CHAPTER VIII

CONCLUSION AND SUGGESTIONS

Man is a social animal. In order to keep the societal order the state imposes certain limitations on the free will of each individual. The state’s protective functions consists in upholding the rule of law norms in providing a dependable legal procedure for determination of rights and obligation and in extending effective remedies for the enforcement of human rights. However, in doing so the state does not have a totalitarian regime even within the four walls of prison. The purpose of modern state is to enable men to enforce their basic human rights and which do not end at the prison gate. A prisoner is as such entitled to a dignified life as any other person, only certain limitations are to be put which are necessary for the very fact that the person is accused of an offence and is being dealt for the same.

The criminal jurisprudence of ancient India, which was essentially Hindu-ruled, was shaped by the concept of ‘Dharma’ or rules of right conduct as envisaged in Vedic scriptures such as ‘Puranas’ and ‘Smritis’.

The king had no independent authority but derived his powers from ‘Dharma’ which he was expected to uphold. The distinction between a civil wrong and a criminal offence was clear. While civil wrongs related mainly to disputes arising over wealth, the concept of Pataka or sin was the standard against which crime was to be defined.¹

The legal system was founded on Divine Revelations. The kings derived law from Manusmriti and Yagnavalkya, Narada, Brihaspati etc. The present rule of presumption of the innocence of the accused person was a fundamental canon of Hindu criminal jurisprudence. The system of appeal also found favour with the ancient kings. The

¹ See A.L. Basham, The Wonder that was India (1967).
criminal appeals finally culminating in King’s court or in his absence in Pradvivaka’s court. The king was the fountainhead of justice but he alone never administered justice. The kings and Pradvivaks sat in the assembly surrounded by ministers and hence a sort of jury trial was resorted to. The right of accused to public trial as well as accused’s right to counsel was also recognized.

Just like the Hindu legal system was based on Vedas the Muslim legal system also derived its source from the tenets and injunctions of the Holy Quran. The Muslim system was akin to the Hindu System as far as the rights of an individual accused were concerned. However, the examination of some of the cases which were adjudicated during this period stand testimony to the fact that there was a manifest improvement in the system in contrast to the earlier one though the punishments were severe.

Finally the Britishers arrived on the scene. Slowly and steadily the Common Law Principles concerning the administration of criminal justice vis-a-vis the Common Law procedural safeguards of an individual accused of a crime were codified, enacted and enforced. And were finally streamlined by the Criminal Procedure Code of 1898 and the Indian Evidence Act, of 1872.

“Liberty means freedom of every law abiding citizen to think, what he will, to say what he will and to go where he will on his lawful occasions without let or hindrance from any other person. It must be matched, of course, with social security by which is meant the peace and good order of the community in which he lives.” With hope of freedom the Constitution of India was enacted. The founding fathers of the Indian Constitution realizing the importance of these safeguards for a person accused of an offence enshrined them in the Constitution so that they become inviolable. Moreover, the Indian Constitution bears the impact of the Universal Declaration of Human Rights and this has been recognized by the Supreme Court of India. The framers of the Indian Constitution

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2 See, P.V. Kane, History of Dharmastra 270-71 (1946).
3 Sir Alfred Denning, Freedom under the Law (1949).
were influenced by the concept of human rights and guaranteed most of human rights contained in the Universal Declaration. The Universal Declaration of Human Rights contained civil and political as well as economic, social and cultural rights. While civil and political rights have been incorporated in part III of Indian Constitution, economic, social and cultural rights have been incorporated in part IV of the Indian Constitution.

The theory of emanation took roots in America. Taking cue from these judgments of American Supreme Court Krishna Iyer, J., observed:

To sum, personal liberty makes for worth of human person. Travel makes liberty worthwhile. Life is a terrestrial opportunity for unfolding personality, rising to higher states, moving to fresh woods and reaching out reality which makes our earthly journey a true fulfillment not a tale told by an idiot to full of sound and fury signifying nothing, but a fine frenzy rolling between heaven and earth. The spirit of man is at the root of Article 21. Absent liberty other freedoms are frozen.

Thus being influenced by the Ninth Amendment of the American Constitution, the Supreme Court of India has also applied the theory of emanation and has availed distinct and independent rights out of the existing fundamental rights.

The founders of the Constitution have incorporated certain rights of the individual which are so very essential to provide certain safeguards to an accused person so that injustice is not done – Reign terror is not unleashed. The rights are stated in clear terms but it is up to the courts and the police force responsible for maintaining peace and security to interpret these rights and put them into practice.

The framers of the Constitution made judiciary the guardian of individual liberty and the present study reveals that the enforcement agencies have not lived up to the expectations.

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The empirical survey conducted by the researcher stand testimony to the same. To prepare a memo or arrest is one of the prerequisites of present detention laws. But according to the survey in 82.5% of cases no memo of arrest was made. In many cases medical examination of the accused were not carried out. As far as legal aid is concerned, the general populace being illiterate and poor have no clue as to their right to remain silent and that they have a right to legal aid. And the police who are duty bound to inform the accused of this sacrosanct right have no scruples in dispensing with this necessary formality. The survey showed that in majority of the cases the accused persons were not made aware of their right to legal aid.

Even after various judgements and Conventions custodial violence seems to be the order of the day. The National Human Rights Report reflects the police’s penchant for custodial violence and the survey also indicated that no one is spared from the wrath of the police inspite of the constitutional protections available to the accused.

Inspite of the tall claims by the Himachal Pradesh Government and the police officials about the open jail system, an inmate lodged in the Bilaspur open-air jail has alleged manhandling by the jail incharge. This was revealed by the inmate to the District and Session Judge while he was on a surprise visit to the jail on 23rd June, 2006. This only shows that the police authorities did not deliberately give permission to the researcher to question the inmates lest their behaviour comes to light.

In another incident a seven year old girl was picked up by rail police in 1996 on the charges of loitering on the platforms of Patna railway station without a valid ticket. The railway magistrate asked her to deposit a fine of Rs. 350, on failure of which, ordered nine day sentence in prison. As the destitute girl had no money, she was sent to the government owned Nari Niketan (reformatory home) at Deoghar, which new falls in Jharkand. Instead of nine days, the girl spent nine years inspite of the Juvenile Justice (Care and Protection of Children) Act, 2000. the incident came to light when Chief Justice of Jharkand went to Nari Niketan on a surprise visit and happened to talk to the

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7 See Chapter VII.
girl. One shudders to think how many more years she would have had to spend in Nari Niketan had there been no surprise visit by the chief justice.

Every now and then one hears convicts being treated with a kind of depravity that would put Ravana’s demon force into shame. Pulling out eyes in Bhagalpur Blinding case or as in Nandini Satpathy’s case the methods, manners and morals of the police force could suggest an insignia for our criminal system it would be a hollow skill with Danger written in Red. These kind of police atrocities including custodial deaths are an affront to human dignity and constitute serious human rights violations.

Criminal activities undoubtedly affects the rights of the common man and the principles of criminal law in modern societies have evolved, on the one hand to arrest crime as much as possible and on the other to reform the criminal. As long as ‘due process’ was restrictively interpreted to mean ‘any process enacted law’ the jurisprudence of a fair trial, punitive justice and imprisonment was neglected. The expanded meaning led to Supreme Court to devise more complex and comprehensive doctrine of fairness in criminal procedure and punishment.

The irony is that the Constitution itself permitted preventive (or administrative) detention. Though of course it required the reasons for detention to be made known to the detenu, fixed time limits on detention and also created an Advisory Board to review detentions. In Constituent Assembly Debates a fear was felt that it is a case of sailing between Charybdes and Scylla but ultimately the Constitution originally conceived and enacted recognizes preventive detention as a permissible means of abridging the liberties of the people, though subject to limitation imposed by Part III.

The existing laws are not adequate to deal with terrorist offences and problems of insurgency. Hence provision like Terrorist and Disruptive Activities Act, 1987(TADA) and Prevention of Terrorism Act, 2002 (POTA) had to be enacted. But it is common

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9 Madan Kumar, “For her, 9 days in prison lasted 9 years” The Hindustan Times June 26, 2006.
12 Constitution of India Art. 22(4) to (7).
knowledge that many innocent persons were booked under TADA during terrorism in Punjab and there were widespread allegation of misuse of provisions of TADA. There were similar apprehension when POTA was enacted that it was nothing but a reincarnation of TADA and it has proved so in various cases. The working group (of the United Kingdom) on Enforcement of Voluntary Disappearances established in 1980, reported large numbers of enforced disappearances, attributing primary responsibility to the Punjab police. The working Group also held that officers of Punjab police acted with virtual impunity, disobeyed judicial orders, even ignored writs of habeas corpus and intimated family members of disappeared persons so as to make them refrain from making complaints. There was reported widespread practice of arbitrary execution carried out by the security forces.\(^{13}\)

At the Peoples Tribunal on POTA and Other Security Legislation at the Press Club in New Delhi on July 16, 2004 a 629-page report based on depositions made before the Tribunal by victims and their families from ten states in India, as well as expert depositions by lawyers and activists, showed that such security legislations grant sweeping powers to authorities, which has led to misuse of these powers and severe restriction of basic rights. At the same time, such legislations do not address the political, social and economic roots of the problem. The tribunal concluded that the review of victim and expert testimony showed that the misuse of the Act is inseparable from its normal use. The tribunal stated that the statute meant to terrorise not so much the terrorists as ordinary civilians and particularly the poor and disadvantaged such as dalits, religious minorities, adivasis, and working people. Thus the tribunal recommended that POTA be repealed and that too in such a manner that the POTA charges are deleted from all existing investigations and trials. But, if the state so desires, these may continue under other laws and charges.

Finally on September 17, 2004 the Union Cabinet in keeping with the UPA government’s Common Minimum Programme, approved ordinances to repeal the controversial Prevention of Terrorism Act, 2002 (POTA) and amend the Unlawful Activities

Home Minister said that the government would provide a sunset period of one year during which all cases pertaining to POTA would be reviewed by the Central POTA Review Committee. He added, that there would be no arrests made after the ordinance is promulgated. To fill the lacuna that have been created due to the repeal of the Act, adequate amendments were being brought to the Unlawful Activities (Prevention) Act, 1967 to define a terrorist act and provide for banning of terrorist organisations and their support systems, including funding of terrorism, attachment and forfeiture of proceeds of terrorism, etc. All terrorist organisations banned under POTA would continue to remain banned, under the Unlawful Activities Act, after the repeal of the Act. Some of the clauses contained in POTA, which will be completely dropped in the amended Unlawful Activities Act, are: the onus on the accused to prove his innocence, compulsory denial of bail to accused and admission as evidence in the court of law the confession made by the accused before the police officer. But these are not ordinary circumstances. No doubt preventive detention is a violent weapon in the hands of the police but the impartial judiciary has been made a shield to protect the innocent persons. What happened in Punjab etc. are stray incidents where sort of martial law was unleashed. Lessons are learned and the judiciary must keep a watch that such incidents are not repeated. Till the time we are facing the evils of terrorism and insurgency preventive detention laws have become a necessary evil

As far as the normal criminal process is concerned, the Constitution, the grundnorm of the country, has enough safeguards. The procedure itself had to be enacted by law. Any person who is arrested has the right to know the grounds of his arrest as soon as may be and the right to consult and be defended by a lawyer and be produced before a magistrate within 24 hours. Persons cannot be convicted for an offence which did not exist when they allegedly committed the crime, punished for the same offence twice or be compelled to be a witness against themselves. It is not that safeguards do not exist but the problem is that of implementation.

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15 Supra note 9, Art. 21.
16 Id., Art. 22 (1) and (2).
17 Id., Art. 20(1) to (3).
A committee was constituted for Reforms in the Criminal Justice System popularly known as the “Malimath Committee”. The Committee has recommended certain reforms in the area of criminal justice system. The researcher is of the opinion that the reforms are pro police who are notorious for their atrocities. Many of the suggestions can be passed as wishful thinking, which are made without keeping the Indian context in mind. The Committee has tried to dilute the very tenets of the sacred rights available to the accused. For example, as regards right to self incrimination the committee of the view that without subjecting the accused to any duress, the court should have the freedom to question the accused to elicit the relevant information, and if he refuses to answer, to draw adverse inference against the accused.

Section 165 of the Evidence Act gives Judge’s power to put questions or order production. In *Ram Chander v. State of Haryana* the trial judge in order to compel the witnesses to speak the truth threatened them with prosecution for perjury. The Supreme Court shocked at the attitude of the judge remarked: We may go further than Lord Denning and say that it is the duty of a Judge to discover the truth and for that purpose he may ask any question in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant (section 165 of the Evidence Act). But this he must do, without unduly trespassing upon the

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18 S.165. Judge’s power to put questions or order production. – The Judges may, in order to discover or to obtain proper proof of relevant facts, ask any question they please, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question or order, nor, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which would improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

19 1981 SCC (Cri) 683.

20 *Id.* at 686.
functions of the Public Prosecutor and the defense counsel without any hint of partisanship and without appearing to frighten or belly witnesses. '

He must take prosecution and defense with him. But subsequently Kerala High Court again qualified section 165 of the Evidence Act as absolute and justified the somewhat similar kind of act of the sessions judge in Vincent v. State of Kerala\textsuperscript{21} and remarked:\textsuperscript{22} 

In this case when the Sessions Judge found it necessary to put questions to the defence, she is justified in exercising her power and no matter that she did not put cross questions to prosecution witnesses. 

The author of the above judgment, Thomas, J., reiterated when he became the judge of the Supreme Court in State of Rajasthan v. Ani\textsuperscript{23} 

The said Section 165 was framed by lavishly studding it with the word any which could only have been inspired by the legislative intent to confer unbridled power on the trial court to use the power wherever he deems it necessary to elicit truth. 

Similar view was echoed in State of W.B. v. Mohd. Omar\textsuperscript{24} It is submitted that this trend needs to be checked while interpreting section 165 of the Evidence Act the courts must keep in mind the background of the evolution of power and the roles and interrelations of the functionaries under the criminal justice system. The judge must not meddle with the rights of the accused but be independent and impartial and witness the trial with detachment. 

\textsuperscript{21} 1984 KLT 950. 
\textsuperscript{22} Id. at 955. 
\textsuperscript{23} 1997 SCC (Cri) 851. 
\textsuperscript{24} 2000 SCC (Cri) 1516.
Moreover the Committee is of the view that preponderance of probabilities must be 
adhered to rather than “beyond a reasonable doubt”. It was in Shivaji Sahabrao Bobade v. 
State of Maharashtra25 that this “beyond reasonable doubt” came under attack and Iyer, 
J., cautioned:26

The dangers of exaggerated devotion to the rule of benefit 
of doubt at the expense of social defence and to the 
soothing sentiment that all acquittals are always good 
regardless of justice to the victim and the community, 
demand special emphasis in the contemporary context of 
escalating crime and escape. The judicial instrument has a 
public accountability. The cherished principles or golden 
thread of proof beyond reasonable doubt which runs 
though the web of our law should not be stretched 
morbidly to embrace every hunch, hesitancy and degree 
of doubt. The excessive solitude reflected in the attitude 
that a thousand guilty men may go but one innocent 
martyr shall not suffer is a false dilemma. Only 
reasonable doubts belong to the accused. Otherwise any 
practical system of justice will then break down and lose 
credibility with the community.

But subsequently Khanna J., who was a party to the decision retracted and said in Kali 
Ram v. State of H.P.27

Observations in a recent decision of this court, Shivaji 
Shahabrao Bobade v. State of Maharashtra28 to which

25 1973 SCC (Cri.) 1033. 
26 Id. at 1039. 
27 1973 SCC (Cri.) 1048. 
28 Id. at 1059 – 1060.
reference has been made during arguments were not intended to make a departure from the rule of the presumption of innocence of the accused and his entitlement to the benefit of reasonable doubt in criminal cases. One of the cardinal principals, which has always to be kept in view in our system of administration of justice for criminal cases, is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused...

Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible in the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the court entertains doubt regarding the guilt of the accused, the accused must have the benefit of doubt.
It is submitted that this would do injustice since the general populace is poor and illiterate and may not be able to match the power of the state. This would lead to a rise in conviction rather than imparting justice.

As far as compensation to victims is concerned. The Fifth Law Commission in its 42nd Report on the IPC delved on the issue. The Law Commission was of the opinion that ‘elaborate procedure’ provided under the French and German Codes would be ‘unsuitable’ in Indian courts and the creation of a legal right in favour of a victim of crime to join criminal proceedings as a third party would be ‘unwise’.29 It is submitted that this seems to be the right approach whereas Malimath Committee’s suggestion of victim participation may no doubt take care of the victim but societal interest would suffer.

Police fails to understand that it is ‘policing’ rather than ‘police’ that is vital to social order. The public peace is not kept by the police but is kept primarily by an intricate almost unconscious, network of voluntary controls and standards among the people themselves, and enforced by the people themselves. Yet, a belief (perpetuated by the police) that policing was ‘expert business’ and an accompanying expectation that the police would and could control crime, contributed along with broader social changes to weaken informal social control, and dashed public expectations when it became clear that there were serious questions about the police’s capacity to tackle crime.30 The investigating agencies may not need the kind of overhauling suggested by Malimath. But the police force needs to be reoriented and the suggestions laid down in Sube Singh v. State of Haryana31 may go a long way in ameliorating the situation:

(a) Police training should be re-oriented, to bring in a change in the mindset and attitude of the police personnel in regard to investigations, so that they

29 Law Commission of India, Forty-second Report: Indian Penal Code at 52, see also Law Commission of India, One hundred and fifty sixth Report: Indian Penal Code.
will recognize and respect human rights, and adopt thorough and scientific investigation methods.

(b) The functioning of lower level police officers should be continuously monitored and supervised by their superiors to prevent custodial violence and adherence to lawful standard methods of Investigation.

(c) Compliance with the eleven requirements enumerated in D.K. Basu\(^\text{32}\) should be ensured in all cases of arrest and detention.

(d) Simple and foolproof procedures should be introduced for prompt registration of first information reports relating to all crimes.

(e) Computerization, video-recording, and modern methods of records maintenance should be introduced to avoid manipulations, insertions, substitutions and ante-dating in regard to FIRs, Mahazars, inquest proceedings, port-mortem; reports and statements of witnesses etc. and to bring in transparency in action.

(f) An independent investigating agency (preferably the respective Human Rights Commissions or CBI) may be entrusted with adequate power, to investigate complaints of custodial violence against police personnel and take stern and speedy action followed by prosecution, wherever necessary.

It is submitted that the endeavour should be to achieve a balanced level of functioning, where police respect human rights, adhere to law, and take confidence building measures (CBMs), and at the same time, firmly deal with organized crime, terrorism, white-collared crime, deteriorating law and order situation etc.

The police due to its infamous torture skills are not trusted and confession recorded by a police officer is not admissible in evidence. The trend, which is picking up is that the confession is recorded in the presence of a magistrate under section 161 Cr.P.C. But again later the accused may retract on the plea that he was tortured and was under undue influence of the police. This would not only lead to perjury but also put the magistracy in disrepute. Hence, it is submitted that the Sube Singh’s guidelines should be put into

practice rather than looking for other ways. For these very reasons the demand for amending section 167(2) of the code to increase the maximum period of police custody to 30 days in respect of offences punishable with sentence of more than seven years is unthinkable: If these measures are ensured there is not an iota of doubt that the criminal justice administration would go safely take care of the rights of the accused.

Indeed our criminal system has not been successful in ensuring conviction in all cases. Critics used to say that this is due to the sacred adherence of our judges to the presumption of innocence of the accused and various rights which flows from this presumption. There is no harm in reversing the frequent acquittals on technicalities but doing so by means of trampling on the sacrosanct rights of a person who is accused of an offense is against our ethos.

A person accused of a bailable offence is entitled to bail as a matter of right. Similarly, persons accused of non-bailable offence may be granted bail on application at the system of bail needs to be looked into. Not only will it reduce the overcrowding in jails but is otherwise also a valuable right which the accused must be allowed to avail. The recent trend of challenging the rejection of bail applications is a welcome one. In Kamaljit Singh v. State of Punjab and Anr., the Court rightly remarked:

In the facts and circumstances of the case we are of the view that it is an appropriate case in which the application of the appellant for grant of anticipatory bail ought to have been allowed.

In cases relating to women, e.g., Dowry Prohibition Act, 1961 the trend is against giving anticipatory bail. In Bharat Chaudhary v. State of Bihar and Anr., the appellants were accused of offences punishable under sections 504, 498-A and 406 IPC and sections 3/4 of the Dowry Prohibition Act. Their application for anticipatory bail under section 438

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34 (2003) 8 SCC 77.
Cr. P.C. was rejected by the High Court. They filed instant appeal by special leave. After hearing the parties the Supreme Court was inclined to grant the anticipatory bail but the respondent state raised a legal objection that since the trial court had taken cognizance of the offence, section 438 could not be used for granting anticipatory bail even by the Supreme Court and the only remedy available to the appellants was to approach the trial court and surrender, and thereafter apply for regular bail under section 439 Cr. P.C. The Supreme Court came heavily on the state’s objection and rightly observed:\(^{35}\)

The objection of Section 438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the courts concerned while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance or filing of a charge-sheet cannot by itself be construed as a prohibition against the grant of anticipatory bail. The courts i.e. the Court of Session, High Court or Supreme Court have the necessary power vested in them to grant anticipatory bail in non-bailable offences under section 438 Cr.P.C. even when cognizance is taken or charge sheet is filed provided the facts of the case require the court to do so.

It is submitted that this is a welcome trend and needs to be carried on so that a person accused of an offence is not unduly harassed. Liberal grant of bail would also mitigate the

\(^{35}\) Ibid
rigours of special law, which are prowomen, and the courts had been taking a partisan attitude\textsuperscript{36} which worked against the rights of the accused.

However, it is hoped that beginning June 21\textsuperscript{2006} the nation can start getting rid of one of the worst blots in its criminal justice system. Thousands of undertrials languishing in prison will be eligible for freedom from June 23, the date set for the implementation of the long awaited amendments to the Criminal Procedure Code. Arguably the most radical amendment is the insertion of the Cr.P.C. Amendment Act 2005 was notified on the said date by the Ministry of Home Affairs. It’s being implemented exactly a year after President A P J Abdul Kalam gave his assent to the Cr PC Bill on June 23, 2005.

Arguably, the most radical amendment is the insertion of a new section (436A). This entitles an undertrial, other than those accused of an offence for which the death penalty is prescribed, to be released with or without sureties if he/she has been under detention for more than half the prescribed period of imprisonment. The new section also provides for release of undertrials who are detained beyond the maximum period of imprisonment provided of the alleged offences.

Undertrials who meet these criteria will now have to file fresh petitions in courts to be granted relief under this section 436A. While Law Ministry officials don’t have a specific number of how many under-trials will be eligible for release, Home Ministry estimates the figure to be as high as 50,000. According to the latest figures of the National Crime Record Bureau (NCRB), there are 2.23 lakh undertrials of the 3.22 lakh inmates in 1,135 prisons.\textsuperscript{37}

The law enforcers need to realize that every one charged by the police is not necessarily guilty of a crime, and also that every convicted person is a human being first and hence entitled to various right save ones which are curtailed due to criminal process.

\textsuperscript{36} Dowry Prohibition Act, 1961; Scheduled Castes and Scheduled Tribes, Prevention of Atrocities Act, 1989.

\textsuperscript{37} Ritu Sarin “Friday : thousands of undertrials will get right to walk free” Indian Express, June 22, 2006.
It is suggested that new scientific methods need to be adopted. The joining of science with traditional criminal investigation techniques offers new horizons of efficiency in criminal investigation. New perspectives in investigation bypass a total or major reliance on informers and custodial interrogation and instead increasingly use a skilled scanning of the crime scene for physical evidence and a search for as many witnesses as possible.\(^{38}\)

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 extinguish 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.

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 praise. 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.