Fundamental Rights & Duties

Part: 1
Fundamental Rights
(Articles 12-35)

1. **Constitution does not confer fundamental rights but only confirms their existence and protects them :** It is a fallacy to regard fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any Constitution by reason of the basic fact that they are members of the human race. These fundamental rights are important as they possess intrinsic value. Part III of the Constitution does not confer fundamental rights. It confirms their existence and gives them protection. Its purpose is to withdraw certain subjects from the area of political controversy to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. Every right has content. Every foundational value is put in Part III as a fundamental right as it has intrinsic

value. The converse does not apply. A right becomes a fundamental right because it has foundational value. Apart from the principles, one has also to see the structure of the article in which the fundamental value is incorporated. A fundamental right is a limitation on the power of the State. See : **M. Nagaraj Vs. Union of India, AIR 2007 SC 71 (Five-Judge Bench).**

2(A). Fundamental rights incorporated under Part III of the Constitution of India : Part III of the Constitution of India contains following fundamental rights :

(1) Equality before law
Article 14

(2) Prohibition of discrimination on grounds
Article 15
of religion, race, caste, sex or place of birth

(3) Equality of opportunity in matters of
Article 16
public employment

(4) Abolition of untouchability
Article 17

(5) Abolition of titles Article 18

(6) Protection of certain rights regarding
Article 19
freedom of speech, etc.

(7) Protection in respect of conviction for offences Article 20

(8) Protection of life and personal liberty Article 21

(9) Right to education Article 21A

(10) Protection against arrest and detention in certain cases Article 22

(11) Prohibition of traffic in human being and forced labour Article 23

(12) Prohibition of employment of children in factories etc. Article 24

(13) Freedom of conscience and free profession, practice and propagation of religion Article 25

(14) Freedom to manage religious affairs Article 26

(15) Freedom as to payment of taxes for promotion of any particular religion Article 27

(16) Freedom as to attendance at religious instruction or religious worship in certain educational institutions Article 28

(17) Protection of interests of minorities Article 29

(18) Right of minorities to establish and administer educational institutions — Article 30

(19) Remedies for enforcement of rights conferred by Part III — Article 32

2(B). Classification of fundamental rights : The fundamental rights contained under Part III of the Constitution of India can be classified under six groups noted below :

(1) Right to equality (Articles 14, 15, 16, 17, 18)

(2) Right to freedom (Articles 19, 20, 21, 22)

(3) Right against exploitation (Articles 23, 24)

(4) Right to freedom of religion (Articles 25, 26, 27, 28)

(5) Cultural and educational rights (Articles 29, 30)

(6) Right to constitutional remedies (Articles 32, 33, 34, 35)

3. Fundamental rights are the heart & soul of the Constitution : A Constitution Bench of the Hon'ble Supreme Court, while highlighting the importance of the

fundamental rights contained under Part III of the Constitution, has declared that the fundamental rights are the heart & soul of the Constitution. See :

(i) I.R. Coelho Vs. State of Tamil Nadu, AIR 2007 SC 861 (Nine-Judge Bench).

(ii) Maneka Gandhi Vs. Union of India, AIR 1978 SC 597.

4. **Objects of fundamental rights :** The object of the fundamental rights is to foster the social revolution by creating a society egalitarian to the extent that all citizens are to be equally free from coercion or restriction by the State. By enacting fundamental rights and directive principles which are negative and positive obligations of the States, the Constituent Assembly made it the responsibility of the Government to adopt a middle path between individual liberty and public good. Fundamental rights and directive principles have to be balanced. That balance can be tilted in favour of the public good. The balance, however, cannot be overturned by completely overriding individual liberty. This balance is an essential feature of the Constitution. **See : I.R. Coelho Vs. State of Tamil Nadu, AIR 2007 SC 861 (Nine-Judge Bench)***(para 102).*

5. **Fundamental rights are not absolute but subject to reasonable restrictions :** The fundamental rights cannot be taken away by any legislation. A Legislation can only impose reasonable restrictions on the exercise of the fundamental rights. See **: Dharam Dutt Vs. Union of India, AIR 2004 SC 1295** (para 36).

6. **Fundamental rights have to be balanced with directive principles :** By enacting fundamental rights and directive principles which are negative and positive obligations of the State, the Constituent Assembly made it the responsibility of the Government to adopt a middle path between individual liberty and public good. Fundamental rights and directive principles have to be balanced. That balance can be tilted in favour of the public good. The balance, however, cannot be overturned by completely overriding individual liberty. This balance is an essential feature of the Constitution. **See : I.R. Coelho Vs. State of Tamil Nadu, AIR 2007 SC 861 (Nine-Judge Bench***)(para 102).*

7. **Distinction between fundamental & statutory right** : A statutory right as distinguished from a fundamental right conferred on persons or citizens is capable of being

deprived of or taken away by legislation. The fundamental rights cannot be taken away by any legislation. A legislation can only impose reasonable restrictions on the exercise of the fundamental rights. See **: Dharam Dutt Vs. Union of India, AIR 2004 SC 1295** (para 36).

8(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.

8(B-1). 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.

8(B-2).Fatwa or religious directions violating basic human rights cannot be issued :

: No institution which derives its strength from religion or is religiously sanctioned or sanctioned by religious or personal law may act or issue directions or opinions such as fatwa in violation of basic human rights. Religion cannot be allowed to be mercy less to the victim. Faith cannot be used as a de-humanizing factor. See : Vishwa Lochan Madan Vs. Union of India, (2014) 7 SCC 707.

8(B-3).Fatwas have no legal sanction and not binding anyone including the individual who had asked for it :

No Dar-ul-Qaza or for that matter anybody or institution by any name shall give verdict or issue fatwa touching upon rights, status and obligation of individual unless asked for by such individual concerned. In case of incapacity of individual, fatwa can be sought by any person interested in welfare of such individual. Issuance of fatwas concerning individual Muslims, at instant of complete strangers, held, is impermissible. Such fatwas can cause irreparable damage and shall be in violation of

basic human rights. Fatwas have no legal sanction and are not binding on anyone including the individual who had asked for it. Fatwa issued at instance of total stranger (journalist in present case), dissolving marriage of Muslim parties after wife was allegedly raped by her father-in-law, held amounts to punishing the victim only, since such fatwa was not binding on parties. **See : Vishwa Lochan Madan Vs. Union of India, (2014) 7 SCC 707.**

8(C). 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.**

8(D). Fundamental rights cannot be waived : The doctrine of waiver has no application to the provisions of law enshrined in Part III of the Constitution. It is not open to an accused person to waive or give up his constitutional rights and get convicted. See **:**

(i) Bashesher Nath Vs. Income Tax Commissioner, AIR 1959 SC 149.

(ii) Behram Vs. State of Bombay, AIR 1955 SC 146

(iii) Olga Tellis Vs. Bombay Municipal Corporation, AIR 1986 SC 180.

8(E). "Right to die" not a fundamental right under Article 21 : 'Right to die' is not included in the 'right to life' under Art. 21. Thus 'right to live' with human dignity cannot be construed to include within its ambit the right to terminate natural life, at least before commencement of the natural process of certain death. Art. 21 cannot be pressed into service to support the challenge based on Article 14. It cannot, therefore, be said that Section 309 IPC is violative either of Art. 14 or Art. 21 of the Constitution. Art. 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can 'extinction of life' be read to be included in 'protection of life'.

To give meaning and content to the word 'life' in Article 21, it has to be construed as life with human dignity. Any aspect of life which makes it dignified may be read into it but not that which extinguishes it and is, therefore, inconsistent with the continued existence of life resulting in effacing the right itself. The 'right to die', if any, is inherently inconsistent with the 'right to life' as is 'death with life'. Protagoism of euthanasia on the view that existence in Persistent Vegetative State (PVS) is not a benefit to the patient of a terminal illness being unrelated to the principle of' sanctity of life' or the 'right to life with dignity' is of no assistance to determine the scope of Art. 21 for deciding whether

the guarantee of 'right to life' therein includes the 'right to die'. The 'right to life' including the right to live with human dignity would mean the existence of such a right up to the end of natural life. This also includes the right to a dignified life up to the point of death including a dignified procedure of death. In other words, this may include the right of a dying man to also die with dignity when his life is ebbing out. But the 'right to die' with dignity at the end of life is not to be confused or equated with the 'right to die' an unnatural death curtailing the natural span of life. See : **Gian Kaur Vs. State of Punjab. AIR 1996 SC 946 & 1257.** (Five-Judge Bench).

8(F). Euthanasia & Santhara not permissible : In view of the Constitution Bench decision of the Hon'ble Supreme Court rendered in the case of **Gian Kaur Vs. State of Punjab. AIR 1996 SC 946 & 1257** (Five-Judge Bench)**,** the arguments in favour of *euthanasia* (mercy killing) and *santhara* (a practice in jainism to fast unto death) have stood negatived.

8(G). Accused has right to maintain silence during examination u/s 313 CrPC : The accused has a duty to furnish an explanation in his statement under Section 313 CrPC regarding any incriminating material that has been produced against him. If the accused has been given the

freedom to remain silent during the investigation as well as before the Court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 CrPC is being recorded. However, in such an event the Court would be entitled to draw an inference including such adverse inference against the accused as may be permissible in accordance with law. See :

(i) Phula Singh Vs. State of Himachal Pradesh, AIR 2014 SC 1256.(para 6)

(ii) Surya Baksh Singh Vs. State of UP, 2014 (84) ACC 379 (SC)

9. Access to justice is a human right : A party having a grievance must have remedy. Access to justice is a human right when there exists such a right, a disputant must have remedy in terms of the doctrine *ubi jus ibi remedium*. See :

(i) **Bhagubhai Dhanabhai Khalasi Vs. State of Gujarat (2007) 4 SCC 241**(para 10).

(ii) Arunima Baruah Vs. Union of India, (2007) 6 SCC 120.

10. **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 violation of human rights under the provisions of Sec. 2(d) & 12(j) of the Protection of Human Rights Act, 1993. 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.**

11(A). **Role played by judiciary in the development & protection of human rights or fundamental 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 the authorities of the State. 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 of the Supreme Court for the protection of human rights of the citizens are being discussed hereinafter.

11(B). Duty of judiciary to protect both substantive & procedural rights : Part III of our Constitution protects substantive as well as procedural rights. Implications which arise therefrom must effectively be protected by the judiciary. See : **Pratap Singh Vs. State of Jharkhand, (2005) 3 SCC 551 (Five-Judge Bench)**(para 64).

11(C). Fundamental rights can be enforced against State or its authorities or instrumentalities : The fundamental rights in part III of the Constitution are normally enforced against State action or action by other authorities who may come within the purview of Article 12 of the Constitution. See **:**

(i) Pradeep Kumar Biswal Vs. Indian Institute of Chemical Biology, (2002) 5 SCC 111 (Seven-Judge Bench).

(ii) Ajay Hasia Vs. Kalid Mujib Sehravardi, (1981) 1 SCC 722.

(iii) S.S. Rana Vs. Registrar, Co-operative Societies, (2006) 11 SCC 634.

12. Fundamental rights under Article 19(1) not available to non citizens : The fundamental rights conferred by

Article 19(1) of the Constitution are not available to and cannot be claimed by any person who is not and cannot be a citizen of India. See : **Dharam Dutt Vs. Union of India, AIR 2004 SC 1295** (para 36).

13(A). Presumption of innocence 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 therefore. See :

(i) Kailash Gour Vs. State of Assam, (2012) 2 SCC 34(Three-Judge Bench)

(ii) Ranjitsing brahmajeetsing Sharma Vs. State of Maharashtra, (2005) 5 SCC 294 (Three–Judge Bench)

(iii) Narendra Singh Vs. State of M.P., (2004) 10 SCC 699.

13(B). 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).**

13(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) Jayabalan vs. U.T. of Pondicherry, 2010 (68) ACC 308 (SC)

(ii) Sunil Kumar Shambhu Dayal Gupta vs. State of Maharashtra 2011 (72) ACC 699 (SC).

14. Right to property as constitutional and 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.**

15. 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.**

16. **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 v. 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**

17(A). 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 deputes 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.

17(B) . 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)*

17(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).**

17(D).Arrest of a person by the police and the treatment with him thereafter by the police 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.

17(E). Duty of Arresting Officer and Magistrate : In the famous cases of **D.K. Basu v. State of West Bengal, (1997) 1 SCC 416** and **A.K. Jauhari v. State of U.P., (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 it's 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.

17(F). Liability for contempt of the Arresting Officer : A full bench of the Allahabad High Court has in the matter of **Ajeet Singh v. State of U.P., 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.

17(G).Arrest not mandatory as per Section 41 and 41-A CrPC in cognizable offences punishable with imprisonment upto 07 years : Sections 41 and 41-A CrPC place cheque on arbitrary and unwarranted exercise of powers of arrest by police. Arrest is not mandatory as per Section 41 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.**

17(H).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.)**

Note: Now overruled by Supreme Court

17(I). 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**

17(J). Arrest of female accused : Respecting the human rights of the female accused a new **sub-section (4) to Sec. 46 CrPC** has been added since June, 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.

17(K). 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.**

18(A). 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 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.

18(B). 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, Brainfinger 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)**

18(C). 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)**

18(D). 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)**

19(A). 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.**

19(B). 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.

20(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.

20(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 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 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.

20(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 Alieas Julficar Ali Vs. State (Govt. of NCT) Delhi, 2012 (76) ACC 836 (SC).**

20(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**

21. 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.**

22(A). 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—D.B.)**

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)**

22(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.

22(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.

23(A).Bail u/s. 436-A CrPC : 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 abovenoted 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 abovenoted cases.

23(B). Article 21 Of the Constitution : No person shall be deprived of his life or personal liberty except according to procedure established by law.

23(C).International Covenant On Civil & Political Rights, 1966 : India is a signatory to the International Covenant On Civil And Political Rights, 1966 and, therefore, Article

21 of the Constitution has to be understood in the light of the International Covenant On Civil And Political Rights, 1966.

23(D).Meaning of 'Personal Liberty' under Article 21 of the Constitution : The expression 'Personal Liberty' in Article 21 of the Constitution is of the widest amplitude and it covers a varity of rights which go to constitute the personal liberty of a person and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19 of the Constitution. 'Personal Liberty' under Article 21 of the Constitution primarily means freedom from physical restraint of person by incarceration or otherwise. The concept of "right to life and personal liberty" guaranteed under Article 21 of the Constitution includes the "right to live with dignity" and it does not mean mere animal like existence of life. After the Supreme Court's decision rendered in the case of **Maneka Gandhi Vs. Union of India, AIR 1978 SC 597**, Article 21 of the Constitution now protects the right of life and personal liberty of citizen not only from the executive action but from the

legislative action also. A person can be deprived of his life and personal liberty if two conditions are complied with, first, there must be a law and secondly, there must be a procedure prescribed by that law provided that the procedure is just, fair and reasonable. See :

(i) Vikas Vs. State of Rajasthan, (2014) 3 SCC 321

(ii) District Registrar & Collector Vs. Canara Bank, AIR 2005 SC 186

(iii) Danial Latifi Vs. Union of India, (2001) 7 SCC 740

(iv) Maneka Gandhi Vs. Union of India, AIR 1978 SC 597

(v) **A.K. Gopalan Vs. State of Madras, AIR 1950 SC 27.**

23(E).Universal right of personal liberty enshrined in Sec 437 & 439 CrPC : The Universal right of personal liberty emblazened by Article 21 of our Constitution, being fundamental to the very existence of not only to a citizen of India but to every person, cannot be trifled with merely on a presumptive plane. We should also keep in perspective the fact that Parliament has carried out amendments to this pandect comprising Sections 437 & 439, and, therefore, predicates on the well established principles of interpretation of statutes that what is not

plainly evident from their reading, was never intended to be incorporated into law. Some salient features of these provisions are that whilst Section 437 contemplates that a person has to be accused or suspect of a non-bailable offence and consequently arrested or detained without warrant, Section 439 empowers the Sessions Court or High Court to grant bail if such a person is in custody. The difference of language manifests the sublime differentiation in the two provisions, and, therefore, there is no justification giving the world 'custody' the same or closely similar meaning and content as arrest or detention. Furthermore, while Section 437 severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. Indeed, the only complicity that can be

contemplated is the conundrum of 'Committal of cases of theCourt of Session' because of a possible hiatus created by the CrPC. See : **Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745.**

23(F). List of rights as to 'Personal Liberty' under Article 21 : In the case reported in **Unnikrishnan J.P. Vs. State of A.P., AIR 1993 SC 2178,** the Hon'ble Supreme Court has given the following list of the rights under Article 21 of the Constitution to be treated as rights as to 'personal liberty' :

(i) Right to go abroad
(ii) Right to privacy
(iii) Right against solitary confinement
(iv) Right against bar fetters
(v) Right to legal aid
(vi) Right to speedy trial
(vii) Right against handcuffing
(viii) Right against delayed execution
(ix) Right against custodial violence
(x) Right against public hanging
(xi) Right to medical assistance
(xii) Right to shelter
(xiii) Right to sleep
(xiv) Certain other rights also as declared by the Hon'ble Supreme Court in it's subsequent decisions.

23(G).Fundamental principles under Article 21 of the Constitution in the context of bail : The fundamental principle of our system of justice is that a person **should not be deprived of his liberty except** for a distinct breach of law. If there is no substantial risk of the accused fleeing the course of justice, there is no reason why he should be imprisoned during the period of his trial. The basic rule is to release him on bail unless there are circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution and, therefore, such refusal must be rare. See….

(i) Sanjay Chandra Vs. CBI, AIR 2012 SC 830

(ii) State of Rajasthan Vs. Balchand, AIR 1977 SC 2447

(iii) Gudikanti Narasimhulu Vs. Public Prosecutor, AP, AIR 1978 SC 429

23(H) Right to personal librty not available at the cost of life or liberty of others : Where the accused, a history-sheeter with 30 serious criminal cases pending against him, was granted bail by the Hon'ble Allahabad High

Court for the offences u/s 365 & 506 of the IPC without considering the criminal antecedents of the accused, the Supreme Court cancelled the bail and observed that though the High Court and the Court of Sessions have got power to grant bail to an accused u/s 439 of the CrPC but the concept of personal liberty of a person is not in realm of absolutism but is restricted one. The fact that the accused was lodged in jail for the last 07 months melts into insignificance. No element in Society can act in a manner by consequence of which life or liberty of others is jeopardized. See : **Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446.**

23(I).'Personal liberty' guaranteed under Article 21 when deemed to be not violated ? : Detention of a person accused of offences, which are non-bailable, during the pendency of trial unless enlarged on bail cannot be questioned as being violative of Article 21 of the Constitution as it is in accordance with law. See : **Kalyan Chandra Sarkar Vs. Rajesh Ranjan (2005) 2 SCC 42.**

23(J).Refusal of bail when to be treated as not violative of right as to 'personal liberty' guaranteed under Article 21 ? : Where the accused had allegedly deceived millions

of countrymen who had invested their entire life's savings in fictitious and frivolous companies promoted by him and thousands of cases were pending against him in different parts of the country, it has been held by the Hon'ble Supreme Court that the accused cannot claim of violation of Article 21 of the Constitution on the ground that he is not being able to be released out of jail in view of different production warrants issued by different courts. See : **Narinderjit Singh Sahni Vs. Union of India, AIR 2001 SC 3810.**

23(K).Law interfering with the right as to 'personal liberty' must withstand certain tests : In the cases of **District Registrar & Collector Vs. Canara Bank, AIR 2005 SC 186** and **Maneka Gandhi Vs. Union of India, AIR 1978 SC 597** it has been ruled by the Hon'ble Supreme Court that any law interfering with the right as to 'personal liberty' guaranteed to a citizen or non-citizen under Article 21 of the Constitution must be just, fair and reasonable and must satisfy the following tests :

(i) It must prescribe a procedure

(ii) The procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 of the Constitution which may be applicable in a given situation.

(iii) It must also withstand the tests under Article 14 of the Constitution.

23(L). Bail is the rule, jail exception : While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. See…. **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830.**

23(M). Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. See…. **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** (Note: it was 2G Spectrum Scam Case).

23(N).Interim Bail by Sessions Judges & Magistrates & Protection of personal liberty : In the cases noted

below, it has been laid down that Sessions Judges & Magistrates have power u/s 437 & 439 CrPC to grant interim bail to an accused of non-bailable offence keeping the bail application pending for disposal on merits. See :

1. **Lal Kamlendra Pratap Singh Vs. State of UP, 2009(2) Crime 4 (SC)**
2. **Smt. Amrawati & Others Vs. State of U.P., 2005 (1) Crimes 44 (All— Seven Judge Bench.....***which received approval by Supreme Court vide its order dated 23-03-2009 passed in criminal appeal no. 538/2009 Lal Kamlendra Pratap Singh Vs. State of U.P.) and circulated by the High Court amongst the Judicial Officers of the State of U.P. vide C.L. No.:44/2004, dated 16.10.2004.*
3. **Sheo Raj Singh @ Chhuttan Vs. State of UP, 2009(65) ACC 781(All-DB)**
4. **Tahseen Khan Vs. State of UP,** *decision dated 19.11.2010 rendered in Criminal Misc. Writ Petition No. 21083/2010 by a Division Bench of the Hon'ble Allahabad High Court & circulated amongst the Judicial Officers of the State of UP.*
5. **Sukhwant Singh Vs. State of Pujab, 2010 CRLJ 1435(SC)**

24(A). Hand-cuffing, fetters & duty of Courts : 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.**

24(B). 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.

24(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)**

25. 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)

26. 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.

27(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.

27(B).Freedom of marriage a fundamental right under Article 21 : The State is duty bound to protect the fundamental rights of its citizens. An inherent aspect of Article 21 of the Constitution would be the freedom of choice in marriage. Such offences are resultant of the States incapacity or inability to protect the fundamental rights of the citizens. See : **In re : India Women Says Gang Raped on Orders of Village Court, AIR 2014 SC 2816 (Three-Judge Bench).**

27(C).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).**

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 therefor 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 notedabove 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 reformative 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 & SC 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).**

32. Child & Bonded Labourers & Duty of DLSA : 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. **Protection from sexual harassment of women :** 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 favors (c) sexually-colored remarks (d) showing pornography (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

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). 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.

36(C). 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.

37(A). Speedy trial, 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 :

(i) Babubhai Bhimabhai Bokhiria Vs. State of Gujarat, (2013) 9 SCC 500

(ii) Vakil Prasad Singh vs. State of Bihar, (2009) 3 SCC 355

(iii) A.R. Antulay vs. R.S. Nayak, AIR 1992 SC 1701 (Seven-Judge Constitution Bench)

(iv) Kadra Pehadiya vs. State of Bihar, AIR 1981 SC 939

(v) Hussainara Khatoon vs. State of Bihar, AIR 1976 SC 1360

37(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 trail 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 : **Akil Vs. State (NCT of Delhi), (2013) 7 SCC 125** *(paras 33, 42 & 43)*

37(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.)**

37(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.

37(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.**

Part: 2

Fundamental Duties

(Article 51-A)

1. **Fundamental Duties of citizens** (Article 51-A): By way of 42nd amendment in 1976, a

new Article 51-A was inserted in the Constitution w.e.f. 3.1.1977 providing for certain duties as fundamental duties of the citizens of India.

2. **Fundamental duties are judicially not enforceable by writ of courts:** Fundamental duties are judicially not enforceable by writs of courts. See: AIIMS Students Union Vs. AIIMS, AIR 2001 SC 3262

3. **Public servants should observe their fundamental duties envisaged under Article 51-A**: Public administrator should get rid of all narrow considerations of caste, religion, section or region and should abide by the fundamental duties as is required by Article 51-A of the Constitution. See: State of Punjab Vs. G.S. Gill, AIR 1997 SC 2324

4. **Respecting faith of others and promoting harmony and brotherhood is fundamental duty:** All citizens are enjoined by Article 51-A of the Constitution to respect the faith of each other and thereby promote harmony and spirit of common brotherhood. See: Om Prakash Vs. State of UP, AIR 2004 SC 1896

5. **Duty to respect ideals and institutions, national flag and national anthem:** Supreme Court issued directions to all cinema theatres to play the national anthem before a movie begins during which the national flag is to be shown on the screen. Every person present in the cinema hall has been directed to rise up and pay respect to the anthem when it is played. See: Shyam Narayan Chowksi Vs. Union of India, (2017) 1 SCC 421

6. **Playing national anthem in cinema halls not mandatory:** Supreme Court reviewed its 2017 judgment delivered in Shyam Narayan Chowksi Vs. Union of India and held that playing national anthem in cinema halls prior to showing of films is not mandatory. See: Shyam Narayan Chowksi Vs. Union of India, (2018) 2 SCC 574

7. **Corporate responsibility to discharge fundamental duties:** Supreme Court has ruled that Corporate Sector must contribute towards protection of environment and must obtain prior clearance of the NGT under the Environment (Protection) Act, 1986 before starting operations of their units near habitats of wild life and should have compassion towards living beings as is required by Article

51-A(g) of the Constitution. See: Vanashakti Vs. Union of India, 2026 INSC 761

8. **Protecting natural environment is fundamental duty of citizens:** One of the objects behind enacting Article 51-A (g) of the Constitution was to ensure the spirit and message of Articles 48 and 48-A. While Article 48-A speaks of environment, Article 51-A(g) employs the expression" the natural environment" and includes therein " forests, lakes, rivers and wild life". See: State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat, (2005) 8 SCC 534 (Seven Judge Bench)

9. **Eviction of illegal occupants of forest land duty of State:** State has a duty to evict illegal occupants of forest land and maintain

ecological system. See: Abdul Khalek Vs. State of Assam, 2026 LiveLaw 134 (SC)

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