where judiciary intervened and the rights of children. In the case of *Labourers working on Salal project*

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414 AIR 1989 SC 549.
v. *State of Jammu and Kashmir*\(^{417}\), Supreme Court held that child below the age of 14 years cannot be employed and allowed to work in construction process. Court has issued various directions related to child labour. Supreme Court in *Vishal Jeet v. Union of India*\(^{418}\) asked governments to setup advisory committee to make suggestions for eradication of child prostitution and to evolve schemes to ensure proper care and protection to the victim girls and children. The Supreme Court further in *Gaurav Jain v. Union of India*\(^{419}\) showed its concern about rehabilitation of minors involved in prostitution and held that juvenile homes should be used for rehabilitation of them and other neglected children.

Mumbai High Court in *Public at large v. State of Maharashtra*\(^{420}\) rescued children from flesh trade and passed order for checking sexual slavery of children and for their rehabilitation. Children are not only prone to sexual abuse but they are also sometimes kept as bonded labourers as was in the case of *People's Union for Civil Liberties (PUCL) v. Union of India*\(^{421}\) where the Supreme Court released child labourers and also ordered for grant of compensation to them. Concern of the Supreme Court about the protection of rights of children does not ended here it reiterated the importance of compulsory primary education vis-a-vis eradication of child labour in the case of *Bandhua Mukti Morcha v. Union of India*\(^{422}\).

Supreme Court in *Sakshi v. Union of India*\(^{423}\) highlighted the need to establish procedure that would help the child victim to testify at ease in the court and held that proceedings should be held in cameras. Delhi High Court in *Sheba Abidi v. State of*
Delhi observed that child victims are entitled to get support person during trial and also established that child victims can testify outside the court environment.

Women are considered weak in our society which has resulted in the backwardness of women in every sphere. Women remains oppressed ones and are often denied basic human rights. They are subjected to violence in society whether it is within four walls of the house or at workplace. Despite the provision of right to equality enshrined under Article 14 of the Constitution, they are subjected to discrimination. Gender is considered to be the most important factor as for as Indian labour market is concerned. Discrimination against women laborer in terms of wage payments is a very common phenomenon in India. Wages earned by women are generally lesser than their male counterparts. However, Article 39 of the Constitution guarantees the principle of equal pay for equal work for both men and women. Despite the guarantees of equal rights to women still they are not equally treated with men. Supreme Court has played remarkable role in protection of their rights such as in case of Associate Banks officers Association v. State Bank of India, Supreme Court protected the rights of women workers and held that women workers are in no way inferior to their male counterparts and hence there should be no discrimination on the ground of sex against women. In State of Madhya Pradesh v. Pramod Bhartiya Supreme Court held that under Article 39 the State shall direct its policy towards securing equal pay for equal work for both men and women.

Article 21 i.e. protection of life and personal liberty was invoked for the dignified life for the prostitutes by Supreme Court in

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426 AIR 1998 SC 32.
427 AIR 1993 SC 286.
case of State of Maharashtra v. Madhukar Narayan Mandalikar\textsuperscript{428} held that even a woman of easy virtue is entitled to privacy and no one can evade her privacy. In Bodhi Satwa Gautam v. Subra Chakarborty\textsuperscript{429} Supreme Court has held that rape is a crime against basic human rights. Supreme Court laid down guidelines for protection of women against sexual harassment at work place in case of Vishaka v. State of Rajasthan\textsuperscript{430} and reiterated the same in Medha Kotwal Lele v. Union of India.\textsuperscript{431} Guidelines for ensuring the safe work environment for women were given and made it mandatory for employer to take responsibility in cases of sexual harassment at work.

Supreme Court also protected the rights of workman in BALCO Employees Union (Regd.) v. Union of India,\textsuperscript{432} Consumer Edu. & Research Centre v. Union of India.\textsuperscript{433} In People's Union for Democratic Rights v. Union of India\textsuperscript{434} the Supreme Court stated that releasing persons from bonded labour was connected to rehabilitation process in order to give full remedy. In Workmen v. Rohtas Industries\textsuperscript{435} the Supreme Court observed that the right to equality became instrumental in protecting right of workers against unreasonable closures and discriminations in payment of pensions.

Judicial system protects the rights of its citizens including prisoners. The Supreme Court by interpreting Article 21 of the Constitution protected and preserved the rights of the prisoners. In case Prem Shankar v. Delhi Administration\textsuperscript{436} Supreme Court held that practice of using handcuff and fetters on prisoners violates the guarantee of human dignity. A landmark judgment in D.K. Basu v.

\begin{itemize}
\item \textsuperscript{428} AIR 1991 SC 207.
\item \textsuperscript{429} AIR 1996 SC 922.
\item \textsuperscript{430} 1997(6) SCC 241.
\item \textsuperscript{431} 2013(1) SCC 297.
\item \textsuperscript{432} 2002(2) SCC 333.
\item \textsuperscript{433} 1995(3) SCC 42.
\item \textsuperscript{434} 1982(3) SCC 235.
\item \textsuperscript{435} AIR 1996 SC 467.
\item \textsuperscript{436} (1980) 3 SCC 538.
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State of West Bengal,\textsuperscript{437} protected the rights of the prisoners and laid down various guidelines for arrest and detention to prevent the custodial violence and observed that right to life include right to live with human dignity. Similarly Court in Sheela Barse v. State of Maharashtra\textsuperscript{438} dealt with an issue of mistreatment of women in police station and court laid down various guidelines for the protection of rights of women in custodial/correctional institutions. Further in Citizens for Democracy v. State of Assam and others,\textsuperscript{439} Supreme Court held that handcuffing and tying with ropes is inhuman and in utter violation of human rights guaranteed under the international laws and the laws of the land. Court directed that handcuffs or other fetters shall not be forced on prisoners- convicted or under trial while lodged in jail or even while transporting, police and jail authorities shall have no authority to direct handcuffing of any inmate of jail or during transportation without permission from the magistrate. While executing of arrest warrant person arrested cannot be handcuffed without obtaining orders from magistrate.

Therefore, Judiciary is playing a crucial role in the protection of the human rights of the people from time and again by expanding the scope of the rights and recognizing new rights with the need of time. Judiciary has expanded the scope of right to life to include entitlements which are vital for the enjoyment of right to life with dignity. Courts have protected right of the people in numerous cases whether it is a right against violence in custody, to live in a pollution free environment, right to health, right to adequate wages of the workers, safety of the women at workplace, compensation to rape victim and rights of the child labourers and so on.

\begin{footnotesize}
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\item \textsuperscript{437} (1997) 1 SCC 416.
\item \textsuperscript{438} AIR 1983 SC 378.
\item \textsuperscript{439} (1995) 3 SCC 743.
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