

Human Rights & Social Inclusion

S.S. Upadhyay
Former District & Sessions Judge
Former Legal Advisor to Hon'ble Governor
Uttar Pradesh, Lucknow
Mobile : 9453048988
E-mail: ssupadhyay28@gmail.com

1(A). Human Rights: what are? : Human rights are not conferred by any ruler, constitution or statute. A human being is born with human rights. Giving new dimensions to Article 21 of the Constitution, the Supreme Court, in the cases noted below, has declared that right to live as guaranteed under Article 21 is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. The right to live is not restricted to mere animal existence. It means something more than just physical survival. The right to 'live' is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes "the right to live with human dignity", and all that goes along with it, namely, the bare necessities of life such as, adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human being. Any thing which impedes the right to lead life with dignity and decency is violative of human rights. See :

1. **Francis Coralie Mullin Vs Union Territory of Delhi, 1981 SC 746**
2. **Maneka Gandhi Vs Union of India, AIR 1978 SC 597.**
3. **Sunil Batra Vs Delhi Administration, AIR 1978 SC 1675**
4. **Peoples Union for Democratic Rights Vs Union of India, AIR 1982 SC 1473**

1(B). Definition of Human Rights : Section 2(1)(d) of the Protection of Human Rights Act, 1993 defines the words "Human Rights" as under :

"Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."

2(A). Fundamental Rights as Human Rights : The Constitution guarantees essential human rights in the form of fundamental rights under Part III and also directive principles of State policy in Part IV, which are fundamental to governance of the country. See :

(i) **National Legal Services Authority Vs. Union of India, (2014) 5 SCC 438.**

(ii) **Peoples Union for Democratic Rights vs. Union of India, (2005)2 SCC 436.**

2(B). Human Rights can not be granted or taken away by people : Human Rights are rights that belong to every person and they are not dependent on specifics of the individual. Human Rights are moral, pre-legal rights and cannot be granted by people or taken away by them. Human Rights have been recognized by the Universal Declaration of Human Rights and adopted as Fundamental Rights in Part III of our Constitution. See : **National Legal Services Authority Vs. Union of India, (2014) 5 SCC 438.**

2(C). Hijras & Eunuchs declared as 'Third Gender' and 'Transgender Persons': Hijras & Eunuchs have been declared by the Supreme Court as 'Third Gender' and 'Transgender Persons'. See : **National Legal Services Authority Vs. Union of India, (2014) 5 SCC 438.**

2(D). Even State cannot violate the human rights : Right to life is one of the basic human rights and not even the State has the authority to violate that right. See : **Siddharam Satlingappa Mhetre Vs. State of Maharashtra, JT 2010 (13) SC 247.**

3. Concept of human rights in olden times : Ages old concept of respect for human rights of others can be found in the olden thoughts of the Indian sages, sociologists and thinkers as quoted below :

1- आत्मानं प्रतिकूलानि परेषां न समाचरेत् ।

(An act which you do not like others to do to you, don't do that to others)

2- मातृवत् परदारेषु परद्रव्येषु लोष्टवत् ।

आत्मवत् सर्वभूतानि यः पश्यति स पण्डितः ॥

(One who treats the women of others like his own mother, the wealth of others as discardable as a bit of soil, cares for other human beings and living creatures as for himself, is a true human being of perfect understanding)

3(अ) अष्टादशपुराणेषु व्यासस्य वचनद्वयं ।

परोपकारः पुण्याण पापाय परपीडनम् ॥

(ब) परहित सरिस धरम नहिं भाई ।
परपीड़ा सम नहिं अधमाई ॥ (Goswami Tulsidas)

(स) वही मनुष्य है कि जो मनुष्य के लिए मरे ।
यही तो पशु प्रवृत्ति है कि आप आप ही चरे ॥

(There are only two significant sayings in the eighteen Purans composed by Great sage Vedvyaas : (1) doing good to others for divine gains and (2) hurting others for divine curses).

4. **Universal declaration of human rights on December 10, 1948** : With the declaration of human rights on December 10, 1948, India became one of the signatory countries of the world having made commitment to respect and protect the human rights declared and accepted by the United Nations Organizations. The UNO had required the signatory countries to incorporate the universally acknowledged human rights in their Constitutions and domestic laws. India being signatory to these UNO Declarations of human rights, incorporated the human rights as fundamental rights in the Indian Constitution enforceable since January 26, 1950.

LIST OF 30 ARTICLES OF HUMAN RIGHTS UNIVERSALLY DECLARED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON DECEMBER 10, 1948

Article 1 : All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2 : Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3 : Everyone has the right to life, liberty and security of person.

Article 4 : No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5 : No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6 : Everyone has the right to recognition everywhere as a person before the law.

Article 7 : All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8 : Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9 : No one shall be subjected to arbitrary arrest, detention or exile.

Article 10 : Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11(1) : Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

Article 11(2) : No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12 : No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13(1) : Everyone has the right to freedom of movement and residence within the borders of each state.

Article 13(2) : Everyone has the right to leave any country, including his own, and to return to his country.

Article 14(1) : Everyone has the right to seek and to enjoy in other countries asylum from persecution.

Article 14(2) : This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15(1) : Everyone has the right to a nationality.

Article 15(2) : No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16(1) : Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

Article 16(2) : Marriage shall be entered into only with the free and full consent of the intending spouses.

Article 16(3) : The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17(1) : Everyone has the right to own property alone as well as in association with others.

Article 17(2) : No one shall be arbitrarily deprived of his property.

Article 18 : Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19 : Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20(1) : Everyone has the right to freedom of peaceful assembly and association.

Article 20(2) : No one may be compelled to belong to an association.

Article 21(1) : Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Article 21(2) : Everyone has the right of equal access to public service in his country.

Article 21(3) : The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22 : Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23(1) : Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Article 23(2) : Everyone, without any discrimination, has the right to equal pay for equal work.

Article 23(3) : Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Article 23(4) : Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24 : Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25(1) : Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Article 25(2) : Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26(1) : Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Article 26(2) : Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Article 26(3) : Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27(1) : Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Article 27(2) : Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28 : Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29(1) : Everyone has duties to the community in which alone the free and full development of his personality is possible.

Article 29(2) : In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 29(3) : These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30 : Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

5(A). Role played by judiciary in the development & protection of human rights :

Our Constitution specifically empowers the judiciary to protect the human rights in the form of fundamental rights enumerated in our Constitution and in case of any violation of the fundamental rights of the citizens, judiciary has been empowered to protect and restore the same. The sub-ordinate judiciary being easily accessible to the common citizenry is supposed to come first to the rescue and protection of human rights of the citizens. Since the inception of Constitution, the country is governed by rule of law and not by the whims of any individual authorities. The object behind various legislations and creation of different organs of the State is nothing but to ensure the overall welfare of the

citizens and to protect their life, liberty, dignity and fundamental or human rights. Apart from the higher judiciary, the sub-ordinate courts do also play very important role in protecting the human rights of the citizens. The sub-ordinate judiciary being easily accessible by the masses, comes first to protect the human rights of the citizens. Different agencies of the executive like police, jail and others are often blamed for violation of human rights of the citizens. The Supreme Court has over the years taken much pains in issuing directions and guidelines to the sub-ordinate judiciary for protection of human rights of the citizens. Different agencies of the executive have also been repeatedly directed by the Supreme Court not to violate the human rights of the citizens. Most of the complaints regarding violation of human rights are made against the police and the jail authorities. The various legislations and the judicial pronouncements by the Supreme Court for the protection of human rights of the citizens need to be discussed here.

5(B). Role of Judiciary in upholding the rule of law : For the role of Judiciary in upholding the rule of law, kindly see the following leading decisions of the Supreme Court reported in :

- (i) **State of Gujarat Vs. Mohan Lal, AIR 1987 SC 1321**
- (ii) **State of MP Vs. Sri Ram Singh, SLP (Cr) No. 1295/1997 (SC)**
- (iii) **Vineet Narayan Vs. Union of India, (1998) 1 SCC 226**

6(A). Presumption of innocence ends with the conviction and sentence by the lower court and does not continue thereafter: When a lower court convicts an accused and sentences him, the presumption that the accused is innocent comes to an end. The conviction operates and the accused has to undergo the sentence. The execution of the sentence can be stayed by an appellate court and the accused released on bail. If the appeal of the accused succeeds the conviction is wiped out as cleanly as if it never existed and the sentence is set aside. But that is not to say that the presumption of innocence continues, after the conviction by the trial court.

The conviction and the sentence it carries operate against the accused in all their rigour until set aside in appeal, and a disqualification that attaches to the conviction and sentence applies as well. See : **B.K. Kapur Vs. State of T.N., (2001) 7 SCC 231 (Five-Judge Bench)** (para 40).

6(B). Presumption of innocence of accused : Presumption of innocence is a human right. Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. See----

- (i) **Shabnam Vs. Union of India, (2015) 6 SCC 702.**
- (ii). **Kailash Gour Vs. State of Assam, (2012) 2 SCC 34(Three-Judge Bench)**
- (iii). **Ranjitsing Brahmajetsing Sharma Vs. State of Maharashtra, (2005) 5 SCC 294 (Three–Judge Bench)**
- (iv). **Narendra Singh Vs. State of M.P., (2004) 10 SCC 699.**

6(C). Presumption of innocence continues even upto the appellate stage :

Every accused is presumed to be innocent unless proved guilty. Presumption of innocence of accused starts in the trial court and continues even upto the appellate stage. See--

- (i) **Sunil Kumar Shambhu Dayal Gupta Vs. State of Maharashtra 2011 (72) ACC 699 (SC).**
- (ii) **Jayabalan Vs. U.T. of Pondicherry, 2010 (68) ACC 308 (SC)**

7. **Right to property as human right** : The right of property is now considered to be not only a constitutional right but also a human right. The (French) Declaration of Human and Civic Rights of 1789 enunciates the scope of the right under Article 17 and so does Article 17 of the Universal Declaration of Human Rights, 1948 adopted in the United Nations General Assembly. Earlier human rights were restricted to the claim of individual's right to health, right to livelihood, right to shelter and employment, etc. but now human rights have started gaining a multifaceted approach. Now property rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be read in consonance with human rights. Right to property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be

deprived of his property save in accordance with law. Adverse Possession should be considered in that context. See :

(i) **Chairman, Indore Vikas Pradhikaran vs. Pure Industrial Coke & Chemicals Ltd., (2007) 8 SCC 705.**

(ii) **Lachhman Dass vs. Jagat Ram, (2007)10 SCC 448**

(iii) **P.T. Munichikkanna Reddy vs. Revamma, (2007) 6 SCC 59**

8(A). Acquisition of Learning as Human Right : Desire to acquire more qualification or learning is an inherent human right. See : **Institute of Chartered Financial Analysts of India vs. Council of the Institute of Chartered Accountants of India, (2007) 12 SCC 210.**

8(B). Noise pollution as violative of human rights : As regards the noise pollution spread by loudspeakers and amplifiers or other gadgets which produce offending noise, it has been held by the Supreme Court that the same is violative of human rights. Silence is considered to be golden. It is considered to be one of the human rights as noise is injurious to human health which is required to be preserved at any cost. Interpreting the provisions of the Environment (Protection) Act, 1986 and the Noise Pollution (regulation and Control) Rules, 2000, it has been held by the Hon'ble Supreme Court that noise pollution is violative of Articles 14 & 21 of the Constitution. See :

(i) Farhd K. Wadia Vs. Union of India, (2009) 2 SCC 442 (*paras 22, 23, 24 & 25*)

(ii) Noise Pollution (V) Case, (2005) 5 SCC 733

(iii) Noise Pollution (IV), in re, (2005) 5 SCC 731

(iv) Noise Pollution (VII), in re, (2005) 8 SCC 796

8(C). Horn of vehicles not to be blown/used at night between 10 pm to 6 am in residential area except in exceptional circumstances : See : **In re, noise pollution, AIR 2005 SC 3136.**

8(D). Noise pollution by firecrackers etc. : Firecrackers for the purpose of export may be manufactured and bear higher noise levels subject to the following conditions : (i) The manufacturer should be permitted to do so only when he has an export order with him and not otherwise : (ii) The noise levels for these

firecrackers should conform to the noise standards prescribed in the country to which they are intended to be exported as per the export order; (iii) These firecrackers should have a different colour packing, from those intended to be sold in India, (iv) The firecrackers should have a clear print on them stating that they are not to be sold in India. In case these firecrackers are found being sold in Indian territory, then the manufacturer and the dealer selling these goods should be held liable. See : **In re, noise pollution, AIR 2005 SC 3136** (*paras 157 & 168*).

9. **Gender equality as human right** : In terms of Articles 14 and 15 of the Constitution of India, the female heirs, subject to the statutory rule operating in that field, are required to be treated equally to the male heirs. Gender equality is recognized by the world community in general in the human rights regime. The Hindu Succession Act, 1956 as amended in the year 2005 brought about revolutionary changes in the old Hindu Law. It was enacted to amend and codify the law relating to intestate succession amongst Hindus. By reason of the Act, all female heirs were conferred equal right in the matter of succession and inheritance with that of the male heirs. See : **G. Sekar vs. Geetha, (2009)6 SCC 99**.

10(A). **Right to privacy as fundamental right** : Surveillance (under Extradition Act, 1962) per se may not violate individual or private rights including the right to privacy. Right to privacy is not enumerated as a fundamental right either in terms of Article 21 of the Constitution of India or otherwise. It, however, by reason of an elaborate interpretation by this Court in *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295 was held to be an essential ingredient of “personal liberty”. The Supreme Court however took an elaborate view of the matter in regard to the right to privacy in the case of *Govind Vs. State of M.P.*, (1975) 2 SCC 148 opined that the regulation of privacy was not violative of the procedure established by law. However, a limited fundamental right to privacy as emanating from Articles 19(1)(a), (d) and 21 was upheld, but the same was held to be not absolute wherefor reasonable restrictions could be placed in terms of

clause (5) of Article 19 of the constitution. See : **Bhavesh Jayanti Lakhani vs. State of Maharashtra, (2009) 9 SCC 551**

10(B). To be vegetarian or non-vegetarian a right to privacy & fundamental right under Article 21 of the Constitution: A large number of people are non-vegetarian and they cannot be compelled to become vegetarian for a long period. What one eats is one's personal affairs and it is a part of his right to privacy which is included in Article 21 of our Constitution. To be vegetarian or non-vegetarian is one's personal affair and part of his right of privacy. The right to privacy is implicit in the right to life and liberty guaranteed by Article 21 of the Constitution. It is a "right to be left alone". See: **(i) Hinsa Virodhak Sangh Vs. Mirzapur Moti Kuresh Jamat & Others, AIR 2008 SC 1892 (para 26), (ii) R. Rajagopal Vs. State of Tamil Nadu, AIR 1995 SC 264 (para 28)**

10(C). Right to privacy whether or not a fundamental right, question referred to larger bench : Right to privacy whether or not a fundamental right, question has been referred to larger bench by a Three-Judge Bench of the Supreme Court. See : **K.S. Puttaswamy Vs. Union of India, (2015) 8 SCC 835.**

11. Presumption of innocence as human right : The accused is presumed to be innocent until proven guilty. The accused possesses this presumption when he is before the trial court. The trial courts acquittal bolsters the presumption that he is innocent. See : **Arulvelu vs. State, 2010 (68) ACC 5 (SC)**

12(A). FIR & powers of police to arrest without warrant a person having committed cognizable offence : Sections 41 to 60A of the CrPC empower the Police Officers to arrest without warrant a person having committed cognizable offences. Sections 41 to 60A of the CrPC are as under :

Section 41 : Power of Police Officer to arrest without warrant a person having committed cognizable offence.

Section 41A : Notice of appearance before Police Officer and arrest thereafter.

Section 41B : Procedure of arrest and duties of officer making arrest.

Section 41C : Control room at districts.

Section 41D : Right of arrested person to meet an advocate of his choice during interrogation.

Section 42 : Arrest on refusal to give name and residence.

Section 43 : Arrest by private person and procedure on such arrest.

Section 44 : Arrest by Magistrate.

Section 45 : Protection of members of the Armed Forces from arrest.

Section 46 : Arrest how made.

Section 47 : Search of place entered by person sought to be arrested.

Section 48 : Pursuit of offenders into other jurisdictions.

Section 49 : No unnecessary restraint.

Section 50 : Person arrested to be informed of grounds of arrest and of right to bail.

Section 50A : Obligation of person making arrest to inform about the arrest, etc., to a nominated person.

Section 51 : Search of arrested person.

Section 52 : Power to seize offensive weapons.

Section 53 : Examination of accused by medical practitioner at the request of police officer.

Section 53A : Examination of person accused of rape by medical practitioner.

Section 54 : Examination of arrested person by medical officer.

Section 54A : Identification of person arrested.

Section 55 : Procedure when police officer deposes subordinate to arrest without warrant.

Section 55A : Health and safety of arrested person.

Section 56 : Person arrested to be taken before Magistrate or officer in charge of police station.

Section 57 : Person arrested not to be detained more than twenty-four hours.

Section 58 : Police to report apprehensions.

Section 59 : Discharge of person apprehended.

Section 60 : Power, on escape, to pursue and retake.

Section 60A : Arrest to be made strictly according to the Code.

12(B). Arrest not mandatory as per Section 41(1)(b) CrPC in cognizable offences punishable with imprisonment upto 07 years : Sections 41(1)(b) and 41-A CrPC place check on arbitrary and unwarranted exercise of powers of arrest by police. Arrest is not mandatory as per Section 41(1)(b) and 41-A CrPC in cognizable offences punishable with imprisonment upto 07 years. Writ Court under Article 226 of the Constitution can in appropriate cases grant relief against pre-arrest but such power is not to be exercise in the State of

UP liberally so as to bring back the provisions of Section 438 CrPC by back door. See : **Km. Hema Mishra Vs State of UP, AIR 2014 SC 1066.**

12(C). Arrest of accused on registration of FIR u/s 154 CrPC not mandatory : It is incorrect to say that mandatory registration of FIRs will lead to arbitrary arrest, which will directly be in contravention of Article 21 of the Constitution. While registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. In fact, registration of FIR and arrest of an accused person are two entirely different concepts under law, and there are several safeguards available against arrest. Moreover, an accused person also has a right to apply for "anticipatory bail" under the provisions of Section 438 of the Code if the conditions mentioned therein are satisfied. See : **Lalita Kumari Vs Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench).**

12(D). Arrest when amounts to violation of human rights? : Irrational and indiscriminate arrest are gross violation of human rights. See : **Siddharam satlingappa Mhetre Vs. State of Maharashtra, 2011(1) SCJ 36.**

12(E). Police have no unlimited powers of investigation : Powers of police to investigate crimes are not unlimited. Power should be exercised within limits prescribed by the CrPC and should not result in destruction of personal freedom guaranteed by Article 21 of the Constitution. See : **2013 CrLJ 2938 (SC)**

12(F). No detention in police custody beyond 24 hours : Article 20(2) of the Constitution : Except the arrest and detention of an enemy alien or arrest and detention of a person under any law providing for preventive detention as provided by Article 22(3) of the Constitution, **Article 22(2)** mandates that no person who is arrested shall be detained in custody **beyond 24 hours** of such arrest excluding the time necessary for journey from the place of arrest to the court of the Magistrate. Section 57 of the CrPC also provides that no person shall be detained in police custody beyond 24 hours exclusive of the time necessary for journey from the place of arrest to the Magistrate's court for remand u/s 167 CrPC. If the police officer is forbidden from keeping an arrested

person beyond twenty four hours without order of a magistrate, what should happen to the arrested person after the said period. It is a constitutional mandate that no person shall be deprived of his liberty except in accordance with the procedure established in law. Close to its heels the Constitution directs that the person arrested and detained in custody shall be produced before the nearest magistrate within 24 hours of such arrest. The only time permitted by Article 22 of the Constitution to be excluded from the said period of 24 hours is "the time necessary for going from the place of arrest to the Court of Magistrate". Only under two contingencies can the said direction be obviated. One is when the person arrested is an "enemy alien." Second is when the arrest is under any law for preventive detention. In all other cases the Constitution has prohibited peremptorily that "no such person shall be detained in custody beyond the said period without the authority of a magistrate." See : **Manoj Vs. State of M.P., AIR 1999 SC 1403 (para 12)**

12(G). Duty of Arresting Officer & guidelines of the Supreme Court : Arrest of a person by the police and the treatment with him thereafter have always been the area of concern for the courts. In the case of **Joginder Kumar v. State of U.P., (1994) 4 SCC 260**, the Hon'ble Supreme Court has clarified that an accused named in a FIR should not be arrested soon after the registration of the FIR. He should be arrested by the investigating officer only after collecting some evidence showing his involvement in the commission of the offence.

12(H). Guidelines of the Supreme Court on arrest etc. in the case of D.K. Basu Vs State of West Bengal, (1997) 1 SCC 416 & A.K. Jauhari Vs State of UP, (1997) 1 SCC 416 : In the famous cases of D.K. Basu Vs State of West Bengal, (1997) 1 SCC 416 and A.K. Jauhari Vs State of UP, (1997) 1 SCC 416, the Hon'ble Supreme Court has issued following guidelines for the arresting officers to be observed at the time of arrest of a person and treatment thereafter with him :

- (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with

their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

- (2) The police officers carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable member of the locality from where the arrest is made. It shall be countersigned by the arrestee and shall contain the time and date of arrest.
- (3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at a particular place unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- (4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district and the police station of the area concerned telegraphically within a period of 8 to 10 hours after the arrest.
- (5) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- (6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- (7) The arrestee should, where he so requires, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
- (8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of

approved doctors appointed by Director Health Services of the state or union territory concerned. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

- (9) Copies of all the documents including the Memo Of Arrest referred to above should be sent to the Illaka Magistrate for his record.
- (10) The arrestee may be permitted to meet his Lawyer during interrogation, though not throughout the interrogation.
- (11) A police control room should be provided at all District and State Headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and the police control room it should be displayed on a conspicuous notice board.

12(I). Liability of contempt of the Arresting Officer in the event of breach of guidelines of the Supreme Court as issued in the cases of D.K. Basu & A.K. Jauhari etc.

Jauhari etc. : A Full Bench of the Allahabad High Court has in the matter of **Ajeet Singh Vs State of UP, 2006 (6) ALJ 110 (Full Bench)**, held that any violation of the guidelines issued by Hon'ble Supreme Court in the cases of D.K. Basu and A.K. Jauhari would not only provide a ground to the accused to question the correctness of his arrest but the arresting officer would also stand exposed to the contempt proceedings for non observance of the aforesaid guidelines of the Hon'ble Supreme Court. The guidelines issued by Hon'ble Supreme Court in the cases of D.K. Basu and A.K. Jauhari in the year 1997 have now been incorporated in **Sec. 50-A of the CrPC** through the amendments since June, 2006. Under the newly added **Sec. 50-A (4)**, a duty has been cast upon the Magistrates to ensure at the time of production of the arrested accused before them that the guidelines contained in Sec. 50-A of the CrPC have been complied with by the arresting officer. The introduction of these provisions in the CrPC through amendment is aimed at protecting the human rights of the arrestee from the tortures and atrocities committed by the police.

12(J).Arrest of accused must before submission of charge-sheet : If the IO submits charge-sheet without arresting the accused person (unless he is on bail) it can be submitted only if he has been declared absconder and the case under Section 174-A of the IPC has also been registered as a result of such proclamation. Compliance with the provisions of Section 170 & 173 CrPC by the investigating officer is mandatory. If police report submitted u/s 173 CrPC falls short of above compliance, court will be justified in insisting on compliance before accepting the charge-sheet for cognizance or otherwise. IO is duty bound to inform the Magistrate whether the accused in jail or on bail or is being forwarded with the charge-sheet. If charge-sheet is submitted after declaring the accused as absconder, a case under Section 174-A of the IPC has to be registered. The IO is also duty bound to inform the complainant of the FIR about the result of the investigation whether he submits charge-sheet or final report. See : **Iqbal Vs State of UP, 2013 CrLJ 1332 (All)(LB)(by Hon'ble Sudhir Kumar Saxena, J.)**

12(K).Arrest of accused not necessary before submission of charge-sheet : Arrest of accused is not necessary before submission of charge-sheet. See : **Judgment dated 14.05.2015 of the Supreme Court delivered in Criminal Appeal No. 789/2015, State of UP & Others Vs. Anil Kumar Sharma.**

13(A).NBW when to be issued ? : The Constitution, on the one hand, guarantees the right to life and liberty to its citizens under Article 21 and on the other hand imposes a duty and an obligation on the judges while discharging their judicial function to protect and promote the liberty of the citizens. The issuance of non-bailable warrant in the first instance without using the other tools of summons and bailable warrant to secure attendance of such a person would impair the personal liberty guaranteed to every citizen under the Constitution.There cannot be any strait jacket formula for issuance of warrants but as a general rule, unless an accused is likely to

tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. The conditions for the issuance of non-bailable warrant are, firstly, if it is reasonable to believe that the person will not voluntarily appear in court; or secondly if the police authorities are unable to find the person to serve him with a summon and thirdly if it is considered that the person could harm someone if not placed into custody immediately. In the absence of the aforesaid reasons, the issue of non-bailable warrant a fortiori to the application under Section 319 CrPC would extinguish the very purpose of existence of procedural laws which preserve and protect the right of an accused in a trial of a case. The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued. See : **Vikas Vs. State of Rajasthan, (2014) 3 SCC 321.**

13(B). NBW when to be issued ? : Where in a complaint case, the Magistrate had outright issued NBW against the accused persons, interpreting the scope of Article 21 of the Constitution in relation to the rights of personal liberty of a person, it has been held by the Supreme Court that the attendance of the accused could have been secured by issuing summons or at best by a bailable warrant. Detailed guidelines have been issued by the Hon'ble Supreme Court in this regard for observance by the courts and the Police Officers. A format of **Register** for entering therein the details of issue etc of NBWs has also been provided by the Hon'ble Supreme Court at the end of its judgment. See : **Raghuvansh Dewanchand Bhasin Vs State of Maharashtra & Another, AIR 2011 SC 3393.**

13(C). Only summons or bailable warrant to be issued in the first instance in complaint cases : The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant

failing which a non-bailable warrant should be issued. See : **Vikas Vs. State of Rajasthan, (2014) 3 SCC 321.**

14(A). Arrest of female accused (Section 46(4) CrPC w.e.f. 23.06.2006) : Respecting the human rights of the female accused, a new Section **46(4) CrPC** has been added since 23.06.2006 which provides that save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose jurisdiction the offence is committed or the arrest is to be made. However, in the case of **State of Maharashtra v. Christian Community Welfare Council of India, (2003) 8 SCC 546**, the Supreme Court while interpreting the provisions contained U/s 41 and 46 CrPC for the arrest of a female accused, has clarified that it is not necessary that a lady constable must be present at the time of her arrest and in case a lady constable is not present to effect the arrest of the female accused then the arrest can be made by the male police officer also provided there would be undue delay in the arrest of the female accused and that would impede the investigation.

14(B). Installation of CCTV Cameras in police stations to prevent custodial tortures etc. : The State Governments shall also consider installation of CCTV cameras in police stations in a phased manner depending upon the incidents of human rights violations reported in such stations. See : **D.K. Basu Vs. State of W.B., (2015) 8 SCC 744 (para 38.6)**

14(C). State Govt. to appoint at least two women constables in each police station for custodial interrogation of female accused : The State Governments shall consider deployment of at least two women constables in each police station wherever such deployment is considered necessary having regard to the number of women taken for custodial interrogation or interrogation for other purposes over the past two years. See : **D.K. Basu Vs. State of W.B., (2015) 8 SCC 744 (para 38.9)**

14(D). Installation of CCTV Cameras in the prisons : The State Governments shall take steps to install CCTV cameras in all the prisons in their respective States, within a period of one year from today but not later than two years. See : **D.K. Basu Vs. State of W.B., (2015) 8 SCC 744 (para 38.5)**

15. Application of Scientific Methods of Investigation : Instead of subjecting the accused or arrestee to physical tortures or applying **third degree** methods to elicit information, the scientific methods of investigation like Polygraph Test, DNA, Lie Detector Test etc. have been given judicial recognition by the apex Court in its judicial pronouncements. In the year 2006, a new **Sec. 164-A** has been added in CrPC casting an obligation upon the investigating officer for medical examination of the victim of the sexual offences and if needed DNA should also be done of the victim or/and of the accused.

(i) Order to give specimen signature, finger print or handwriting of accused not violative of Art. 20(3) : In the case of **State through SPE & CBI, AP vs. M. Krishna Mohan, AIR 2008 SC 368**, interpreting **Art. 20(3)** of the Constitution, the Supreme Court has held that taking specimen signature, fingerprints or handwritings from accused is not hit by **Art. 20(3)** as being witness by the accused against himself and such samples can be taken from the accused for purposes of investigation etc.

Note: For **contrary** earlier law on the subject, see : (i) **Amrit Singh vs. State of Punjab, AIR 2007 SC 132** (ii) **Gurupal Singh vs. State of U.P., 2002 (1) U.P.Cr.Rulings 40 (All)** (iii) **Amarjit Singh vs. State of U.P., (1998) 8 SCC 613** (iv) **Sukhvinder Singh vs. State of Punjab, (1994) 5 SCC 152** (v) **State of U.P. vs. Ram Babu Misra, AIR 1980 SC 791.**

(ii) As regards the DNA Test of the accused, in the cases noted below it has been held by the Supreme Court that an accused cannot be compelled to give his blood or any other part of body for purposes of investigation etc. See :

(i) Gautam Kundu vs. State of W.B., AIR 1993 SC 2295

(ii) Banarsi Dass vs. Teeku Dutta, 2005 (4) SCC 449

(iii) Miss Renuka vs. Tammanna, AIR 2007 Karnataka 133

But in the case of **Sharda vs. Dharampal**, AIR 2003 SC 3450, the Supreme Court has held that an accused can be compelled and subjected to DNA Test.

16. **No mechanical grant of remand by magistrate u/s 167 CrPC** : The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner. See : **Manubhai Ratilal Patel Tr. Ushaben Vs. State of Gujarat and Others**, AIR 2013 SC 313.

- 17(A). **Legal Aid — Art. 39-A of the Constt. & Legal Services Authority Act, 1987** : The Parliament has passed the **Legal Services Authority Act, 1987** to give effect to the provisions of Art. 39-A of the Constitution to provide free legal aid to the poor and the needy. The District Legal Services Authorities constituted under the aforesaid Act have been specially required to provide assistance to the poor litigants, convicts, under trials and the litigants belonging to the poor sections of the society in the form of court fees, expenses of the litigations and the Advocates fee etc. A litigant belonging to the aforesaid categories may apply to the Secretary of the DLSA to avail the free of cost assistance as noted above.

These provisions are also aimed at protecting and promoting the basic human rights of the citizens.

17(B). The direction issued by the Supreme Court in the cases of **D.K. Basu vs. State of W.B., (1997) 1 SCC 416** and **A.K. Jauhari Vs. State of UP, (1997) 1 SCC 416** that the accused must be subjected to medical examination before and after the police custody **remand granted by a Magistrate u/s. 167 of the CrPC** is aimed at ensuring that no physical tortures or third degree treatment or other inhuman treatment is meted out to the accused during police custody. Provision of getting legal aid of a lawyer during police custody has also been made to provide the accused an opportunity to get proper legal advice of a lawyer of his choice.

17(C). **Providing legal aid to an accused facing trial is mandatory:** Interpreting Article 39-A of the Constitution and Section 303 & 304 of the CrPC, the Hon'ble Supreme Court has ruled that Article 39-A casts a duty on the State to ensure that Justice is not denied by reason of economic or other disabilities in legal system. Section 304 CrPC contemplates legal aid to accused facing charge in court of sessions. Failure of trial court to make an effective appointment of counsel to defend the accused would be denial of due process of law and violative of fundamental principles of judicial procedure on account of breach of mandatory provisions of Section 304 CrPC. Court is required to appoint a counsel for him at the expense of the state where accused is unable to engage a counsel. Until convicted, the accused has to be presumed to be innocent. See : **Mohd. Hussain Alias Julficar Ali Vs. State (Govt. of NCT) Delhi, 2012 (76) ACC 836 (SC).**

17(D). **Services of Advocate to defend him as fundamental/Human Right of an accused :** Every person, however wicked, depraved, vile, degenerate, perverted, loathsome, execrable, vicious or repulsive he may be regarded by the society, has a right to be defended in a court of law and correspondingly, it is the duty of the lawyers to defend him. The resolution passed by the Bar Association not to defend certain accused policemen in criminal cases has been held to be violative of rights of accused guaranteed under Article 22(1) of the Constitution. See : **A.S. Mohammed Rafi Vs. State of TN, (2011) 1 SCC 688**

18. Kinds of human rights violations : Following are the major sorts of violations of human rights :

- (i) Police brutality
- (ii) Gender injustice
- (iii) Pollution
- (iv) Environmental degradation
- (v) Malnutrition
- (vi) Social Ostracism of Dalits
- (vii) other cases of human rights violations. See : **People's Union for Civil Liberties vs. Union of India, (2005) 2 SCC 436.**

19. Death and grievous injuries occurring in police encounters & guidelines of Supreme Court for effective and independent investigation : In the event of extra judicial killings and causing of grievous injuries in police encounters, the Hon'ble Supreme Court has issued following guidelines for effective and independent investigation of such incidents :

- (1) Whenever the police is in receipt of any intelligence or tip-off regarding criminal movements or activities pertaining to the commission of grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form. Such recording need not reveal details of the suspect or the location to which the party headed. If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.
- (2) If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court under Section 157 of the Code without any delay. While forwarding the report under Section 157 of the Code, the procedure prescribed under Section 158 of the Code shall be followed.
- (3) An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek :

- (a) To identify the victim; colour photographs of the victim should be taken;
 - (b) To recover and preserve evidentiary material, including blood-stained earth, hair, fibers and threads, etc., related to the death;
 - (c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;
 - (d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;
 - (e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;
 - (f) Post-mortem must be conducted by two doctors in the District Hospital, one of them, as far as possible, should be In-charge/Head of the District Hospital. Post-mortem shall be videographed and preserved;
 - (g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. Wherever applicable, tests for gunshot residue and trace metal detection should be performed.
 - (h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.
- (4) A Magisterial inquiry under Section 176 of the Code must invariably be held in all cases of death which occur in the course of police firing and a report thereof must be sent to Judicial Magistrate having jurisdiction under Section 190 of the Code.
 - (5) The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation. However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.
 - (6) The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.
 - (7) It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc., to the concerned court.
 - (8) After full investigation into the incident, the report should be sent to the competent court under Section 173 of the Code. The trial, pursuant to the charge-sheet submitted by the Investigating Officer, must be concluded expeditiously.

- (9) In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.
- (10) Six monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the six monthly statements reach to NHRC by 15th day of January and July, respectively. The statement may be sent in the following format along with post-mortem, inquest and, wherever available, the inquiry reports :
 - (i) Date and place of occurrence.
 - (ii) Police Station, District.
 - (iii) Circumstances leading to deaths.
 - (a) Self-defence in encounter.
 - (b) In the course of dispersal of unlawful assembly.
 - (c) In the course of affecting arrest.
 - (iv) Brief facts of the incident.
 - (v) Criminal Case No.
 - (vi) Investigating Agency.
 - (vii) Finding of the Magisterial Inquiry/Inquiry by Senior Officers;
 - (a) disclosing, in particular, names and designation of police officials, if found responsible for the death; and
 - (b) whether use of force was justified and action taken was lawful.
- (11) If on the conclusion of investigation the materials/evidence having come on record show that death had occurred by use of firearm amounting to offence under the IPC, disciplinary action against such officer must be promptly initiated and he be placed under suspension.
- (12) As regards compensation to be granted to the dependants of the victim who suffered death in a police encounter, the scheme provided under Section 357-A of the Code must be applied.
- (13) The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights under Article 20 of the Constitution.
- (14) An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer/counseling, same must be offered.
- (15) No out-of-term promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officers is established beyond doubt.
- (16) If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or

impartiality by any of the functionaries as above-mentioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the concerned Sessions Judge shall look into the merits of the complaint and address the grievances raised therein. The above guidelines will also be applicable to grievous injury cases in police encounter, as far as possible. Accordingly, we direct that the above requirements/norms must be strictly observed in all cases of death and grievous injury in police encounters by treating them as law declared under Article 141 of the Constitution of India. See : **Peoples' Union for Civil Liberties Vs. State of Maharashtra, 2015 CrLJ 610 (SC)**(paras 31, 32 & 33)

20(A-1).Compensation in case of custodial tortures & deaths : Torture of an accused in police custody, custodial deaths and atrocities on prisoners in jails have also been one of the major area of concern as regards the human rights. The Hon'ble Supreme Court has in a plethora of cases (noted below) clarified that if a person in the custody of police is subjected to any torture, inhuman treatment or violence or custodial death takes place then courts can not only take appropriate action against the responsible police officer but can also provide compensation to the dependents of the deceased or the victim of the illegal torture or violence :

1. **Ravindra Nath Awasthi vs. State of U.P., 2010 (68) ACC 61 (All) (DB)**
2. **Shakila Abdul Gafar Khan (Smt.) v. Vasant Raghunath Dhoble, (2003)7 SCC 749**
3. **Raghubir Singh v. State of Haryana, (1980) 3 SCC 70**
4. **Gauri Shankar Sharma v. State of U.P., AIR 1990 SC 709**
5. **Bhagwan Singh v. State of Punjab, (1992)3 SCC 249**
6. **Nilabati Behera v. State of Orissa, AIR 1993 SC 1960**
7. **Pratul Krishna v. State of Bihar, 1994 Supp. (3) SCC 100**
8. **Kewalpati v. State of U.P., (1995) 3 SCC 600**
9. **Inder Singh v. State of Punjab, (1995) 3 SCC 702**
10. **State of M.P. v. Shyam Sunder Trivedi, (1995)4 SCC 262**
11. **D.K. Basu v. State of W.B., (1997) 1 SCC 416**
12. **Sheela Barse v. State of Maharashtra, (1983) 2 SCC 96**
13. **State of Maharashtra v. Christian Community Welfare Council, (2003) 8 SCC 546**
14. **Sube Singh v. State of Haryana, 2006(54) ACC 873 (SC)**

20(A-2).State/Court are duty bound to award compensation to the victims of custodial torture whether during arrest, detention, investigation or trial: Custodial death is perhaps one of the worst crimes in a civilised society governed by the rule of

Law. The rights inherent in Articles 21 and 22 (1) of the Constitution require to be jealously and scrupulously protected. Court cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government became law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights jurisprudence. The answer, indeed, has to be an emphatic 'No'. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under-trials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law. Section 330, of the IPC directly makes torture during interrogation and investigation punishable under the Indian Penal Code. It is however, inadequate to repair the wrong done to the citizen. Prosecution of the offender is an obligation of the State in case of every crime but the victim of crime needs to be compensated monetarily also. The Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience. It is now a well accepted proposition in most of the jurisdiction that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the Criminal Courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the

functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no straitjacket formula can be evolved in that behalf. The relief to address the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit. See: D. K. Basu Vs. State of W.B and Ashok K. Johri Vs. State of U.P, AIR 1997 SC 610.

20(A-3).State Govt. to conduct enquiry in all cases of custodial death or injury :

The State Governments shall launch in all cases where an enquiry establishes culpability of the persons in whose custody the victim has suffered death or injury, an appropriate prosecution for the commission of offences disclosed by such enquiry report and/or investigation in accordance with law. See : **D.K. Basu Vs. State of W.B., (2015) 8 SCC 744 (para 38.8)**

20(B). Duty of Judicial Magistrates in the event of custodial deaths (Sec. 176 (1-A)

CrPC) : With the introduction of a new Sec. 176 (1-A) in the CrPC by the Parliament with effect from June, 2006, a duty has been cast upon the Judicial Magistrates exercising local territorial jurisdiction to conduct judicial inquiry in the matters of **fake encounters, custodial deaths or extra judicial killings** caused by the police and subject to the result of the inquiry to take appropriate further legal action in such matters against the responsible police officer or the arresting officer.

20(C). Inquiry report alongwith evidence collected to be sent to DIG, Prisons (C.L.

No. 2/2010 dated 7.1.2010) : Vide C.L. No. 2/2010/Admin.(G-II) dated 7.1.2010, the Allahabad High Court has directed the CJMs/ACJMs/JMs of the State of U.P. that the powers of enquiry on death during custody as provided u/s. 176 of the CrPC be exercised by the Chief Judicial Magistrates, Chief Metropolitan Magistrates, Addl. Chief Metropolitan Magistrates, Addl. Chief Judicial Magistrates and the Judicial Magistrates and copy of the enquiry report

alongwith the list of evidence collected therein be sent to the DIG, Prisons of the region concerned to take necessary action.

20(D). State Government is bound to implement the order of the National Human Rights Commission awarding compensation to the dependents of the under trial prisoner having died due to medical negligence of the jail authorities : State Government is bound to implement the order of the National Human Rights Commission awarding compensation to the dependents of the under trial prisoner having died due to medical negligence of the jail authorities. See : **State of UP Vs. NHRC, 2016 (4) ALJ 98 (All)(DB).**

21(A). Bail in bailable offences (Section 436 CrPC): The right of an accused to bail u/s 436 CrPC in bailable offence is an absolute and indefeasible right. In bailable offences there is no question of discretion in granting bail as the words of Section 436 CrPC are imperative. As soon as it appears that the accused person is prepared to give bail, the police officer or the court before whom he offers to give bail, is bound to release him on such terms as to bail as may appear to the officer or the court to be reasonable. It would even be open to the officer or the court to discharge such person on his executing a bond as provided in Sec. 436 CrPC instead of taking bail from him. See---

(i) **Rasiklal Vs. Kishore, (2009) 2 SCC (Criminal) 338**

(ii) **Vaman Narain Ghiya Vs. State of Rajasthan, 2009 Cr.L.J. 1311 (SC)**

21(B). Distinction between bailable & non-bailable offences : In the legislative history for the purposes of bail, the terms "bailable" and "non-bailable" are mostly used to formally distinguish one of the two classes of cases viz. "bailable" offences in which bail may be claimed as a right in every case whereas the question of grant of bail in non-bailable offences to such a person is left by the legislature in the court's discretion. The discretion has, of course, to be a judicial one informed by tradition methodized by analogy, disciplined by a system and subordinated to the primordial

necessity of order in social life. Another such instance of judicial discretion is the issue of non-bailable warrant in a complaint case under an application under Section 319 CrPC. See : **Vikas Vs. State of Rajasthan, (2014) 3 SCC 321.**

21(C). Offences punishable with imprisonment less than three years are bailable : The expression "bailable offences" has been defined in Section 2(a) of the CrPC. It means an offence which is either shown to be bailable in the First Schedule of the CrPC or which is made bailable by any other law for the time being in force. The First Schedule the Code of Criminal Procedure consists of Part 1 and Part 2. While Part 1 deals with offences under the IPC, part 2 deals with offences under other laws. Accordingly, if the provisions of part 2 of the first schedule are to be applied, an offence in order to be cognizable and bailable would have to be an offence which is punishable with imprisonment for less than 3 years or with fine only, being the third item under the category of offences indicated in the said part. An offence punishable with imprisonment for 3 years and upwards, but not more than 7 years, has been shown to be cognizable and non-bailable. See : **Om Prakash & another Vs. Union of India & another, 2012 (76) ACC 869 (SC) (Three-Judge Bench).**

21(D). No conditions to be imposed for bailable offences u/s 436 CrPC: Court has no discretion to impose any conditions while granting bail to an accused u/s 436 CrPC for a bailable offence except demanding security with sureties. See--- **Vaman Narain Vs. State of Rajasthan, 2009 Cr.L.J. 1311 (SC)**

21(E). Bail in bailable offences----when to be ? : Sec. 436(2) CrPC reads thus : "Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in

custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under Section 446.”

22. Bail u/s 436-A CrPC when the accused has already undergone half of the maximum sentence prescribed : As per Sec. 436 CrPC, bail to an accused of bailable offence has to be granted as a matter of right. A new Sec. 436-A has also been added in the CrPC since June, 2006 which provides that where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the Punishments under the law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties. The purpose behind the incorporation of the aforesaid new provisions in the CrPC through amendments w.e.f. June, 2006 is to protect the human rights of the arrestees and the accused persons as directed by the Hon’ble Supreme Court in the above noted cases. The sub-ordinate courts particularly the magisterial courts have been assigned the task of ensuring the observance of the aforesaid new provisions in the CrPC and the guidelines issued by Hon’ble Supreme Court from time to time in the above noted cases.

23(A). Putting hand-cuff or bar-fetters on prisoners : Putting hand-cuff or bar-fetters on the person of the accused or the prisoners, keeping the prisoner into solitary confinement or subjecting them to any barbarous treatment or any other sort of inhuman treatment has also been deprecated by the Supreme Court as being violative of the fundamental rights under Article 21 of the Constitution and various guidelines have been issued in this regard to the effect that without the prior permission of the courts no authority including jail authorities would hand-cuff or fetter the prisoners. Any violation of the guidelines issued by Hon’ble Supreme Court to that effect has been declared punishable as contempt of court in the following cases....

1. **Altemesh Rein Advocate, Supreme Court of India v. Union of India, AIR 1988 SC 1768**
2. **Prem Shanker Shukla v. Delhi Administration, AIR 1980 SC 1535**
3. **State of Maharashtra v. Ravikant S. Patil, (1991) 2 SCC 373**
4. **Sunil Batra v. Delhi Administration, (1978) 4 SCC 494**
5. **Sunil Gupta v. State of MP, (1990) 3 SCC 119**
6. **Rudal Shah v. State of Bihar, (1983) 4 SCC 141**
7. **Citizen for Democracy through it's President v. State of Assam, AIR 1996 SC 2193**
8. **D.K. Basu v. State of W.B., (1997) SCC 416**
9. **A.K. Jauhari v. State of U.P., (1997) SCC 416**
10. **In re; M.P. Dwivedi and others, AIR 1996 SC 2299**
11. **R.P. Vaghela v. State of Gujarat, 2002(2) JIC 951 (Gujarat) (FB)**
12. **Charles Shobraj vs. Superintendent, Central Jail, Tihar, New Delhi, AIR 1978 SC 1514**
13. **Kishor Singh vs. State of Rajasthan, AIR 1981 SC 625**

23(B). Magistrate not ordering removal of hand-cuffs of the accused at the time of first remand u/s 167 CrPC deprecated by the Supreme Court :

A duty has been imposed upon the courts that no under trial prisoner is produced before the courts hand-cuffed or fettered. In the case of **M.P. Dwivedi & others, AIR 1996 SC 2299**, a judicial magistrate who had failed to take suitable action against the police constables producing the accused hand-cuffed in his court, was summoned by the Supreme Court and was severely reprimanded for not having observed the guidelines issued by the Hon'ble Supreme Court in relation to the hand-cuffing of the accused persons. The judicial magistrate, in this case, was being sent to jail by the Supreme Court but on request having been made by the senior advocates of the Supreme Court then present in the court room and looking into the fact that the concerned judicial magistrate was a new entrant in the judicial service and was not aware of the pronouncements of the Hon'ble Supreme Court on the subject, was spared with the warning not to commit such omissions in future and the court strongly disapproving his conduct directed the observations of the Supreme Court to be kept on his personal service record.

23(C). Compensation for hand-cuffing : Where the accuse, who was running a coaching centre, was arrested for committing offences u/s 420/34 IPC and u/s 3/4 of M.P. Recognized Examination Act, 1937, his photographs with hand-cuffs appeared in local papers, his sister expired due to shock and prosecution after 10

years ended into acquittal and the accuse then claimed compensation, it was held by the Hon'ble Supreme Court that the accused was hand-cuffed without warrant adversely affecting his dignity and, therefore, he was awarded a compensation of Rs. 2 lacs. See : **Hardeep Singh Vs. State of M.P., 2012(76) ACC 359(SC)**

24(A). Prisoners' human rights : Even after conviction, when a person is in jail, allowing humane conditions in jail is part of human dignity. Prison reforms or jail reforms are measures to make convicts reformed persons so that they are able to lead a normal life and assimilate in society after serving the jail term are motivated by human dignity jurisprudence. See : **Shabnam Vs. Union of India, (2015) 6 SCC 702.**

24(B). Human Rights of convicts and the interest of Society at large : The interests of society at large are being repeatedly sacrificed or the exaggerated, if not misplaced concern for what is fashionably termed as 'human rights' of convicts. Recent judgments of the Court contain a perceptible dilution of legal principles such as the right of silence of the accused. The Supreme Court has, in several cases, departed from this rule in enunciating, inter alia, that the accused are duty bound to give a valid explanation of facts within their specific ad personal knowledge in order to dispel doubts on their complicity. Even half a century ago this would have been a jural anathema. See : **Surya Baksha Singh Vs. State of UP, 2014 (84) ACC 379 (SC)** (para 11)

25. Inspections of jails by Judicial Officers : Regular monthly inspections and even surprise inspections of the jails are made by the district magistrates, superintendents of police of the districts, district judges and the chief judicial magistrates to ensure that the human rights of the prisoners are not violated in the jails.

26(A). Child in the lap of female accused & the duty of courts : Directions issued by the Supreme Court in writ petition (C) No. 559/1994, **R.D. Upadhyay vs. State of A.P. & others, AIR 2006 SC 1946** and circulated by Allahabad High Court amongst the Judicial Officers of the State of U.P. vide **C.L. No. 34/2006 dated**

7.8.2006 mandates that female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years. In such cases the courts must issue directions to the jail authorities for proper feeding, medication and over all well-being of the infants/children in jail. These directions from the Apex Court are aimed at protecting the valuable human rights of the infants/children who are in jails with their prisoner mothers.

26(B). Pregnancy & birth of child in jail & protection of human rights : In the matter of a prisoner women being pregnant & birth of child in jail, several guidelines have been issued by the SC to the jail authorities & the courts. See : **R.D Upadhyay Vs. State of A.P,(2007) 15 SCC 337 (Three-Judge Bench).**

27. Remedy of prisoners in case of marriage, funeral etc. of near dears : The remedy of prisoners in the event of some human urgencies like marriage, funeral etc. of any family member or of any other near and dear or seeking interview with the lawyer or family members etc. lies in the U.P. Jail Manual. The relevant provisions in this regard are contained under clauses 279, 280(2)(4), 409-A, 457-A, 691, 457-C, 457-D of the U.P. Jail Manual. In the event of emergent humanitarian considerations like the above ones, the District Magistrate has been empowered under the provisions notedabove to grant permission to the prisoners to attend the human emergencies of the sort notedabove subject to reasonable restrictions, safety and security of the prisoners. The relevant case laws on the subject are :

1. **K. Anand Nambiar vs. Chief Secretary, Govt. of Madras, AIR 1966 SC 657**
2. **Om Prakash Srivastava alias Babloo Srivastava vs. State of U.P., 1998 (37) ACC 96 (All--D.B.)**

28. Medical aid to ailing prisoners : Ailing prisoners are to be provided with necessary medical care as per the provisions contained under **para 1058 of the U.P. Jail Manual**. Courts of Judicial Magistrates and other district courts are specially empowered under various provisions of law to direct the jail authorities for providing adequate care and necessary medical facilities to the prisoners in

the jail. These provisions are also aimed at protecting the basic human rights of the prisoners. It has to be kept in mind that the human rights or the fundamental rights of a citizen do not extinguish with the imprisonment of the citizen in a jail. Only the personal liberty to go beyond the jail premises is curtailed and regulated under the authority of the law but in no case the basic human rights of a citizen or human can be curtailed or finished in jail. Even a foreigner is entitled to claim protection of his human rights in another country.

29. **Jail appeals of convict prisoners reeling under poverty & ignorance etc.** : In the case of **M.H. Hoskot v. State of Maharashtra, AIR 1978 SC 1548**, the Supreme Court has directed the jail authorities to prefer **jail appeals** of such convict prisoners who are unable to prefer appeals to the higher courts due to poverty or other reasons and the expenses therefore are to be borne by the state. These directions of the Supreme Court are to protect the human rights of the poor convict prisoners. The convicting trial court and the DLSA have also been directed in the case noted above to ensure that the jail appeal, if desired by the convict, is preferred to the higher courts at the cost of the state.
30. **Human rights of children & juveniles** : - Giving special protection to the children or juveniles under 18 years of age, the Parliament has passed **Juvenile Justice (Care & Protection of Children) Act, 2000**. This special Act is aimed at protecting the human rights of the persons of tender age. Children or juveniles below 18 years cannot be treated as ordinary or hardened criminals and they cannot be tried together with the ordinary criminals. For the trial of their criminal cases, a special forum called the **“Juvenile Justice Board”** has been constituted under the 2000 Act. Juveniles cannot be awarded death penalty or sentence of imprisonment. To bring about reforms in them, they are to be lodged in juvenile or reformatory protective homes and can be directed to render community service etc. These special provisions are meant to respect and protect the human rights of the children or juveniles and endeavour to bring reforms in them to become responsible and good human beings.

31(A). **Mentally ill prisoners & duty of Courts** : The Hon'ble Supreme Court, while interpreting the provisions of **Mental Health Act, 1987**, has in the case of **Sharda v. Dharam Pal, AIR 2003 SC 3450**, declared that the sub-ordinate courts can issue necessary directions for the protection of human rights of a mentally ill person.

31(B). **Mentally ill/lunatic prisoners & the Supreme Court guidelines** : In the case noted below, the SC has issued detailed guidelines to protect the rights of lunatic undertrials or mentally ill prisoners. See : **News item "30 years in jail without trial" published in Hindustan Times, in re vs. UOI,(2007) 15 SCC 18(Three-Judge Bench)**.

31(C). **Supreme Court's directions for welfare of mentally ill and differently abled persons** : In the case noted below, the Hon'ble Supreme Court, while interpreting the provisions of the 'Persons With Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995', has issued certain directions for improvement in conditions of inmates of Homes and mentally ill persons and differently abled persons and also for identification of issues relating to non-compliance with the statutory guidelines and objectives of the said Act. See :

- (i) **Reena Benerjee Vs. Government (NCT of Delhi) & Others, (2017) 2 SCC 94.**
- (ii) **Sunanda Bhandare Foundation Vs. Union of India, (2017) 5 SCC 131.**

32. **Child & Bonded Labourers & Duty of DLSA** : (A) **Art. 23** of the Constitution prohibits traffic in human beings and begar or forced labour in any form. Labour taken from prisoners in jail without paying proper remuneration to them has been held by the Supreme Court as "forced labour" and violative of Art. 23 of the Constitution. The Parliament has passed the **Bonded Labour System (Abolition) Act, 1976** to check this feudal practice and to protect the human rights of the helpless poor labourers. The Hon'ble Supreme Court has issued necessary directions in this regard in the leading cases noted below :

- 1. **Bandhua Mukti Morcha vs. Union of India, AIR 1984 SC 802**
- 2. **Deena vs. Union of India, AIR 1983 SC 1155**

3. **Peoples Union for Democratic Rights vs. Union of India, AIR 1982 SC 1943**
33. **Marital obligation of a woman & her human rights regarding pregnancy & child birth** : The woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognize that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilization procedures. Taken to their logical conclusions, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a 'compelling State interest' in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices. See : **Suchita Srivastava vs. Chandigarh Administration, AIR 2010 SC 235**
34. **No harassment of women workers at their work places** : In the case of **Apparel Export Promotion Council Vs. A.K. Chopra, AIR 1999 SC 625**, where male Private Secretary to the Chairman of the Apparel Export Promotion Council had tried to molest his women typist-cum-clerk physically and on enquiry his guilt was found proved, it has been held by the Hon'ble Supreme Court that the sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication. Similarly in the case of **Vishaka Vs. State of Rajasthan, (1997) 6 SCC 241**, a three-Judge Bench of the Hon'ble Supreme Court has defined the words "sexual

harassment" to include such unwelcome sexually determined behavior, whether directly or by implication as (a) physical contact and advances (b) a demand or request for sexual favours (c) sexually-coloured remarks (d) showing pornography (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

34.1 'Right to Marry' not an absolute right under Article 21 of the Constitution: Every young man or, for that matter, a woman, has a right to marry. But such right cannot be claimed to be absolute. Marriage is the sacred union, legally permissible, of two healthy bodies of opposite sexes. It has to be mental, psychological and physical union. When two souls thus unite, a new soul comes into existence. That is how the life goes on on this planet. Mental and physical health is of prime importance in a marriage as one of the objects of the marriage is the procreation of equally healthy children. That is why in every system of matrimonial law, it has been provided that if a person was found to be suffering from venereal disease in a communicable form, it will be open to the other partner in the marriage to seek divorce. Once the law provides the "venereal disease" as a ground for divorce to either husband or wife, such a person who was suffering from that disease even prior to the marriage cannot be said to have any right to marry so long as he is not fully cured of the disease. If the disease with which he was suffering would constitute a valid ground for divorce was concealed by him and he entered into marital ties with a woman who did not know that the person with whom she was being married was suffering from a virulent venereal disease, that person must be enjoined from entering into marital ties so as to prevent him from spoiling the health and consequently the life of an innocent woman. Such a person is under a moral, as also legal duty, to inform the woman with whom the marriage is proposed that he was not physically healthy and that he was suffering from a disease which was likely to be communicated to her. In this situation, the right to marry and duty to inform about his ailment are vested in the same person. It is a right in respect of which a corresponding duty cannot be claimed as against some other person. Such a right, for these reasons also would be an exception to the general rule that every "Right" has a correlative "Duty". Moreover, so long as the person is not cured of the communicable venereal disease or impotency, the Right to Marry cannot be enforced through a Court of law and shall be treated to be a "Suspended Right". Sections 269 and 270 of IPC spell out two separate and distinct

offences by providing that if a person, negligently or unlawfully, does an act which he knew was likely to spread the infection of a disease, dangerous to life to another person, then, the former would be guilty of an offence punishable with imprisonment for the term indicated therein. Therefore, if a person suffering from the dreadful disease "AIDS", knowingly marries a woman and thereby transmits infection to that woman, he would be guilty of offences indicated in Sections 269 and 270 of the IPC. The above statutory provisions thus impose a duty upon the person concerned not to marry as the marriage would have the effect of spreading the infection of his own disease which obviously is dangerous to life to the woman whom he marries apart from being an offence. See: 'X' Vs. Hospital 'Z', AIR 1999 SC 495.

35. Police protection to be given to major boys and girls undergoing inter-caste or inter-religious marriage : Explaining the concept of right to life guaranteed under Article 21 of the Constitution, the Supreme Court has directed the police and administration to protect from harassment, threats or act of violence such major boys or girls who have undergone inter-caste or inter-religious marriages. It has further been directed that stern action should be taken against persons who give threats or harass or commit violence against major boys or girls undergoing inter-caste or inter-religious marriages. See : **Lata Singh vs. State of U.P., 2006 ALJ 357 (SC)**

36(A). Human Rights Courts constituted under Protection of Human Rights Act, 1993 : With the passage of Protection of Human Rights Act, 1993, Special Courts of Sessions have been constituted to deal with the offences under the 1993 Act. **Vide U.P. Government's Notification No. Nyaya Anubhag-2, (Adhinastha Nyayalaya), Noti. No. 2688/VII-Nyaya-2-169/G-94, dated September 25, 1995, published in the U.P. Gazette, Extra, Part 4, Section (Kha), dated 25th September, 1995,** the seniormost Addl. District & Sessions Judges in every district of the State of U.P. have been notified as the presiding officers of the Special Court constituted under the Protection of Human Rights Act, 1993 to try the offences relating to violation of human rights.

36(B). Direction of the Supreme Court to set up Human Rights Court in every district : "There is, in our opinion, no reason why the State governments should not seriously consider the question of specifying Human Rights court to try offences arising out of violation of human rights. There is nothing on record to suggest that the Governments have at all made any attempt in this direction or taken steps to consult the Chief Justices of the respective High Courts. The least which the State Governments can and ought to do is to take up the matter with the Chief Justices of the High Courts of their respective States and examine the feasibility of specifying Human Rights Court in each district whith in the contemplation of Section 30 of the Act. Beyond that we do not propose to say anything at this stage. See : **D.K. Basu Vs. State of W.B., (2015) 8 SCC 744 (para 30)**

36(C) Judges are expected not to sit as “mute structures of clay” in the Hall known as “court room” but to be sensitive to the nature of matters under their consideration: The right which advances the public morality or public interest would alone be enforced through the process of Courts for the reason that moral considerations cannot be kept at bay and the Judges are not expected to sit as mute structures of clay, in the Hall, known as Court Room, but have to be sensitive in the sense that they must keep their fingers firmly upon the pulse of the accepted morality of the day. See: 'X' Vs. Hospital 'Z', AIR 1999 SC 495 (para 43)

37. Powers & procedure of Human Rights Courts : The Protection of Human Rights Act, 1993 does not provide any procedure for the Special Courts constituted u/s. 30 of the 1993 Act to try the offences relating to the violation of human rights. The Allahabad High Court, vide it's **C.L.No. 18/2006/Admin.(A-3)/Dated:Allahabad: 10.5.06**, has laid down following procedure for cognizance and trial of the offences relating to violation of human rights by the Special Sessions Courts constituted u/s. 30 of the 1993 Act :

“Functioning of the Human Rights Courts will be treated from the date on which the notification has been published by the State Government, specifying the Court of Human Rights u/s. 30 of the Protection of Human Rights Act, 1993, i.e. 25.9.1995 and the special court/designated court cannot take cognizance directly and it can take cognizance only after the case has been committed to the Court of Sessions.”

It is thus clear that the Special Court constituted u/s. 30 of the Protection of Human Rights Act, 1993 cannot take cognizance of the offences relating to violation of human rights directly but only after the commitment of the case to it by the Magistrate. The procedure which emerges from the above noted C.L. of the Allahabad High Court is that the complaints regarding violation of human rights would be instituted in the courts of judicial magistrates exercising local territorial jurisdiction over the area and if after inquiry in the complaint the judicial magistrate finds that some prima facie case of violation of human rights is made out, he shall commit the case for trial to the court of Special Additional Sessions Judge constituted for the purpose. It is thus abundantly clear that a complainant alleging violation of human rights has to file his complaint in the court of the judicial magistrate having jurisdiction over the area wherein the offence regarding violation of human rights is alleged to have taken place and if on inquiry of such complaint, some prima facie case is found by the Magistrate to be made out, he would commit the case for trial to the Special Court constituted u/s. 30 of the 1993 Act.

38. Penalty awardable by Human Rights Courts : The Protection of Human Rights Act, 1993 does not contain any penal provision in itself to punish the violator of human rights. If the Special Court constituted u/s. 30 of the 1993 Act, finds that the accused has committed some offence punishable under the General Penal Law of the IPC, it may (keeping in view the provisions contained u/s. 5 of the IPC) award suitable penalty to the violator/accused for the offence proved.

39(A). Speedy trial of under trials (Art. 21 of the Constitution & Sec 309 CrPC) : Speedy trial of the cases of under trial prisoners has also been declared by the Supreme Court as their fundamental right under Article 21 of the Constitution. See :

1. **Babubhai Bhimabhai Bokhiria Vs. State of Gujarat, (2013) 9 SCC 500**
2. **Vakil Prasad Singh vs. State of Bihar, (2009) 3 SCC 355**
3. **A.R. Antulay vs. R.S. Nayak, AIR 1992 SC 1701 (Seven-Judge Constitution Bench)**
4. **Kadra Pehadiya vs. State of Bihar, AIR 1981 SC 939**

5. **Hussainara Khaton vs. State of Bihar, AIR 1976 SC 1360**

39(B).Direction of the Hon'ble Supreme Court for taking administrative action against the delinquent Judicial Officers not conducting trial on day to day basis and granting adjournments u/s 309 CrPC :

Where the trial court (sessions court) had granted adjournment for two months for cross examination of a prosecution witness (who was subsequently won over by the accused and had completely contradicted in cross-examination his previous deposition in examination-in-chief), the Hon'ble Supreme Court has ruled thus : "*The dire need for the courts dealing with the cases involving serious offences is to proceed with the trial commenced on day to day basis in de die in diem until the trial is concluded. We wish to issue a note of caution to the trial courts dealing with sessions cases to ensure that there are well settled procedures laid down in the Code of Criminal Procedure as regards the manner in which the trial should be conducted in sessions cases in order to ensure the dispensation of justice without providing any scope for unscrupulous elements to meddle with the course of justice to achieve some unlawful advantage. In this respect, it is relevant to refer to the provisions contained in Chapter XVIII of the CrPC where u/s 231 it has been specifically provided that on the date fixed for examination of witnesses as provided u/s 230, the sessions judge should proceed to take all such evidence as may be produced in support of prosecution and that in his discretion may permit cross-examination of any witnesses to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination..... every one of the cautions indicated in the decision of this Court in **Raj Deo Sharma Vs. State of Bihar, (1998)7 SCC 507** was flouted with impunity. In the said decision a request was made to all the High Courts to remind all the trial judges of the need to comply with Section 309 CrPC in letter and spirit. In fact, the High Courts were directed to take note of the conduct of any particular trial Judge who violates the above legislative mandate and to adopt such administrative action against the delinquent judicial officer as per the law. It is unfortunate that in spite of the specific directions issued by this Court*

*and reminded once again in **State of UP Vs. Shambhu Nath Singh, (2001) 4 SCC 667** such recalcitrant approach was being made by the trial court unmindful of the adverse serious consequences flowing therefrom affecting the society at large. Therefore, even while disposing of this appeal by confirming the conviction and sentence imposed on the appellant by the learned trial judge, as confirmed by the impugned judgment of the High Court, we direct the Registry to forward a copy of this decision to all the High Courts to specifically follow the instructions issued by this Court in the decision in **Raj Deo Sharma and reiterated in Shambhu Nath** by issuing appropriate circular, if already not issued. If such circular has already been issued, as directed, ensure that such directions are scrupulously followed by the trial courts without providing scope for any deviation in following the procedure prescribed in the matter of trial of sessions cases as well as other cases as provided under Section 309 CrPC. In this respect, the High Courts will also be well advised to use their machinery in the respective **State Judicial Academy** to achieve the desired result. We hope and trust that the respective High Courts would take serious note of the above directions issued in the decision in **Raj Deo Sharma** which has been extensively quoted and reiterated in the subsequent decision of this court in **Shambhu Nath** and comply with the directions at least in the future years." See :*

- (i) **Vinod Kumar Vs. State of Punjab, (2015) 3 SCC 220.**
- (ii) **Akil Vs. State (NCT of Delhi), (2013) 7 SCC 125 (paras 33, 42 & 43)**
- (iii) **Gurnaib Singh Vs. State of Punjab, (2013) 7 SCC 108.**

39(C). Granting frequent adjournments u/s 309 CrPC deprecated by the Supreme Court : Protraction of criminal trials because of grant of frequent adjournments u/s. 309 CrPC by Judges and Magistrates has also been deprecated by the Supreme Court and directions for speedy trial of the cases of the accused or under trials has been issued in the following cases :

- 1. **N.G. Dastane vs. Shrikant S. Shinde, AIR 2001 SC 2028**
- 2. **Swaran Singh vs. State of Punjab, 2000 (11) U.P. Cr. Rulings 1 (SC)**
- 3. **Ramon Services Pvt. Ltd. vs. Subhas Kapoor, JT 2000 (Suppl. 2) SC 546**

4. **Raj Bahadur vs. Commissioner, Agra Division, 2005 (4) AWC 3321 (All- D.B.)**

39(D). No direction fixing time limit for disposal of Criminal Trials can be issued

by courts : However a Seven Judge Constitution Bench of the Supreme Court in the case of **P. Ramachandra Rao vs. State of Karnataka, (2002) 4 SCC 578 (Seven-Judge Bench)** has clarified that although speedy trial is a fundamental right of an accused/under trial but courts cannot prescribe any specific time limit for the conclusion of a criminal trial.

39(E). Inordinate delay of 37 years in disposal of criminal appeal in the matter of

attempt on life of the CJI deprecated by the Supreme Court : Two live hand grenades were lobbed on 20.03.1975 at about 4.15 P.M. inside the car at the intersection of Tilak Marg and Bhagwan Dass Road at a stone's through distance from the Supreme Court of India, Delhi. The then CJI Mr. Justice A.N. Ray, his son Shri Ajoy Nath Ray (later on became Chief Justice of the Allahabad High Court), Driver of the car Inder Singh and Jamadar Jai Nand were travelling in the said car. Fortunately, the grenades did not explode and the occupants of the car including the CJI escaped unharmed. FIR was registered and the matter was investigated by the Crime Branch of Delhi police. On the same day one Santoshanand Avadhoot was arrested and later on an Advocate namely Ranjan Dwivedi was also arrested. Two other accused persons namely Sudevanand Avadhoot and Vikram @ Jaladhar Das, who were in jail for the murder of Shri L.N. Mishra, the then Minister of Railways in the Union Cabinet who was killed in a bomb blast two and half months before at the platform of Samastipur Railway Station, Bihar, were also arrested on 27.07.1975 in connection with the aforesaid incident of attempt on live of the then CJI. The above accused persons were convicted on 28.10.1976 by the ASJ, Delhi for the offences u/s 307/120-B of the IPC and sentenced to 10 years rigorous imprisonment. The convicts preferred appeal to the Delhi High Court but the same remained undecided for the last 37 years. The convicts/appellants then approached the Hon'ble Supreme Court for justice. The Supreme Court, while expressing distress at the inordinate delay of 37 years in the disposal of the criminal appeal, observed that speedy,

open and fair trial is a fundamental right of an accused under Article 21 of the Constitution. The Supreme Court further directed the Delhi High Court to ensure that the criminal appeals of the convicts named above were decided without further delay within a period of six months. **See : Sudevanand Vs. State through CBI, (2012) 3 SCC 387.**

40. **Article 20(3) of the constitution as bar against forced scientific tests like DNA, Narco-analysis & Polygraph etc.** : In view of the bar of constitution contained under Article 20(3), an accused person can not be compelled to undergo scientific tests like Narco analysis, Polygraphy, Brainfnger printing etc. as it amounts to self-incrimination of the accused. See : **Smt. Selvi Vs. State of Karnataka, AIR 2010 S.C. 1974 (Three-Judge Bench)**
41. **DNA Test not violative of Art. 20(3) of the constitution** : DNA profiling technique has been expressly included among the various forms of medical examination in the amended explanation to sections 53, 53-A and 54 of the CrPC DNA Profile is different from a DNA sample which can be obtained from bodily substances. The use of material samples such as finger prints for the purposes of comparison and identification does not amount to testimonial act or compulsion for the purpose of Article 20(3) of the constitution. Hence, the taking and retention of DNA Samples which are in the nature of physical evidence does not face constitutional hurdles in the Indian context See : **Smt. Selvi Vs. State of Karnataka, AIR 2010 S.C. 1974 (Three Judge Bench)**
42. **Tests like Narco analysis, Polygraph & BEAP violative of human rights** : Scientific tests like Narco analysis, polygraph and BEAP on accused persons have been declared to be cruel, inhuman degrading, mentally torchorous and violative of Art 21 of the Constitution. The SC while holding as above has relied upon the following the principles contained in following :
- (i) Art 21 of the Constitution
 - (ii) Art 5 of the Universal Declaration of Human Rights, 1948.
 - (iii) Art 7, International Covenant on civil &political Rights, 1966.

- (iv) Art 1 & 16 of the U.N. Convention against torture & other cruel, inhuman or degrading treatment or punishment, 1984.
- (v) Principles 1,6 & 21 of the U.N Body of principles for the protection of all persons under any form of detention or imprisonment, 1988
- (vi) Article 17 of the Geneva Convention relating to the treatment of prisoners of war, 1949.
- (vii) Sec 24, 25, 26 of the Evidence Act, 1872. See : **Selvi Vs. State of Karnataka, (2010) 7 SCC 263 (Three-Judge Bench)**

43. **Denial of benefits under law amounts to violation of human rights** : If a person is entitled to benefit under a particular law and the benefit under that law has been denied to him, it will amount to a violation of human rights under the provisions of Sec. 2(d) & 12(j) of the Protection of Human Rights Act, 1994. Broad vision of definition of Human Rights under the above provisions can not be straight jacketed within narrow confines. Nature and contents of Human Rights can be understood from rights enumerated in Universal Declaration of Human Rights. See : **Ram Deo Chauhan Vs. Bani Kant Das, AIR 2011 SC 615.**

44. **Human Rights Commission has no jurisdiction to decide disputed question of title and possession** : The Human Rights Commission does not have any jurisdiction to deal with the disputed questions of title and possession of the property. There is nothing in Section 12 of the Protection of Human Rights Act, 1993 which authorizes the Human Rights Commission to adjudicate upon the disputes of title and possession of property. See : **G. Manikyamma & Others Vs. Roudri Cooperative Housing Society Ltd. & Others, AIR 2015 SC 720.**

45(A). **In a Three-Judge Bench decision dated 21.01.2014 of the Supreme Court in Writ Petition (Criminal) No. 55 of 2013, Shatrughan Chauhan & Another Vs. Union of India & Others, (2014) 3 SCC 1 several guidelines against the delayed execution of death sentence of prisoners have been issued as under :**

- (i) Legal aid to the prisoner
- (ii) Speedy disposal of the mercy petition by the President/Governor

- (iii) Communication of rejection of mercy petition by the Governor to the prisoner
- (iv) Providing a copy of rejection order of the mercy petition to the prisoner
- (v) Minimum 14 days prior notice to the prisoner before execution
- (vi) Regular evaluation of mental health of the prisoner condemn to death
- (vii) Execution of the prisoner should be stopped when he is mentally and physically not fit for execution
- (viii) Providing copies of all relevant documents to the prisoner free of cost.
- (ix) Assisting the death sentence prisoner in making mercy petition
- (x) Arranging final meeting between the prisoner and his family before execution
- (xi) Post mortem of the body of the prisoner after execution of death sentence mandatory
- (x) Hanging by rope is constitutionally valid .

45(B). Delay in disposal of mercy petition entitles the prisoner condemned to death for commutation of the death penalty into life imprisonment :

Where the mercy petition of the prisoner condemned to death was not disposed of even after the period of three years and ten months, it has been held that such inordinate delay in disposal of the mercy petition was violative of Article 21 of the Constitution and the death sentence was commuted by the Supreme Court into life imprisonment. See : **Ajay Kumar Pal Vs. Union of India, AIR 2015 SC 715 (Three-Judge Bench).**

45(C). Remedies available to death convict after confirmation of death sentence by the Supreme Court :

Article 21 has its traces in the dignity of human being. It has been recognised as part of Article 21 of the Constitution. Once this aspect of dignity of human being is recognised, it does not end with the confirmation of death sentence, but goes beyond and remains valid till such a convict meets his/her destiny. Therefore, the

process/procedure from confirmation of death sentence by the highest court till the execution of the said sentence, the convict is to be treated with human dignity to the extent which is reasonable and permissible in law. The human dignity has to be preserved even when a prisoner is sentenced to death. Thus, condemned prisoners also have a right to dignity and execution of death sentence cannot be carried out in an arbitrary, hurried and secret manner without allowing the convicts to exhaust all legal remedies. Following procedure has to be followed before the execution of the death sentence :

- (i) The principles of natural justice must be read into the provisions of Section 413 and 414 CrPC and sufficient notice ought to be given to the convict before the issuance of a warrant of death by the Sessions Court that would enable the convict to consult his advocates and to be represented in the proceedings.
- (ii) The death warrant must specify the exact date and time for execution and not a range of dates which places a prisoner in a state of uncertainty.
- (iii) A reasonable period of time must elapse between the date of the order on the execution warrant and the date fixed or appointed in the warrant for the execution so that the convict will have a reasonable opportunity to pursue legal recourse against the warrant and to have a final meeting with the members of his family before the date fixed for execution.
- (iv) A copy of the execution warrant must be immediately supplied to the convict.
- (v) In those cases, where a convict is not in a position to seek legal assistance, legal aid must be provided.

This procedure is in consonance with Article 21 of the Constitution. While executing the death sentence, it is mandatory to follow the said

procedure and the guidelines contained in Shatrughan Chauhan, (2014) 3 SCC 1 (*paras 10, 21 & 23*). See :

- (i) **Shabnam Vs. Union of India, (2015) 6 SCC 702** (*para 16*)
- (ii) **Peoples' Union for Democratic Rights (PUDR), 2015 SCC Online All 143.**

46. **Certain suggestions for effective role of Human Rights Courts** : As is clear from the various legislations and the judicial pronouncements of the Hon'ble Supreme Court quoted above, the judiciary has to play a major role for the protection of human rights of the citizens. It is the sub-ordinate judiciary that can respond first and rapidly to the rescue of a citizen whose human rights are in jeopardy at the hands of the police, jail or other agencies of the executive.

In the coming times, the sub-ordinate judiciary has to play major role in protecting the human rights of the citizens. Apart from the State Human Rights Commissions and the National Human Rights Commission, the special courts constituted under the Protection of Human Rights Act, 1993 need to be given more teeth to deal with the cases of violation of human rights. It is hoped that in the days ahead, the scenario regarding the respect and protection of human rights in the country will improve.

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