In India, the administration of Criminal Justice System follows the Anglo-Saxon-adversarial pattern. It has four vital units, namely, the Police, Prosecution, Judiciary and the correctional institutions. These components are supposed to work in a harmonious and cohesive manner with close co-ordination and cooperation in order to produce the desired results more effectively, fairly and quickly. Moreover, the success or failure of the administration of criminal justice depends upon the efficacy of these allied units.

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

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

The word ‘accused’ has not been defined either in the Code of criminal Procedure or in the International Covenants on Civil and Political Rights. The terms ‘arrestee’, ‘prisoners awaiting for trial’, ‘undertrial prisoners’ and also
‘untried prisoners’ have been used so far. According to Law Lexicon, ‘Accused’ means “A person against whom an allegation has been made that he has committed an offence, or who is charged with an offence”. Whereas “Accused of an offence” means where evidence whether oral or circumstantial points to the guilt of a person and he is taken in the custody and interrogated on that basis, he becomes a person accused of an offence at the same moment and he continues to be accused till he is convicted or acquitted by the court. It is immaterial whether such person has been arrested or after arrest has been kept either in police custody or judicial custody, or has been released on bail. So long as the trial continues and a judgment is not pronounced, he continues to be an accused.

It is to be borne in mind that by virtue of being suspects, accused or undertrial prisoners, they do not cease to be human beings. Rights of the Accused, suspects and undertrial prisoners, whether they are in police custody or prison are so fundamental that no one can violate them. The must be respected and protected by all means.

The word ‘torture’ usually denotes intense suffering, physical, mental and psychological, aimed at forcing someone to do or say something against his or her will. Physical torture in varied forms is inflicted on the arrestees to extract confession, extort money, settle scores and to teach a lesson. This includes abusive language accompanied by the threat of use of force intended to cause bodily harm, loss of faculty, disfiguration of face, fracture of dislocation of any bone, tattooing ignominious word on the forehead, emasculation, handcuffing, stripping and parading in public places.

Though Articles 20, 21 and 22 provide the provisions pertaining to the basic human rights, the Indian Constitution has not provided a specific right against torture. Hence, the burden has fallen upon the Indian Judiciary to design a right against torture through a process of interpretation. In Nandini Satpathy v. P. L. Dani, the Hon’ble Supreme Court held that not merely physical threats or violence but psychic torture, atmospheric pressure, environmental coercion, firing interrogatives, proximity, overbearing and intimidatory methods done in the course
of interrogation by the police are violative of the right against self-incrimination guaranteed under Article 20(3) of the Constitution and further upheld the right of an accused to secure the services of a lawyer of his choice at the time of police interrogation. In *Gauri Shankar Sharma v. State of U.P.*, The Apex Court has further observed:

“Brutal assaults by a person who is supposed to protect the citizens must be seriously viewed; otherwise we will help to take a stride in the direction of police raj. The punishment should be such as would deter others from indulging in such behaviour. There can be no room for leniency.”

The turning point came in 1978 in *Maneka Gandhi’s* case where the Supreme Court has held that any State action affecting the life and liberty of the people assured under Article 21 of the Constitution has to be “right, just and fair and not arbitrary, fanciful and oppressive”. Thereafter, there was progressive judicial activism for the protection of human rights of the accused person.

The most significant legislative recognition to human rights philosophy came about in the form of the enactment of a comprehensive Protection of Human Rights Act, 1993 by Parliament. It also provides an elaborate procedure for reporting of human rights violations, their investigations, enquiry and action in respect of such rights violations.

The judiciary in India had adopted a status quo jurisprudence and had shown lack of appreciation and concern by its ‘hand-off’ approach to the operations of prisons until 1970. A major breakthrough in prison rights jurisprudence came in 1974 in *D. Bhuvan Mohan Patnaik v. State of Andhra Pradesh* where the Court asserted that the mere detention does not deprive the convicts of all the fundamental rights they otherwise possess. The Supreme Court in *M.H. Hoskot, Moti Ram and others, Hussainara Khatoon, Sheela Barse, Arvinder Singh Bagga, Kishore Singh* and many more other cases not only articulated new rights, but also developed new techniques for dealing with the complaints of prisoners and their demands for human treatment, legal assistance
and justice. The attitudinal change of judiciary in recent times is in consonance with the changing premises behind imprisonment emphasising on the rehabilitative aspects and treating prisons as correctional institutions.

The chief object of awarding compensation by the Supreme Court of India was rehabilitating the victims or their dependents. Sometimes due to the police atrocities, the victim might not die but might lose his limb or eyes or the incident might make him unable to find his bread. In such cases, the amount suggested by the Court would not be sufficient to rehabilitate the victims. Thus the latest judicial trend is in consonance with Article 9(5) of the International Covenant on Civil and Political Rights. It is submitted that whenever any police official acts contrary to the clear directions laid down by the Supreme Court and various High Courts or when he is stepping out the legal boundaries thereby violating the basic right to human dignity of the citizens, he should be made personally liable to pay compensation in addition to the financial liability imposed upon the government.

In India, the system of trial as envisaged in the Code of Criminal Procedure 1973, (Cr.P.C.) is the adversarial or accusatorial model of criminal justice. In Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. An accused is presumed to be innocent till he is proved guilty. The alleged accused is entitled to full fairness and true investigation and fair trial and the prosecution is expected to play a balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the basic fundamental cannons of our criminal jurisprudence and they are quite in conformity with the Constitutional mandate contained in Articles 20 and 21 of the Indian Constitution.

In Smt. Selvi & Ors. v. State of Karnataka, the Supreme Court has held that nobody can be compelled to undergo narco analysis, brain mapping,
or lie detector tests and that any statements made during these procedures are not admissible as evidence and made it clear that forcible use of these tests is unconstitutional. The compulsory administration of the impugned techniques violates the ‘right against self-incrimination’. It may be submitted that the criminal justice system is founded on such jurisprudential principles that protect the rights of suspects and accused. These include the right against self-incrimination, the right to remain silent, and the right against providing information under physical or mental pressure. Despite this, invasive procedures such as Narco analysis, brain-mapping, and polygraph tests have been routinely used by the police and shockingly, with the approval of the courts. In holding that the forcible use of these tests is unconstitutional, the Supreme Court of India has drawn attention to the inherent violence in such investigative procedures, which constitute a gross abuse of human rights. This landmark judgment is arrived at two broad legal conclusions. First, such coercive testing violates Article 20(3) of the Constitution, which stipulates “no person accused of an offence shall stand witness against himself.” Secondly, it is an infringement of the right to personal liberty as understood in the context of Article 21, in particular the right to privacy, the right to a free trial and the right against cruel, inhuman or degrading treatment.

Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution. It is essential for the maintenance of dignity of the courts and is one of the cardinal principles of the rule of law in a free democratic country, that the criticism or even the reporting, particularly, in sub judice matters must be subjected to checks and balances so as not to interfere with the administration of justice.

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

The Indian Constitution guarantees justice to all. It includes the guarantee of equal rights of life and personal liberty. Rule of Law envisages that all men are equal and have equal rights before the law. These rights are of no avail if an individual has no means to get them enforced. The enforcement of the rights has to be through the courts, but judicial process is very complex, costly and dilatory putting the poor persons at a distance. The Constitutional promise of securing justice-social, economic and political as promised by the Preamble of the Constitution cannot be achieved unless all the three organs of the State i.e. Legislature, Executive and Judiciary join together to find ways and means for providing to the indigent person equal access to its justice system. However, the Indian judiciary has played a majestic role and tried to do this through Public Interest Litigation Movement. The increase in Lok Adalats, Nyaya Panchayats, and Alternative Dispute Resolution Mechanisms will help access to justice.

By giving a liberal and comprehensive meaning to life and personal liberty, the Courts have formulated and established a plethora of rights, such as, right to privacy, right to travel, right to livelihood, right to medical care, right to live with human dignity, right to speedy trial, right to free legal aid, right against inhuman, cruel and degrading treatment, right against solitary confinement, right against handcuffing, bar-fetters, right to live in unpolluted environment etc., the
latest judicial trend reveals that Indian Courts are quite enthusiastic in using the laws as tool of social revolution. Thus the task of a judge in human rights area is acute rather than deferential; creative rather than mechanical; evolutionary rather than status-quoits; humanist rather than formalist.

The Police in a democratic society is the instrument for enforcing the rule of law. The power given to them is not an end in itself, but a means for creating a higher, peaceful and prosperous social order. But the police carries the image of terror and torture, and violence appears to be institutionalized in its functional methodology. “Policing the police” is new buzzword in all discourse on human rights violations these days. Lots of ideas have been thrown in already, but the question- who will do the policing and how?-still remains unsatisfactorily answered. In spite of Constitutional and legal safeguards, established procedural law, judicial verdicts, International Covenants and treaties against the tortures and deaths in police lock-up, the menace is on the increase and nothing seems to have substantially changed on the ground level. The torture leading to lock-up deaths is a fundamental violation of human rights and extreme misuse of power by the State law enforcing agency. Therefore, immediate steps are required to eradicate this growing menace. Otherwise the Constitutional provisions assuring justice, liberty and dignity of the individual will remain only on paper. Thus, it becomes quite essential to enact specific law against torture and to further strengthen the existing provisions in various laws like Criminal Procedure Code, Indian Penal Code, and Evidence Act etc., to make the right against torture a more effective right with effective remedies. Personal accountability of policemen and strict action for any misuse of power will ensure respect for human rights in policing. It should also be ingrained in the minds of policemen during training and through proper education that no exceptional circumstances whatsoever can be invoked as a justification for torture or for misuse of their powers.
The present system of administration of justice is very complicated and it has become very difficult for a common man to reap out of it. In Indian perspective, Non-Governmental Organizations (NGOs) are playing commendable roles in responding to the mass voices of weak, meek, poor, suppressed, downtrodden and exploited people and has emerged as a powerful protective shield of assistance in the field of legal battle to the needy persons. It is remarkable to note that the positive role which the Non-governmental organization (NGOs) in India can play in furthering the cause of human rights has been duly recognised both by the protection of Human Rights Act, 1993 and the National Human Rights Commission (NHRC). The Commission also encourages and utilizes the NGOs for organizing Seminars, training programmes and in spreading human rights awareness. To coordinate and canalize the efforts of NGOs working in the field of human rights and to make known their contribution to the outside world, NHRC has compiled a National Register of NGOs working in Human Rights area Human rights violations by the State and its organs have been articulated by a specialist group of NGOs known as Civil Liberties and Democratic Rights Groups.

**Suggestions**

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

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

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

3. Normally police do not make entry in the General Diary or G.D. regarding
any arrest. They make entry on the G.D. only when they think of to
produce the person arrested before the Magistrate, which comes within the
provision of law. Therefore, it is further suggested that the signature of
two public witnesses must be taken in the G.D. in relation to the entry of
date and time of the arrest.

4. When the proceedings of a Session Trial case starts, the accused is first
called by the lower court to appear before it and afterwards the lower court
commits the case to the Sessions Court and the trial starts. It will be more
appropriate and would definitely provide a speedy trial to an accused if he
is produced directly in a Sessions Court in every Session trial.

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

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

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

8. For human rights to become a part of civil culture in India, mass awareness needs to be inculcated within the social and political psyche of the people. Existing institutions, in particular the judiciary and the human rights Commissions, can play a vital role in developing such a culture in India.

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

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

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

12. The police should recognize and respect the limitations of their powers and functions. They should not usurp or even seem to usurp the functions of the judiciary and sit in judgments on cases to avenge individuals and punish the guilty. Therefore, police training should be thoroughly re-oriented so as generate the value of ethics and morality.

13. In securing the observance of law or in maintaining order, the police should as far as practicable, use the methods of persuasion, advice and warning. When the application of force becomes inevitable, only the irreducible minimum of force required in the circumstances should be used.

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

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

16. The police Act, 1861 should be amended, as recommended by the National Police Commission suitably and the duties of the police in respect of the human rights should be redefined and incorporated in the Act.
17. High powered vigilance squads comprising of judges, lawyers, journalists, medicos and representatives of the human rights observants should be constituted at the District and State levels to conduct surprise visits to the police stations so that early detection of unauthorized detentions and custodial tortures becomes possible. Arrest on the grounds of suspicion should be banned.

18. Human Rights Watch groups have played laudable role in monitoring the human rights violations attracting the public attention. These watch groups should be encouraged to organize their operations down to the district and taluka levels in protecting the basic rights and liberties of the people.

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

20. Legal requirement of the production of arrested person before the nearest Magistrate within 24 hours is generally not observed in cases of custodial crimes. Victims of such crimes are not shown to have been arrested. This arbitrary and unjust exercise of police powers needs to be bridled effectively.

21. To spread the general awareness amongst the masses of the country against human rights violations, the National Human Rights Commission should publish ‘Human Rights Newsletter’ in all regional languages.

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

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

24. To ensure transparency in the smooth functioning of the police force, there shall be effective display of their working procedure at the concerned police station.

25. Fundamental Rights to life and personal liberty under Article 21 of the Constitution of India which also contains the inherent rights of speedy and fair investigation and trial shall be strictly complied with.

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

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