



Role of Judiciary in Protecting Human Rights

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1.01. 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 part III of 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 people. 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 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 and non-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 of the Supreme Court for the protection of human rights of the citizens are being discussed here as under :

1.02. 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 Art. 21 of the Constitution, the Supreme Court, in the cases noted below, has declared that right to live as guaranteed under Art. 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

1.03. 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."

2.01. 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.

2.02. 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.

3.01. 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 लोष्ठवत् ।
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) अष्टादशपुराणेषु व्यासस्य वचनद्वयं ।
परोपकारः पुण्याण पापाय परपीडनम् ॥

(4) परहित सरिस धरम नहिं भाई ।
परपीडा सम नहिं अधमाई ॥ (Goswami Tulsidas)

(5) 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.

5. **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.

6. **Presumption of innocence of accused as human right** : 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. 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) 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 Brahmajeetsing Sharma Vs. State of Maharashtra, (2005) 5 SCC 294 (Three–Judge Bench)
 - (iv). Sunil Kumar Shambhu Dayal Gupta Vs. State of Maharashtra 2011 (72) ACC 699 (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 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. **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.
9. **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

10. 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.

11. 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

12. 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.

- 13.01. 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.
- 13.02. 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).
- 13.03. 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.
- 13.04. 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.
- 13.05. 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)
- 13.06. No detention in police custody beyond 24 hours** : 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*)

13.07. 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.

13.08. 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.

13.09. 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. : 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.

- 14. NBW when to be issued ?** : 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. 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 :
- (i) Vikas Vs. State of Rajasthan, (2014) 3 SCC 321.
 - (ii) Raghuvansh Dewanchand Bhasin Vs State of Maharashtra & Another, AIR 2011 SC 3393.
- 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 it's judicial pronouncements. In the year 2006, a new **Sec. 164-A** has been added in Cr.P.C. 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.
- 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. **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, undertrials 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. 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 U.P., (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 Cr.P.C. 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.
18. **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*)

19.01. 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 dependants 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. Raghbir 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)

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

Cr.P.C.) : 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.

19.03. 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 Cr.P.C. 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. 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 Cr.P.C. 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 subordinate courts particularly the magisterial courts have been assigned the task of ensuring the observance of the aforesaid new provisions in the Cr.P.C. and the guidelines issued by Hon'ble Supreme Court from time to time in the above noted cases.

21.01. 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

21.02. 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.

- 21.03. 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)
- 22.01. 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.
- 22.02. 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)
- 23. 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.

24. **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.
25. **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).
26. **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.
27. **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.

- 28.01. 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.
- 28.02. 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).
- 28.03. Protection of human rights of elderly and senior citizens** : Art.21 of the Constitution of India in its expansive meaning encompasses various rights of elderly persons/senior citizens such as right to dignity, right to health, right to adequate pension and right to shelter. There is need to continuously monitor implementation of rights of elderly persons/senior citizens. Thus a continuing mandamus is required to be issued in the present case as it is a well-recognised practice for enforcing the social justice postulated by the Preamble. The Supreme Court issued directions for enforcement of the said rights and the statutory rights under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and other welfare schemes. Under the Indira Gandhi National Old Age Pension Scheme, Rs 200/- and Rs 500/- was fixed for persons between age of 60-70 and above 80 respectively. Said amount was fixed more than a decade ago. No doubt, under the said Scheme, the State Governments have an obligation also but their contribution varies from Rs 500/- to Rs 200/-. The right to live with dignity is a fundamental right recognised by Article 21 of the Constitution. Availability of adequate finances is necessary for a person to live a life of dignity. An elderly person, particularly someone who is in an old age home, is unable to look after himself needs financial assistance. This can be made available only if there is a viable pension scheme that is implemented with sincerity and which can be taken advantage of by an elderly person. **See: *Ashwani Kumar Vs Union of India and others* (2019) 2 SCC 636**

29. **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
30. **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)
31. **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.
32. **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.

33. 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.

34.01. 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 Khatoon vs. State of Bihar, AIR 1976 SC 1360

34.02. 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.

34.03. 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 Cr.P.C. 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.)

34.04. 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.

35. 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, Brainfingerprinting 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)

36. 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.

37. **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. Manikamma & Others Vs. Roudri Cooperative Housing Society Ltd. & Others, AIR 2015 SC 720.

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