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Unit: I Conceptual Perspectives In this unit, you will learn about, ? Meaning and Nature of Crime ? Types of Crime ? Classes of Crime ? List of Criminality types ? Causes of Crime ? Correlation of crime with various agencies ? Overview of criminal law ? Doctrine of Defences Meaning and Nature of Crime Introduction Certain moral sentiments develop in the history of human society, how they developed is not our present concern certain of these moral sentiments become of such interest to the whole group that conduct out ranging then made a crime. There is a relation between crime and immorality. In early societies these crimes arrows out of the feeling that conduct that offended the diety threatened the general security. Crime is a changing concept, depending upon the social development of a people that is upon the fundamental interests and values dominating their common beliefs.
Definition of Crime

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The concept of crime involves the idea of a public as opposed to a private wrong with the consequent intervention between the criminal and injured party by an agency representing the community as whole. Crime is thus the international commission of an act deemed socially harmful; or dangerous and

the reason for making any given act a crime is the public injury that would result from its frequent participation. The society therefore takes steps for its preventation by prescribing specific punishments for each crime. 1. The

word ‘crime’ is of origin viz; ‘Crimean’ which means ‘charge’ or ‘offence’ Crime is a social fact. 2. The Waverly Encyclopaedia defines it as, “An act forbidden by law and for performing which the perpetrator is liable to punishment”. 3. James Anthony Froude (1818-94) wrote, “Crime is not punished as offence against God, but as prejudicial to society”. 4. Sir John Hare (1844 - 1921) Explains, “Crimes sometimes shock us too much: Vices always too little”. 5. Dr. Gillian J.L. points out, “More important is the feeling of danger to ourselves and our property than the criminal–induces”. (Gillian, J.L Criminology and penology (1945). 6. Mr. Justin Millar contends that the crime is the commission or omission of act which the law forbids or commands under pain of punishment to be imposed by the State. 7. Watermark Says that customs and laws are based on moral ideas and that ‘crimes’ are such modes of behaviour as are regarded by society as crimes. 8. According to Adler, ‘Crime’ is merely, “an instance of behaviour prohibited by criminal law”. 9. According to the Italian school of criminologists, crime is abnormal in so for as it is atavistic or pathological in its nature. 1

10. Halsbury defines crime as, “an unlawful act or default, which is an offence against the public and which renders the perpetrator of the atc or default liable to legal punishment”. 11. Sellin, T. regards crime as a deviation from or breach of, a conduct norm. This deviation or breach is punished by society by means of its sanction. But punishment is not only the criterion of value. Religion, art, education and other sociological agencies also reveal value (Sellin T. culture conflict and crime pp. 32-33.). According to this definition, crime is an act in violation of the law the criminal is a person who does an act in violation of the law. 12. The concise Encyclopaedia of crime and criminals has defined ‘crime’ thus: “A crime is an act or default which prejudices the interests of the community and is forbidden by law under pain of punishment. It is an offence against the State, as contrasted with loot or a civil wrong, which is a violation of a right of an individual and which does not lead to punishment. (Edited by Sir Harold Scott, Pub. Andre Deutsch Ltd. 105, Great Russel Street, London, 1961) 13. Crime in international context “crime is complex, multidimensional event that occurs when 0the law, offender on target (refers to a person in personal crime and or object in property) converge in time and place (such as a street, corner, address, building or street segment)”. 14. Crime in Indian context “Crime is an activity that involves breaking the law and enforcements. 15. Meaning of crime in oxford dictionary “an offence against an individual or the state which is punishable by law. 16. Crime “An act committed or omitted in violation of law forbidding or commanding.” 17. Gwyenn Nettle: - Clearly remarks “Crime is work not added”. To fully appreciate the import of this remark it is necessary to recognize that the term crime is also part of the scheme of classification. It constitutes a category of events that contains within it numerous subcategories. At the same time the category of crime is itself a subcategory of a larger set of events. 18. Crime is phenomenon in human societies, according to Sociologist- Pris and Durkheim, “Criminality proceeds from the very nature of humanity itself, it is not transcendent but immanent.” Durkheim emphasized the point further when he says, “Crime is normal in human societies because the fundamental condition of social organization logically implies it”.” A society exempt from crime would require a standardization of the moral concepts of all individuals, which is neither possible nor desirable”. 19. Garofalo’s (1914) “natural” definition: crime is an immoral and harmful act that is regarded as criminal by public opinion because it is an “injury to so much of the moral sense as is represented by one or the other of the elementary altruistic sentiments of probity and pity. Moreover, the injury must wound these sentiments not in their superior and finer degrees, but in the average measure in which they are possessed by a community – a measure which is indispensable for the application of the individual to society”. 20. Crime: activities that involve breaking the law. 21. Crime, the intentional commission of an act usually deemed socially harmfully of

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dangerous and specifically defined, prohibited, and punishable under the criminal law. 22.

Conceptions of crime very so widely from culture to culture and change with time to such an extent that it is extremely difficult to name any specific act universally regarded as criminal. Crime 1. Law an act that subjects the doer to legal punishment; the commission or omission of an act specifically forbidden or enjoined by public law. 2

2. Any grave offense against morality or social older wickedness iniquity, see synonyms under ABOMINATION, offense. (The New International Webster's comprehensive Dictionary–Trident Press International 2003.) We would give our own definition of crime. So as to bring all the essential features of what we call 'crime'. A crime may be defined as an act or omission, sinful or non-sinful, which a society or a study has of thought fit to punish or otherwise deal with under its laws for the time being in force. The different acts and or omissions so punishable under the law are known as "Crimes". In this modern age, sociologists have expanded that crime happens in the social structure only. They don't agree that a human being happens to be a criminal by birth. They also analytically put forth many social factors which induce human beings towards criminality by going against the system of social control. Criminologists have proved these reasons leading to crime. Hence, while studying, the reasons for crime, the following factors should be considered. There are two groups of factors leading to crime 1. Ordinary Factors 2. Specific Factors Ordinary Factors These factors affect the whole of the society. Further these ordinary factors are divided into four secondary factors. Those are 1. Geographical 2. Sociological 3. Physiological 4. Atmospheric 1) Geographical Factors: In the evolution of society, the geographical elements play an important role. This has been accepted by historian's torsions and sociologists. A supporter of the school of geographical thinker's tradition, Mr. Huntington states that a child born in winter usually becomes less intelligent. Some of such children become criminals. The geographical elements affect the emotions and behaviour of an individual. Many of the French, Italian and German criminologists have tried to show the relation between the features of geographical elements and the proportion of crimes. Mr. Lombroso has also prepared a calendar showing the occurrence of crimes in specific months of the year. According to him, child murders are proportionally more in the period from January to April. In July, murders and total attacks are found to increase. Human needs change according to the changes in seasons. e.g. in winter in the European countries, the primary (basic) needs increase and if there are obstacles in satisfying their needs, the individuals have a tendency to criminal acts. "By geographical factors, we mean those factors which are connected with physical environment. The geographical setting governs the form of society. Due to geographical differences we find different types of culture and civilization in different geographical regions. The composition of population is closely connected with geographical conditions. Similarly, diet, habits and social organization always develop in accordance to geographical conditions. Therefore, whenever there is any change in the geographical setting there is also change in society." 2) Sociological Factors: 3
The number of crimes increases or decreases depending upon how far a society or a community is organized or divided. In a social group where migration, cultural differences, changes in the population and political instability prevail; there a conflict arises regarding the abatement of social rules. 3) Physiological Factors: As a living being, man's physique, heredity and the functions of body glands are taken into consideration. In the opinion of Lombroso (a crime specialist) there is abnormality in the body and mind of a criminal right from his birth. Hence, he becomes a criminalistic in his life. A man of oppressive and bad-tempered mentality becomes a criminal. Broadly speaking, an individual inherits some of the organic properties from the parents. We call these as hereditary qualities. This inherited behavioural property is mainly responsible for the criminal attitude. Hereditary weakness and criminal attitude convert a man into a criminal. Mr. Dugdale, an American criminologist says that the life style of every human being is affected largely by the hereditary qualities. Hence, the consequent circumstances of hereditary qualities cause the future generations to be criminal minded continuously. Some psychologists say that criminal behaviour has its roots in the psychological set up of an individual. During the gradual psychological development of an individual some mental weaknesses take shape. These weaknesses become the causes of criminal behaviour. Mental instability and criminality are closely related. Some psychiatrists have tried to correlate criminality with the abnormality in the nerves. Disappointment, conflict, feeling of criminality, mental shocks etc. one related with the human mental activities and they become responsible for the criminal behaviour. Sociologists, Psychologists and Psychiatrists have deeply studied of human behaviour. These stimuli are created from eternal circumstances. Circumstantial Elements: These are related with the criminality of human beings. The following circumstantial elements may be considered. a) Family Circumstances: The family is looked upon as a powerful cause of forming good or bad personality developments. The very important task of a family is to socialize an individual and to impart social rules and to develop the individual culturally, so that the individual becomes a responsible citizen. But, under certain circumstance this family responsibility fails and the members of the family tend to become criminals. b) A Ruined Family: If in a family, the father and the mother are divorced, or dead, or living separately then such a family is in the ruins. The children of a such a family turn towards criminality. This has been proved from various researches conducted so far. c) The Size of the Family: A big or a small family is respectively denoted by the number of members in the family. More members make a big family and fewer members make a small family. Usually in a big family there will be difficulties regarding food and management. In such large families, generally children are neglected, and such neglected children tend to become criminals. In these matters there have not been researcher showing a definite relation of criminality with the size of the family. Still, in the urban areas, children in the big families generally turn to criminal behaviour. d) Serial Placement among Brothers in a Family: 4

Research has been conducted to show the probability of criminality of a brother by his servility among his brothers. Some criminologists of New York have conducted research in 1930 to give the aforesaid conclusions. Generally, the brother in the 2 nd place of servility tends to become a criminal. The last but one child does not generally have a criminal behaviour. The youngest child may turn to criminal behaviour as compare with the elder brothers. e) Discontentedness in the Family: If the inter-relation between parents and children are not complacent, or instead of love, binding, sympathy, loyalty, c-operation belief, dedication there are conflict, alienation, disbelief, selfishness, unreasonable behaviour, rivalry in the family then the members of the family especially the children behave in a dissatisfactory manner. From this, the criminal attitude arises. f) Fallen Family: If the responsible person or persons of a family are involved in drinking, extra-marital relations, polygamy and criminality, the atmosphere in the family is not moralistic and such a family is known as a fallen family. In such a family, criminality of individuals or specially children is very probable. Such a family is unable to impart civilized life or behaviour. g) Absence of Orderliness in the Family: The most important duty of the family guardians is to be attentive towards the socially acceptable behaviour of individuals and children in the family. They don't find time as they are involved in their own duties. Further, they don't have desire, or they are ignorant, and they have undue or over belief in their children. Whatever be the case, if the guardians don't care for the proper behaviour of the children, then they will certainly turn towards criminal behaviour. h) There is a proverb that "A man is recognized by the company he keeps". This companionship and crime may be inter-related and that can be studied as under: 1. Two or more people in company commit crime 2. Innocent people may probably fall into the company of criminals. 3. During the period of imprisonment, a criminal comes in contact with senior criminals from whom the tricks to commit criminal acts are learnt. In the beginning stage of criminal behaviour, the criminal company lays the foundation of criminal behaviour. As a result, an individual develops criminal behaviour as his profession. Seeking for the techniques of crime and growth of mental attitude are the fruits of bad company. i) Living in disorganized company, In congestion and having immoral behaviour in a heterogeneous community develop due to cinema. Disorganization breeds crime. Further, in the fast growing cities the increasing population is taken to be one of the prime factors in criminal activities. j) Disorganized living Under congested conditions, having immoral behaviour with the movies to affect the behaviour, the causes arise to result in criminal acts. That is to say, that the disorganized communities breed crime. Secondly, the increasing population in the urban areas is supposed to cause criminal behaviour. Crimes occur more in thickly populated areas than in thinner populations of cities. Parents can't control the children who have to 5
wander on roads. Such children take to criminal acts. Even, homes of too much congestion are sending to be the causes of crime. In the congested homes it is hard to keep up morality and orderly behaviour. Those children, who spend their time on roads in playing, become victims of neglect by the elders and such children turn to criminal behaviour. Such pockets of immoral behaviour in communities are said to be responsible for the criminal act. The best examples are houses of cheaper and lower level entertainment and centres of betting games. These convert under age children into immoral acts. The established criminals frequently visit such centres of immoral behaviour and here only the companions are naturally selected or here only the criminal professions are started. The society doesn't accept these centres which breed immorality in the individuals. k) The Movies: The cinema houses have become the centres of breeding criminal behaviour in children of smaller age. The movies instigate sexual behaviour and getting the advantage of darkness in the theatre. The ignorant children are drawn towards sexual acts in the theatre. Many children commit theft to visit the cinema. l) Financial Conditions: Monitory conditions are taken to be crime breeding reasons in three ways. 1) Difference in social status due to monitory conditions cause criminal acts and the extent of such effect can be studied. Besides, the effects of various professions on criminal behaviour can also be studied. Mr. Bonger, a Dutch criminologist says that the atmospheric elements are more responsible for criminal activity. He further says that the criminal activity is abundant in a disorganized society. In societies in which the important regulations are broken, the criminal activity forms a firm background. However, in many disorganized societies, individuals are found to stay free from criminal activities. And in well-organized societies, some individuals may turn to criminal behaviour. It is but obvious that the criminality is more probable in the disorganized societies, than the organized societies. m) Regional Variance: The proportionate frequency of criminality and the types of crime change depending upon the region or division of place. The main causal factor of criminal behaviour is the structural variety in community. e.g. the judicial and social definitions are different from state to state. The view point of the public towards crime or criminal behaviour is different. There are different laws in different areas, and they are implemented to control the behaviour going against lawful life of a community. The traditional life of communities too tries to curb the criminal behaviour. The queer minded persons are of various types depending upon the territorial difference. Even the types of crime are different in different communities of different areas. To illustrate, the border areas of a country may be considered. If groups of advanced class of people have entered the border area, the tendency to breach of law is upper most. The only reason is that there is no established administration of social or political community. Along the political border area there are frequent smuggling crimes. Normally the defence forces on both sides of the border are insufficient and this factor helps criminal's activities. Always there will be people who take advantage of insufficient military forces on the border and they conduct criminal activities. In cities we find more crimes and child criminals also occur abundantly. Because of the unstable management of communities, the expected moralistic behaviour is not extant everywhere. In the deep inner parts of a corporation however the proportion of crime per head decreases. Hence, regional difference shows variant proportion of crime. It is interesting to note that in areas where there is abundance of finance, facilities and conveniences, we find more criminal behaviour. Where as in areas affected by natural calamities, scarcity and epidemics, we do find crime but in lesser proportion. 6

Class, age, sex, race etc. affect the criminal behaviour. For example, the difference of status in a community initiates criminal behaviour, and such people come under legal procedures. As these people grow in age, their attitude towards criminality recedes. The criminal attitude is found more in men then in women. Again, the reason is that different communities have different views towards women. Generally, the disciplinary control over women is stricter. Further, women have limitations by nature over their physical conditions. They need protection; they are generally called as the weaker sex. Racial or national influence is found on criminality. Especially, in a heterogeneous society these qualities become. In a Nation, the outsiders are given the status of minority and they are looked upon differently regarding criminality. These minority people have different problems to face. Thus, class, age, sex and race have their own impact over criminality, and they are important in view of study. Types of Crimes/Classification of Crimes 1. All crimes are not similar. There are many types of different crimes (in Fig). In some crimes, only one individual is involved and in some other crimes there are many persons who are organized for the purpose of crime. There are such bands of criminals working at the national level and even there are bands of criminals whose field of crime is international. It is not only the males to be criminals but there are females and children also in criminal acts. So, in order to classify crime we have to consider the personality of the criminal, his purpose and the type of his crime. Mr. Sutherland, a criminologist, considers the seriousness of crimes and divides crimes broadly into two types. Below figure shows the different types of crimes: Classes of Crimes Crime has divided in two classes as 1) Ordinary types of crime, 2) Serious types of crime. Mr. Bojore, another expert, classifies crimes into four main types depending upon their purpose or objective. 7

1. Monetary Crimes: Crimes done to get money. E.g. Theft, dacoity, fraud, forgery, contraband currency, etc. 2. Sexual Crimes: Rapes, homosexuality's. 3. Political Crimes: Espionage (international), treachery, treason etc. 4. Miscellaneous Crimes: Crimes other than the above three types e.g. quarrels, fights, kidnapping or addiction to narcotics etc. Also, the crimes are classified on the base of their antisocial or anti personal aspects as under: 1) Murderous crimes: It is the prime need of an individual or community to be safe. Any behaviour bringing this safety into danger may be called as murderous crime e.g. thrashing, enforcing starvation, causing physical, injuries, inducing some to suicide, victimizing, attempting to murder. (a) Crimes against moveable or immoveable possessions: Whether an individual or a community, the property or possessions are important. The basic human needs are food, shelter and clothing on which human welfare, establishment and safety depend. Naturally every community approves the legal ownership of possessions by individuals. Hence, theft, looting, fraud, forgery are crimes regarding possessions. Every human being has the right to protect the possessions. So, getting back the possessions from the criminals and punishing them were considered as personal issues. This tradition is even now found to exist among savage natives. But, this system is not practicable for all the persons and hence not effective always. On the other hand, vengeance and conflict arise and the peace and administration of the community are endangered. Therefore, crime against possessions is considered as logically coming under criminality. Individual or social welfare depends upon the peaceful running of family. Therefore, any behaviour brining the family in danger is positively considered as crime e.g. Negligence of the parents regarding the care taking of their wards, breaking the traditional social concepts of marriages, having many husbands or many wives, extramarital relations, neglecting the helpless old. (b) Crimes against moral values: Every organization of each community is based on certain morals and breach of this moral faith by misbehaviour is considered as crime. In various communities there are family relations, marital relations are governed by certain moral rules. Going against these rules is condemned. Publicly displaying the nudity and showing openly the love or body, attractions are moral crimes. Lying, tempting for extramarital relation, Dee it, inducing for drug addiction or betting etc are also moral crimes. (c) Crimes against public peace and order: For the welfare and peaceful life, safety of the people in community is essential. Almost all the communities are alert in keeping their constituent institutes active and therefore they are attentive regarding safety and order within the community. Any behaviour against there is considered as crime. Any political party's government basically considers safety and order in the community and any anti-communistic behaviour is treated as political crime. (d) Crimes against Public Health: These crimes include the activities of interference or hindrance in 1) irradiation of the epidemics, 2) vaccination of immunizing lus, 3) selling of adulterated food, 4) selling of unauthorized medicines. 8

(e) Crimes regarding Natural Resources: Just as the personal belongings and property are valuable, the natural resources are also very valuable to the community. The resources like, rivers, oceans, forests, mines, birds, cattle and other beasts and also human population are considered as the national property. Any behaviour engaged in destroying the above items is considered as crime against national resources. Considering the criminals in their social status, Mr. Sutherland gives two kinds of criminals. 1. Criminals of low status 2. White collared criminals Individuals of low status in society may involve themselves in criminal activities. The reasons are obvious. Financial scarcity, the favourable crime provoking surroundings, ignorance, illiteracy, uncultured life etc. induce criminality. White collared people have better financial conditions. They are well-bred and well- educated having good company. Such persons take the disadvantage of their position and commit crimes. Such people are called as white collared criminals. During their professional life these respectable and high class people do commit crimes. Unnecessary, but the increasing unnatural needs and greediness make these people to manhandle the powers vested in them and thus they become white collared criminals. Officers, clerks, professors, teachers, judges, doctors, M.P.S., M.L.A's, ministers, public workers, police, advocates etc are relatively enjoying social status and are respectable. Their duties carry responsibility. In order to carry out their duties they are vested with some authority. But many such people misuse their authoritative powers for their selfish motives. Consequently, the work carried out by such people is not properly done. That means, they commit the crime of not carrying out property their duties. Furthermore, they convert illegal acts into legal acts. So, such people commit double crime at a time. E.g. Loans to be sanctioned to the needy are not sanctioned. There might be a person applying for loan for his selfish purposes, and to get the loan sanctioned, he may bribe the loan sanctioning officer. Such examples are experienced more and more in the present days. The persons involved in such crimes are highly educated and managing higher positions. Therefore, they are looked upon with faith because these persons are generally well versed with the legal aspects. They know the loopholes and they have an established relation with higher authorities and politicians. Hence the crimes do not come up or they are suppressed and the involved persons are ready to escape from the crime accusation. Such criminals of the white collared class get a lot of easy money which is in turn utilized for more luxury like drinking, betting, buying costly furniture and gold ornaments and spending their time in super hotels. These persons involve their money in anonymous investments to get more money. And this surplus money is used again to capture higher positions by bribing. The main aim is to earn more money by corruption. The persons concerned in higher promotions are kept pleased by bribing. The white collared people convert illegal operations into legal affairs by bribing and committing fraud. In addition, such criminal minded people support and help smuggling, corruption, misusing the authority, distributing false licenses or certificates and avoiding income tax or any legal tax. In this way the white collared criminals amass enormous amount of money which is utilized for their luxurious living. Such person doesn't have the social conscience, and there is no effective law to stop these persons, who always keep abusing the powers made available to them. These may be taken as the main reasons of white collared crimes. List of Criminality Types The following list explains the different criminal behaviour patterns: 1) Hooliganism: Under Indian Penal Code, Rule No. 146, the hooliganism is mentioned. It is considered as a crime of the disturbance of public peace, when an illegal or unlawful mob is formed and force is used, then 9
the hooliganism crime is committed. Generally, the common objective of the mob is attained either individually or jointly by using force. In such an incident, every person in the mob is considered as a criminal. 2) Kidnapping: This crime includes the corporal torturing of human beings. There are two types of kidnapping. i) Kidnapping of Minors: When any person kidnaps a try under 16 years and a girl under 18 years of age without the consent of parents or a person who induces elopement by some temptation, then this crime is said to be committed. ii) Kidnapping by using force: When a person kidnaps another person by using force, by compelling, by deceit or by tempting then this crime is said to be committed. 3) Murdering: Killing somebody intentionally comes under the crime of murdering. If the person committing the act knows that it so imminently dangerous that it must, in all probability cause death or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. 4) Deception: When a person causes another person to part with or hand over anything or article to a third person, or if a person induces by compulsion another person to consent for the possession of a thing or article by a third person, then the act of deception occurs. 5) Imitation: Contriving to imitate and prepare a similar from an original thing or copying out the original the crime of imitation takes place. Using false currency, coins or forged documents come under this crime. The main intention is to deceive. 6) Theft by house breaking: If there is illegal trespassing in a house for the purpose of theft, this crime occurs. 7) Theft: If some article or possession of a person is stolen without the knowledge or permission of the owner, then this crime is committed. 8) Looting with the employment of force or beating: When there is an effort to steal and if during the actual operation of theft is a person is injured in the fight or expires, or if a person is intimidated illegally of death or refection and if then the theft is done, this act comes under looting. Thus, looting is stealing or using violence. 9) Dacoity: When five or more men come together and try to steal or to loot, this activity comes under dacoity. 10) Dowry death: Where the death of a women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to currently or harassment by her husband or any relative of her husband for, or in connection with, any demand of dowry, such death shall be called "dowry death". 11) Rape: Man is said to commit "Rape" who except in the case hereinafter excepted has sexual intercourse with a woman under circumstances. 10

12) Hurt: Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. Causes of Crime The common factors in causing crimes are physical ailments which may be organic and functional. Mental ailments coupled with an environment which is favourable may cause an outburst of anti-social crime. We know that conduct is an expression of mental activity. A delinquent act may be the result of neurosis or psychosis. It may be also due to the susceptibility to crime as a consequence of a mental defect coupled with some environmental factors. Perhaps, the mind may be in some condition, but the crime is committed due to an emotional disability of childhood, or it may happen because of the impact of psychopathic. If the delinquency is to be diagnosed, the crime person mental traits, peculiarities and disabilities play a very important part. It is quite plain that it is the mind that control criminal behaviour. If the mind itself is deranged, defective or feeble we have no other go but to turn for cure or removal of the mental defect or fortification of the mental faculty. Correlation of crime with various agencies 1) The cinema and the prevention of crime: The easily sceptical week minds are criminally aroused by seeing the criminal scenes which easily impress the week minds. Sex appeals, adventurous inclinations may be stimulated or created. The viewer may be inspired to initiate what he or she saw on the screen. The remedy however lies in efficient censorship of films and their shows. The parents are also equally responsible in keeping vigilance over such shows and keep away their wards. The sexy erotic dance programmes and criminal pictures should be carefully and tactfully avoided. 2) Child employment and crime: The employment of children is looked upon as a cheaper labor, but it deprives the child from the ever necessary socializing influence and the loving company of their own family group and the schooling. Such child employment robs the child of its healthy growth in an environment congenial to it formation. The child may have to spend his childhood in contact with mal adjustment and dissatisfaction which is drudgery for him. The child is denied his rights to healthy growth and education. By curbing the child's physical growth and maintenance of good health and making him to work monotonously without proper education definitely make the child desire less for progress and he becomes a misfit in life. 3) Poverty, a cause of crime: None can deny that for want of money and crime may be committed. Economic depressions along with poverty have tremendous influence in causation and commission of crime. The crime may be committed to achieve dishonest possession. In the process of acquisition, crime is the least thought off. If there is scope to make compensation to the aggrieved party while dealing with offender, the cases of dishonest acquisition may decrease to a great extent. However, economic depression is lead to criminality everywhere and the percentage is more if the persons involved are of infirm character or weak will power. Of course, poverty itself is not necessarily a crime causing factor but there are other factors that commute to criminality. Hundreds of poor persons are there in many lauds and they are not at all crime minded; on the other hand, there can be hundreds of wealthy persons who are acutely avaricious and therefore do not hesitate in indulging with criminal dealings 11
where money is concerned. Among the educated white-collared people, there are offenders who have high positions and status in society and the multiple factor theory can apply to determine the true factors in the causation of crimes. As a side issue of unemployment, poverty plays a major role. Both unemployment and poverty are major social problems which cause sickness, either individually or communally and therefore there can be family and community disorganization. The poor have such a low income that it is very difficult foot them to manage hand to mouth. Further they have responsibilities of education, clothing, medical care and much more responsibilities. Due to the negative way of life, they are discouraged and may take recourse to improper functioning leading to delinquency and criminal behaviour. In the undeveloped, backward countries where people are suffering from hunger and other wants have no other go than to tread criminal attitude of life. However, we cannot say that all the, percent population is criminal, though poverty prevails in majority. The depression in the economy of society gives rise to criminal acts and we find that unemployment also is a factor in the criminality of the people. In a capitalistic organization there can be crimes of property management and purchase. What we need to know is the correct interpretation of criminal factors. Do men steal because they are hungry? Similarly, do girls enter prostitution because they need? It is true that some men steal because they to their families are in need. Similarly, some girls take recourse to prostitution because of utter necessity. Unemployment and consequently distress doubtlessly put an individual under strain which is impossible for them to bear. Of course, some people are there who in their deepest distress do not. commit crime and virtuous girls do not fall a prey to prostitution though they are under heavy strain. So, in most cases, economic factor affects indirectly rather than directly. Need becomes a circumstance under which certain people respond by antisocial conduct and act. 4) Social Factors: Conduct in life of a person is practically determined by the society in which he lives. Therefore, social conditions affect. The conduct of a person, just as the economic conditions affect it is evident that personality develops in the social environment. If these environments are of such a nature as to bring out the person inherent qualities which are already adapted to the present social life. A person begins to inhibit the present social characteristics by his antisocial conduct when we are under the impression that the person is behaving as per norms of the society. a) Pro Social Conduct Anti-social conduct and we must know that such changes are due to the stimulation of circumstance in the society in which the person lives. The social factors which surround an individual can be classified broadly as under: ? The home ? The recreational agencies ? The school ? The community ? Traditions, customs and beliefs b) Class and Religion Frequently, social conditions within these areas are inimical to the development of a socially desirable personality's conduct. The mutual relations between parents and their children are extremely significant. Very strict or too lenient treatment parental discord in handling the children or favouritism over one or the other of the children have been closely observed by scholars to find they play a very important part in 12

creating a criminal of a child. It is in the home that most of the behaviour patterns are effectively set and therefore, better or worse children tern the values and attitudes which find expression in meeting the tests of later life by which they may be branded as virtuous or criminal. c) Population and Crime: The population of the world is becoming double every thirty five years, adding 70 million people every year. As a corollary city are getting overcrowded and ugly. Naturally this causes breeding of crime and disease. Unrestricted increase of industrial population is leading the breakdown the barrios of society. Hence the population explosion is a dilemma. We can compare the crime rate along with the growing population. Overcrowding definitely causes social, moral and mental problems. Modern scientific investigations have revealed how even rats and cats degenerate in a crowded living condition. Thus, the population increase, and urbanization have together caused serious problems in establishing healthy urban units and there is now a challenge to healthy human existence because of prostitution, hurting rioting, thefts looting dacoity etc. d) Population Density and Crimes in Maharashtra To study the co-relation between population and percentage of crime used the Pearson's co-relation method. Calculating the co-relation between the population and crimes r value comes r = 0.83 it indicates significant positive co-relation and co-efficient r 2 =0.65. It reveals that highest population indicates highest crime rate e.g. in Mumbai, Thane, Nagpur, Pune, Nasik, Aurangabad population density is high in proportion to this crimes rate are also high. Regression Density of population and % of crime 2010 e) Urbanization: The process of urbanization is very rapid without its awareness. There is growing concentration in large cities and naturally there are problems of size and diminutions of the urban area. The significant features of urbanization are also under affectation. Society is composite of family, caste, religion, economy, education and political ups and downs. Therefore, the modern cities are confronted with problems of overcrowding and crime. In the urban areas, pick-pocketing, rape, cheating, roils, hurting, murders, white-collar crimes are accumulating. Slums are the evil are as of cities because crimes are always bred and hatched in them. Crime and sex problems are the standing challenges as a menace to civilization. Unhappy marriages, increasing divorces juvenile delinquency and allied evils are caused from the disintegration of urbanity. Prostitution has always been a product of urban culture where people thick that 'white slaves' are voluntary prostitutes and corrupts. Sex freedom is the fashion of the day. Further, sex freedom and abortion go hand- 13 in-hand. Now socially the shame of abortion is gone and the number of virgin or unwed mother is growing very fast. In cities, in our race for pleasures we fall prey to the temptations of acquisition and luxury and suffer from lack of human values and objectives of life. f) Poverty and Unemployment: Poverty and unemployment are two major evils of society causing serious situations in personal, family and community disorganization. However, there are not new in the community. They are there since the down of civilization. One method or the other was devised to help those suffering from poverty, dependence and unemployed. So long as such needs of the society were possible to be controlled by easier means. But since the technological advancement, industrial revolution and new concepts of democracy, the problem unemployment has assumed new dimension. Poverty and richness are relative terms, because poverty in a society is determined by the mode of living and customs. That is, poverty is relative to the scale of living in a given group or country. One way of measuring poverty or richness in a country is the level of easily availability of goods and services necessary for consumption in a particular year. If there are handles or in capabilities due to incapacity of the individuals, adverse physical environments hindering economic factors defects in social organization then they are attributed to poverty. g) Unemployment: This factor is found everywhere in all the countries. If the countries are industrially advanced, then the unemployment is of industry nature and the causes are relative to industrial training and specialization. However, the nature of unemployment differs from country to country depending upon the fields of industries the countries have. There can be seasonal unemployment, temporary unemployment, voluntary unemployment, cyclic unemployment, unemployment due to want funds, equipment etc. There can be involuntary unemployment also. h) Literacy: Literacy is to train individual for social life. It is saving character and formation of good habits. Literacy is one of the important indicators of social development. Literacy is human right a tool, empowerment and means for social and human development. Literacy always plays an important role to develop any society. Social morality and human values are depending upon literacy. In 1991, 64.87 per cent of literacy and in 2001 it increased 76.62 per cent. In this present study reveals the correlation between literacy and number of crimes per 1 lakh population. Fig shows that correlation between literacy and number of crimes per one lakh population for calculating co efficient between these two variables used the Pearson's correlation method and used the district wise literacy data and number of crimes per lakh population. The value comes to r = 0.549 and its coefficient of determination r 2 comes to 0.212. It shows that the positive correlation. In urban areas literacy rate in high as well as crime rate also high. Simple regression method is used for determining the existence of a linear or strength line relation between these variables sees fig below: 14

Literacy and crime 1991 Table: Maharashtra Literacy rate (1991- 2001) and districtwise population. Sr.No District Literacy Literacy IPC Crime Density of rate rate rate Population 1991 2001 1991 2001 1991 2001 1 AhemedNagar 61.03 75.3 2.79 2.76 197 239 2 Akola 65.83 81.42 3.92 4.09 209 300 3 Amravati 70.06 82.54 4.52 2.05 181 213 4 Aurangabad 58.98 72.91 1.52 145 219 289 5 Beed 49.82 67.99 2.21 2.10 170 202 6 Bhandara 64.69 78.47 1.86 1.55 2236 292 7 Buldhana 61.69 75.78 2.44 2.13 195 230 8 Chandrapur 59.41 73.17 1.85 2.93 155 182 9 Dhule 51.22 71.65 2.05 1.98 192 212 10 Gadchiroli 42.89 60.1 0.14 0.75 55 67 11 Gondiya - 78.52 211 12 Hingoli - 66.25 218 13 Jalgaon 64.3 75.43 2.21 2.54 271 312 14 Jalna 46.25 64.42 1.68 1.75 177 209 15 Kolhapur 66.94 76.93 2.08 1.84 387 457 16 Latur 55.57 71.54 1.29 1.60 234 290 17 Mumbai city 82.5 86.4 22.34 18.41 16432 19254 15

18 Mumbai - 86.89 - - suburban 19 Nagpur 73.64 84.03 2.82 2.94 333 414 20 Nanded 48.17 67.77 2.51 3.49 220 272 21 Nadurbar - 55.78 - 260 22 Nasik 62.33 74.36 2.59 2.49 247 320 23 Osmanabad 54.27 69.02 1.13 3.39 168 195 24 Parbhani 47.58 66.07 2.15 2.22 191 229 25 Pune 71.05 80.45 1.95 2.87 357 461 26 Raigad 63.95 77.03 2.52 2.40 254 308 27 Ratnagiri 62.7 75.05 0.84 2.44 188 206 28 Sangali 62.61 76.62 1.71 1.80 256 301 29 Satara 66.67 78.22 2.14 1.99 256 267 30 Sindudurgh 75.81 80.3 0.44 0.84 160 165 31 Solapur 56.39 71.25 1.74 3.49 216 259 32 Thane 69.54 80.66 2.52 2.31 557 850 33 Wardha 69.95 80.06 1.65 2.27 169 195 34 Washim - 73.62 198 35 Yawtmal 57.96 73.62 2.66 2.86 153 181 36 Maharashtra 64.87 76.62 256 315 Source Census of India 2011 Literacy is defined as the ability to read and write with understanding if any language as per the senses of India. Literacy is human right a tool of empowerment as well as heart of basic education. Maharashtra State is the highly concentrated urbanized industrialized and high agriculture developed state. We try to indicate the correlation between literacy and percentage of crimes in Maharashtra. District wise data of Literacy and percentage of crimes the two variables are used to find out coefficient correlation. Pearson's co-relation method is used. Value of r = 0.48 shows the significant positive co- relation between these two variables and co-efficient r 2 = 0.132. It reveals that the positive co-relation between literacy and crime see fig below: Literacy and crime 2001 16

Introduction The study of criminal law is concerned with the attribution of criminal responsibility by legal institutions. This process is governed by three main factors: 1. Enterprise of general principles ? Abstract concepts ? The basic axioms of legal definitions ? Definitions addressed to legal professionals 2. Social context, cultural values ? Constructions ? Circumstances ? Convention 3. Language of criminal law ? Arguments governed by language ? Criminal law rests upon a linguistic way of thinking These factors construct a kind of 'normative skeleton' able to define and classify crimes and apply and give meaning to general legal principles via a particular fact situation. A System of Criminal Law Modern criminal law is composed of three component parts: 1. Substantive law (the criminal law itself) ? General principles of criminal responsibility (ie, actus non facit reum nisi mens sit rea) ? Definitions of specific types of crime (eg, murder, theft) ? Definitions of specific defences to accusations of crime (eg, provocation, self- ? defence) ? Other methods by which to attribute liability (eg, strict and absolute liability, ? complicity) 2. Criminal Procedure ? Prescribes permissible methods of subjecting an individual to courts of criminal jurisdiction ? Pre-trial procedures (eg, arrest, evidence gathering) ? Trial and appeal procedures ? Practices related to sentencing and punishment 3. Criminal Evidence 17 ? Establishes proof by which criminal responsibility is attributed ? Two criteria: credibility (reliability of evidence/facts) and relevance (relationship between the evidence/facts and the definition of the crime) These components interact to produce a tradition of criminal law informed by several sources: 1. Common law ? Judicial interpretation of precedent ? Creation of new precedent by expanding body of case law 2. Criminal statutes ? Judicial interpretation of criminal statutes (eg, Crimes Act 1958(Vic)) ? Federal criminal law (eg, Crimes Act 1914(Cth)) 3. International legal norms 4. Model Criminal Code Criminal law has a large scope, drawing on a variety of legal and sociological sources and adjudicating important human conduct. The jurisdiction of criminal law encompasses heterogeneous value systems and self-representations; the law, and individual perceptions thereof, vary widely. The general principles of criminal responsibility act as rational deterrents by targeting the mentality of individuals, which in turn control their behaviour; criminal law deters by intimidating the mentality of the general populace. The retributive aspect of criminal law targets the bodies of individuals. Attraction of Criminal Law Stephen: ? Criminal law is of moral significance since it is concerned with how 'men…torment their fellow- creatures' Kenny: ? Criminal law is of particular interest because of its bloodthirsty rationality and ability to inflict serious punitive measures ? It is the cause of '[f]orcible interferences with property and liberty, with person and life' Marx: ? Criminal law is a product of the criminal ? The criminal 'renders a "service" by arousing the moral and aesthetic feelings of the public' and preventing monotony and stagnation ? The criminal 'gives stimulus to the productive forces', for example by necessitating the creation of police and judiciary Rush: ? The meaning of criminal law lies within the dichotomy between rational thought and physical action. The crimes (and the sanctions to which they give rise) are essentially physical, but the thought processes used to adjudicate are intellectual abstractions ? '[T]he meaning of criminal law can be read as emerging between the two warm flesh of the literal event and the cold skin of the concept, between the deeds of criminal law and the words of criminal law' 18

When studying ‘criminal law’, it is important to remember that what is being studied is actually a representation– a set of values and principles, some explicit, some implicit – of authority supported by legal jurisdiction. Historical Development 1. Systematisation of criminal law Historical analysis reveals a contrast between common law crime and the enterprise of general principles underpinning contemporary criminal law. ? Common law: central practice is judgments in criminal trials o Judgments had authority by virtue of tradition, and the experience of the presiding judge o Coke CJ: regarded as the traditional origin of many common law principles o Judgments were submerged under the authority of common law tradition or, later, statute ? General principles: emerging from the end of the 18 th century to the present o Concern for systematic explanations by means of general principles o Systematisation of the common law in to a small number of conceptual structures capable of universal application A stark contrast exists between traditional common law crime and the general principles employed by contemporary courts. This contrast gave rise to a fundamental change in the way crime was perceived and punished. At common law, crimes were ‘public wrongs’ (cf today: ‘crimes’). 1. Common law tradition Common law judgments derived their authority from two sources: long-standing legal tradition, and the experience of the judge. Common law judgments were submerged under the authority of the common law tradition or the governing statute. Coke CJ is typically regarded as the origin of the original definition of crime at common law; later judgments would frequently refer to his definition. Towards the end of the 18 th century, a new set of general principles began to take form. With the transition from specific categories of common law crimes to a broad set of general principles, there were also changes in the fundamental construction of criminal activity itself: what were previously known as ‘public wrongs’ became known as ‘crimes’. During the 19 th century, judges (and, later, academics) were concerned to provide systematic explanations of the law such that they could give rise to general principles. This led to the systematisation of the common law. The common law falls into two parts: a) Formal rules (logical, formal reasoning; principles, definitions) b) Bureaucratic institutions (trial, police, prison) Previously, the trial was the pinnacle of the criminal process, and controlled both the other major parts of the criminal process. Police were under the direction of the judge or magistrate, and the prison authorities were called upon according to the details of the sentence. With the rise of general principles, the trial become secondary to the police and prison authorities, which became increasingly important and unregulated by the judiciary. The trial is now subordinate to external processes and prosecutorial discretions, so that general principles are relevant only in the courtroom. 2. Changes in the criminal object 19

At common law, the object of crime was its modus operandi. The manner of acting was the major determinant of criminal liability. Thus, the circumstances in which the accused acted, and the qualitative characteristics of their behaviour determined liability (eg, poison or pitchfork?). Thus, the object of crime was an event: how did s/he act, and what did they do? The manner of acting played a large role in determining guilt or innocence. Circumstantial or qualitative characteristics determined liability. Today, criminal liability is determined by the consequences (results) of acting, and the mental state (purpose) of the accused. As a consequence of this transition, definitions of crimes became increasingly general; abstractions width wider scope for application to fact scenarios were adopted. 3. Division of the common law The common law falls into two parts: ? Formal rules (Logic, formal reason, principles, definitions) ? Bureaucratic institutions (Trial process, police, prisons) Prior to the development of general principles, the trial was seen as the pinnacle of the bureaucratic process, with the police and prison systems subordinate in their investigation and housing of the accused/convicted. With the rise of general principles, the trial became secondary to the police and prisons, which were now both more important than and less regulated by the judiciary. General principles were seen as being relevant only to the courtroom. 4. Contemporary criminal law Today, it is the consequence of an action, in combination with a purpose or mental state, which determines guilt or innocence. Results, such as the killing of a human being are more important than, eg, the weapon with which it was brought about. Definitions of crimes become increasingly general, abstract, and capable of subsequent application to a wider range of fact scenarios. General principles operate as deterrents by targeting the mentality of individuals; in theory, the law should control the minds of individuals, which in turn controls their behaviour. Thus, by intimidating the mentalities of the general populace according to rational processes and common knowledge, criminal law sought to prevent the committal of crime. This contrasts with the common law approach of restitutio, which targeted the bodies of perpetrators. An act is not guilty unless the mental state with which it is done is also guilty. Definition of Criminal Law In order to determine the scope of criminal law and the limits within which crime and law interact, it is necessary first to define crime. Williams’ practical definition has been highly influential, and – though criticised as circular – emphasises the procedural nature of the law (a positivist?): A crime is an act capable of being followed by criminal proceedings having a criminal outcome.... Criminal law is that branch of law which deals with conduct... by prosecution in the criminal courts. Blackstone’s 18 th century definition, on the other hand, focuses upon the public harm suffered as a result of criminal conduct: A crime or misdemeanour is an act committed, or omitted, in violation of a public law, either forbidding or commanding it ... public wrongs, or crimes and misdemeanours, are a breach and violation of the public rights and duties, due to the whole community... Heterodox approaches to contemporary criminal law are generally discouraged, as they tend towards fragmentation of previously unified bodies of law and dissolution of principle. Pragmatic approaches are 20

favoured, particularly where they serve to improve the perception of criminal law as a single, self-coherent, and rational entity. Application of Criminal Law Substantive criminal law encompasses numerous semantic layers: ? Constructions of criminal responsibility ? Interpretation of definitional elements ? Classification of crimes ? Legal definition of specific types of crime ? Constructions of the 'facts' of the case As such, particular attention should be paid to the way in which judicial interpretation proceeds (eg, in defining the crime and treating evidence) and the values that underlie it and other legal reasoning and rhetoric. General Principles of Criminal Law 1) Doctrines of the Crime A crime is composed of two parts: a) Actus reus: An external, behavioural element; and b) Mens rea: A mental, fault-based element. Generally, in order to commit a crime an actor must possess both actus reus and mens rea. That is, an act is not guilty unless the mental state by which it was commissioned is also guilty. The crime is the combination of both and is a single unity. Modern definitions of crimes construct the attribution of criminal responsibility around prohibited mentalities as to prohibited consequences. However, this can cause problems in crimes which are structured around a mentality as to a circumstance (eg, rape). Definitions of specific legal crimes (eg, assault, murder) are generated by reference to these two components. Each legal type of crime has its own forms of mens rea (per Stephen J in Tolson). For criminal liability to be attached to a person, three elements are necessary: 1) Act (must be voluntary and a legal cause of the prohibited consequence) (a) Acts that are not willed are not legal acts (voluntariness) (b) Omissions arguments are often claiming that the act should have been done 2) Mental state (intent or purpose of the accused) (a) Intention: oldest mental state ? attached to consequences ? purpose of the actual accused (subjective); eg, killing vs scaring when carrying loaded shotgun (b) Recklessness: foresee prohibited consequence as a 'possible or probable result' of conduct ? (i) Irrespective of intention, but has subjective element (c) Negligence: objective standard (that of the ordinary reasonable person) 3) Defence: There must be a lack of valid legal defences (a) Automatism: used as a defence to negative voluntariness (b) Intoxication: used as a defence to negative voluntariness, intention, or both 21

(c) Temporal coincidence: to prevent unintended coincidences, both actus reus and mens rea must occur contemporaneously Doctrines of Defence Doctrines of defence specify the legal requirements for employment of defences and set limits of their use. In order for a crime to exist according to law, it requires both external and internal elements to be present as well as the absence of available defences that would negative them. Types There are two main types of defences: a) Can the actus reus or mens rea of the offence be proven? i. The defence operates by denying the elements of the crime ii. Arises as a consequence of the burden of proof, the onus of which lies with the prosecution b) Systematisation of common arguments i. Legally recognised defences with their own definitions, derived from general principles (eg, provocation) ii. These have legally distinct, precise definitions Of the specific legal defences, there exist two types of defence based on the extent to which they negative or limit criminal liability: ? Partial Defences: the accused is still guilty, but the defence changes the type of crime with which they are charged; and ? Complete Defences: the prosecution must disprove the defence; if they fail, a verdict of not guilty is entered and the accused is acquitted. Mens rea defences Many defences are concerned with mens rea issues, such as provocation, where the argument of the accused is that a different mental state should apply, since they only brought about the prohibited consequence as a result of failing to exercise self-control. Other mens rea defences: ? Duress: eg, a gun is put to the head of B, and A is told to kill C, or B will be killed ? Necessity: an objectively-determined circumstance ? Self-defence: reasonable belief Note that the availability of these defences depends upon the nature of the crime. The exception is insanity, which is available for any crime. General approach When considering a defence, three questions need be raised: 1. Is it partial or complete? 2. For what crimes is it available? 3. Are its definitional elements fulfilled? Identify the crime first. Note its elements. Identify relevant items of proof. Then (and only then) look at possible defences. 22

Quasi-defences Pseudo/quasi-defences deny the existence of an actus reus or mens rea but the onus of raising such defences rests upon the accused. For example: ? Automatism Question of will; conduct was involuntary there can be no actus reus ? Intoxication The accused was so drunk that there was no intention/purpose and/or voluntariness ? Mistaken belief Intention predicated upon knowledge; if act committed innocently, this could undermine the basis of liability. It might be asked of these quasi-defences whether they are excuses or justifications for the conduct of the accused. Previously, they were treated as excuses; now, however, procedural changes have transformed them into justifications. A. Doctrines of Strict and Absolute Liability Doctrines of strict and absolute liability are methods of interpreting statutory definitions of crime. Crimes which attract strict or absolute liability do not require the prosecution to prove the existence of a mens rea. These doctrines influence the reading of a criminal statute (typically, not concerned with the Crimes Act 1958 (Vic), but rather, eg, areas like environmental law). ? Does the statute specify mens rea as a necessary element for the prosecution to prove? ? When statutes began to overtake the common law, they began to use non-legal expression of mens rea ? The judicial climate in which interpretation took place developed in response ? Definition of honest and reasonable mistake of fact ? This defence is unavailable in crimes of absolute liability Another difference between the two types of crime relates to the defence of honest and reasonable mistake of fact (belief in a set of circumstances which, if true, would afford an excuse to the conduct of the accused), which is available for crimes of strict liability, but not crimes of absolute liability. B. Doctrines of Complicity The doctrines of complicity extend the limits of criminal liability to groups. In this way, individuals may be personally liable for the criminal actions of others. The doctrines of complicity define a method for finding people liable where elements of the crime are lacking. Where a group of people act in cohort to produce a prohibited consequence, and each has knowledge of the circumstances in which they act, all members may be found guilty of the crime as though they themselves had produced the result as an individual. Generally, knowledge is an essential element. C. Doctrines of Inchoate Crimes Doctrines of inchoate crimes attach criminal liability to agreeing, planning, or promoting the commission of a crime (eg, attempted murder). Like doctrines of complicity, they extend criminal liability beyond the normal conception of a crime. 23

There are two main types of inchoate offences: ? Attempts An individual act, but doesn't achieve the desired results ? Incitement A incites B to commit a crime; though no criminal act is performed by A, they are liable as an accessory Inchoate is Latin for 'incomplete'. 24
Unit: II Administration of Criminal Justice and Human Rights In this unit, you will learn about, ? The criminal Justice system ? System Components ? Administration of criminal justice system in India ? Procedure for administration of criminal justice system ? Hierarchy of courts and justice system in India ? Supreme court – Its role in Judicial System ? High Courts – Its role in Judicial System ? Subordinate courts of India ? Human Rights courts in India The

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Criminal Justice System The criminal justice system is the set of agencies and processes established by government to control crime and impose penalties on those who violate laws. There is no single criminal justice system

in the United States but rather many similar, individual systems. How the criminal justice system works in each area depends on the jurisdiction that is in charge: city, county, state, federal or tribal government or military installation. Different jurisdictions have different laws, agencies, and ways of managing criminal justice processes. The main systems are: 1. State: State criminal justice systems handle crimes committed within their state boundaries. 2. Federal: The federal criminal justice system handles crimes committed on federal property or in more than one state. System Components Most criminal justice systems have five components: law enforcement, prosecution, defense attorneys, courts, and corrections, each playing a key role in the criminal justice process. a) Law Enforcement: Law enforcement officers take reports for crimes that happen in their areas. Officers investigate crimes and gather and protect evidence. Law enforcement officers may arrest offenders, give testimony during the court process, and conduct follow-up investigations if needed. b) Prosecution: Prosecutors are lawyers who represent the state or federal government (not the victim) throughout the court process-from the first appearance of the accused in court until the accused is acquitted or sentenced. Prosecutors review the evidence brought to them by law enforcement to decide whether to file charges or drop the case. Prosecutors present evidence in court, question witnesses, and decide (at any point after charges have been filed) whether to negotiate plea bargains with defendants. They have great discretion, or freedom, to make choices about how to prosecute the case. Victims may contact the prosecutor's office to find out which prosecutor is in charge of their case, to inform the prosecutor if the defense attorney has contacted the victim, and to seek other information about the case. 25 c) Defense Attorneys: Defense attorneys defend the accused against the government's case. They are ether hired by the defendant or (for defendants who cannot afford an attorney) they are assigned by the court. While the prosecutor represents the state, the defense attorney represents the defendant. d) Courts: Courts are run by judges, whose role is to make sure the law is followed and oversee what happens in court. They decide whether to release offenders before the trial. Judges accept or reject plea agreements, oversee trials, and sentence convicted offenders. e) Corrections: Correction officers supervise convicted offenders when they are in jail, in prison, or in the community on probation or parole. In some communities, corrections officers prepare pre-sentencing reports with extensive background information about the offender to help judges decide sentences. The job of corrections officers is to make sure the facilities that hold offenders are secure and safe. They oversee the day-to-day custody of inmates. They also oversee the release processes for inmates and sometimes notify victims of changes in the offender's status. How the Criminal Justice Process Works? Below is a basic outline of the sequence of events in the criminal justice process, beginning when the crime is reported or observed. The process may vary according to the jurisdiction, the seriousness of the crime (felony or misdemeanour), whether the accused is a juvenile or an adult, and other factors. Not every case will include all these steps, and not all cases directly follow this sequence. Many crimes are never prosecuted because they are not reported, because no suspects can be identified, or because the available evidence is not adequate for the prosecutor to build a case. 1) Entry into the System 3. Report: Law enforcement officers receive the crime report from victims, witnesses, or other parties (or witness the crime themselves and make a report). 4. Investigation: Law enforcement investigates the crime. Officers try to identify a suspect and find enough evidence to arrest the suspect they think may be responsible. 5. Arrest or Citation: If they find a suspect and enough evidence, officers may arrest the suspect or issue a citation for the suspect to appear in court at a specific time. This decision depends on the nature of the crime and other factors. If officers do not find a suspect and enough evidence, the case remains open. 2) Prosecution and Pretrial iii) Charges: The prosecutor considers the evidence assembled by the police and decides whether to file written charges (or a complaint) or release the accused without prosecution. iv) First Court Appearance: If the prosecutor decides to file formal charges, the accused will appear in court to be informed of the charges and of his or her rights. The judge decides whether there is enough evidence to hold the accused or release him or her. If the defendant does not have an attorney, the court may appoint one or begin the process of assigning a public defender to represent the defendant. v) Bail or Bond: At the first court appearance (or at any other point in the process-depending on the jurisdiction) the judge may decide to hold the accused in jail or release him or her on bail, bond, or on his or her "own Recognizance" (OR)," (OR means the defendant promises to return to court for any required proceedings and the judge does not impose bail because the defendant appears not to be a flight risk). To be released on bail, defendants have to hand over cash or other valuables (such as property deeds) to the court as security to guarantee 26

that the defendant will appear at the trial. Defendants may pay bail with cash or bond (an amount put up by a bail bondsman who collects a non-refundable fee from the defendant to pay the bail). The judge will also consider such factors as drug use, residence, employment, and family ties in deciding whether to hold or release the defendant. vi) Grand Jury or Preliminary Hearing: In about one-half of the states, defendants have the right to have their cases heard by a grand jury, which means that a jury of citizens must hear the evidence presented by the prosecutor and decide whether there is enough evidence to indict the accused of the crime. If the grand jury decides there is enough evidence, the grand jury submits to the court an indictment, or written statement of the facts of the offense charged against the accused. In other cases, the accused may have to appear at a preliminary hearing in court, where the judge may hear evidence and the defendant is formally indicted or released. vii) Arraignment: The defendant is brought before the judge to be informed of the charges and his or her rights. The defendant pleads guilty, not guilty, or no contest (accepts the penalty without admitting guilt). If the defendant pleads guilty or no contest, no trial is held, and offender is sentenced then or later. If the defendant pleads not guilty, a date is set for the trial. If a plea agreement is negotiated, no trial is held. 3) Adjudication (Trial Process) ? Plea Agreements: The majority of cases are resolved by plea agreements rather than trials. A plea agreement means that the defendant has agreed to plead guilty to one or more of the charges in exchange for one of the following: dismissal of one or more changes, a lesser degree of the charged offense, a recommendation for a lenient sentence, not recommending the maximum sentence, or making no recommendation. The law does not require prosecutors to inform victims about plea agreements or seek their approval. ? Trial: Trials are held before a judge (bench trial) or judge and jury (jury trial), depending on the seriousness of the crime and other factors. The prosecutor and defense attorney present evidence and question witnesses. The judge or jury finds the defendant guilty or not guilty on the original charges or lesser charges. Defendants found not guilty are usually released. If the verdict is guilty, the judge will set a date for sentencing. 4) Post-Trial ? Sentencing: Victims are allowed to prepare for the judge (and perhaps to read at the sentencing hearing) a victim impact statement that explains how the crime affected them. In deciding on a sentence, the judge has a range of choices, depending on the crime. These choices include restitution (paying the victim for costs related to the crime), fines (paid to the court), probation, jail or prison, or the death penalty. In some cases, the defendant appeals the case, seeking either a new trial or to overturn or change the sentence. ? Probation or Parole: A judge may suspend a jail or prison sentence and instead place the offender on probation, usually under supervision in the community. Offenders who have served part of their sentences in jail or prison may-under certain conditions-be released on parole, under the supervision of the corrections system or the court. Offenders who violate the conditions of their probation or parole can be sent to jail or prison. Administration of Criminal Justice System in India Introduction 27

The essential object of criminal law is to protect society against criminals and law-breakers. For this purpose, the law holds out threats of punishments to prospective lawbreakers as well as attempts to make the actual offenders suffer the prescribed punishments for their crimes. Therefore, criminal law, in its wider sense, consists of both the substantive criminal law and the procedural (or adjective) criminal law. Substantive criminal law defines offences and prescribes punishments for the same, while the procedural law administers the substantive law. Therefore, the two main statues which deals with administration of criminal cases in our country are criminal procedure code i.e. CRPC and Indian penal code i.e. IPC being procedural and substantive respectively. However, with the changing times the societal norms also change and people who are part of this society have to accept this change either by way of compromise or any other way in order to adjust and make them still the part of the very same society. In earlier days there was no criminal law in uncivilized society. Every man was liable to be attacked in his person or property at any time by any one. The person attacked either succumbed or over-powered his opponent. "A tooth for a tooth, an eye for an eye, a life for a life" was the forerunner of criminal justice. As time advanced, the injured person agreed to accept compensation, instead of killing his adversary. Subsequently, a sliding scale came into existence for satisfying ordinary offences. Such a system gave birth to archaic criminal law. For a long time, the application of these principles remained with the parties themselves, but gradually this function came to be performed by the State. The germs of criminal jurisprudence came into existence in India from the time of Manu. In the category of crimes Manu has recognized assault, theft, robbery, false evidence, slander, criminal breach of trust, cheating, adultery and rape. The king protected his subjects and the subjects in return owed him allegiance and paid him revenue. The king administered justice himself, and, if busy, the matter was entrusted to a Judge. If a criminal was fined, the fine went to the king's treasury, and was not given as compensation to the injured party. Later with the advent of western jurisprudence and passing of various charters and commissions and the advent of British rule the Indian society succumbed or we can probably say adjusted or adapted and aligned itself to the adversarial system of justice dispensation which prevails even today but with a lot of changes which have been time and again being made to it to suit to the needs of the changing times. In today's world one needs to have a receptive, broad and open mind in order to solve various problems which are discussed in chapter one being faced by our justice system. Since it is evident that a change is required in our criminal justice system and there is a need to adhere to recourse to alternative methods of dispute resolution even in criminal cases instead of making a major change we firstly have to see the common features of a trial and the procedure which is followed by our courts or system for the administration of criminal justice and its flaws which is discussed as further. At the outset of this chapter the researcher would like to state that owing to paucity of time and nature of topic selected the researcher has limited his scope of study to a certain specific offences only and would be dealing with them and the lacuna which exists in the administration procedure followed and which particular technique of ADR can be used to curb the said problems and side by side would result in a fair and expeditious trial. Procedure for Administration of Criminal Justice The procedure of administration of criminal justice in our country is divided into three stages namely investigation, inquiry and trial. The Criminal procedure code 1973 provides for the procedure to be followed in investigation, inquiry and trial, for every offence under the Indian Penal Code or under any other law. Now before discussing the procedure of administration there are certain basic terms one should be aware of these being; ? Cognizable offences. 28

? Non cognizable offences ? Inquiry ? Investigation Section 2(c) of the Code defines 'Cognizable Offence' and 'Cognizable case' as "Cognizable Offence" means an offence means an offence for which, and "Cognizable case" means a case in

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which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant".

Section 2(l) defines "Non-cognizable offence" means an offence for which, and "

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non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant"

Section 2(g) defines "Inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or court; and Section 2(h) defines "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf, Therefore, for a dispute to be resolved the said case has to go through the three stages i.e. inquiry investigation and trial and after this process is completed the judgement of the court is passed by the judge who decides the case and its outcome. Although the said process appears to simple and plain on paper but in practicality is cumbersome and time consuming which is defeating the main essence of a criminal system i.e. fair and expeditious justice and hence warrants a change now. The three stages: namely investigation, inquiry and trial are as follows: Investigation is a preliminary stage conducted by the police and usually starts after the recording of a First Information Report (FIR) in the police station. Section 154 provides that any information received in the police station in respect of a cognizable offence shall be reduced into writing, got signed by the informant and entered in the concerned register. Section 156(1) requires the concerned officer to investigate the facts and circumstances of such a case without any order from the Magistrate in this behalf. If Magistrate receives information about commission of a cognizable offence, he can order an investigation. In such cases citizen is spared the trouble and expense of investigating and prosecuting the case. Section 157 of the code provides for the procedure for investigation which is as; if the officer-in- charge of a police station suspects the commission of an offence, from statement of FIR or when the magistrate directs or otherwise, the officer or any subordinate officer is duty-bound to proceed to the spot to investigate facts and circumstances of the case and if necessary, takes measures for the discovery and arrest of the offender. It primarily consists of ascertaining facts and circumstances of the case, includes all the efforts of a police officer for collection of evidence:

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proceeding to the spot; ascertaining facts and circumstances; discovery and arrest of the suspected offender; collection of evidence relating to the commission of offence, which may consist of the examination of various persons including the accused and taking of their statements in writing and the search of places or seizure of things considered necessary for the investigation and to be produced at the trial; formation of opinion as to whether

on the basis of the material collected there is a case to place the accused before a magistrate for trial and if so, taking the necessary steps for filing the charge-sheet. The investigation procedure ends with a submission of a police report to the magistrate under section 173 of the code this report is basically a conclusion which an investigation officer draws on the basis of evidence collected. Now the second phase is, Inquiry dealt under sections 177-189 of the code which consists of a magistrate, either on receiving a police report or upon a complaint by any other person, being satisfied of the facts. 29
Lastly, the third stage is trial. Trial is the judicial adjudication of a person's guilt or innocence. Under the Crpc, criminal trials have been categorized into three divisions having different procedures, called warrant, summons and summary trials. Section 2(x) of the Crpc defines Warrant-
case i.e. "

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Warrant-case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years; A warrant case

relates to

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offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

Trial of warrant cases is dealt under sections 238-250 of the code. The Crpc provides for two types of procedure for the trial of warrant cases i.e. By a magistrate, triable by a magistrate, viz., those instituted upon a police report and those instituted upon complaint. In respect of cases instituted on police report, it provides for the magistrate to discharge the accused upon consideration of the police report and documents sent with it. In respect of the cases instituted otherwise than on police report, the magistrate hears the prosecution and takes the evidence. If there is no case, the accused is discharged. If the accused is not discharged, the magistrate holds regular trial after framing the charge, etc. In respect of

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offences punishable with death, life imprisonment or imprisonment for a term

exceeding seven years,
the trial is conducted in a session's court after being committed or forwarded to the court by a magistrate.

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A summons case means a case relating to an offence not being a warrant case,

implying all cases relating to offences punishable with imprisonment not exceeding two years. In respect of summons cases, there is no need to frame a charge. The court gives substance of the accusation, which is called "notice", to the accused when the person appears in pursuance to the summons. The court has the power to convert a summons case into a warrant case, if the magistrate thinks that it is in the interest of justice. The provisions regarding the procedure to be followed in summons case is dealt under section 251-259 of the Crpc. Summary trials are dealt under section 260 – 265 of the Crpc the procedure is as provided; the high court may empower magistrates of first class to try certain offences in a summary way where as second class magistrates can summarily try an offence only if it is punishable only with a fine or imprisonment for a term not exceeding six months.

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In a summary trial no sentence of imprisonment for a term exceeding three months

can be passed in any conviction. The particulars of the summary trial are entered in the record of the court and in every case which is

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tried summarily in which the accused does not plead guilty the magistrate records the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

The common features of the trials in all three of the aforementioned procedures may be roughly broken into the following distinct stages: 1. Framing of charge or giving of notice This is the beginning of a trial. At this stage, the judge is required to weigh the evidence for the purpose of finding out whether or not a prima facie case against the accused has been made out. In case the material placed before the court discloses grave suspicion against the accused that has not been properly explained, the court frames the charge and proceeds with the trial. If, on the contrary,

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upon consideration of the record of the case and documents submitted and after hearing the accused person and the prosecution in this behalf, the judge considers that there is not sufficient ground for proceeding, the judge discharges the accused and records reasons for doing so. The

words "not sufficient ground for proceeding against the accused" mean that the judge is required to apply a judicial mind in order to determine whether a case for trial has been made out by the prosecution. It may be better understood by the proposition that whereas a strong suspicion may not take the place of proof at the trial stage, yet it may be sufficient for the satisfaction of the court in order to frame a charge against the accused person. 30
The charge is read over and

explained to
the accused. If pleading

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guilty, the judge shall record the plea and may, with discretion convict him however if the accused

pleads not guilty
and claims trial, then trial begins. Trial starts after the charge has been framed and the stage preceding it is called inquiry. After the inquiry, the charge is prepared and after the formulation of the charge the trial of the accused starts. A charge is nothing but formulation of the accusation made against a person who is to face trial for a specified offence. It sets out the offence that was allegedly committed. 2. Recording of prosecution evidence After the charge is framed, the prosecution is asked to examine its witnesses before the court. The statement of witnesses is on oath. This is called examination-in-chief. The accused has a right to cross-examine all the witnesses presented by the prosecution. Section 309 of the Crpc further provides that

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the proceeding shall be held as expeditiously as possible and in particular, when the examination of witnesses has once begun, the same shall be continued day-to-day until all the witnesses in attendance have been examined. 3.

Statement of accused The court has powers to examine the accused at any stage of inquiry or trial for the purpose of eliciting any explanation against incriminating circumstances appearing before it. However, it is mandatory for the court to question the accused after examining the evidence of the prosecution if it incriminates the accused. This examination is without oath and before the accused enters a defense. The purpose of this examination is to give the accused a reasonable opportunity to explain incriminating facts and circumstances in the case. 4. Defense Evidence

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If after taking the evidence for the prosecution, examining the accused and hearing the prosecution and defense, the judge considers that there is no evidence that the accused

has committed the offence, the judge is required to record the order of acquittal. However, when the accused is not acquitted for absence of evidence, a defense must be entered and evidence adduced in its support. The accused may produce witnesses who may be willing to depose in support of the defense. The accused person is also a competent witness under the law.

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The accused may apply for the issue of process for compelling attendance of any witness or the production of any document or thing. The

witnesses produced by him are cross-examined by the prosecution. The accused person is entitled to present evidence in case he so desires after recording of his statement. The witnesses produced by him are cross-examined by the prosecution. Most accused persons do not lead defense evidence. One of the major reasons for this is that India follows the common law system where the burden of proof is on the prosecution, and the degree of proof required in a criminal trial is beyond reasonable doubt. 5. Final Arguments This is the final stage of the trial. The provisions of the Crpc provide that

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when examination of the witnesses for the defense, if any, is complete, the prosecutor shall sum up the prosecution case and the accused is entitled to reply.

The same is provided for under section 234 of the code. 6. Judgement After conclusion of arguments by the prosecutor and defense, the judge pronounces his judgment in the trial. Here it is relevant to mention that the Crpc also contains detailed provisions for compounding of offences. It lists various compoundable offences under table 1 of the Indian Penal Code which may be compounded by the specified aggrieved party without the permission of the court and certain offences under table 2 that can be compounded only after securing the permission of the court compounding of offences also brings a trial to an end. Under the Crpc an accused can also be withdrawn from prosecution at any stage of trial with the permission of the court. If the accused is allowed to be withdrawn from prosecution prior to framing of 31

charge, this is a discharge, while in cases where such withdrawal is allowed after framing of charge, it is acquittal. The above described is the process how a trial takes place for dispensation of a criminal case although this six stepped procedure looks plain and simple it suffers from many inherent lacunas which become the reasons for delay and hampers an expeditious trial and not to forget the option of appeal is again there where the state or the criminal has option to appeal to appellate court and as well as seek a permission to file a special leave petition to the supreme court where in again all this process is repeated except for the fact that the supreme court only deals with cases where there is a question of law involved. The following are some of the problems of our trial procedure which pose as hurdles to speedy dispensation of cases; ? Investigation though is the foundation of the Criminal Justice System but is unfortunate that it is not trusted by the laws and the courts themselves the same can be explained by a perusal of sections 161 and 162 of the Criminal Procedure Code which provides that the statements of the witnesses examined during investigation are not admissible and that they can only be used by the defense to contradict the maker of the statement, the confession made by accused is also not admissible in evidence. The statements recorded at the earliest stage normally have greater probative value but can't be used in evidence. It is common knowledge that police often use third degree methods during investigation and there are also allegations that in some cases they try to suppress truth and put forward falsehood before court for reasons such as corruption or extraneous influences political or otherwise. Unless the basic problem of strengthening the foundation is solved the guilty continue to escape conviction and sometimes even innocent persons may get implicated and punished. ? Secondly the police officers face excessive work load due to lack of manpower and the public at large is non co-operative because of the public image of the police officers and there is lack of coordination with other sub-system of the Criminal Justice System in crime prevention to add to the agony there is a lot of misuse of bail and anticipatory bail provisions, more over due to Political and executive interference police is directed for other tasks which are not a part of police functions. It may be apt to point out that the rank of the IO investigating a case also has a bearing on the quality of investigation. The minimum rank of a station house officer (SHO) in the country is sub inspector (SI). However, some of the important police stations are headed by the officers of the rank of Inspector. It has been observed that investigations are mostly handled by lower level officers, namely, HC and ASI etc. The senior officers of the police stations, particularly the SHOs generally do not conduct any investigations themselves. This results in deterioration of quality of investigations. It is therefore necessary to address ourselves to the problems and strengthen the investigation agency. Furthermore, the common citizen is not aware of the distinction between cognizable and non- cognizable offences. There is a general feeling that if anyone is a victim of an offence the place, he has to go for relief is the police station. It is very unreasonable and awkward if the police were to tell him that it is a non-cognizable offence and therefore, he should approach the Magistrate as he cannot entertain such complaint. ? Thirdly, the investigation of a criminal case, however good and painstaking it may be, will be rendered fruitless, if the prosecution machinery is indifferent or inefficient. One of the well-known causes for the failure of a large number of prosecutions is the poor performance of the prosecution. In practice, the accused on whom the burden is little engages a very competent lawyer, while, the prosecution, on whom the burden is heavy to prove the case beyond reasonable doubt, is very often 32
represented by persons of poor competence, and the natural outcome is that the defense succeeds in creating the reasonable doubt on the mind of the court. ? Fourthly, the most notorious problem in the functioning of the courts, particularly in the trial courts is the granting of frequent adjournments on most flimsy grounds. This malady has considerably eroded the confidence of the people in the judiciary. Adjournments contribute to delays in the disposal of cases. They also contribute to hardship, inconvenience and expense to the parties and the witnesses. The witness has no stake in the case and comes to assist the court to dispense justice. He sacrifices his time and convenience for this. If the case is adjourned, he is required to go to the court repeatedly. He is bound to feel unhappy and frustrated. This also gives an opportunity to the opposite party to threaten or induce him not to speak the truth therefore the right to speedy trial is thwarted by repeated adjournments. ? Fifthly, one of the major causes for delay even in the commencement of trial of a criminal case is service of summons on the accused. The Code of Criminal Procedure provides for various modes of service. Section 62 of the Code provides that summons shall be served by a Police Officer, or subject to such rules being framed by the State Government, by any officer of the Court or other public servant. Unfortunately, rules have not been framed by many State Governments to enable service otherwise than through police officers. Since the Criminal Procedure Code itself provides for other means of service namely through registered post in the case of witnesses, it should also provide for service on accused through facilities of courier service, fax where available. ? Lastly our country suffers from low judge population ratio because of which the pendency of work increases therefore the judges take a long time in delivering judgments this again adds to enlargement of the time frame of a case to be decided from its intuition point because of which the litigants feel that litigation is a time consuming and lengthy procedure the two areas which need special attention for improving the quality of justice are prescribing required qualifications for the judges and the quality of training being imparted in the judicial academics. Since the above problems curb the speedy dispensation of cases the researcher in order to provide or seek a solution for remedying and trying to move away from the old colonial shackles has undertaken to research upon this topic where the main research ground would be whether introduction ADR techniques in certain criminal cases would lead to speedy dispensation of cases without calling in for a major infrastructural change for this very same purpose the researcher has chosen six particular sections which would be dealt further where each section would be explained along with a its classification and which method of trial is followed and by using a certain technique of ADR in trial of that particular offence would lead to expeditious and fair trial as when compared to the traditional litigation method, The researcher owing to paucity of time and since compulsory compromise is not possible all criminal cases the researcher has undertaken to propose the following; Adding more offences under section 320(1) table from the table under section 320(2) i.e. offence which are to

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be compounded with the permission of the court should now be allowed to be compounded without eh permission of the court

where both the parties agree to settle the matter and refer the said matters for mediation instead of normal trial procedure. Sending all maintenance and family discord matters under section 125 Crpc for mediation using family group conferencing method instead of normal court trial. Using victim offender mediation method for cases under section 323 IPC i.e. HURT. Using victim offender mediation method for cases under section 379 IPC i.e. Theft. 33
Using victim offender mediation method or early neutral evaluation method for cases of Criminal breach of trust dealt under section 405-408 IPC. Sending cases of defamation dealt under section 499 IPC for mediation. Hierarchy of Courts and Justice System in India The courts are divided into three categories with top court, middle court and lower court. The top court is named as the Supreme Court, while the middle court is named as High Court, and the lower court is named as District Court, Introduction India, being one of the biggest countries in the world with a fabulous population has a very strong judiciary system which is inherent with the structure of the courts and its hierarchy and the judicial system. This system provides livelihood to huge number of professionals attached with the system of judiciary in different forms and thus serve the nation with the service. In this essay, the structural pattern of judiciary system will be narrated with the hierarchical type of courts effectively take part in the judiciary system and the different personalities engaged in this profession to play different roles assigned to them. Because of the size of the country, the judiciary system is planned as per the requirement of the citizen of India with the location of courts as per status to serve the community of India with efficiency. India has a rich tradition of providing justice to the affected and the courts in various levels are there to serve the purpose of extending highest level of efficient juridical system all over the country. The court structure is set as per the judiciary system prevailing in India with differentiation of applicability as per the merit of the case. The normal trend of the judiciary system is to start any general dispute in the lower court which is being escalated as per the satisfaction of the parties to the higher courts. The hierarchical structure of court is being endorsed by the Constituency of India with the level of power exercised by the different level of courts. The judgments can be challenged in the higher courts if the parties to the cases are not satisfied. The process of escalation is systematic and thus the system of providing maximum level of satisfaction to the parties is sincerely tried by the judiciary system. Hierarchy of Indian Courts The Hierarchical Structure of Indian Courts 34
The feature Indian judiciary system is its hierarchical structure of courts. There are different levels of judiciary system in India empowered with distinct type of courts. The courts are structured with very strong judiciary and hierarchical system as per the powers bestowed upon them. This system is strong enough to make limitation of court with its jurisdiction and exercise of the power. The Supreme Court of India is placed at the top of the hierarchical position followed by High Courts in the regional level and lower courts at micro level with the assignment of power and exercising of the same for the people of India. 1)

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Supreme Court of India Supreme Court of India is the highest level of court of Indian juridical system which was established as per Part V, Chapter IV of the Constitution of India which endorses the concept of Supreme Court

as the Federal Court to play the role of the guardian of the esteemed constitution of India with the status of the highest level of court in the status of appeal cases. Constitution As conferred by Articles 124 to 147 of Indian Constituency, the jurisdiction and composition of the Supreme Court is being fixed. This court is primarily of the status of appellate court. This court is accepting the appeals of cases which are being heard in the High courts situated in different states and union territories with dissatisfaction of related parties. This court also accepts writ petitions with the suspected occurrence of activities which may infer about violation of human rights and subsequent petitions are accepted to hear and judge the consequences of such happenings. These types of petitions are accepted under Article 32 of Indian constitution. This article confers the right to ensure remedies through constitution. This court also hears about such serious issues which need to be attended with immediate attention. History This court has started its operation since 28 th January 1950 with the inaugural sitting, the day since when the constitution of independent India had been effectively applicable. The court had already taken care of more than 24,000 judgments as per report of the Supreme Court. Structure and Application This court is comprised of the Chief Justice along with 30 other judges to carry on the operation of the court. The proceeding of the Supreme Court is being heard only in the language of English. The Supreme Court is governed by the Supreme Court Rules which was published in the year 1966. The same had been fixed under the Article number 145 of the Constitution of India to ensure the regulation of procedures and practices of the Supreme Court. This article is passing through the process of upgrading with the presently enforced Article as per the Supreme Court Rules, 2013. 2) High Court of India Constitution High Courts are second Courts of Importance of the democracy of India. They are run by Article 141 of the Constitution of India. They are governed by the bindings conferred by the Supreme Court of India so far judgments and orders are concerned. The Supreme Court of India is the highest level of courts and is responsible for fixing the guidance to the High Court's set by precedence. 35

High courts are the types of courts which are instituted as the courts powered by constitution with the effect of Article 214 Part IV Chapter V of the Indian Constitution. There are 24 high courts in India taking care of the regional juridical system of India out of which Kolkata High Court is the oldest. Jurisdiction These courts are mainly confined to the jurisdiction of state, group of states or Union Territory. They are being empowered to govern the jurisdiction of lower courts like family, civil and criminal courts with other different courts of the districts. These courts are of the statute of principal civil courts so far originality of jurisdiction is concerned in the related domain of the states and the other district courts. These courts are treated as subordinate to High Courts by status. But High Courts are mainly exercising their jurisdiction related to civil or criminal domain if the lower courts are proved incapable of exercising their power as per authorization extended by law. These situations may be generated through the inability of financial or territorial jurisdiction. There are specific areas in which only High Courts can exercise the right for hearing like cases related to Company Law as it is designated specially in a state or federal law. But normally the high courts are involved in the appeals raised in the cases of lower courts with the writ petitions as conferred in Article 226 of the Constitution of India. The area of writ petitions is also the sole jurisdiction of high courts. The jurisdiction of High Court is varying so far territorial jurisdiction is considered. Official Structure and Application The appointment of the judges of High Courts are being executed by the President of India with the consultation of the Chief Justice of India, the Chief Justice of High Court and the Governor of the state or union territory. Decision on the number of judges in High Court is mainly dictated considering the higher number of either the average of organization of main cases for the last years as per the average nationally calculated or the average rate of main cases disposed per judge per year in the respective high court. The high courts with handling of most of the cases of a particular area are provided with the facility of permanent benches or branches of the court situated there only. To serve the complainants of remote regions the establishment of circuit benches had been made to facilitate the service with the schedule of operation as per the occurrence of visit of the judge. 3) Lower Courts of India a) District Courts Constitution The basis of structuring of district courts in India is mainly depending upon the discretion of the state governments or the union territories. The structure of those courts are mainly made considering several factors like the number of cases, distribution of population, etc. Depending upon those factors the state government takes the decision of numbers of District Courts to be in operation for single district or clubbing together different adjacent districts. Normally these types of courts exercise their power of juridical service in district level. These courts are covered by the administrative power of the High Courts under which the district courts are covered. The judgments of the district courts are subject to review to the appellate jurisdiction of the respective high court. Structure and Jurisdiction 36
The district courts are mainly run by the state government appointed district judges. There are additional district judges and assistant district judges who are there to share the additional load of the proceedings of District Courts. These additional district judges have equal power like the district judges for the jurisdiction area of any city which has got the status of metropolitan area as conferred by the state government. These district courts have the additional jurisdictional authority of appeal handling over the subordinate courts which are there in the same district specifically in the domain of civil and criminal affairs. The subordinate courts covering the civil cases, in this aspect are considered as Junior Civil Judge Court, Principal Junior and Senior Civil Judge Court, which are also known as Sub Courts, Subordinate Courts. All these courts are treated with ascending orders. The subordinate courts covering the criminal cases are Second Class Judicial Magistrate Court, First Class Judicial Magistrate Court, and Chief Judicial Magistrate Court along with family courts which are founded to deal with the issues related to disputes of matrimonial issues only. The status of Principal Judge of family court is at par with the District Judge. There are in total 351 district courts in operation out of which 342 are of states while 9 are of union territories. b) Village Courts Constitution Structures and Features The village courts are named as Lok Adalat or Nyaya Panchyat which means the service of justice extended to the villagers of India. This is the system for resolving disputes in micro level. The need of these courts is justified though the Madras Village Court Act of 1888. This act is followed by the development post 1935 in different provinces, which are re-termed as different states after the independence of 1947. This conceptual model had been started to be sued from the state of Gujarat consisting of a judge and two assessors since 1970s. The Law Commission had recommended in 1984 to form the Nyaya Panchayats in the rural areas with the people of educational attainment. The latest development had been observed in 2008 through initiation of Gram Nyaylayas Act which had sponsored the concept of installation of 5000 mobile courts throughout the country. These courts are assigned to judge the petty cases related to civil and criminal offence which can generate the penalty of up to 2 years imprisonment. So far the available statistics of 2012 there are only 151 Gram Nyaylayas which are functional in this big country which is far below the targeted figures of 5000 mobile courts. While trying to find the basic reasons for this non-achievement, it was found as financial constraints followed by shown reluctance by the lawyers, respective government officials and police. Judicial System of India The present judicial system of India is being made effective through the Constitution of India. The judicial system of India is mainly consisting of three types of courts- the Supreme Court, The High Courts and the subordinate courts. The effective rules and regulations are made of the Constitution and other laws and regulation structured mainly upon the basis of British Law with the improvised version suitable for India. These rules and regulation along with the Constitution are elementary in fixing the composition, jurisdiction and power of the respective courts. The below discussion will highlight the features and the roles of the three types of courts so far the judicial system of India is concerned Supreme Court- Its role in the Judicial System This court is with the status of the highest level of courts as per Chapter IV of Part V of the Indian Constitution. This court is situated in the capital of India, New Delhi. The panel of judges is comprised of Chief Justice and twenty other Judges. 37

Appointment of Judges: The judges of Supreme Court are being appointed by the President of India. The system is to send the panel of probable judges by the Chief Justice of Supreme Court through collegiums to the President of India with the approval of the Central Government. The qualifications and the conditions of the judges so far appointment and the tenure of service are fixed as per below: 4. He should be the citizen of India. 5. He should have the experience of serving as the Judge of High Court for a minimum period of at least five years or he should be an advocate of High Court for at least ten years or he should be considered by the President as a distinctive jurist. 6. The Judge of the Supreme Court is eligible for performing his duties by holding office up to the age of sixty five year if he has not resigned or disqualified on the basis of any act of misbehaviour or proving incapable of holding his duties[13]. 7. Jurisdiction of Supreme Court The jurisdiction of Supreme Court is classified under different types: 1) Original Jurisdiction: The Supreme Court exercises original jurisdiction exclusively to hear the cases of disputes between the Central Government and the State Governments or the interest of the States. The Supreme Court has original but not exclusive jurisdiction for enforcement of Fundamental Rights as per the provision of Constitution of India through the way of writs. 2) Appellate Jurisdiction: The Supreme Court has the jurisdiction of hearing the appeal raised against the judgment of all High Courts of India provided the respective High Court grants the certificate related to the query about the interpretation of the Constitution of India. In case of any civil dispute, if the High Court thinks that the intervention of Supreme Court is required to resolve substantial query of law regarding importance in general is there and the High Court infers that the specific query is to be decided by the Supreme Court. In case of any criminal dispute, if the High Court thinks that the same is to be heard by the Supreme Court. It is the discretionary power of the Supreme Court to hear any criminal case without the certificate of High Court against the judgment conferred by High Court through which any verdict of death sentence is being pronounced while reversing the original judgment of the lower court of release order to the accused or in case of withdrawal of case from the lower court. Supreme Court has the power to exercise extra ordinary jurisdiction to hear any appeal related to any matter for which any court or tribunal had decided with judgment through the option of special leave petition except the case of tribunal related to armed Forces. Supreme Court has the power to withdraw or transfer any case from any High Court. The Supreme Court has the authority to review any verdict ordered. The law of Supreme Court is put the binding on all courts across India. Even the Supreme Court has the authority to create any rule of government with the approval from the President of India. Supreme Court is defined as the Court of record with the right to make punishment for the contempt of court. 3) Advisory Jurisdiction: The Supreme Court has the option to report its opinion to the President about any questions raised of public importance referred by the President. 38
The High Courts – Its role in the Judicial System The Constitution of India has conferred the provision regarding the judicial system through Chapter V of Part Vi for high courts. The main features are discussed below: ? Establishment: The Constitution conferred that each state or more than one state should have one High Court. The Union Territories of Manipur, Goa and Tripura have the judicial Commissioner Courts. The Constitution has made provision for the other Union Territories to establish high courts. ? Court of Record: All the High Courts have the power to pronounce punishment for contempt of court and thus, they will be treated as Court of Record. ? Appointment of Judges: The appointment of the Judges

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of High Court is done by the President of India with the consultation of the Chief Justice of India, the

Chief Justice of respective high Court and the Governor of the state. ? Number of Judges: The President of India has the authority to fix the number of judges of the High Court as per requirement. The basic factor for this purpose is being settled though the central executive which can decide about the number of judges in High Court which is being decided with flexible attitude ? Qualification of Judges: A person, being the citizen of India with holding the judicial office in India for 10 years or an advocate of High Court for 10 years is eligible for being the Judge of High Court. ? Tenure of service: The judges of the High Court have the maximum period of service up to sixty two years. Till then they cannot be removed from their duties if any occurrence of misbehaviour or incapability is proved and seconded by two third of members of both houses of parliament through voting. ? Salary of Judges: This is done as per prescribed declaration in the second schedule of the Constitution and cannot be changed without any amendment of the Constitution. ? Revenue: The old-fashioned restriction since 1915 regarding revenue is being outdated on the original jurisdiction of the High Courts of Kolkata, Chennai and Mumbai. ? Writ Jurisdiction and Superintendence: Except for High Courts of Kolkata, Chennai and Mumbai none has the power to issue the privileged writs. At present Article 226 of Constitution of India has given the power to the high Courts to issue different writs. Article 227 of Indian Constitution has empowered all high courts to practice superintendence over all the courts of tribunal effective within the regional jurisdiction of the High Court. Subordinate Courts of India Chapter VI of Part VI of the Indian Constitution has made provisions for subordinate courts related to the judicial system. These courts are in the state level under the direct superintendence of High Court. The activities like appointment promotion and posting of judges are made by the Governor of the state by consulting respective High Court. The criterion of eligibility of district judge is that he must be an advocate for minimum seven years with the recommendation of the respective high court. Respective High Court has the sole discretionary power related to the administrative matters like posting, promotion or leave which can be conferred by the conditions of service as per the law applicable for subordinate courts. Panchayats 39

As per the provisions made in Part IV of the Constitutions, the directive of panchayats is fixed which endorses the concept of self-governance through Article 40 of this part. The panchayats are there in the rural area to resolve the issues related to civil or criminal issues by following the simple system of informal application to enhance to scope of compromise between the parties. Article 50 had made provision separating

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the judiciary from the administrative executive deployed in the public services of the state.

Establishment of Nyaya Panchayat (1) The State Government or the prescribed authority shall divide a district into circles, each circle comprising as many areas subject to the jurisdiction of the [Gram Panchayat] as may be expedient, and establish Nyaya Panchayat of each such circle; Provided that the areas of [Gram Panchayat] within each circle shall, as far as possible be contiguous. (2) Subject to a minimum of ten and a maximum of twenty-five, every Nyaya Panchayat at shall have such number of members as may be prescribed, but it shall be lawful for a Nyaya Panchayat to function notwithstanding any vacancy therein; Provided the number of Panches therein is not less than two-thirds of the prescribed strength. Appointment of Panches and their term (1) There shall be appointed by the prescribed authority out of the members of a Gram Panchayat such number of persons, as may be prescribed to the Panches of the Nyaya Panchayat and thereupon the members so appointed shall cease to be member of the Gram Panchayat and their seats in the Gram Panchayat shall be filled, as far as may be in the manner provided in Section 12; [Provided that if the requisite number of members of a Gram Panchayat are not available for being Panches of the Nyaya Panchayat, it shall be lawful for the prescribed authority to fill in any seat so remaining vacant by nomination from amongst other members of the Gram Panchayat.] (2) No person may be appointed as a Panch of the Nyaya Panchayat unless he has the qualification that may be prescribed; Provided that where suitable person having the prescribed qualifications are not available for such appointment any or all of such qualifications may, by an order in writing, be relaxed by the prescribed authority. Election of Sarpanch or Sahyak Sarpanch The Panches appointed under Section 43 shall, in the manner and within the period to be prescribed, elect from amongst them two persons who are able to record proceedings, one as the Sarpanch and the other as the Sahayak Sarpanch; Provided that if the Panches fail to elect the Sarpanch or the Sahayak as aforesaid the prescribed authority may appoint the Sarpanch or the Sahayak Sarpanch. Term of Panch The term of every Panch of a Nyaya Panchayat shall commence on the date of his appointment as such, and unless otherwise determined under the provisions of this Act, shall expire with the Gram Panchayat, from which he was appointed; Provided that Sarpanch and the Sahayak Sarpanch shall continue in office until their respective successors are elected or appointed. Resignation of Panches 40
A Panch, a Sarpanch or Sahayak Sarpach may resign his office as such by writing under his hand addressed to such authority as may be prescribed and his office shall thereupon become vacant. Bench of Nyaya Panchayat 1) The Sarpanch shall form Benches consisting of five Panches each for the disposal of cases and inquiries coming up before the Nyaya Panchayat. 2) The formation of Benches, the period for which they will work including the hearing of part heard cases, the method of distribution, transfer or re-transfer of work among the Benches and procedure generally to be followed by them in cases and enquiries shall be governed by rules. 3) No Panch, Sarpanch or Sahayak Sarpanch shall take part in the trial of or inquiry in any case to which he or any relation, employer, employee debtor, creditor or partner of his is a party or in which any of this is personally interested. 4) Notwithstanding anything contained in this section, the State Government may prescribe the constitution of Special Benches for the trial of any class or classes of cases; Provided that the State Government may at any time order for the reconstitution of such Special Bench. 5) Any dispute relating to the formation of Benches or method of their working, shall be referred to the prescribed authority whose decision shall be final. Filling of casual vacancies 1. If a vacancy in the office of a Panch arises by reason of his death, removal or resignation it shall, subject to the provisions of Section 45, be filled for the unexpired part of his terms by the prescribed authority by appointing a person from amongst the members for the time being of the Gram Panchayat, and if the Panch vacating the office was also Sarpanch or Sahaya Sarpanch a new Sarpanch or Sahayak Sarpanch, as the case may be, shall be elected in the manner provided in Section 44. 2. Any person appointed as Panch undr sub-section (1) shall cease to be a member of the Gram Panchayat from the date of his appointment and the vacancy so caused in the [Gram Panchayat] shall be deemed to be a casual vacancy for the purpose of Section 12-H. Powers of Sahayak Sarpanch The Sahayak Sarpanch shall exercise such powers of the Sarpanch as may be prescribed. Territorial Jurisdiction n) Notwithstanding anything contained in the [Code of Criminal Procedure, 1973] every criminal case triable by a Nyaya Panchayat shall be instituted before the Sarpanch of the Nyaya Panchayat of the circle in which the offence is committed. o) Notwithstanding anything contained in the Civil Procedure Code, 1908, every civil case instituted under this Act shall be instituted before the Sarpanch of the Nyaya Panchayat of the circle in which the defendant or, where there are more than one, all the defendants ordinarily reside or carry on business at the time of the institution of the civil case irrespective of the place where the cause of action arose. 41

Offences cognizable by Nyaya Panchayats [(1) The following offences as well as abetments of and attempts to commit such offices, if committed with the jurisdiction of a Nyaya Panchayat shall be cognizable by such Nyaya Panchayat]: (a) Offences under section 140, 160, 172, 174, 179, 269, 277, 283, 285, 289, 290, 294, 324, 334, 341, 352, 357, 358, 374, 379, 403, 411 (where the value of the stolen or misappropriated property in cases under Sections 379, 403 and 411 does not exceed fifty rupees), 4276, 428, 430, 431, 447, 448, 504, 506, 509, and 510 of the Indian Penal Code, 1860; (b) Offences under sections 24 and 26 of the Cattle Trespass Act, 1871; (c) Offences under sub-section (1) of 10 of the United Provinces District Board Primary Education Act, 1926; (d) Offences under Section 3, 4, 7 and 13 of the Public Grambling Act, 1867; (e) Any other offence under aforesaid enactments or any other enactment as may, by notification in the official Gazette, be declared by the State Government to be cognizable by a Nyaya Panchayat; and (f) Any offence under this Act or any rule made thereunder. (1-A) The State Government may by order published in the Official Gazette empower any Nyaya Panchayat to take cognizance of offences under Section 279, 286, 336 and 356 of the Indian Penal Code, 1860 and may likewise withdraw any offence referred to in clauses (a) to (d) of sub-section (1) from the cognizance of Nyaya Panchayats generally or such Nyaya Panchayats as may be specified. (2) Any criminal relating to an offence under Section 143, 145, 151 or 153 of the Indian Penal Code, 1860, pending before any court may be transferred for trial to the Nyaya Panchayat if in the opinion of such court the offence is not serious. Security for keeping the peace (1) Wherever the Sarpanch of a Nyaya Panchayat has reason to apprehend

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that any person is likely to commit a breach of peace or disturb public

tranquillity, he may call up on such person to show cause how he should not execute a bond or an amount not exceeding Rs. 100 with or without sureties for keeping the peace for a period not exceeding 15 days. (2) The Sarpanch shall after issue of such notice report the matter to a Bench. The Bench may either confirm the order or discharge the notice after hearing such person and such witnesses as he may desire to produce. (3) If the person required to execute a bond as aforesaid under sub-section (2) fails to do so, he shall be liable to pay a penalty up to five rupees as the Bench may fix for every day if the default continues during the period fixed in the order. Penalties (1) No Nyaya Panchayat shall inflict a substantive sentence of imprisonment. (2) A Nyaya Panchayat may impose a fine not exceeding [two hundred and fifty rupees] but not imprisonment may be awarded in default of payment; Provided that no accused shall be tried for more than three offences in the same criminal case and the fine that may be imposed on any one accused in a criminal case shall not in the aggregate exceed [two hundred and fifty rupees]. Cognizance of cases 42 (1) After a Nyaya Panchayat has been established for any area, no Court except as otherwise provided in this Act shall take cognizance of any case triable by such Nyaya Panchayat. (2) When a Nyaya Panchayat is suspended, superseded or dissolved under Section 95, or for any other reason ceases to function all cases pending before it shall stand transferred to the Court of competent jurisdiction which shall dispose them of according to law; Provided that the trial of all such cases in Court shall commence de novo; Provided further that a Nyaya Panchayat shall not be deemed to cease to function merely for the reason that is Panches have to be re-elected. (3) Notwithstanding anything contained in Section 52 and in sub-section (1) of this section any court may take cognizance of any offence under Section 431 and 447 of the Indian Penal Code, 1860, if it is otherwise competent to do so. (4) Notwithstanding anything contained in Section 52 and Sub-section (1) to (3) of this section but subject always to the provisions of the Code of Criminal Procedure, 1898, (Now Act 2 of 1974) where any Court has taken cognizance of any offence referred to in the said section and a summons or warrant, as the case may be, has been issued for the appearance of the accused in such case, the offence may be enquired into and tried by such Court. Transfer of cases by Courts to Nyaya Panchayat A Court if it finds that a case is triable by a Nyaya Panchayat, shall, except as provided in sub-section (4) of Section 55 transfer the case to the Nyaya Panchayat of competent jurisdiction which shall thereafter try the same de novo. Summary dismissal of complaint A Nyaya Panchayat may dismiss any complaint if after examining the complainant and taking such evidence as he produces it is satisfied that the complaint is frivolous, vexatious or untrue. Transfer of cases by Nyaya Panchayat to courts If at any time it appears to a Nyaya Panchayat: o that it has no jurisdiction to try any case pending before it. o that the offence involved is one for which it cannot award adequate punishment, or o that the case should other-wise be tried by a court; it shall transfer the same to the Court of competent jurisdiction and shall give information of such transfer to the parties concerned. Certain persons not to be tried by Nyaya Panchayat No Nyaya Panchayat shall take cognizance of any criminal case against a person where such person: c) has been previously convicted of an offence punishable with imprisonment of either description for a term of three years or more. d) has been previously fined for theft by any Nyaya Panchayat. e) has been found over to be of a good behaviour under [Sections 109 or 110 of the Code of Criminal Procedure, 1973]. f) has been previously convicted under the Public Gambling Act, 1867, or is a public servant. Compensation to complainants In imposing any fine the Nyaya Panchayat may order any portion or

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the whole of the fine recovered to be applied: o in defraying the expenses properly incurred in the

criminal case by the complainant. 43

o In the payment to any person of compensation for any material loss or injury caused by the offence, or o In compensation any bona fide purchaser of stolen property for loss of the same, where property is re-stored to the possession of the person entitled thereto. Compensation to the accused (1) If any criminal case instituted before a Nyaya Panchayat any person is accused of any offence triable by a Nyaya Panchayat and the Nyaya Panchayat acquits the accused and is of the opinion that the accusation against him was false and either frivolous or vexatious, the Nyaya Panchayat may call upon the complainant forthwith to show cause why he should not pay compensation to such accused. (2) If after hearing the complainant, the Nyaya Panchayat is satisfied that the accusation was false and either frivolous or vexatious, it may direct that compensation not exceeding twenty-five rupees be paid by such complainant to the accused. Human Rights Court in India One of the objects of the Protection of Human Rights Act, 1993 as stated in the preamble of the Act, is the establishment of human rights courts at district level. The creation of Human Rights Courts at the district level has a great potential to protect and realize human rights at the grassroots. The Protection of Human Rights Act, 1993 provides for establishment Human Rights Courts for the purpose of providing speedy trial of offences arising out of violation of human rights. It provides that the state Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district. The Act refers to the offences arising out of violations of human rights. But it does not define or explain the meaning of "offences arising out of violations of human rights". It is vague. The Act does not give any clear indication or clarification as to what type of offences are to be tried by the Human Rights Courts. No efforts are made by the Central Government in this direction. Unless the offence is not defined the courts cannot take cognizance of the offences and try them. Till then the Human Rights Courts will remain only for namesake. Even if "offences arising out of violations of human rights" are defined and clarified or classified, another problem arises in the working of the Human Rights courts in India. The problem is who can take cognizance of the offences. What the Act says is in each district, one Sessions Court must be specified for trying "offences arising out of human rights violation". It is silent about taking of cognizance of the offence. The Prevention of Corruption Act, 1988 is another law, which provides for appointment of a Sessions Judge in each district as Special Judge to try the offence under the said Act. Provision has been made in section 5 of the Prevention of Corruption Act, 1988 empowering the Special Judge to take cognizance of the offences under the said Act. In the Protection of Human Rights Act, 1993 it is not so. Sessions Court of the district concerned is considered as the Human Rights Court. Under the Criminal Procedure Code, 1973 a Sessions Judge cannot take cognizance of the offence. He can only try the cases committed to him by the magistrate under Section 193 of the Cr.P.C. Similar problem had arisen in working

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of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

in the beginning. The Special Judges used to take cognizance of the offences. In Potluri Purna Chandra Prabhakara Rao V. State of A.P., 2002(1) Criminal Court cases 150, Ujjagar singh & others V. State of Haryana & another, 2003(1) Criminal Court Cases 406 and some other cases it was held that the Special Court (Court of Session) does not get jurisdiction to try the offence under the Act without committal by the Magistrate. The Supreme Court also held same view in Moly & another V. State of Kerala, 2004(2) Criminal Court Cases 514. Consequently, the trial of all the cases under the Prevention of Atrocities Act were 44

stopped and all the cases were sent to the Courts of jurisdictional Magistrates. Thereafter the respective Magistrates took cognizance of the cases and committed them to the Special Courts. The Special Courts started trying the cases after they were committed to them. The Act was later amended giving the Special Courts the power to take cognizance of the offences under Act. The situation in respect of the Human Rights courts under the Protection of Human Rights Act, 1993 is not different. Apart from the above, the Special Courts will face yet another question whether provisions of Section 197 of Cr.P.C. are applicable for taking cognizance of the offences under the Protection of Human Rights Act, 1993. In most of the cases of violation of human rights it is the police and other public officers who will be accused. The offence relates to commission or omission of the public servants in discharge of their duties. Definitely the accused facing the trial under the Act raise the objection. There is plethora of precedents in favour of dispensing with the applicability of Section 197 of Cr.P.C. on the ground that such acts (like the ones which result in violation of human rights) do not come within the purview of the duties of public servants. But there is scope for speculation as long as there is no specific provision in the Act dispensing with the applicability of Section 197 of Cr.P.C. The object of establishment of such Courts at district level is to ensure speedy disposal of cases relating to offences arising out of violation of human rights. Unless the lawmakers take note of the above anomalies and remove them by proper amendments the aim for which provisions are made for establishment of special courts will not be achieved. Fast Track Court: Dictionary meaning of Fast Track means “A route or method which provides for more rapid results than usual. It also means “happening, developing or more progressing more quickly than usual. Thus, fast track court means a special type of court set up for speedy trial in special cases where hearing is being done either daily or without much delay. The Central Government has framed a scheme that envisages the appointment of ad hoc judges has to be carried out by High Court. The Hon'ble Apex court pleased to observe that, Priority shall be given by the Fast Track Courts for disposal of those Sessions cases which are pending for the longest period of time, and/or those involving under-trials. Similar shall be the approach for Civil cases i.e. old cases shall be given priority. The objectives of Fast Track Courts: 23. To expedite the pendency in courts under a time-bound program. 24. To give top priority to sessions cases and under-trial cases. 25. To reduce the number of under-trials in jail thereby reducing expenditure as well as burden on jails. 26. Setting up fast track court in each district [as per scheme]. Fast Track of the civil cases/ civil applications for the Track No. 1 & 2 of the Model Case Management Rules, was discussed, wherein it is observed that,' On more events, the life of the case increases. If the parties take effective steps, then it is possible to reduce the time limit '. Now the court managers are also appointed to enhance the court track fast. At present, there is a provision for display of daily board, court orders and life cycle. The constitutional guarantee of speedy trial is an important safeguard. It prevents undue

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and oppressive incarceration prior to trial and limits the possibilities that long delays will impair the ability of an accused to defend himself.

The right to free legal aid and speedy trial are implicit in Art.21 of the constitution of India. 45

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The right to a speedy trial is first mentioned in landmark document of English law, the Magna Carta.

The concept of

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right to speedy trial has grown in age by almost two and a half decades.

It deals with speedy disposal of cases to make the judiciary more effective and to impart justice as fast as possible, but

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the goal sought to be achieved is yet a far-off peak.

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Article 21 declares that “no person shall be deprived of his life or personal liberty except according to the procedure laid by law.” Justice Krishna Iyer while dealing with the bail petition in Babu Singh v. State of UP, remarked, "Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial' whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings."

In Sheela Barse v. Union of India, court reaffirmed that speedy trial to be fundamental right.

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Right to speedy trial is a concept gaining recognition and importance day by day.

There are 3 pillars of social restraint and order in India: (1) legislature (2) executive (3) judiciary Legislature is an authority which makes the law & Executive takes into consideration effective implementation of the legislations while judiciary implements it in practical life. But are any of them concerned about these problems? With the rapid growth in technological, industrial field and population, workload has increased on the judiciary system which calls for effective and rapid disposal of ever increasing cases. Also the Constitutional courts of the country were held just and reasonable in holding the right to speedy trial procedure enshrined in Article 21 due to

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the mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself.

Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and re-trial in short everything commencing with an accusation and expiring with the final verdict. But denial of such fundamental right to the accused persons, due to failure on the part of prosecuting agencies and executive to act, and their turning an almost blind eye at securing expeditious and speedy trial so as to satisfy the mandate of Article 21 of the Constitution have persuaded the Supreme Court in devising solutions

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which go to the extent of almost enacting by judicial verdict bars of limitation beyond which the trial shall not proceed and the arm of law shall lose its hold. The

validity or justness of those decisions is not the matter to be decided but the seriousness of delay in the conclusion of criminal and civil matters must be appreciated at the earliest. Right to

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speedy trial is the essence of criminal justice and there is no doubt that

justice delayed is justice denied.

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In United States speedy trial is one of the constitutionally

assured rights.
European Convention on Human Rights also provides

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that everyone arrested or detained shall be entitled to trial within reasonable time or to release pending trial. Though right to

speedy trial is not specifically enumerated as fundamental right in Constitution of India, it is implicit in the broad sweep of Article 21(ii). The

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procedure cannot be fair unless it ensures speedy trial for determination of the guilt

of the accused.

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There can be, hence, no doubt that speedy trial (reasonably expeditious trial) is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21(

iii). For the same purpose and to achieve the aim of speedy justice, judiciary has also come up with the concept of Fast Track Courts. This is a noble concept which is introduced for the speedy disposal of vast number of pending cases in the various courts throughout India. There is a vast increase the no number of pending cases due to the various reasons like the vast number of vacancy to the post of judges, Provision for 46
adjournment, it is also the main reason for the delay in the cases is the adjournment granted by the court on flimsy grounds, then the Vacation of the court in country like India where there are huge number of pendency of cases. In most of the countries like U.S. and France there is no such provision and there are various other reasons along with it which account for the same. India is a democratic country where justice is done to all. It works on the principle "let 100 culprits go free but not a single innocent person should be punished." Doing justice to all, is the concept that has travelled through the ages. From the very old times we had courts and authorities which delivered judgments on various disputes. From this we have in the present day various courts at different levels like metropolitan court, district court, session's court, high court, Supreme Court and various other courts at different level which decides cases at different level. But in the present date we have various cases pending in different courts whose number in increasing day by day. The courts take years to decide a case and the judgment is passed after eight-ten or even fifteen years or more. But it is something called as delayed justice and it is well said that "justice delayed is justice denied." So, there should be some mechanism in order to serve the purpose at an appropriate time and in appropriate manner. There should be some control barrier but it does not mean at all that the very purpose should be forgotten because "justice hurried is justice buried". So, we should basically focus delivery of judgment in a proper way in a proper span of time. Need for speedy trial In the present day we feel the need for speedy trial because of various reasons the most prominent among them are: (1) The vast number of pending cases: As per the recently published article in the Times of India it was revealed that as many as more than 50,000 cases are pending in the Supreme Court. It said as follows:- "In a blow to the concept of "speedy Justice", the Supreme Court has for the first time in a decade run up a backlog of more than 50,000 cases. The dubious mark was crossed by the end of March 2009 when the number of pending cases stood at 50,163. With computerization of the S.C. registry and use of information technology in docket management, pendency of cases in the 1990s was brought down from more than one lakh to a manageable 20,000. But the huge rush of litigants, despite an increased disposal rate, has proved more than a match for the judges, who hear more than 80 cases a day. The pendency has steadily crept northwards since 2006, when it stood at 34,649. In January 2007, it had become the trend of spiralling pendency. However, even as the SC stepped up the rate at which it disposed of cases, the apex court failed to reduce the pendency as it could not cope up with the rising number of cases filed every year. The Dockets swelled and the pendency by January 2008 was within striking distance of the 50,000- mark, standing at 46,926. By January 2009, pendency rose to 49,819, before finally breaching the 50,000 mark in March. A similar trend was seen at the level of high courts and trial courts. The 21 high courts, working with a total strength of just 635 judges against a sanctioned strength of 886, reported a pendency of 38.7 lakh cases as of January 1, 2009, against 37.4 lakh cases on January 1, 2008. 2.64 Cr cases pending before trial courts: - The SC has for the first time in a decade run up a backlog of more than 50,000 cases. Trial courts, having a judge strength of 13,556 against a sanctioned strength of 16,685, were burdened with an additional pendency of nearly 10 lakh cases by January 2009, when the pendency figure was 2.64 crore. It stood at 2.54 crore cases in January 2008. 47
The CJI has been repeatedly saying the state governments to increase the strength of trial court judges by an additional 10,000 to tackle the situation, but most of them have brushed aside the only practical solution, citing a fund Crunch." (2) Over populous condition inside the jails Prisons in India are governed by the Indian Prison Act. It gives emphasis for not only safe custody but on reformation and rehabilitation of offenders in society. It occupies a unique position in society, as it is the final repository for those persons who are labelled as losers and temporarily or semi-permanently or permanently irredeemable. Pandit Jawaharlal Nehru also observed the fact - that a criminal is largely created by social conditions and, instead of being punished has to be treated, as one is required to be treated for a disease. Mahatma Gandhi, the father of the Nation also expressed the idea that "

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Crime is the outcome of a diseased mind and Prison must have an environment of hospital for treatment and care''.

But today the condition of this hospital for the people who have committed crime is just like the worst place to live in the Physical condition of prisons of is described by words like- (i) Overcrowding and Congestion; (ii) Unhygienic conditions; (iii) lack of other Basic amenities. The prisoners are those persons who are 1. Under trials, 2. Convicts and 3. Detenues The condition of the prisoners is very poor. They are sent to jail for reformation purpose but in jail due to overcrowding, there is no reformation but on the other hand the persons who are hard core criminals turn the other persons who come to jail also into hard core criminals. They are forced to live in the worst possible way they can. And in that also many are those persons who are poor arrested for petty offences and could not afford for bail. They remain in the jail for years and years without being looked in to. In fact these are those persons who could not afford for two square meal in a day and in the jail at least gets food and shelter without cost. There are many such people. So, the jails should be made free from such people by speedy disposal of their cases and instead of sending them in jail they should be fined for the if they have committed petty offence or they should be left to do other things like serving poor etc instead of sending them to jail. Also the persons who are accused only and can be released on jail should be quickly released on jail by speedy disposal of bail application so that the crowd can be reduced. According to the data given in "Contemporary Issues of Correctional Administration in India" :- "There are 1315 (Central Prisons, District Prisons, Sub Prisons, 14 Women Prisons, 12 Borstal School, 26 Open Prisons, 25 Special Prisons and 7 other Correctional Institutions) in India having the authorized capacity of 252,117 prisoners as against actual prison population of 343,796 leading to overcrowding to the extent of 36%. During the year 2005, as against the authorized capacity of 252117 in 1315 Indian Prisons, there were 343,796 prisoners. It comprised of sentenced / convicts - 104158; unsentenced / undertrial prisoners - 238250; detenues - 1388. The rate of imprisonment in Indian prisons is 31 prisoners

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per one hundred thousand of population which is one of the lowest in the world."

But for all these things and to improve the condition of overcrowded jails and in vast number of pending cases, we need to dispose of the cases fastly and to fulfill the dream we need things like fast track courts, lok adalats , etc. The Government of India has been undertaking various measures to reduce overcrowding and also reduce the trial detention period. 48
(3) Speedy trial as a fundamental right All the delay and lack of accountability and half-baked schemes amount to a daily mockery of the fundamental right to speedy trial. The Supreme Court made it clear that "speedy trial is of essence to criminal justice and there can be no doubt that the delay in trial by itself constitutes denial of justice". In yet another case It added that "

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there can be no doubt that speedy trial -- and by speedy trial we mean

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reasonably expeditious trial -- is an integral and essential part of fundamental right to life and liberty enshrined in

Art 21". It is a very important obligation. Even apart from Art. 21 the constitutional mandate for speedy justice is inescapable. The preamble of the Constitution enjoins the state to secure social, economic and political justice to all its citizens. The Directive Principles of State Policy declare that the state should strive for

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a social order in which such justice shall inform all the institutions of national life {(

Art 38 (1)}. This is elaborated by specifically adding
that "

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The State shall secure that the operation of the legal system promotes justice;

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to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities" (

Art 39A).
While interpreting this provision

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the Supreme Court has held that "social justice would include 'legal justice' which means that the system of administration of justice must provide a cheap, expeditious and effective instrument for realization of justice by all section of the people irrespective of their social or economic position or their financial resources".

Observing

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that speedy trial is a fundamental right of an accused, the Supreme Court has directed the

Centre and all State Governments to prevent unreasonable delay in disposal of criminal cases. In order to make the administration of criminal justice effective, vibrant and meaningful, the Union of India, the State Governments and all authorities must take necessary steps immediately so that the constitutional right of the accused to speedy trial does not remain only on paper, said a Bench consisting of Justices S.B. Sinha and Dalveer Bhandari. "While it is incumbent on the court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and accused persons are not indefinitely harassed," the Bench said quashing the proceedings initiated by the State Bank of India in 1980 against Motilal Saraf, an officer, under the Jammu and Kashmir Prevention of Corruption Act for receiving Rs. 700 as illegal gratification. The constitutional guarantee of speedy trial is an important safeguard to prevent undue

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and oppressive incarceration prior to trial; to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delays will impair the ability of an accused to defend himself.

It is the bounden duty of the court and the prosecution to prevent unreasonable delay. Writing the judgment, Justice Bhandari said the apex court in a number of cases reiterated that speedy trial was one of the facets

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of the fundamental right to life and liberty enshrined in Article 21

and the law must ensure reasonable, just and fair procedure. "

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No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or just and it would fall foul of Article 21."

The Bench said: "

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The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality can be averted."

So, we are now very clear with the thing that speedy trial is a very important fundamental there are many ways by which it can be ensured like: - i. Prison Courts (Lok Adalat's): Holding of Lok Adalat's in the prison is another step towards speedy disposal of cases of undertrials involving petty offences like theft, retaining stolen property, breach of the peace and like minor offences. For 49

holding the Lok Adalat, the Superintendent of Prison is required to identify petty offences of undertrials in such cases where no progress has been made towards conclusion of trial involving sentence less than two years or so. He then contacts the District and Session Judge who in turn deputes judicial officers to hold courts and dispose of cases by passing appropriate orders. Such courts result in release of undertrials from the prison. ii. Fast Track Courts: This is an initiative of the Department of Justice to cut short delays in courts, the XIth Finance Commission of India recommended a scheme for creation of 1734 additional courts in the country for disposal of long pending sessions and other cases. The services of retired judges were availed of to man these courts. The scheme is extended further to expedite disposal of pending trial cases. iii. Alternatives to Imprisonment Probation service in India is one method of not confining offenders to an institutional but releasing them on good behaviour on the conditions prescribed by the courts under the guidance of the Probation Officer. It imposes conditions and retains the authority in the sentencing court to Modify the conditions of sentence of incarceration to the offender if he violates such imposed conditions. Probation is used for first time offenders and is an effective alternate to imprisonment. Community Service Scheme has also been started in one state i.e. Gujarat and it is an alternate for offences under the Bombay Prohibition Act. Another state i.e. Andhra Pradesh has also amended the Penal Code and introduced Community Service as a punishment. This legislation is now pending with the Union. So, these are a few ways in which the right to speedy trial can be ensured. And furthermore, ways can be made out in which this important fundamental right can be ensured. 4. Fast track courts The Eleventh Finance Commission recommended a scheme for creation of 1734 Fast Track Courts in the country for disposal of long pending Sessions and other cases. The Ministry of Finance, Government of India sanctioned an amount of Rs. 502.90 crores as "special problem and upgradation grant" for judicial administration. The scheme was for a period of 5 years. Out of 18.46 lakh cases transferred to them, 10.66 lakh cases were disposed of by these courts at the end of the said scheme on 31.03.2005. Keeping in view the performance of Fast Track Courts and contribution made by them towards clearing the backlog, the scheme has been extended till 31.03.2010 with a provision of Rs. 509 crores as 100 percent central assistance. In his address at a Joint Conference of Chief Ministers and Chief Justices, at Vigyan Bhawan, New Delhi on 08.04.2007, Hon'ble Mr. Justice K. G. Balakrishnan, CJI, expressed the view that these courts have been quite successful in reducing the arrears. Most of the criminal cases in subordinate courts are pending at the level of Magistrates. Keeping in view the performance of Fast Track Courts of Session Judges, the Government of India should formulate a similar scheme for setting up Fast Track Courts of Magistrates in each State, as recommended by the previous Conference of Chief Ministers and Chief Justices held on 11.03.2006. Similar views were expressed by Hon'ble Mr. Justice B. N. Agrawal, Judge, Supreme Court of India, on 01.08.2007 at the Lecture Series organized by the Supreme Court Bar Association. In this era of globalization and rapid technological developments, which is affecting almost all economies and presenting new challenges and opportunities, judiciary cannot afford to lag behind and has to be fully prepared to meet the challenges of the age. It is heartening to note that use of information and communication technology in judiciary is growing despite various constraints. Day-to-day management of courts at all levels can be simplified and improved through use of technology including availability of case- law and meeting administrative requirements. Congestion in court complex can also be substantially 50
reduced through electronic dissemination of information. The objectives that can be achieved through use of technology include transparency of information, streamlining of judicial administration and reduction of cost. Increase in the number of judicial officers will have to be accompanied by proportionate increase in the number of court rooms. The existing court buildings are grossly inadequate to meet even the existing requirements and their condition particularly in small towns and mofussil is pathetic. A visit to one of these courts would reveal the space constraints being faced by them, overcrowding of lawyers and litigants, lack of basic amenities such as regular water and electric supply and the unhygienic and insanitary conditions prevailing therein.

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The National Commission to review the working of the Constitution

noted that judicial administration in the country suffers from deficiencies due to lack of proper planned and adequate financial support for establishing more courts and providing them with adequate infrastructure. It is, therefore, necessary to phase out the old and outdated court buildings, replace them by standardized modern court buildings coupled with addition of more court rooms to the existing buildings and more court complexes. So, we can finally say that the paramount purpose of speedy trial is to safeguard the innocents from undue punishments, but prolonged pendency has created an uncountable barrier in that. Huge no. of cases is pending for years together which creates mental and economic pressure on litigants.

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In hussainara khatoon v. State of Bihar which formed the basis of the concept of the Speedy Trial, it was held that where undertrial prisoners have been in jail for duration longer than prescribed, if convicted, their detention in jail is totally unjustified and in violation to fundamental rights under article 21. Inordinate delays violate article 21 of the constitution: for more than 11 yrs the trial is pending without any progress for no faults of the accused-petitioner. Expeditious rights is a basic right to everybody and cannot be trampled upon unless any of the parties can be accused of the delay. Delay in trial unnecessarily confers a right upon the accused to apply for bail. Under sec. 482 read with 483, Cr. P.C lays that every possible measure to be taken to dispose

of

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the case within 6months from today. No adjournments to be granted until n unless circumstances are beyond the control of judiciary. It is the responsibility of the judiciary to keep a check on under trial prisoners and bring them to trial. Overcrowded courts, inadequate resources, fiscal deficiency cannot be the reasons for deprivation of a person. In

cases relating corruption, judiciary should deal with it swiftly and dispose the case as fast as possible. 51
Unit: III Human Rights Problems In this unit, you will learn about, ? Police Atrocities and Custodial Torture ? Violence against women ? Nature and forms of Violence ? Causes of Violence ? Types of Violence ? Trafficking in Women ? Violence against Children ? Intersections between violence against children and Violence against Women ? Communal Violence Police Atrocities and Custodial Torture In the accusatorial system of criminal justice, as a person is considered to be a criminal only if and when he is convicted by a court of law, the police should also presume that a person in custody may be innocent, till his guilt is proved. The principle of presumption of innocence is specifically provided in

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Article 11 (1) of the Universal Declaration of Human Rights, Article 14(2) of the International Covenant on Civil and Political Rights

and
Rule 84(2) of the
Standard Minimum Rules. Since arrested persons are presumed innocent, police may impose only those conditions and restrictions on them as will ensure their appearance at trial, prevent their interference with evidence and further commission of offences. A police station is the most important base-line unit of the police organisation. It is at this cutting- edge level of police administration; the people often get in close touch with the police. The lock-up is the first place of detention of arrested persons, regardless of whether they are later acquitted, convicted, fined or placed on probation. The concept of a police station - i.e., the holy of holies for administration of justice-must exerts influence upon the nicety of behaviour. But the police in India could not understand it so far, and it continues to be so inspite of appeals from many quarters to do away with the oft-resorted evil practices in police stations. Allegations are plenty to show that the police misbehave with the suspects, in many ways including employing third degree methods, detaining illegally, detaining beyond the permitted period, not permitting to wear proper cloths, not providing food etc. These acts show that there is no presumption in favour of the suspects during the course of investigation. Therefore, we have to conclude that in our present system, the presumption of innocence is available only in favour of the accused and not at all in favour of the arrested or remanded. When a crime is committed or reported, the people alleged to have committed the offence are arrested. A lot of publicity is given about the arrest and people look at them as real culprits. There exist a number of violations of human rights in police lock-ups and surely there is the public dissatisfaction with the police functioning. Police officers know well what is going on in police stations and yet they, allow them. Among the violations the most common forms are illegal detention, prolonged detention, manipulation of records of detention, custodial torture, custodial death, custodial suicide, custodial rape, denial of food, medical care and clothing, and denial of access to counsel and denial of interaction with dear and near ones. 53
Illegal/ Detention and Manipulation of Records of Detention Detention means deprivation

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of personal liberty except as a result of conviction for an offence

whereas imprisonment means deprivation

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of personal liberty as a result of conviction for an offence.

An arrest or detention which is lawful under national law may nonetheless be arbitrary under international standards, if the law under which the person is detained is vague or is in violation of other fundamental standards such as the right to freedom of expression. International law requires states to take measures for the avoidance of pre-trial detention. The most relevant international human rights instruments relating to persons in police custody are

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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the

Rights of the Child, the Declaration against Torture and the Code of Conduct for Law Enforcement Officials. The relevant standards are laid down

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in Article 9(3) of the International Covenant on Civil and Political Rights.

Art.24 of the
Draft Principles on Freedom from Arbitrary Arrest and Detention prohibits all kinds of torture. It also provides that any statement or evidence obtained through any of such prohibited methods shall not be admissible. In a free society like ours, law is very zealous of the liberty of its subjects and does not permit detention unless there is legal sanction for it. Section 50, 56 and 57 of the Code of Criminal Procedure mandates that no person can be detained in custody without informing the grounds for arrest and that a detainee

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must be presented before a Magistrate within twenty-four hours of arrest.

Section 160 of the Code prohibits the detention of males under the age of fifteen or females of any age for the purposes of investigation or questioning by the police. It is only on a formal arrest that a person can avail of different statutory protections promised under the Code of Criminal Procedure. Besides the protections under the Code, there are constitutional protections available under Articles 21 and 22. Articles 226 and 32 entitle a person to seek judicial intervention through the writ of habeas corpus for his release from unlawful detention. Judicial intervention can also be sought against arrest on insufficient grounds through the writ of mandamus under the said Articles and through inherent jurisdiction of the High Court under section 482 of the Code. However, these legal protections can be made use of only if someone is aware of the unlawful detention of the person concerned and the information of arrest and its grounds are duly notified. This further calls for giving of information to some other legal aid agency where no one comes to the rescue of the detained person. The situation is more demanding in India where half of its population is living below the poverty line and over 95% of the persons wrongfully confined belong to this category.
Prolonged and Uncomfortable Detention Current practices permit the police to keep the suspect 'for a reasonable time' in the police station. The police feel justified in keeping the suspect in custody until they succeed in breaking down his resistance by rigid questioning. Every person
who has been arrested has the

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right to be produced before the Magistrate within 24 hours of his arrest,

and the failure of which is a very serious matter. It becomes to wrongful confinement. Paragraph 3

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of Article 9 of the International Covenant on Civil and Political Rights

requires that in criminal cases, any person arrested or detained should be brought promptly before a judicial authority, whose function is to determine the lawfulness of a person's arrest or detention in a given case. The Principles of Detention also contains elaborate provisions on the judicial oversight of detention. Paragraph I of Article 10 of the Declaration on Disappearance also guarantees to persons arrested on a criminal charge the right to be brought before a judicial authority promptly after detention. The fundamental right guaranteed under Article 22(2) of the Constitution of India also protects the right of

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the arrested person to be produced before the Magistrate within 24 hours of arrest. 29

Provisions like 54
Article 22(2) are contained in Section 57 of the Code of Criminal Procedure. Sections 56 and 76of the Code of Criminal Procedure 1973 reiterate the same.

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Section 57 of the Code provides that person arrested should not be detained in police custody for more than

twenty-four hours. It is certainly not an authorisation for police to detain him for twenty-four hours in their custody. Twenty-four hours prescribed in the Code is only an outermost limit beyond which arrested person cannot be detained in police custody. Section 167 of the Code also requires the police to produce the accused person before the nearest Magistrate within twenty-four hours of his arrest. This right is also directly related to other rights like right to presumption of innocence and right against self-incrimination. For this obvious reason, the Supreme Court and various High Courts also have strongly urged upon the State and its police authorities to ensure the enforcement of this requirement. Where it is found disobeyed, they should come down heavily upon the erring police personnel. The Supreme Court in Sheela Barse's case has imposed a

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duty on the Magistrate before whom the arrested person is produced to

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enquire from the arrested person whether he has any complaint of torture or maltreatment in police custody and inform him that he has

a

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right under Section 54 of the Code of criminal procedure to be medically examined.

Earlier the Supreme Court in Khatri v. State of Bihar,41 opined that the provisions prohibiting detention without remand is a very healthy provision which

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enables the Magistrates to keep check over the police investigation and it is necessary that the Magistrate should try

to enforce this requirement and where it is found to be disobeyed, should come down heavily upon the police. In Joginder Kumar's case the Supreme Court, with the object of enforcing the directions issued by it to the police regarding information to a friend or relative of an arrested person and making of an entry in the Diary to this effect, imposed a duty upon the Magistrate also, before whom the arrested person is to be

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produced, to satisfy himself that these requirements are complied with. The above

discussions related to the provisions of the Code of Criminal Procedure and the case laws make it clear that production of the accused by the police before the Magistrate is not only for obtaining an order of detention of the accused but also to ensure that the Magistrate has an implied duty to apply his judicial mind while remanding the accused. An accused is not required to be detained in custody, if the investigation can be carried out without making arrest. However, allegations are there that the police detain people in their custody for more than 24 hours and it is more so in the case of the less privileged in society. As the people are unaware of the rights of the arrested persons and the procedural formalities which are to be followed by the police while keeping a person in police custody, they do not question the police even if a person is kept in police custody for many days for the purpose of prolonged interrogation. If the arrestee is not produced before the Magistrate within the statutorily permitted time, he becomes a victim of police action. No doubt he suffers the effects of police ill-doings. Illegal detention beyond the period permitted by law is extremely common. It may be frequently coupled with physical assault. An illegal procedure has come to be adopted by the police whereby a suspect is picked up and detained for many days unrecorded. The requirement of section 57 of the Code of Criminal Procedure is usually tactfully evaded by the police by \indicating that there was no arrest but only informal detention. No remand is sought from the Court and no information is given to relatives regarding the whereabouts of the detainee. Sometimes this leads to police torture or even to custodial death of the arrested person. But no action can be taken against the police since there is no evidence to prove that the person was arrested or that he died in police custody. As a means of covering up illegal detention, police have become adept at manipulating records. Very often the police resort to the malicious practice of recording the time of arrest in such a manner that the production of the arrested person before the Magistrate is well within 24 hours of the arrest. The Indian judiciary while taking cognizance of such practices has expressed its disapproval of the same. It is almost a 55
regular practice to leave blank space in the register to be filled up later. The General Diary has fallen into disuse ensuring that there is no record of what happens at a police station. Police officers usually consider as a fashion to spend more time for interrogation. Prolonged interrogation by employing third degree methods is a routine process in almost all the police stations. But it is suggested that more importance should be given to the manner of investigation than the duration of investigation. Torture The term 'torture' has neither been defined in the Constitution nor in any penal law. The Convention against Torture considers it as the infliction of severe pain or suffering on a human being by another human being who is acting in an official capacity. The word torture today has become synonymous with the darker side of human civilization. There are express prohibitions of torture in

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a number of international instruments. The Universal Declaration of Human Rights, 1948, the

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International Covenant on Civil and Political Rights, 1966 and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

Article 15
of the
Convention against Torture provides greater protection to persons in police custody by requiring each State Party to ensure that any statement procured by ill-treatment shall not be invoked as evidence in a proceeding. However, statement made by the detainee shall be admissible as evidence against a person accused of torture.

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Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

is complementary to the standards embodied in the Convention against Torture. India has not so far acceded to the Convention against Torture, but the Indian laws provide certain measures of protection to persons from police torture. Apart from protections provided in Articles 20(3), 21, 22, 32 and 226 of the Constitution, safeguards against police torture are provided in the criminal law and procedure of the land. Torture is essentially a problem of criminal law. Many countries have enacted laws against custodial violence and the use of third-degree methods. In India, though there is no specific legislation to curtail or control the police torture or atrocity, some procedural safeguards against police violence or torture are provided in the Code of Criminal Procedure, Indian Penal Code, Indian Evidence Act and various Police Acts of different states. The Indian Penal Code makes it an offence to wrongfully confine a person to extract confession or compel restoration of property.66Similarly, the Code of Criminal Procedure prohibits offering of threats, promises or inducements to extract information. Sections 24, 25 and 26 and 27 of the Evidence Act are also meant to protect persons suspected of crimes from police atrocities and high-handedness. In addition, various Police Acts at the State level as well as the guidelines issued by the National Human Rights Commission prohibit custodial torture and direct the Station House Officer (SHO) of police to keep the suspects safe from any physical assault while in the police custody. More over Section 29 of the Police Act, 1861 lays down that torture in custody is a punishable offence. The Kerala Police Act provides checks against vexatious entry, search, arrest etc. for extortion by police. Penalty is also prescribed for policeman who is guilty of any breach or neglect of any provision of law or any rule or order which is to be observed by the officer. Even though law provides these safeguards, torture and degrading treatment of suspect by the police continues. The charges of violations of human rights in India are being raised primarily with the incidents of torture, rape and deaths in police custody. Third-degree methods, otherwise known as physical torture, have been notoriously resorted to in police functioning- is perhaps the oft-alleged accusation against the police force in our country. 56

It is a common belief that in police station, people are not treated courteously and are met with ungentlemanly behaviour. Often the police employ unlawful methods including third-degree methods, prolonged and brutal interviews and making false arrests. The increasing tendency of police to resort to torturous means to get confession is evident from some of the cases decided by the apex court. Thus, in Niranjan Singh, the court lamented that "the police instead of being the protector of law have become the engineer of terror and panic the people into fear." The highest court was again deeply disturbed in Raghubir Singh v. State of Haryana, where the violence employed by the police to extract a confession resulted in the death of a person suspected of death. The Supreme Court held: We are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death. The vulnerability of human rights assumes a traumatic, torture some poignancy (when) the violent violation is perpetrated by the police arm of the State whose function is to protect the citizen and not to commit gruesome offences against them as has happened in this case. Police lock-up, if reports in newspapers have a streak of credence, are becoming more and more awesome cells. This development is disastrous to our human rights awareness and humanist constitutional order. In D.K. Basu case the Supreme Court laid down several guidelines prevent third-degree methods which are still being used in many police stations, despite being declared illegal. The Supreme Court referred to the historical decision of the US Supreme Court in Miranda v. Arizona in which several safeguards have been laid down by the US Supreme Court. The Supreme Court in D.K. Basu further Quoting Adriana P. Bartow stated: "

Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself". Thus, law makes it clear that custodial violence cannot be recognised and policemen, who are to uphold the law, should not indulge in illegal acts. It undermines human dignity; brutalizes the police system; forfeits the trust of the people and the judiciary and affects the images of police organization. Finally, it also exposes the police officer to the risk of criminal liability and punishment. Nevertheless, one wonders whether or not the law remains dormant in the Statute. The manifestations of torture in police lock-ups are beyond comprehension and even human imagination. Despite these clear legal prohibitions and negative aspects and even when law punishes the practice of third degree with imprisonment up to 7 or 10 years, police indulge in custodial violence due to the erroneous belief that it is a short cut to success. Police generally employ third degree methods during the investigation of criminal cases. Torture is used by police to extract a self-incriminating statement or a confession from the suspected offender. The infringement of the principles of basic human dignity occurs not only on account of the desire in our mind for quick results but also under the pressure for 'effective' remedies demanded by the people. From time to time we read and hear of police excesses like custodial deaths, lock-up brutalities, confessions obtained by third degree methods and the like. The number of complaints against police received by the authorities is only a part of the actual torture inflicted by police on citizens. Though custodial violence and death are brought to light by the media and there is condemnation against this obnoxious practice by the public and various organizations working in the field of Human Rights, the police are continuing the practice in varying degrees. However, the victim or his relative is not willing to come forward to fight against this menace because they know well that police will rough them up in case they are interrogated. Use of torture or third-degree methods at any stage of the interrogation is unethical, inhuman, barbarous and illegal. There is no substitute for evidence collected against the suspect and any attempt to 57

substitute evidence using muscle power is degrading to the police department. The use of torture is a feudal practice. It is a human rights violation as well. There are several notorious methods of torture by the police. Old head-constables take pride in their knowledge of such methods. The choice of the method depends on several factors. The criterion for the selection of the method is the category of people who are living in a particular area and the quantum of protest that can be expected from them, the status of the victim, and so on. Third degree methods used during the interrogation of accused persons means and includes resorting to harassment, wrongful confinement, beating, applying electric shocks, roller treatment, ingenious (and unprintable) misuse of sex and use of ice slabs and many other unimaginable brutalities which cause humiliation, physical injury and even death in extreme cases. Since many of these cruelties happen within the four walls of the police stations, the gravity and intensity of the torture and its extent are not fully taken note of by the public. Frankly, there are no effective laws also, to stop these cruelties or curtail their extent particularly when the supervisory officers too connive with the acts of inhuman treatment. Denials of sleep, food, water, etc, uses of strong lights etc are considered moderate methods. They are used more in films than in practice. These activities of most of the police personnel show that they have a predisposition for meting out inhuman and dehumanizing treatment. There are many instances when the victims were not only thoroughly abused on account of their caste or religion or social status but made to eat things like excreta or drink urine as well. Many have been forced to perform oral sex on the cops. There are several ways of degrading a man or woman. In one instance an adolescent boy was asked to perform intercourse on his own mother. Studies prove that custodial violence is counter-productive and does not add in any significant way to the achievement of the goals and objectives of the police organization. Further, investigation of crime is a battle of wits with the criminal and calls for sustained and prolonged efforts on the part of police. The most common torture method is severe beating. All of us are familiar with the instances of physical assault by police. The police unjustly beat up all sorts of people. Beating on the inner soles of the feet with cane, thread, electric cable, optical fibre, rubber hose etc.; simultaneous beating on both ear with both palms; beating on the back, usually by fist or lathi; beating with elbow on either side of vertebra after bending the person or after placing his heads in between the legs of the constable; close fisted blows in the lower abdomen; hitting on the head; hitting on the chest etc. are a few among the common forms of torturous methods resorted by the police to extract confession or information from persons in their custody. The victims include suspects, detenues, defaulters and quite often even the complainants. There are several shades of this assault. Petty thieves may receive just a few slaps and kicks. A little beating by the police is considered to be ritualistic by many police personnel. They think that 'police custody' is not complete unless one has been beaten or ill-treated. Field study shows that severe beating is rarely out of the heat of the moment. In almost all cases it is cold blooded and deliberate. Many of the police personnel are holding the view that they are getting respect from the public only because of the fear which the public is having towards the police. They honestly believe that this fear has crept into the minds of general public only because of the notorious torturous activities practices by many of them on persons in their custody. Sometimes the victim is hung upside down and given electric shock, we have also reported of crushing of suspected offenders, their burning, their stabbing with sharp instruments and forcing of objects like chilly or thick sticks into their rectum by the police. Sexual mutilation has also been reported. Rape is a common form of torture, which is very often used by the police to deter the opposition and also as a means of indirectly punishing the men from a particular village or area. Torturing people in public by the police may be a lesser evil as it has been done in public's visibility. But, torturing people in police lock-ups, police vehicles, away from public's visibility cannot be justified. The police are accountable for their actions. 58

The helpless victims, who undergo torturous treatments in the hands of the police continues to suffer mentally, financially, socially and even physically. The financial loss and the mental agony, trauma and tension which they suffer are neglected by the police and prosecutors. Experience has compelled them to think only from their angles and they cannot understand the pangs to which an accused is compelled and condemned to suffer. Custodial death, custodial violence, corruption etc. are the off springs of such permissiveness in carrying on enforcement criminality by the people and administration. Many of them who are having direct knowledge about the ill-doings of the police are also not responding properly against it because of the belief in their mind that the victims are having some 'bad fate'. Some of the respondents are supporting the use of third-degree methods to an extent. Their justification is that people should be afraid of police and that in the larger interest of the society such isolated events of custodial excesses should be condoned. However human rights activists, courts of law and civic-minded people are against the use of enforcement criminality in society. Custodial violence is anathema in any civilized society. The police should make a conscious effort to banish this evil practice from their organizations. Till this is done, police will neither earn the respect and cooperation of the public nor find an honourable place for themselves in society. Custodial Death Right to life is the most important, human, fundamental, natural, inalienable and transcendental right. Hence it requires the highest protection from all quarters. After life true liberty is very important for every individual. But, the death in police custody is a crucial violation of this right of citizens.

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Custodial death is perhaps one of the worst crimes in a civilised society governed by the rule of law.

Death due to torture is murder as defined in section 302 of the Indian Penal Code for which the maximum punishment is death. Despite positive statements made by the Central Government, the Judiciary and the National Human Rights Commission, custodial violence, sometimes resulting in death, continues to be a widespread phenomenon throughout India. The United Nations Special Rapporteurs on torture and on extra judicial, summary and arbitrary executions have both expressed concern at the number of victims of torture and deaths in custody reported from India and the lack of an effective system to prevent such violations and bring those responsible to justice. The ultimate form of torture is that which results in the victim's death. There is evidence of a pattern of this form of gross human rights violation throughout India, regardless of which party is in power at the centre or in the states. Incidents of custodial deaths due to torture are increasing even when the police continue to paint a human face of their actions. There are continuing reports that people die in police custody as a result of torture. Reports of torture by the Indian police, sometimes leading to death, continue to be brought to Amnesty International's attention from all om India. Amnesty international has received reports of 36 deaths in custody ID 1993 from sources within India. In 1994, Amnesty International recorded 68 deaths in police custody as a result of torture or medical neglect throughout India, excluding the state of Jammu and Kashmir. This brings the total number of such deaths reported to Amnesty International since 1 January 1985 to 517. In the year 1998-99, the figures reported to the Commission were 183 deaths in police custody compared with the 193 deaths in police custody reported in 1997-98. These figures on custodial deaths indicate the steep rise of such cases. Most of those who die in police custody are criminal suspects who are tortured in order to extract confessions or information. Some appear to be innocent of any crime. Cover-ups involve senior police and state officials and even some members of the medical profession and magistrates. Amnesty International provided the government with details of over 450 people who reportedly died in custody as a result of torture and the government has provided information on only 230 of the cases. Many of such cases were not deal-t 59 by state properly. These responses show the lack of determination of the Government to bring perpetrators of custodial crime to justice and grant compensation to the victims or their relatives. In addition to custodial death, suicidal deaths in lock-ups are also on the increase and one reason for it is the influence of the environments in police lock-ups and outside on the detainees. There are allegations that almost all the custodial deaths are pictured by the police as suicide. Suicidal deaths should be eliminated by changing environments and circumstances in police lock-ups. The averment of the police that the arrestee was having suicide tendency cannot be believed. Police station is not the suitable place for such a person to commit suicide as the people have many other better places to do it conveniently. Without the minimum facility to commit suicide and while the sentry is watching him he may not engage in such highhandedness. Even if the superior officers are convinced that the detainee has committed suicide, it is not fair or just on their part to wipe off the police accountability just by taking an attitude of 'a suicide after all' in police lock-ups. Every police station has lock-ups constructed on the basis of eighteenth-century concepts on the structural aspects of police custody. Some lock-ups are sub-human in their construction and are not fit for human dwelling. The detained have opportunities to see and get afraid of the police strategy of interrogating other people during their short stay and therefore they know what their fate will be when they are interrogated. They see, hear, and overhear the conversation in police stations, human cries during interrogations, calling of filthy expressions, speaking of foul/incidental languages, lathis, canes, hand-cuffs, rifles, food etc. and surely such an atmosphere is the worst set for interrogating suspects in crimes. In police stations one may see many more things that constitute antipathy/hatred in any human being. During field study some respondents said that police used to pour water into the lock-up. So, the detainees who are usually in underwear or in naked condition may not be able to sit or sleep on the floor. Some people say that police also keep rotten egg, fish, or meat with the suspects to force them to make confession. In some cases, the detainees said that they were not allowed to go to latrine or to urinate. They were also not allowed to have bath or to clean teeth. Along with this, they have to bear the beating and other torturous activities of those in khaki and sometimes that of other detainees in the same lock-up. So, it is quite natural that people who are condemned to be there for days and nights together might think of committing suicide. There is a school of thought which argues that every suicide in police lock-up should be treated as a death due to police misbehaviour to the detained. The compelling and precipitating causes created on the deceased by police should be brought out during inquiries conducted in such custodial deaths. Some Psychologists and Criminologists are of the view that every suicide in police lock-up is an escape-mechanism to police maltreatment in police stations. The school further advocates that the policemen should be made accountable for every suicidal death that takes place in police lock-ups. Police are primarily meant to safeguard the life and property of the citizens and a loss of life in police station even by suicide cannot be and should not be treated as 'just a suicide'. The police should be made accountable to for creating the precipitating causes for the detainees to have recourse to this undesirable pattern to commit suicide. Field study conducted by the researcher reveals that in almost all the police stations there is only one lock-up. So, women are also to be kept with men in that lock up. Similarly, children or some innocent persons who are arrested on mere suspicion for the purpose of interrogation may have to be kept with even hard-core criminals in the same lock-up. Accommodation, Food, Medical Care and Clothing A person in police custody is entitled to a minimum level of physical conditions as regards accommodations, food and medical care. Poor conditions of confinement are incompatible with State's obligations under Article 10(1). 60
Similarly, all accommodation provided for the use of persons in custody and in particular all sleeping accommodation must meet all requirements of health, due regard being paid to climate conditions and particularly to

But this requirement is not satisfactorily followed in any of the stations. Every person under police custody is entitled to be fed sufficiently. But in the police stations many of the arrested persons are not provided food. During the field study the police officers alleged that it is difficult to provide food for the arrested persons with the meagre amount sanctioned by the Government. Moreover, the procedural hurdles and the delay in sanctioning the amount compel the police personnel to neglect the amount sanctioned by the Government. The detained person has a right to have him medically examined.

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A proper medical examination shall be offered to a detained person as promptly as possible after his admission to the place of detention, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

This would enable the arrested person to complaint to the Magistrate that he has been subjected to torture while in police custody. This puts restraint on the exercise of third-degree methods by the police. Similarly, a detained or imprisoned

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person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or a judicial or other authority for a second medical examination or opinion. The fact that a detained underwent a medical examination, the name of the physician and the result of such an examination should be duly recorded. Access to such records should be ensured. Modalities therefore should be in accordance with relevant rules of domestic law.

The Code of Criminal Procedure also gives right to an arrested person to get himself examined by a medical practitioner. The object of this Section is to confer on the arrested person the right to have his medical examination done. But, very often the arrested person is not aware of this right and on account of his ignorance, he is unable to exercise this right even though he may have been tortured or maltreated by the police in police lock-up. Keeping this in view, the Supreme Court has in Sheela Barse v. State of Maharashtra, declared that on such occasions
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the duty of the Magistrate before whom an arrested person is produced to

make enquiries whether the arrested person has any complaint of torture or mal-treatment while in police custody and inform him that he has a statutory

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right under Section 54 of the Code of Criminal Procedure to be medically examined.

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In D.K.Basu. V .State of West Bengal, Supreme Court

made it clear that every detinue should be medically examined at or after every 48 hours in police custody. Police officers detaining a person in their custody should also ensure that he is medically examined for any illness, injuries - afresh or old - and they should make a record of the same along with suitable arrangements for treatments of any illness. 'Life' means to 'live with human dignity' and the police cannot violate this right as well. The field study discloses that 100% of the arrested persons are kept in the lockup after removing their clothes. They are allowed to wear only underwear or in many cases newspaper or thorths as a precautionary measure against any attempt to commit suicide by hanging. During the field study the police officers tried to justify their part. Many police officers are holding the view that the people taken into custody are generally in desperate mental conditions. Many of them have tendency to commit suicide. But none of the police stations have suicide proof lock ups. Moreover, the usual practice of keeping persons in lock-up in underwear or newspaper is not questioned by anybody. Police station is a public place where people belonging to several walks of life including women are coming. Women police constables who are on duty are also witnessing these scenes. Denial of Access to Counsel 61

Detention in a police lock-up does not and cannot render an individual a non-entity. He is a person with inherent dignity. He enjoys many rights and his rights are not subjected or surrendered to the whims of police authorities. The right to legal aid steps in as soon as a person's free movement is restrained and circumscribed. The justification for deprivation of liberty is to be ascertained through legal standards which call for the role of legal aid to the arrested person. Facilitating legal aid at the initial stage of the criminal justice system is more important to prevent the abuse of human rights of a person in police custody. Provisions relating to assistance of legal counsel find a place of pride in

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the International Covenant on Civil and Political Rights. The United

States Supreme Court in Escobedo and Miranda expanded and expounded the concept of right to counsel as a pre-trial necessity. In US.A., the suspect has a right to remain silent. He has also a right to consult with his attorney. The police are law-bound to effectively advise the suspects of his rights. The suspects in India are also having many rights but they are not informed of them by the police before they are interrogated. According to Article 22 (1), an
arrested person has

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the right to counsel and to be defended by a lawyer of his choice.

Thus, the
person arrested has a

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right to consult a legal advisor of his choice as soon as he is arrested and

also to have an interview with his lawyer out of the hearing of the police. Purpose of law is the protection of all persons under any illegal detention or illegal imprisonments. When we examine the history of this constitutional right as interpreted by the courts, it can be seen that earlier Supreme Court had held that Article 22 does not guarantee any absolute right to be supplied with a lawyer for

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by the State. Nor does the clause confer any right to engage a lawyer for a person who is disabled under the law. The right guaranteed is only to have the 'opportunity' to engage a competent legal practitioner of his choice. It has been further held that this right to counsel is not limited only to the persons arrested but can be availed of by any person who is in danger of losing his personal liberty.

Thus, it is well settled that constitutional right to consult a lawyer is as much available at the time of arrest and subsequent interrogation by the police. Rather it is an obligation of the State to provide competent legal service to the indigent or poor accused. The preventive measures briefly outlined can go a long way in stopping the violation of the human rights of a person in the process of law enforcement at preliminary stage of a criminal case. But in 1976, by the Forty-Second Constitutional Law Amendment Ac Article 39-A was inserted to provide for free legal aid to indigent accused. The right enshrined in Article 22 (1) extends to the accused not only from the time of his arrest under any punitive law but also during the custodial interrogation. The Code of

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Criminal Procedure has specifically recognised the right \0 be defended by a pleader of his choice. Section 303

of the code

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contemplates that the accused should not only be at liberty to be defended by a pleader at the time the proceedings are actually going on, but also implies that he should have a reasonable opportunity, if in custody, of getting into communication with his legal adviser for the purpose of his

defence. It is recognized
that

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the right to consult a lawyer for the purpose of defence begins

from the time of arrest of the accused person. The accused must therefore get reasonable opportunity to communicate with the lawyer

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while in police custody. The consultations can be within the presence of the police but it would be unreasonable and unjust to

have them within the hearing of the police. In this context the Supreme Court in Sheela Barse case held

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that whenever a person is arrested and taken to the police lock up, intimation of the fact of such arrest

must immediately be given to the nearest legal aid committee so that immediate steps can be taken

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for the purpose of providing legal assistance to the arrested person at State cost. It is necessary to

protect the accused from

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torture, ill-treatment, oppression and harassment at the hands of his

custodian. Even before Sheela Barse's case the availability of legal aid at preliminary stage was highlighted by the Supreme Court in Nandini Satpathi v. Dani which was followed in Khatri v. State of Bihar, wherein it was laid down: 62
Constitutional obligation
to provide free legal services to an indigent accused

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does not arise only when the trial commences but also attaches when the accused is for the first time produced before the Magistrate. It is elementary that

the jeopardy to his personal liberty arises as soon as a person is arrested and produced before a Magistrate, for

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it is at that stage that he gets the first opportunity to apply for bail and obtain his release as also to resist remand to police or jail custody.

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That is a stage at which an accused needs competent legal advice and representation

and no procedure can be said to be reasonable, fair and just which denies legal advice and representation to him at this stage. Therefore, it is a Constitutional mandate that right to legal aid must come into existence immediately when a person is deprived of his liberty. Non- providing of legal aid at this stage leads to the vitiation of the whole process resulting into miscarriage of justice and violation of human right of personal liberty. Thus, the right to counsel begins when a person is being interrogated and continues through pre- trial stages to trial and into appeal since it is an essential ingredient of reasonable, fair and just procedures. It would be prudent for the police to allow a lawyer where the arrested person wants to have one at the time of interrogation, if the police want to escape the censure that the interrogation is carried on in secrecy by physical and psychic torture. It assumed much importance when the

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Supreme Court of India in DK Basu v. State of

W.B. laid down a detailed code to be scrupulously followed by the police personnel prior to and after making the arrest. One of the rights recognized is the right of

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the arrestee to meet his lawyer during Interrogation, though not throughout the interrogation.

The presence of a lawyer during the investigation process is perhaps the only perfect method to prevent human rights abuses which has been the bane of the Indian investigating system. In spite of the Supreme Court guidelines, the arrested are generally not allowed to have consultations with their legal counsels. Similarly, Section 126 of the Indian Evidence Act provides that the communication between client and his counsel is to be privileged. Thus, at the time of consultation the accused shall not be surrounded by police officers. Denial of Opportunity to Interact between Detainee and His Near and Dear Ones The accused has a right to have a free and unfettered consultation with his friends and relatives out of the hearings of the police officer. In times of distress and adverse circumstances in life it goes without saying that the greatest solace for the person in distress is interaction with dear and near ones. Though section 303 Code of Criminal Procedure confers a right to legal consultation, conspicuously there is no whisper among the legal community regarding the right of interaction with dear and near ones. When there are large scale allegations regarding violations of conferred rights of arrestees by the police, the need and the scope for the arrestee to consult his near and dear ones goes without saying specifically. Absence of specific provision in this regard entails the police to grant or deny the opportunity according to their sweet will. During field study almost all the respondents complained regarding the denial opportunity. The legal community and the humanists have to fight against custodial torture and condemn publicly the very idea that some people have the right to repress others. In keeping silent about evil, in burying it so deep within us that no sign of it appears on the surface, we are implanting it and it will sprang up a thousand fold in the future. When we neither punish nor reproach evil doers, we are ripping the foundations of justice from beneath new generations. Violence Against Women Violence against women is a term used to collectively refer to violent acts that are primarily or exclusively committed against women. The United Nations General Assembly defines “violence against women” as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental or harm or 63

suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." The 1993 Declaration on the Elimination of Violence against Women noted that this violence including battering, sexual abuse of children, dowry-related violence, rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women, forced prostitution, and violence could be perpetrated by assailants of either gender, family members and even the "State" itself (United Nations General Assembly, 1993.) Some historians believe that the history of violence against women is tied to the history of women being viewed as property and a gender role assigned to be subservient to men and also other women (Penelope Harvey & Peter Gow, 1994). A quick look through the daily newspapers will give us an idea of the epic proportions the phenomenon has taken. Sample some of these facts from around the world: ? At least one out of three women has been beaten, forced into sex, or abused during her lifetime, according to a study based on 50 surveys from around the world. On most occasions, the abuser was a member of the woman's family or someone known to her. ? One woman in four has been abused during pregnancy. ? More than 60 million women worldwide are considered 'missing' as a result of sex- selective abortions and female infanticide, according to an estimate by Nobel Laureate Amartya Sen. ? by their male partners. ? Interpersonal violence is another leading cause of death among women between the ages of 15 and 44, in 1998. ? Population-based studies report that between 12 and 25% of women have experienced, attempted or completed forced sex by an intimate partner or ex-partner at some point in their lives. The World Health Organisation has reported that up to 70% of female murder victims are killed The UNIFEM Report, "A Life Free of Violence: It's Our Right" (1998) reveals that 3 to 4 million women are battered each year worldwide; one in six women are the victims of rape in industrialised countries and between 16 and 52 percent of women surveyed were assaulted by intimate partners. The same report also reveals that in India, dowry related violence claims the lives of over 5000 women each year. The Report of the Special Rapporteur on Violence Against Women on the issue of domestic violence in Brazil makes note of the establishment of a Parliament Commission to investigate violence against women in Brazil in 1993; this commission found that 88.8% of the female victims of physical violence were housewives. ? In Kenya, 42 percent of women in the Kissi district reported that they were regularly beaten in their homes. ? In the United States, one woman is physically abused by her intimate partner every nine seconds. ? In the UK, one woman in ten is severely beaten by an intimate partner. Studies in Canada show that women are more likely to be murdered by an intimate partner than by a stranger. And, in India, according to the National Crime Records Bureau's (NCRB) 2005 Crime Clock, there is: (d) crime committed against women every three minutes (e) molestation case every 15 minutes (f) sexual harassment case every 53 minutes (g) kidnapping and abduction case every 23 minutes 64
(h) rape case every 29 minutes And those are only the reported and recorded statistics. Further, ? Four out of 10 women in India have experienced violence in the home. ? 45% of women have suffered at least one incident of physical or psychological violence in their life. ? 26% have experienced at least one moderate form of physical violence. ? More than 50% of pregnant women have experienced severe violent physical injuries. Undoubtedly, violence against women is not limited to the traditional form of beating, raping or murdering. New modes of victimisation are constantly emerging. Violence starts before birth and continues over the lifecycle. There are several forms of violence that constitute a violation of women's right to live with dignity and self respect. These include rape, incest, domestic violence, widow immolation, female foeticide and infanticide, trafficking in women, sexual harassment, molestation, eve-teasing, witch hunting, dowry deaths, honour killings, female genital mutilation, infibulations, acid attack, the increasing instances of stripping and parading of women and so on. The list is endless. Overt violence is more often than not accompanied by covert violence in the form of general discrimination, subjugation and neglect of women. As a matter of fact, covert violence is more widely prevalent for it is impossible to identify and quantify and remains invisible. Progress of South Asian Women, 2005 categorises violence against women into various categories which include: o Overt physical abuse (battering, sexual assault, at home and in the workplace) and psychological abuse. o Exploitation of women's labour (non payment or underpayment for labour and denial of benefits in the formal sector; sexual division of labour in the home leading to multiple burden on women). o Deprivation of access to and control of resources for physical, social and economic development (health/nutrition, education, means of production, etc.) to keep women dependent. Violence against Women: Global Dimension. o Oppression through cultural and religious practices (sati, honour killings, etc.). o Commodification of women (trafficking, prostitution, pornography). Paul Valley poignantly observes, "These are some of the things that can get a woman killed wearing makeup, going to the cinema, chewing gum; drinking water in the street; chatting to a male neighbour; talking on the phone; talking to someone of a different race; having a man request a song for you on the radio; publishing love poetry; rejecting an arranged marriage; demanding a divorce; being raped; having an unsuitable boyfriend or getting pregnant." He further asserts, "Every year, a total of 5,000 women across the world are killed by their relatives in so called "honour killings", because they were said to have brought shame in their families." However, the basic causes of violence against women are not as simple as that. The cause is deeper and more difficult to pinpoint, for it is embedded in the very structure of society, so much so that women themselves have become a part of it. The United Nations Declaration on the Elimination of Violence against Women regards the "unequal power relations" as the cause and core of violence against women. It is these which have "led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women in one of the crucial social mechanisms by which women are forced into subordinate position compared with men." 65

Among the crimes rape, molestation, sexual harassment, murder and dowry deaths are reported more frequently than dacoity, arson or counterfeiting. The frequency and intensity with which violence against women is perpetuated is no less than the 'terrorist' attacks India is experiencing. What makes violence against woman more dangerous is the fact that the State, on several occasions, chooses to ignore violence against women as something that happens within the 'private' sphere of the family, something not of 'public' significance, and thus non-deserving of State intervention. A woman is violated because of being a woman, which means her gender is the reason why she is being violated. For example, if a woman faces domestic violence because she does not follow the 'traditional' role of a wife. A woman is being violated as a woman; it is the form of violation that is sex/gender-specific. For example, being raped is very gender-specific. Although men also get raped, it is primarily women who are at the receiving end of sexually-penetrative violence. Gender can be considered to be a risk factor that makes a woman's fear of being violated more acute than that of a man in similar circumstances. Nature and forms of Violence The nature and forms of violence is intertwined with physical, mental and psychological levels. Violence against women includes, but is not limited to: o Psychological violence: Encompasses various tactics to undermine a woman's self-confidence such as yelling, insults, mockery, threats, abusive language, humiliation, harassment, contempt and deliberate deprivation of emotional care or isolation. o Physical violence: The most obvious ranges from pushing and shoving to hitting, beating, physical abuse with a weapon, torture, mutilation and murder. o Sexual violence: Any form of non-consensual sexual activity (i.e., forced on a person) ranging from harassment, unwanted sexual touching, to rape. This form of violence also includes incest. o Financial violence: Encompasses various tactics for total or partial control of a couple's finances, inheritance or employment income; it also includes preventing a partner from taking employment outside the home or engaging in other activities that would lead to financial independence. o Spiritual abuse: Works to destroy an individual's cultural or religious beliefs through ridicule or punishment, forbidding practise of a personal religion or forcing women or children to adhere to religious practices that are not their own, etc. o Intimidation: Intimidation as a form of violence can include making women afraid by using looks, actions and gestures; by destroying their property or by displaying weapons. o Isolation: Isolation can be used to control and limit what woman does, whom they see and where they go o Using privilege: Using privilege to control is also a form of violence. By treating a woman or child like a servant and having the last word about everything, the abuser is acting like a master. He is defining and rigidly abiding by the traditional roles of men and women. All violence does not have to be blood and gore. It can also be very subtle. A person can make a contemptuous gesture, swear or pass a lewd remark, make an obscene gesture with the hands, whistle or leer at another. Even if such exchanges are fleeting, they leave their mark. Violence against women can take physical, psychological as well as sexual forms — thus the above categories overlap and are not mutually exclusive. It needn't always take the form of overt acts of bodily violence but can also be manifested through 66

deprivation, neglect or discrimination. For example, physical violence by an intimate partner is often accompanied by sexual violence, deprivation, isolation, neglect as well as psychological abuse. Causes of violence The UN has identified six underlying causes of Violence against women: ? Historically unequal power relations: The political, economic and social processes that have evolved over many centuries have kept men in a position of power over women. ? Control of women's sexuality: Many societies use violence as a way to control a woman's sexuality, and likewise in many societies' violence is used to punish women who exhibit sexual behaviour, preferences and attitudes that violate cultural norms. ? Cultural ideology: Culture defines gender roles and some customs, traditions and religions are used to justify violence against women when women transgress these culturally assigned roles. ? Doctrines of privacy: The persistent belief in many societies that violence against women is a private issue seriously impedes attempts to eradicate this violence. ? Patterns of conflict resolution: Links have been identified between violence against women in the home and community in areas that are in conflict or that are militarised. Often, heightened insecurity means that tensions within the home are more pronounced and can contribute to the perpetuation of violence against women in the family. Equally, because eyes tend to be on the conflict, women's suffering is often overshadowed. Violence against women is also frequently used as a formal military tactic. Government inaction: Government negligence in preventing and ending violence against women establishes a tolerance of violence against women throughout the community. Types of violence 1). Domestic Violence The phenomenon of domestic violence remains one of the most prevalent yet largely 'invisiblised' forms of violence in the public domain. It is a manifestation of inequality within the home. Contrary to the general belief, violence faced by women in intimate relationships which is commonly called "Intimate Partner Violence" or (IPV) is neither restricted to certain social sections nor is it manifested only in its physical form. Domestic violence occurs in many forms - physical, emotional, sexual, economic, verbal and others, and a woman may face violence in any one, two or in combination of all of them. A woman may face this cycle of violence as a daughter, a sister, a wife, a mother, a partner, or a single woman in her lifetime. Domestic violence is not always physical. It can involve behaviour that causes psychological harm or attempts to maintain power and control through coercion or intimidation. Name- calling, humiliation, constant criticism, attempts to isolate a woman from her friends or family, extreme jealousy, restrictions on personal freedom, tight control of family finances, and threats of physical harm are all markers of an abusive relationship. Abuse does not have to happen every day or every week for it to be classified as domestic violence. The impact of domestic violence in the sphere of total violence against women can be understood through the example that 40-70% of murders of women are committed by their husband or boyfriend. In unmarried relationships this is commonly called dating violence, whereas in the context of marriage it is called domestic violence. Though this form of violence is often portrayed as an issue within the context of heterosexual relationships, it also occurs in lesbian relationships, daughter-mother relationships, roommate relationships and other domestic relationships involving two women. Violence against women in lesbian relationships is 67

about as common as violence against women in heterosexual relationships (Girshick, Lori, B., 1500- 1520).Violence against women by women also exists outside the sphere of relationship violence, probably even less research has been done on this subject. Domestic violence is the most common form of gender- based violence. In every country where reliable, large-scale studies have been conducted, between 10 to 69 percent of women report they have been physically abused by an intimate partner in their lifetime (Heise L., Ellsberg M., Gottemoeller M., 1999) Profiling Domestic Violence: A Multicountry Study, Calverton, Maryland showed the prevalence of domestic violence in Zambia (48%), Columbia (44%), Peru (42%), Egypt (34%), Nicaragua (305), Haiti (29%), Dominican Republic (22%), India (19%) and Cambodia (17%), which is given below in the chart: Prevalence of Domestic Violence in Different Note: Percentage of Women ages 15-49 ever beaten by a spouse or partner. Beaten includes having been hit, slapped, kicked or physically hurt. Studies on violence against women indicate that: g) The perpetrators of violence against women are almost exclusively men. h) Physical abuse in intimate relationships is almost always accompanied by severe psychological and verbal abuse. In 1 out of 4 cases of domestic violence, women will also experience sexual abuse. i) Women are at greatest risk of violence from men, they know. In Australia, Canada, Israel, South Africa and the United States, 40-70 percent of female murder victims were killed by their partners. (Krug, E. et al. eds., 2002) Wife Beating/Battering Syndrome Violence within the home is universal across culture, religion, class and ethnicity. The abuse is generally condoned by the social custom and considered part and parcel of marital life. An example of this can be seen through the gist of a popular Spanish riddle: Question: "What do mules and women have in common? Answer: A good beating makes them both better." Many men and women believe wife-beating is justified. The shame associated with domestic violence, rape and other forms of abuse may contribute to the fact that women often suffer it in silence, afraid of repercussions and stigma, and never tell anyone. The statistics reveal grim picture of the realities prevalent in developing and developed countries alike: In the United States a woman is beaten every 18 minutes; between 3 million and 4 million are battered each year, but only 1 in 10 cases is ever reported. In United Kingdom, 1 in 3 families is a victim of assault and 1 in 5 a victim of serious assault, according to a 68
recent report by the home office. In Australia, in 59% of 1500 divorce cases, wife beating is cited as a cause in the marital breakdown. In India the records of National Crime Bureau, Ministry of Home Affairs, Government of India revealed a shocking 71.5% increase in cases of torture and dowry deaths. In Bangladesh, half of the 170 reported cases of women murdered within the confines of the homes. The World Report on Violence and Health, WHO, 2002 clearly shows the proportion of physically abused women who sought help from different sources regarding violence in homes. (Refer to World Report on Violence and Health, Geneva: WHO, 2002). Other widespread forms of violence also have devastating impacts: ? Systematic rape, used as a weapon of war, has left millions of women and adolescent girls traumatized, forcibly impregnated, or infected with HIV(Human Rights Watch, 2002) ? In Asia, at least 60 million girls are 'missing' due to prenatal sex selection, infanticide or neglect (UNFPA). ? Female genital mutilation/cutting affects an estimated 130 million women and girls. Each year, 2 million more undergo the practice. Violence against women also takes the form of other harmful practices – such as child marriage, honour killings, acid burning, dowry-related violence, and widow inheritance and cleansing (both of which increase HIV risks) (Watts and Zimmerman, 2002). Trafficking in Women Forced prostitution, trafficking for sex and sex tourism appear to be growing problems. Each year, an estimated 800,000 people are trafficked across borders – 80 per cent of them are women and girls. Most of them end up trapped in the commercial sex trade. This figure does not include the substantial number of women and girls who are bought and sold within their own countries, for which there are scant data (United States Department of State, 2005). Reports of trafficking in women come from nearly every world region. The greatest number of victims are believed to come from Asia (about 250,000 per year), the former Soviet Union (about 100,000) (IOM Kosovo), and from Central and Eastern Europe (about 175,000). An estimated 100,000 trafficked women have come from Latin America and the Caribbean, with more than 50,000 from Africa (International Organization for Migration (IOM), 2001). War, displacement, and economic and social inequities between and within countries, and the demand for low-wage labour and sex work drive this illicit trade in women (Watts and Zimmerman, 2002). Power and control wheel After going through different causes and forms and different data presented by different studies in developed as well as in developing countries, the Power and Control Wheel which identifies the most common tactics their (women's) abusers used to control them can be prepared. The hub of the wheel, the centre, is the intention of all the tactics – to establish power and control. Each spoke of the wheel represent a particular tactics (economic abuse, emotional abuse, isolation, and so forth). The rim of the wheel, which gives it strength and holds it together, is physical abuse. Battering not only consists of seemingly isolated acts of individual abusers but also encompasses a much larger system of actions of abusers and the community institutions which support woman abuse. Although physical violence may occur only occasionally in a battering relationship, batters daily use the abusive tactics which make up this large system. Violence against children Introduction 69

Violence in all its forms is a global public health problem. While violence has always been part of human experience, its impact in terms of morbidity, mortality, sheer human cost of grief and pain and the effect on the most vulnerable populations, is incalculable. Violence against children (VAC), which incorporates the terms maltreatment, violence, exploitation and abuse – these terms are often used interchangeably -is both a human-rights violation and a personal and public health problem that incurs huge costs for both individuals and society. From the best available data from high income countries, the burden and long-lasting consequences of violence against children are considerable both to the children themselves and to society at large these are likely to be magnified manifold in low- and middle-income countries. We know that in purely economic terms, the burden of child maltreatment in the Asia Pacific region is substantial, affecting a vast number of children in this region. A broader focus will allow us to explore the burden of VAC to include family violence, community inter-personal violence, structural and institutional, and armed conflicts. Exposure to early childhood abuse and trauma is not only associated with short- and medium-term consequences for the child but can have long lasting detrimental effects. The adverse childhood experiences (ACE) study documented a strong graded relationship between the breadth of exposure to abuse or household dysfunction during childhood and multiple risk factors for several of the leading causes of death in adults. Documented health consequences from ACEs have included increased risk of cancer, liver disease, skeletal fractures, chronic lung disease, ischemic heart disease, substance use, suicide, depression, obesity, alcoholism, teen pregnancy, sexual risk behaviours, and sexually transmitted infections. More recent explorations of the impact of ACEs have identified that early adversities are associated with poor early childhood mental health and chronic medical conditions, chronic health and developmental problems in late childhood, and that there are separate and cumulative effects of ACEs on adult health with exposure to violence in childhood having the most damaging effects. Child maltreatment substantially contributes to child mortality and morbidity and has long lasting effects on mental health, substance misuse, risky sexual behaviour, obesity, and criminal behaviour. Evidence over the past 30 years - from neuroscience, developmental psychology, social science and epidemiology - shows that VAC contributes to social, emotional and cognitive impairments and high risk behaviours leading to disease, disability, social problems and premature mortality. Since 1982, the International Society for Prevention of Child Abuse and Neglect (ISPCAN) has published data on child maltreatment (CM) every two years in their World Perspectives on Child Abuse. These publications are of great importance, not only for describing various forms of child maltreatment and identifying trends globally; but also, in evaluating the differences in national policy, reporting systems and legislation. There is considerable variation over time and between cultures about what is deemed abusive to children. However, the unifying modern child protection movement which ISPCAN has been part of, stems from the acceptance of two inspiring ideas—that children are subjects of human rights and not objects of protection and, that children are psychological beings. The main purpose behind this statement is to make practitioners and policy makers think about VAC in much broader terms, recognise and respond to the myriad forms of violence and importantly, acknowledge the pressing urgency of the issue. We include children and young people up to 25 years in our exploration and offer a synthesized definition of VAC that integrates a child rights, clinical and public health-based approach. Our definition includes various types of violence and reflects the many places where violence can happen and manifest in children and young people's lives. A more contextualised understanding can help explain what drives different types of violations against children, including early marriage, commercial sexual or economic exploitation, to significantly increase vulnerability or exposure to violence. Recent studies challenge child protection narratives focused on risk factors, which tends to obscure the social ecology and particularly the determinants of much of the harm that children experience. From this 70

shared understanding, we can make recommendations for establishing trans-disciplinary and inter-sectoral approaches to addressing VAC in the domains of prevention, treatment and rehabilitation. Statement of the problem 1) Defining and clarifying the scope of violence against children The World Health Organization defines violence as the "intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation." This definition includes violence at the personal, inter-personal and collective levels, as well as the use of threatened or actual power. It also includes neglect at the individual and societal levels, such as neglect of children or failure to prevent societal level violence. All forms of VAC, ranging from armed conflict, physical or sexual abuse, trafficking and/or intergenerational transmission of trauma, may result in obvious physical harm and/or may cause less apparent psychological consequences, deprivation, altered development, or lack of wellbeing. A rights-based approach to VAC requires a paradigm shift towards respecting and promoting the human dignity and the physical and psychological integrity of children as rights-bearing individuals rather than perceiving them primarily as "victims". The UN Convention on the Rights of the Child (CRC) provides the legislative framework for promoting and ensuring the rights of all children. Guided by General Comment (GC) 13 of the CRC, "violence" is understood to mean "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse" as listed in article 19, paragraph 1, of the CRC. The use of this term is in keeping with the terminology used in the 2006 United Nations study on VAC, although the other terms used to describe types of harm (injury, abuse, neglect or negligent treatment, maltreatment and exploitation) carry equal weight. The most recent World Perspectives on Child Abuse, reported from their survey from countries, that more than 90% of respondents regarded the following as also abusive to children: failure to provide adequate food, clothing or shelter, abandonment by a parent or caretaker, commercial sexual exploitation, exposing a child to pornography, child prostitution, children living on the streets, physical beating of a child by any adult, forcing a child to beg, child labour under age 12, and abuse or neglect occurring within foster care, educational settings, and detention facilities. While there is greater congruence now across countries and geographical regions on what constitutes VAC, there is also evidence that reported violence is increasing. The scope of VAC globally therefore is considerable. 2) Estimating the burden and consequences of violence against children The magnitude and devastating burden of VAC globally is hard to comprehend. Violence affects more than one billion children, in every country and every community, every year. According to UNICEF, globally children's experience of violence includes: ? Homicide – In 2012, homicide took the lives of about 95,000 children and adolescents –almost one in five of all homicide victims that year. ? Physical punishment – Around six in ten children between the ages of two and 14 are regularly subjected to physical punishment by their caregivers. ? Bullying – More than one in three students between the ages of 13 and 15 regularly experience bullying. ? Forced sex– Around 120 million girls under the age of 20 (about one in ten) have been subjected to forced sexual intercourse or other sexual acts at some point in their lives. 71

? Intimate partner violence (IPV) – One in three adolescent girls aged 15–19 worldwide have been the victims of any emotional, physical or sexual violence committed by their husbands or partners at some point in their lives; 20% of adolescent girls are either married or in a union. The short-and long-term health consequences of VAC are widely recognized. They include fatal injury; non-fatal injury (possibly leading to disability); physical health problems; cognitive impairment; psychological and emotional consequences (such as feelings of rejection and abandonment, impaired attachment, trauma, fear, anxiety, insecurity and shattered self-esteem); mental health problems; and health-risk behaviours (such as substance abuse and early initiation of sexual behaviour). Developmental and behavioural consequences can lead, inter alia, to deterioration of relationships, exclusion from school and coming into conflict with the law. There is evidence that exposure to violence increases a child's risk of further victimization and an accumulation of violent experiences, including later intimate partner violence. Exposure to violence during childhood can impact on brain growth development with long term negative consequences; emotional trauma during early childhood development in particular may be much more difficult to treat than physical abuse. Globally, despite the multiple data gaps and discrepancies in the type of data available, Pereznieto et al estimate that the global economic impacts and costs resulting from the consequences of physical, psychological and sexual VAC can be as high as $7 trillion; the annual costs of the worst forms of child labour are approximately $97 billion, and those resulting from children's association with armed forces or groups up to $144 million. The authors who analysed the best available data to estimate the true cost of VAC for the Overseas Development Institute, suggest that global costs related to physical, psychological and sexual violence estimated by this study are between 3% and 8% of global GDP. (a) High income countries While there is much better reporting and therefore data on CM and for homicide in high-income countries, there is substantial variation in definitions and reporting criteria. Even for high-income countries, there is not enough comparable data on all the typologies of violence we describe below. From the best available data from high-income countries, between 1.5% to 5% of children are reported to welfare authorities for CM concerns annually and approximately 1% of children have substantiated child protection concerns; neglect being the commonest form reported in all countries with comparable data. From self-reported maltreatment or parent-reported perpetration of violence, every year about 4–16% of children are physically abused, one in ten is neglected or psychologically abused, between 5% and 10% of girls and up to 5% of boys are exposed to penetrative sexual abuse, and up to three times this number are exposed to any type of sexual abuse. Exposure to multiple types and repeated episodes of maltreatment is associated with increased risks of severe maltreatment and psychological consequences. CM substantially contributes to child mortality and morbidity and has long-lasting effects on mental health, drug and alcohol misuse (especially in girls), risky sexual behaviour, obesity, and criminal behaviour, which persist into adulthood. From Australian data, an estimated 24% of self-harm, 21% of anxiety disorders and 16% of depressive disorders burden in males; and 33% of self-harm, 31% of anxiety disorders and 23% of depressive disorders burden in females was attributable to CM in 2010. CM was estimated to cause 1.4% (95% uncertainty interval 0.4–2.3%) of all disability-adjusted life years (DALYs) in males, and 2.4% (0.7–4.1%) of all DALYs in females in Australia. (b) Low and middle income countries Comparable data on the burden and health consequences of violence for children from low resource settings is much less available. Pereznieto et al who did the global burden of VAC estimate, urge for there to be much more in-depth primary research on the different forms of VAC conducted in low-and middle-income countries. Fang et al systematically and comprehensively attempted to quantify the economic burden of VAC 72

in the East Asia-Pacific region. They estimated economic value of disability-adjusted life years (DALYs) lost to VAC as a percentage of GDP ranged from 1-4 % across sub-regions, the estimated economic value of DALYs (in constant 2000 US$) lost to child maltreatment in the region totalled US $194 billion accounting for 2-3% of the region's GDP. The best available data comes from China; from a meta-analysis of relevant studies. Fang el al estimated that 27% of children under 18 years of age in China had suffered physical abuse, 20% emotional abuse, 9% sexual abuse and 26% neglect. They estimated that emotional abuse in childhood accounts for 26% of the DALYs lost because of mental disorders and 18% of those lost because of self-harm, physical abuse accounted for 12% of DALYs lost because of depression, 17% of those lost to anxiety, 21% of those lost to problem drinking, 19% of those lost to illicit drug use and 18% of those lost to self-harm. 3) Specific Typologies of VAC The typology presented in the World report on violence and health, divides violence categories according to the context in which it is committed; these include self-directed violence (includes self-harm, suicide), interpersonal violence and collective violence. We describe here the typologies pertinent to children and young people globally; we will not deal with self-directed violence in this statement. We acknowledge that no discussion about the typologies of violence can ignore the importance of structural violence, particularly for children and young people from the majority world. Structural violence as described by Galtung and others refers to the impact of 'sinful' social structures characterized by poverty and steep grades of social inequality, including racism and gender inequality. As distinct from direct violence, structural violence is violence exerted indirectly, systematically that is, by everyone who belongs to a certain social order and culminates in oppression. There are several other contexts, conditions and risk factors that we cannot discuss in detail that increase or directly cause VAC, such as environmental threats, lesbian-gay-bisexual transgender or gender fluid orientation, globalization and climate change. A) Interpersonal Interpersonal violence is divided into two subcategories in the WHO report on violence and health. 8. family and intimate partner violence- that is violence largely between family members and intimate partners, usually, though not exclusively, taking place in the home 9. community violence- violence between individuals who are related, and who may or may not know each other, generally taking place outside the home. The former group includes forms of violence such as child abuse, intimate partner violence and abuse of the elderly. The later includes youth violence, random acts of violence, rape or sexual assault by strangers, and violence in institutional settings such as schools, workplaces, prisons and nursing homes. ? Child Maltreatment Since Henry Kempe described the battered child syndrome in 1962, the medical profession and society at large has come to recognise CM. In 1999, the WHO Consultation on child abuse, came up with the following holistic definition: ''Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power.'' This form of VAC clearly involves the perpetration of violence predominantly by caregivers. In the most recent edition of the World Perspectives on Child Abuse, the most common behaviours across all or most 73

regions and country income categories were physical abuse by parents or caregivers (97%) and sexual abuse (96%). Other parental behaviours mentioned as comprising CM by 90% of all respondents included failure to provide adequate food, clothing or shelter; commercial sexual exploitation; and emotional abuse. The majority of respondents (90%) identified "social conditions" such as physical beating of a child by any adult, child prostitution, infanticide and child labor as CM. Most respondents considered emotional abuse, psychological neglect and children's witnessing intimate partner (or domestic) violence as CM. There is the least consensus on the use of physical discipline (53%) by a parent, and whether this is considered CM. We know that physical discipline is common across high, middle, and low-income communities, and despite the considerable evidence of it harming children, it remains a normative practice in many countries. Other behaviours less often viewed as CM included: parent mental illness affecting the child (49%), female circumcision/ female genital mutilation (60%) and children serving as soldiers (66%); with wide variation across regions. Some behaviours and conditions in spite of being devastating for children were not considered CM by all or most respondents; these included slaveries, abandonment, prostituting a child, forcing a child to beg. It is possible that the responses reflect what legal systems consider CM, rather than acceptance of such conditions. Most definitions of CM found in the literature include four main types of maltreatment: physical abuse, sexual abuse, neglect and emotional abuse. Although any of the forms of CM may be found separately, they often occur in combination. In the WHO documents, physical abuse of a child is defined as the intentional use of physical force that results in— or has a high likelihood of resulting in — harm to the child's health, survival, development or dignity. Key principles in the definition include that it is non- accidental behaviour with physical injury; when a caregiver is involved in the injury, this Behaviour is considered abuse regardless of the intention to hurt. Sexual abuse is defined as the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give consent to, or for which the child is not developmentally prepared, or else that violates the laws or social taboos of society. The WHO definition of child neglect is (a) inattention or omission by the caregiver to provide for the child: health, education, emotional development, nutrition, shelter & safe living conditions; (b) in the context of resources reasonably available to the family or caretakers; (c) and causes, or has a high probability of causing harm to the child's health or physical, mental, spiritual, moral or social development. It includes the failure to properly supervise and protect children from harm. Emotional abuse includes the failure of a caregiver to provide an appropriate and supportive environment and includes acts that have an adverse effect on the emotional health and development of a child. Such acts include restricting a child's movements, denigration, ridicule, threats and intimidation, discrimination, rejection and other nonphysical forms of hostile treatment. More recent explorations of abuse in children and young people have identified that multiple forms of abuse occur together and over time. The term poly-victim refers to those children who experience high levels of multiple forms of violence and victimisation; these young people also experience victimisation in different contexts. These children have high levels of psychological distress, some of the most serious victimization profiles, and vulnerability for further victimization. In a recent study from South Africa, almost two-thirds of school-going children experienced poly-victimisation; these children were significantly more likely to be urban, living in single-parent households, whose parents abused substances, were absent from the home due to prolonged illness and were children who themselves used substances and engaged in risky sexual behaviours. ? Domestic/Family Violence The term 'domestic violence' or family violence is used in many countries to refer to intimate partner violence (IPV) but the term can also encompass other forms of violence including child or elder abuse, or abuse by any member of a household. It is important to be aware of all the contexts of violence within the 74

home including the abuse of animals and exposure to violent media including television, internet and violent video games. The WHO defines IPV as “any behaviour within an intimate relationship that causes, physical, or sexual harm to those in the relationship”. The overwhelming global burden of IPV is borne by women. Although women can be violent in relationships with men, often in self-defence, and violence sometimes occurs in same-sex partnerships, the most common perpetrators of violence against women are male intimate partners or ex-partners. Several studies have found that different forms of family violence co-occur. Renner and Slack in exploring inter-generational connections, found that three of four forms of childhood violence (physical abuse, sexual abuse, and witnessing IPV) are highly predictive of adulthood IPV victimization. Domestic violence can be physical, emotional, sexual, verbal, or financial, or can involve restricting contact of family members with people outside of the home. Domestic violence has a substantial effect on all family members, especially children. Children’s exposure to intimate partner violence IPV is now recognized as a type of CM with levels of impairment similar to other types of abuse and neglect. Children represent a special population of those at risk of IPV; both as victims of abuse and as witnesses to it. Children who witness domestic violence grow up in an environment that is unpredictable, filled with tension and anxiety and dominated by fear. This can lead to significant emotional and psychological trauma, similar to that experienced by children who are victims of child abuse. Instead of growing up in an emotionally and physically safe, secure, nurturing and predictable environment, these children are forced to worry about the future. It is well established that exposure to domestic violence has a significant negative impact on children’s development, affecting their emotional, social and cognitive functioning and interfering in their ability to learn. Each child is unique and may respond differently to the abuse, but there are common short and long-term effects that can impact a child’s day-to-day functioning. Short-term effects can include academic and behavioural problems, sleep disturbances and/or difficulty concentrating. Long-lasting effects can persist into adulthood, like difficulty trusting others and establishing relationships or ongoing depression. The emotional responses of children who witness domestic violence may include fear, guilt, shame, sleep disturbances, sadness, depression, and anger. Physical responses may include stomach-aches and/or headaches, bed wetting, and loss of ability to concentrate. Some children may also experience physical or sexual abuse or neglect. Others may be injured while trying to intervene on behalf of their mother or a sibling. The behavioural responses of children who witness domestic violence may include acting out, withdrawal, or anxiousness to please. The children may exhibit signs of anxiety and have a short attention span which may result in poor school performance and attendance. They may experience developmental delays in speech, motor or cognitive skills. They may also use violence to express themselves displaying increased aggression toward peers or parents and can become self-injuring. Apart from the emotional, physical, social and behavioural damage abuse creates for children, domestic violence can also become a learned behaviour. 4. Community violence- Schools: bullying, corporal punishment Bullying is a relatively recent addition to the violence literature. While there is no legal definition of bullying, it is usually defined as intentional and repeated behaviour which is intended to hurt someone either emotionally or physically and is often aimed at certain people because of their race, religion, gender or sexual orientation or any other aspect such as appearance or disability. Bullying is repeated aggression via physical, verbal, relational or cyber forms in which the targets cannot defend themselves. Bullying can take many forms including: ? physical assault ? teasing ? making threats 75

? name calling ? cyber bullying School is a place where children should be safe, secure and happy and where the threat of violence is non- existent. Sadly, in many countries it is a place where children face emotional and physical abuse from both fellow pupils and from teachers. Globally more than one in three teenagers between 13 and 15 are regularly bullied and in some countries such as Latvia and Romania, nearly 6 in 10 admit to bullying others. While little is known about bullying in low resource settings, data from the UNICEF Multi-Country Study involving adolescents from Ethiopia, India, Peru and Vietnam, shows that indirect bullying, such as measures to humiliate and socially exclude others and verbal bullying are more prevalent; boys are at greater risk than girls of being physically and verbally bullied while girls are more likely to be bullied indirectly. Forms of violence perpetrated by children and young people include bullying, sexual and gender-based violence, schoolyard fighting, gang violence, and assault with weapons. Technology provides a new medium for bullying using the Internet and mobile phones and has given rise to new terms such as "cyber-bullying". Being bullied has been found to have a significant impact on children's physical and mental health, psychosocial well-being and educational performance, with lasting effects into adulthood on health, well- being and lifetime earnings. Children who are bullied are more likely to experience: depression and anxiety, increased feelings of sadness and loneliness, changes in sleep and eating patterns, and loss of interest in activities they used to enjoy; health complaints; decreased academic achievement, and school participation. A very small number of bullied children might retaliate through extremely violent measures. In 12 of 15 school shooting cases in the 1990s, the shooters had a history of being bullied. Some children are particularly vulnerable to bullying: those from minority ethnic groups, those from low socio-economic background, those with language delay or learning difficulties, and children who are gay or transgender. And yet, bullying is highly preventable. Training of teachers is essential and the building of a culture where violence is unacceptable, and diversity is applauded are necessary components of an inclusive, pro-child school community. Paediatricians have a key role in supporting anti-bullying approaches in schools. Corporal punishment in schools "Can anything be more anti-educational than deliberately using violence to discipline children?" (Paulo Pinheiro) There is growing progress towards universal prohibition of this most common form of VAC: 52 states have prohibited all corporal punishment of children, including in the family home. As of 2015, there are 126 states where corporal punishment is prohibited in all schools but still 73 states where children may be lawfully subject to adult violence in all or some schools: including India, Jamaica, Lebanon, Singapore, Egypt and many African states. Proponents argue that it is an effective and non-harmful means of instilling discipline, respect and obedience into children. The evidence suggests otherwise. Children exposed to corporal punishment experience detrimental effects, including poor academic performance, low class participation, school dropout and declining psychosocial well-being. Corporal punishment is highly prevalent, despite prohibition. Data from the UNICEF Multi-Country Study on the Drivers of Violence Affecting Children shows that over half of eight-year-old children in Peru and Vietnam, three quarters in Ethiopia and over nine in ten in India reported witnessing a teacher administering corporal punishment in the last week. Importantly violence in schools is the most important reason children give for disliking school; and boys and children from disadvantaged backgrounds are significantly more likely to experience corporal punishment. While research especially from low resource settings is sparse, there is 76

evidence from the UNICEF Multi-Country Study that corporal punishment in schools is associated with lasting effects on children's cognitive development. Like corporal punishment in the home, the hitting, smacking or beating of children by teachers' models violence, is counter to the rights of the child, can lead to serious injuries and does not help to reduce behaviour problems or facilitate learning. The forms of violence found in schools are both physical and psychological, and usually occur together. Forms perpetrated by teachers and other school staff, include not just corporal punishment but other cruel and humiliating forms of punishment, sexual and gender-based violence, and bullying. Paediatricians and health professionals have an important role in ending corporal punishment in school by making it clear that this is unacceptable and helping to educate parents in alternative approaches to discipline. Institutional Violence Tens of millions of children in the world live and develop for varying lengths of time in institutional care. Given the dramatic increase in the number of children currently being displaced by violence and war, children and youth who are separated from their families are increasingly finding themselves "institutionalized" by governments. Children living in residential facilities are more likely to experience violence and sexual abuse than children living in family-based care. Incarcerated youth are at even greater risk, and also experience psychological trauma secondary to their confinement itself, in particular children exposed to solitary confinement. Children with disabilities, both physical and mental, are at the greatest risk regardless of the venue of the institutional care. In a recent systematic review, researchers attempted to quantify institutional violence globally, and found that overall abuse experiences of children in institutions were poorly recorded. 58 The authors concluded that despite the paucity of studies, violence and abuse, by commission or omission is prevalent in institutions, has an effect on child well-being and is amenable to intervention. Globally there are many reasons why children become institutionalized. Some have lost their relatives and are without extended families or foster care placements to care for them. The pandemic of AIDS in Africa, compounded by extreme poverty, resulted in profound demographic shifts in this regard. Some have physical and mental health conditions that require institutional care. Still others are caught-up in juvenile justice systems that have little regard for the health and well-being of the children and youth they are expected to protect. Although a relatively small number, militaries that conscript children constitute another form of institutionalization. The physical and psychological trauma associated with institutionalization affects children across their life course into adulthood. Beyond the immediate effects of physical, sexual and psychological trauma, children experience developmental delays, depression, post-traumatic symptoms, anxiety disorders and increased rates of suicide, homicide and criminality. For children conscripted into military forces, the impact of violence may be more extreme, resulting in death, dismemberment or permanent developmental and psychological disabilities. A number of human rights instruments, most importantly the UN CRC, address the rights of children and youth living outside of the family environment. Key articles specifically address the obligation of States to protect children from abuse and neglect by those responsible for the care of the child (Article 19), and to provide special protection for a child deprived of the family environment (Article 20). Other articles emphasize the rights of children to live with their families (Article 9) unless the child's best interests dictate otherwise (Article 3). Article 10 articulates the right to family reunification if the child is forced to leave his/her country, and Article 22 requires special protection to refugee children or children seeking refugee status. 77

It requires States to co-operate with competent organizations to provide protection and assistance. Article 23 addresses the right of "disabled" children to special care, education and training to ensure a life lived with dignity and with the greatest degree of self-reliance and social integration. The CRC also specifically address the rights of children detained through juvenile justice systems to be protected from torture and deprivation of liberty (Article 37), to be treated with dignity and respect in the system (Article 40) and to be protected from being directly engaged in armed conflicts and from the impact of conflict (Article 38). With respect to each of these and other related rights, special attention must be focused on ensuring the rights of children are fulfilled for those that are institutionalized for whatever reason. Child Labour "Child labour" is defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to their physical and mental development. From a rights based perspective, there can be no excuse for the existence of child labour. Child labour is a global phenomenon; around 168 million children work, many full-time worldwide. More than half of them, 85 million, are still in hazardous work. Asia and the Pacific still has the largest numbers (almost 78 million or 9.3% of child population), but Sub- Saharan Africa continues to be the region with the highest numerals of child labour (59 million, over 21%). Child labour is so ubiquitous that it often gets ignored; but it is one of the most serious forms of VAC. In many low-income countries, it is essentially a socio-economic problem, inextricably linked to poverty and illiteracy. It not only prevents children from acquiring the skills and education they need for a better future, it also perpetuates poverty and affects national economies through losses in competitiveness, productivity and potential income. A particularly heinous form of child labour comes about as a result of trafficking. While there are no exact estimates of the numbers of trafficked children at this time, estimates suggest that 50 per cent of trafficking victims worldwide are children; human trafficking is one of the fastest growing transnational crimes. Children are trafficked into a range of exploitative practices including labour, domestic work, sexual exploitation, military conscription, marriage, illicit adoption, sport, begging and organ harvesting. One way of responding to the problem of child labour is to use the language of CRC to guide the recognition, response and targeted advocacy campaigns against it. Many Governments have taken proactive steps to tackle the problem of child labour through strict enforcement of legislative provisions along with simultaneous rehabilitative measures. The International Labor Organization's (ILO) International Program on the Elimination of Child Labour (IPEC) is currently is the largest program globally (operational in 88 countries). IPEC has worked to achieve this in several ways: through country-based programmes which promote policy reform, build institutional capacity and put in place concrete measures to end child labour; and through awareness raising and mobilization intended to change social attitudes and promote ratification and effective implementation of ILO child labour Conventions. Withdrawing children from labour, providing them with education and assisting their families with training and employment opportunities contribute directly to creating decent work for adults. Besides education and health care, transforming economies for quality growth and quality jobs has been the main theme in the discussion on the current development framework, setting the stage for the sustainable development goal #8 to "promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all". B) Collective Armed conflict 78

An estimated 246 million children live in areas affected by conflict, or more than one in ten children globally. Children account for one fourth of the 65 million forcibly displaced people worldwide and half of the world's 21 million refugees. In spite of these extraordinary numbers, our understanding of the scale of the impact of armed conflict on child health is limited. Even basic mortality estimates do not provide age-disaggregated data, with the result that children are simply not counted. The ways in which armed conflict affects children are at once diverse and pervasive. Children may be caught in the crossfire or directly targeted by combatants, resulting in physical injury, illness, disability, psychological trauma and mortality. Increasingly, schools and health facilities are attacked. Children are both recruited and forced into armed groups, with devastating consequences for their health, socialization and long-term functioning. Additionally, forced displacement, separation from family, environmental exposures (e.g. contamination of water supplies, unexploded ordinance, and chemical weapons), and the destruction of health, public health, educational and economic infrastructure leads to a broad range of downstream effects on child health that follow children throughout the life course. Food is used as a weapon of war, with sieges, destruction of crops, and attacks on food supply chains leading to high rates of micronutrient deficiencies and acute malnutrition. The disruptive effects of conflict on infrastructure lead to lack of access to basic necessities for several generations, resulting in the continuing violation of children's rights long after cessation of hostilities. Children exposed to war and conflict, therefore are subject to multiple and intersecting forms of violence, structural and direct, collective and interpersonal in the figure mentioned below: 79

Figure: Armed conflict and violence against children— Intersections Practices based on tradition, culture, religion or superstition All violations of children's rights can legitimately be described as harmful practices, but the common characteristic of the violations here is that they are based on tradition, culture, religion or superstition and are perpetrated and actively condoned by the child's parents or significant adults within the child's community. Within the international human rights community, there has been a concern for many decades about 'harmful traditional practices' (HTPs) which violate the human rights of women and girls, culminating in the comprehensive UN Fact Sheet "Harmful Traditional Practices Affecting the Health of Women and Children". The report from the International NGO Council on Violence against Children, lists exhaustively various practices from acid attacks, breast flattening, child marriage, dowry, to male circumcision, female genital mutilation (FGM) and honour killing. There are criticisms of the UN approach to HTPs, in particular that the practices condemned are for the most part only those practiced in non-western societies. There is now international consensus that harmful traditional values and practices based on long upheld patriarchal social values, act as root causes for discrimination and violence against girls. Traditionally condoned forms of discrimination and violence against girls include son preference, early and forced marriage and FGM. Apart from their shared designation as injurious, the reasons for considering early marriage and FGM together are that they respond to common cultural logics and are often linked in practice. Despite many or most HTPs such as child marriage and FGM being prohibited by law in most countries, the practices are maintained by powerful social forces, sometimes with the active consent of girls and women. We need to therefore acknowledge that interventions to promote changes in practice that do not consider the underlying logics and all the potential effects for those involved, are unlikely to achieve their aims and may even bring about resistance and unintended adverse consequences. Intersections between Violence against Children and Violence against Women Violence against women (VAW) and VAC are acknowledged globally as human rights and public health problems. Unsurprisingly both VAW and VAC share common antecedents and pathways. Those working at the intersection of VAW and VAC have wrestled with this divide, with increasing recognition for strategic 80
integration of programming and services. Moving forward with integrated strategies is likely to be more effective if policy makers and practitioners fully consider the historical and political influences that created this gender-age divide. Scholars working in this field identified and reviewed six intersections between VAW and VAC. These include: 1. VAC and VAW have many shared risk factors; 2. Social norms often support VAW and VAC and discourage help-seeking; 3. Child maltreatment and partner violence often co-occur within the same household; 4. Both VAC and VAW can produce intergenerational effects; 5. Many forms of VAC and VAW have common and compounding consequences across the lifespan; 6. VAC and VAW intersect during adolescence, a time of heightened vulnerability to certain kinds of violence. As with the rest of the evidence-base, much of the research used by Guedes et al relied on studies from high income countries, mostly involving CM and IPV. The authors acknowledged that there were important intersections among other forms of violence, including sexual violence by non-partners. A recent important qualitative study from Uganda identified four potential patterns that suggest how IPV and VAC co-occur and intersect within the family, triggering cycles of emotional and physical abuse: bystander trauma, negative role modelling, protection and further victimization, and displaced aggression especially from the mother. Gender dimensions One of the key recommendations of the UN study on VAC was to address the gender dimensions of violence, specifically to understand the different forms of violence meted out against girls in the home and family. 26 There are multiple structures that put girls and women at risk of violence; however, problems of gender are not confined to females. Adopting a gender perspective to address VAC necessitates critical examination of norms around masculinity and femininity. In many societies, boys learn that it is socially acceptable to control and dominate, and girls learn to accept this as the norm. There are certainly specific types of violence that disproportionately affects girls, particularly in low/middle income countries. These include — female infanticide/feticide due to son preference, early and forced marriage, honour killings, neglect of the girl child, domestic labour, FGM. The widespread and systematic neglect of responding to the health and social needs of girls have resulted in documented differences in immunisation coverage, home food allocation, seeking medical care for childhood ailments and proportion of household healthcare expenditures allocated to them. Girls and women are also particularly vulnerable in war and conflict situations. Experiences of children across the globe vary tremendously with a complex combination of factors including age, stage of life, socio-economic status, religion, ethnicity, colour, caste, sexual orientation, health, minority status, citizenship and status as an asylum seeker or refugee coming into play. Violence, as it is understood here therefore, includes an array of factors that are not necessarily linear and include sorting through the meaning of different types of violence (emotional, physical and sexual), happening in different places (the home, school and community), at different levels of a child's social ecology (the structural, institutional, community, interpersonal and individual), while keeping issues of age, gender and power relations figuring prominently in our understanding. Within all these variables, it is also essential to consider the dynamics of children's lives (that is that they are changing and growing), making the task for paediatricians and other who often bear direct responsibility for children's well-being a large, difficult but not insurmountable task with increased understanding and coordination. What works? The evidence bases What works in preventing violence against children? 81

In 2016, ten major international organizations and campaigns launched INSPIRE, an evidence-based resource package of strategies to end VAC. The seven prioritised strategies include: 1. Implementation and enforcement of laws 2. Norms and values 3. Safe environment 4. Parent and caregiver support 5. Income and economic strengthening 6. Response and support services 7. Education and life-skills. It is widely recognized that adaptations of these strategies to national and local contexts is critical and that weaving together several strategies in a multi-sectoral manner is an essential element to success. For these reasons, INSPIRE emphasizes two important cross-cutting activities that help connect and strengthen the seven strategies. These are: inter-sectoral activities and coordination; emphasizing the roles of multiple sectors—including front line ministries as well as civil service organisations with different skills sets, coming together to develop an integrated platform of concerted actions to end violence. The foundation of any of the INSPIRE activities is appropriate monitoring and evaluation to track progress and ensure effective investments. Box 1: INSPIRE The implementation of INSPIRE draws on some of the more recent findings in the field of violence prevention and promotes a multi-pronged implementation plan that incorporates several of the INSPIRE strategies simultaneously. The Multi Country Study on the Drivers of Violence Affecting Children, suggests, for example, that working in the field of violence prevention requires the understanding that little is linear or predictable. While scholars and practitioners agree that prevention requires an understanding of all the factors that influence violence, too frequently these factors are ascribed to one level or another in the model creating a static, if not simplistic interpretation of a very complex social phenomenon. As a result, in the research to policy and practice transfer, researchers, policy-makers and programmers often do not address the complexity that may influence the way violence manifests in children's lives—at all levels. Failing to account for this complexity has created a fractured approach to violence prevention, with the tendency to develop interventions stripped of critical and dynamic contextual factors. Know Violence in Childhood, a global learning initiative reviewed and synthesized evidence from around the world, especially from low- and middle-income countries. Although there are gaps in the evidence base, there are many examples of promising strategies and programmes in place in diverse countries of the world. The Know Violence report highlights the importance of broad-based and integrated prevention strategies 82
that can be adapted and implemented in different contexts. These promising strategies are clustered into three broad types of action: 1. Enhancing individual capacities, especially those of caregivers to manage aggression and relationship conflict, reduce stress induced by economic factors, and nurture children appropriately, as well as capacities of children through age-appropriate programmes that promote equitable gender norms and promote non-discrimination. There are many examples of effective programmes that promote social-emotional learning, life-skills, dating prevention and comprehensive sex education from different parts of the world. 2. Embed violence-prevention in institutions and services, especially those that serve the needs of women and children. Such institutions include schools, where transforming the overall culture of a school can have long-lasting impacts both on ending violence and improving the quality of education. The Good School Toolkit in Uganda is an example of a "whole school" approach that integrates children, parents and educators in a way that strengthens positive behaviours and fosters positive outcomes. Bullying-prevention programmes have also been implemented in many parts of the world, as are peer violence programmes. While much more evaluation is required of these diverse programmes, there is significant potential to adapt and scale up such programmes and integrate them into schooling systems across the world. Health systems around the world can play a significant role in violence prevention– especially as they are the first service that a child encounters in her life and are a critical point of connection for women's well-being, especially during pregnancy but also beyond. There are many ways in which health systems can play a role – including identification of violence, referral and counselling – across primary, secondary and tertiary services and integrating mental health services. While some lessons have emerged from efforts linked to ending violence against women, more needs to be done to strengthen the role of paediatricians in reducing violence against women and children. Other important areas where services, service providers, and institutions need to be strengthened include ending online violence. Children's exposure to the internet can be positive, rewarding and empowering – but it is often a source of exposure to great vulnerability to bullying and sexual exploitation. Prevention strategies aimed at both supporting children to avoid such exposure and also working with online service providers to detect, report and prevent abuse are necessary and possible, as examples from different parts of the world show. Finally, children who are placed in large residential institutions in the absence of appropriate family care are at risk of exposure to cognitive harm and all forms of abuse and exploitation. Strong action is required to support processes of deinstitutionalization and promote investment in alternative family-based care. 3. Eliminating the root cause of violence, especially in fragile, at-risk communities, and promoting positive social norms while challenging adverse ones, are necessary to end violence. Fragile communities can concentrate grave violence including gang violence leading to homicide especially among adolescents and young boys as well as sexual violence against girls. Targeted multi- component strategies that address all aspects of fragility – social, economic and civic – can play a role in reducing levels of violence. Community-oriented policing, supportive justice systems and programmes for children, such as after-school programmes, can all play a critical role in addressing risks in a multi-pronged approach. Improving the design of public spaces through proper lighting, mixed commercial and residential use, better transportation amongst others, can also improve the quality of public spaces for women and children. Finally, the role of community-wide communications strategies to change adverse social norms is critical. Violence in childhood is often deeply embedded in social norms, including patriarchal norms that perpetuate gender inequality and underpin child maltreatment. Such norms 83

can be addressed in part by communications strategies, ranging from mass media campaigns to training and capacity development, and in part by progressive legislation that promotes gender equality and women's rights and freedoms. The implementation of such laws can go a long way in shifting norms and related attitudes and behaviours. There are three overarching strategies that can provide an enabling framework for public action. These include breaking the silence around violence, investing in quality data and evaluation research; and investing in violence prevention systems that can integrate strategies across the different sectors that need to play a role in ending violence. What works in ameliorating the effects/consequences of violence against children? While the research on prevention of violence is still in its infancy, the evidence-base for what works in reducing or alleviating harm in children and young people is sparse. Increasingly, robust evidence is available from low resource settings but more needs to be done. A major concern is the lack of recognition of CM; much less the broader sphere of VAC. Health professionals have a key role to play along with other sectors in responding to VAC. Health-worker training can improve knowledge of child maltreatment reporting laws, accuracy in recognizing CM, and clinical expertise in reporting. While there are a great range of training programs for health professionals, there is an absence of rigorous evaluation of their impact; mandatory clinical experiences in CM has been shown to improve the preparedness of paediatricians to identify and evaluate children for abuse and neglect. We know that there is evidence for risk assessment and behavioural interventions in paediatric clinics (such as the Safe Environment for Every Kid (SEEK) model) in reducing abuse and neglect outcomes for young children. The Cochrane systematic review on child sexual abuse concluded that cognitive behaviour therapy may have a positive impact on the sequelae of abuse, but most results were statistically non-significant. Home visitation for at-risk families has the best evidence for preventing CM, but not all types of programs are equally effective. Two specific home- visiting programmes—the Nurse-Family Partnership and Early Start –have been shown to prevent CM and associated outcomes such as injuries. Some parent-training programs may prevent the recurrence of physical abuse; no intervention has yet been shown to be effective in preventing recurrence of neglect. A few interventions for neglected children and mother-child therapy for families with intimate-partner violence show promise in improving behavioural outcomes. Foster or alternative care placement especially stable and early placement for children who have been maltreated, can lead to benefits compared with young people who remain at home or those who reunify from foster care. Integration of empirically validated substance abuse and trauma treatments into IPV interventions show some promise and manualised child trauma treatments are effective in reducing child symptoms secondary to IPV. Although the evidence-base is small, there is potential for improved coherence between IPV and CM programmes, which requires equal attention to the needs of women and children, and the involvement of fathers when it is safe to do so. Specifically, targeted and tailored parenting programs such as the 'Incredible Years' can contribute to improvements in parenting practices and in parents' perception of their child's behaviour. Recommendations for action on violence against children Despite the enormity of the problem, the substantial costs and the disproportionate burden of VAC for those in low-middle income countries, we know that in 2015 the total development assistance spent to address this area was less than US$1.1 billion, i.e., less than 0.6% of spending. We would strongly advocate that a child-rights-based approach is at the core of any action on VAC. Children's rights as laid out in the UNCRC provide a framework for understanding the range of violence, harm, and exploitation of children at the individual, institutional, and societal levels. The greatest strength of an approach based on the UNCRC is that it provides a legal instrument for implementing policy, accountability, and social justice, all of which 84

enhance public-health responses. Addressing VAC necessarily requires a multi-sectoral approach and involves not only prevention, but also treatment and rehabilitation of the effects of VAC. Approaches need to be integrated such that services and programs are supported by community systems that are in turn supported by public policies. The Integrated Child Centred Framework for Violence Affecting Children, an application of the socio-ecological model, provides an innovative way to make visible what is known about a type/place of violence, using existing nationally-generated evidence. Findings plotted onto this prevention framework helps make clear the different and varied stakeholders, disciplines and responses needed to translate evidence into action in the form of improved interventions and policies. Recommendations for action require commitments at the global, regional and national levels. Coordination will be critical, so too will key topical areas of concern. Global Coordination Global coordination strategies to enhance progress in reducing VAC include: 2. Global agencies such as ISPCAN, IPA, UNICEF and WHO have recently joined together in a collaborative endeavour—the Global Partnership to End Violence in Childhood (Box 2). The Global Partnership provides the learning and technical platform for improved collaboration to support evidence-based primary, secondary and tertiary prevention approaches nationally, regionally and globally. The partnership has an End Violence strategy based on the following principles - rights focused; child centred; universal; gender sensitive; inclusive; transparent; evidence Based; result oriented. Efforts like these designed to coordinate agency and Government approaches to end violence should be fully endorsed. 3. Careful and sustained attention needs to be given to the effects of armed conflict on children, understanding that the dimensions of everyday violence can be exacerbated under these conditions Specifically, global agencies should take on a leading role to monitor the effect of armed conflict on children and make this data and its translation into policy and practice available for public health practitioners and clinicians working with these children. 4. Global agencies addressing violence must agree, to move beyond the narrow focus of risk factors acknowledging the inter-connectedness of children's social ecology. The term 'drivers' refers to factors at the institutional and structural levels that create the conditions in which violence is more likely to occur. While 'risk and protective factors' reflect the likelihood of violence occurring due to characteristics most often measured at the individual, interpersonal, and community levels,' drivers' refer to macro-level (structural) factors and meso-level (institutional) factors that influence a child's risk of, or protection from, violence. 5. Multi-disciplinary professionals at the global level, including clinicians, child rights advocates and researchers can contribute to the growing state of evidence on violence in childhood, by providing decision-makers with multiple types of knowledge and demonstrating how findings can be translated into effective practice in different contexts. Depending on national needs, this could include: information on prevalence, consequences and impact of violence for advocacy, and more in-depth, relational analyses required to understand the inter-relationships of both the drivers, risk and protective factors of VAC. The continued and careful documentation of proven and promising practices that acknowledge national needs, with sound measures aligned to the SDGs, will be critical to success in combating violence.All international professional bodies representing health, education, justice and social welfare professionals working with children (such as the International Paediatric Association) need to endorse and ensure mandatory VAC training at the national level, available as part of core curriculum in their professional streams. This should be broader than the usual singular focus on CM. 85 86

Box 2: Global Partnership to End Violence Against Children Regional Coordination In order to achieve progress both at global and national levels, building strategic regional partnerships and promoting regional governance structures underpinned by a child-rights based approach is critical. The following regional approaches need promoting: 5. The establishment and implementation of specific regional frameworks that help countries set national agendas for addressing VAC. 6. Leaders serving as regional drivers of initiatives, promoting the implementation of agreed upon protocols for data collection, implementation of interventions and evidence generation that can produce regional understandings of change. These can be achieved through incorporating the INSPIRE strategies agreed upon and promoted by the Global Partnership to End Violence and its many partners, such as the WHO, responsible for its implementation. 7. Promotion of comprehensive regional studies to capture national developments aiming at the prevention and elimination of VAC and identifying areas where the process of national follow-up could be further enhanced to respond to uniquely regional issues. 8. Promote cross-regional learning to accelerate progress on the 2030 Agenda for Sustainable Development. 87

National Coordination ? All national governments must uphold their obligations to have reliable systems for gathering data as mandated by the UNCRC to ensure the acquisition, dissemination and analysis of high quality, robust, reliable, valid, social, and epidemiological data on VAC. ? Governments must acknowledge the inter-connectedness of different factors and therefore call upon stakeholders, most notably from the multiple front-line ministries needed to address violence affecting children. Structural and institutional drivers of violence such as poverty, gender inequity and ineffective legal structures and systems work in potent combination with risk factors at the community, interpersonal and individual levels. These drivers cannot be addressed alone by ministries of social welfare and/or ministries of women and gender, typically responsible for the oversight of children's well-being. Acknowledging this complexity and ensuring a multi-sectoral and multi-disciplinary approach to interventions is mandatory. ? Training in child protection issues for all professionals dealing with children, including but not limited to health, social welfare, education and justice should be part of on-going professional development and be linked to credentialing of professionals. Furthermore, introduction of basic violence prevention principles into curricula of these fields should be mandated. A Call to Action: Prioritising VAC Children everywhere are at risk of violence but efforts to change the conditions in which children live, learn, sleep and play can be made safe: this is ultimately the new global mandate. Paediatricians and frontline professionals working with children have a role in this work and it is significant. Research is needed to identify how to effectively respond at the individual, systemic and policy levels. The INSPIRE package of seven strategies builds on growing evidence that VAC is preventable and on a growing public consensus that it can no longer be tolerated. The role of the health sector in the provision of these services—along with those in justice, welfare, education and other child-related domains is essential, Paediatricians also play a critical role in educating parents around these initiatives. Specifically, we call for coordinated efforts in the following: 1. Addressing children living in humanitarian contexts: As the majority of displaced and refugee children live in low- and middle-income countries and two thirds of displaced children reside within their country of origin, international agencies and relevant international professional associations such as the International Paediatric Association should collaborate to assist governments in responding to the needs of these especially vulnerable children by improving access to trauma-informed rehabilitative care, safety and prevention programmes. 2. A public health model for population-based studies, monitoring and surveillance as well as prevention and responses should be advocated widely. 3. Drawing on the experience of the women's health and violence prevention movement, more effective integration between the common concerns of the two distinct, yet similar concerns of VAW and VAC must occur. 4. At the program and systems levels, hospitals and other health care facilities and schools can serve as useful settings for interventions. The design and implementation of community level interventions related to VAC should be enhanced—including advancing the close cooperation of the health sector with other sectors concerned with violence including the education sector, nongovernmental organizations and research bodies. 5. At the policy level, inter-sectoral action across all levels - from individual providers to professional societies, public health professionals and policy makers - can contribute to the generation of relevant and effective public policy. 88

Communal Violence It was thought that partition of the country would resolve the problem of communal violence in India, and in the post-partition period, the people would be able to live without facing the ill -effects of the communal violence. However, it was a false hope and except the decade of fifty, people could not live in without communal violence. In communal violence several causes and multiplicity of factors are involved which contribute to the generation and aggravation of communal riots. Each of these factors, individually and collectively, Contribute to creating the communal passion in which even the mildest of provocations erupts into irrational violence. Besides the communal environment in most of the riots, there are precipitating factors, which engineer the fire of communal violence in any area. It must be noted that in communal violence there are micro as well as macro factors involved. The macro factors are often of ideological in nature and have nation-wide sweep. The micro factors may be non- ideological and of local nature. Both are integrally connected with the process of socio-economic development in the country. To fight communalism and stop communal violence, we ought to know what causes are behind the virus of communal violence. Therefore, it is necessary, to know the various causes of communal violence. This chapter will deal on those causes which are responsible for eruption of communal violence in the country. The causes responsible for the communal violence may be discussed under the following heads: A) General Causes. B) Religious Causes. C) Trivial Causes a) General Causes Communal violence takes place because of various factors. The process of communal violence is very complex one. The reason for the break out of communal violence, its continuance, ineffective policing and other efforts and delay in restoring normalcy are varied and interrelated. Therefore, it is necessary, to know the general causes behind the problem of communal violence. The general causes responsible for the problem of communal violence in India may be discussed under the following heads: Divide and Rule Policy The history of Hindu-Muslim antagonism is the result of 'divide and rule' policy adopted by the British rulers, which left a wide impact on Hindu-Muslim relations. This policy had sown seeds of discord between the communities, who indulged in serious skirmishes posing threat to the security and very existence of the nation. After the revolt of 1857, the British rulers started to divide different communities on communal lines, particularly Hindus and Muslims in India. It was one of the main reasons that the British rulers undertook the first census in Colonial India in the year 1872. The census of 1872 articulated the cleavages of minority and majority and created communal consciousness in the early 20 th century. The census exercises during Colonial rule instilled a geographical and demographic consciousness among the religious communities. The census data on religion also sparked off a communal debate on the size and growth of different religious communities. The division of Bengal in 1905, based on religion was the unique example of fomenting communalism by the British policy of 'divide and rule'. Communal perception was again perpetrated through the political 89

instrument of separate electorates, wherein religious minorities were given separate seats in the legislative bodies according to their proportion of population in the provinces. This widened the prevailing communal antagonism in the country. Mahatma Gandhi struggled hard to bring back the spirit of brotherhood; apart from Maulana Abul Kalam Azad. However, every move to unite the two communities failed miserably. Since then the relationship between Hindus and Muslims has become bitterer than ever before; hatred between them has grown manifold. The Indian ruling class continued the 'divide and rule' policy of the British rulers in the post- partition period in relation to the masses of the two communities to keep them divided and always fighting. Partition of Bengal and Swadeshi Movement The British policy of 'divide and rule' succeeded. The Hindu-Muslim antagonism started surfacing since the division of Bengal in 1905. The partition of Bengal and Swadeshi movement was another factor of creating gulf between two communities by the British rulers. The British Government wanted to cut the very source of Indian nationalism and to divide the people of the region into two separate communities, i.e., Eastern and Western Bengal. In Eastern Bengal, Muslims were in majority while in the Western Bengal, Hindus were in majority. The Colonial rulers were very eager to enlist the support of majority community against the minority community. The majority community took hostile attitude towards the minority community and the Swadeshi movement sponsored by them. Nawab Salimullah of the Eastern Bengal actively helped the government in fighting the Swadeshi movement in the new province. The attitude encouraged by the Nawab culminated in a series of outbreaks at Comilla (now in Bangladesh) and Jamalpur in East Bengal and a growing alienation of relation between the two communities. Gulf started appearing between Hindus and Muslims when the opposition against partition of Bengal and Swadeshi movement were on the peak, several riots took place in areas and places which later on became part of East Pakistan and now Bangladesh. Struggle for Identity or Class Conflicts The theories of class conflict, viz., class stratification coinciding with religious cleavages or the dominant property group trying to raise bogie of majority communalism in order to mute or deflect the rising demands of the minority. In India, communal identity and division has always pervaded Indian society but communalism is one of the by-products of Colonial under development of the Indian economy. The rise of modern politics and social classes occurred in the same period and the crises of Colonial economy began to be largely felt. Colonial economy, underdevelopment and economic stagnation produced conditions conducive to the growth of internal divisions and antagonism within society. The internal divisions promoted communal violence and social tension at the mass level. Some scholars argue that all classes in the society behave differently according to their economic needs, which when triggered off by a religious issue, lead to communal violence. They attribute class struggle as the root cause behind several communal disturbances, not religion. Some scholars believe that after partition of the country, Indian Muslim developed the psychology of being the deprived group. Thus, an incident, which may be trivial in nature, leads to a chain reaction ending in violence. Communal Conflicts and Conflicts of Interest Hindus and Muslims cannot be treated as entirely homogenous communities. There are besides religious conflicts, conflicts of interests too. On occasion, these interests sharpen religious conflict. Religion is often used to provide legitimacy to conflicts of interests and thus what appears to be a religious conflict may in fact be a cover-up for a conflict of interests. This is, of course, not to suggest that there has been no religious 90

conflict between the two communities. Communal conflicts are a means for communities to assert their communal identities and to demand their share in economic, educational and job opportunities. The simplistic explanation of communal conflict in pre-independence period was in terms of the imperialist conspiracy of 'divide and rule'. At a more sophisticated level, communal conflict is sought to be explained by Marxists as an inevitable consequence of the contemporary capitalist order. Communal conflict/communal of interest does not seem to originate in the ignorance of 'true religion' but in the struggle for autonomy on the part of one or more groups and there is an inescapable conflict between their drive for autonomy and the cohesion of the state in a multi-religious society. Politicization of religion, conditions of extreme scarcity and a particularly divisive style of politics aggravate the problem, which appears to be basic to heterogeneous societies. There remains casual continuity between the pre and post-partition periods as far as super-structural causes of communal conflicts like religion- cultural prejudices, the memory of Muslim rule over India, emotional commitment to the cause of Pakistan, etc., were concerned. However, now there emerged a variety of local factors, which came to play an ever-greater role in pushing communal conflict to the threshold of violence. It must be considered as a significant development. Political Factor The communal politics cannot be let down without an attack on communal ideology and the socio-economic structure of the society which sustain it. In most cases the communal violence is politically motivated. There is a growing tendency to maximize political gains by adopting short cuts in terms of usage of ancient identities, money and muscle power, communal slogans, doctrinaire issue, etc. The major cause of communal conflict before partition was the struggle between the Hindu and the Muslim elite for political power as well as control of economic resources at the national level. Zenab Bano believes that "the outcome of communalism in the form of group prejudices, communal contradictions, tensions and communal violence is due to the struggle for control over the resources of power. Communalism's roots are deep in economic power and domination." 7 Prabha Dixit also regards communalism as "a political doctrine that makes use of religious and cultural differences in achieving political gains." Some believe that communalism and communal conflicts are means of political assertion. Politics in general is a process of conflict resolution. In trying to resolve this conflict, each of the participating and contending group and community seek to gain terms advantageous and favourable to it so far as possible. Therefore, the effort of each of the groups is to acquire as much political power as possible and with it the political advantage as a means to enhance the community or caste interests. The 1980s decade witnessed the highest degree of communalization of politics. The 'Minakshipuram conversion' episode was alleged to have been exploited by the then Prime Minister to mobilize the upper and middle caste Hindu support for retaining political power. Due to the political issues communal riots occurred in Hyderabad (1983), Bombay (now renamed Mumbai)-Bhiwandi (1984) and Aurangabad (1988). In the late 80s, communal riots that broke out in Meerut (1987) and the Bhagalpur (1989) were directly the result of 'Ayodhya dispute', the dispute was essentially political in nature. There is a violent political competition among the leaders of both the communities to obtain favour of one community against another for political gain. As a result, communal groups are gaining support from the political parties. Both religious as well as secular leaderships try to take advantage of this situation for their political and non-political ends. There are many other factors also which contribute to the building up of communal tension. The increased prosperity of a group challenges the traditional political leadership of the town. This political rivalry leads to communally dangerous situations. Political rivalries assume dangerous extent in areas 91

marked by a high level of political instability and social violence. Politicians have no interest in bridging the gap between communities, but have, in fact, a positive stake in ensuring that it remains as wide as possible. They succeed in misguiding their ignorant co-religionists in the wrong direction and towards the wrong goals, which are against the interests of the people themselves. Socio-Political Issues It has been established that in Indian society disputes among various trends within Hinduism or Islam did take place. Often socio-political issues also engineered communal violence. The principal aspect that came to the surface was 'cow protection' and 'Urdu-Devanagari' controversy. The demand for the use of the Devanagari script, first made by some Banaras (now renamed Varanasi) Hindus in 1868 and granted by Lt. Governor MacDonnell in 1900 was connected with the tension between old and new elites of UP. The local Gorakshini Sabhas began springing up in many parts of Northern India from the late 1880s, and became more militant and brought acute social tension. On the other hand, Muslim revivalist trends were simultaneously insisting on the necessity of the 'Bakharid' (i.e. the festival of sacrifice) sacrifices. Thus, the ground was prepared for communal violence in 1893. In 1967, the attempt to make 'Urdu', the second official language in Bihar, was the cause behind communal violence in Ranchi. In 1994, the introduction of a short 'Urdu News Bulletin' from the Bangalore Doordarshan (DD) had sparked off communal violence in Bangalore. However, it was clear that apart from 'linguistic sentiments' there was certainly a political motive to the entire events. Economic Factor Many have tried to find economic factors behind communal violence. Theories of development process find the causes in economic competition among Hindus and Muslims in some area. Economic competition often leads to social tensions that can easily turn into communal violence. An important cause of communalism and communal violence springing from it has been unbalanced and exploitative economic relations in Indian society. In 1929, Mumbai riots were explained at the time as the outcome of an economic conflict between Hindu strikers and Muslim strike breakers, mixed in with Hindu antipathy towards Muslim moneylenders in the city. 11 Several accounts of the partition riots in Punjab have also focused on the role of land shortages and conflicts between indebted Muslim farmers and mainly Hindu money lenders in the country side and between Muslim and Hindu business interests in the cities. After independence, however, as riots have become much more urban in nature, most economic explanations of riots have focused on either: (i) economic competition due to Muslim craftsmen moving up in the economic division of labour and beginning to compete with Hindu merchants; or (ii) riots stocked by urban land mafias in an attempt to displace one community from increasingly valuable urban real estate. The inter-dependence between the Hindus and the Muslims in trade and commerce in places like Varanasi, Moradabad, Aligarh and other places have given rise to pressure groups among the artisans and weavers who put pressure on the fanatical members of their respective communities to call off the projection of any communal issue, as in the process the communities stand to lose economically. Due to the economic factors communal violence occurred in Udaipur (1965 & 1966); Godhra (1980- 81); Bihar Sharif (1981); Meerut and Baroda (1982) and in the industrial belt of Bhiwandi-Thane-Mumbai (1984). During 1980, either electoral politics or economic competition played great role in engineering some major riots. Various case studies disclose that in period before Ayodhya issue violence took place in cities where Muslim artisans and weavers took over the trading of their products from Hindus. The intense economic competition led to conflicts and riots. The Gopal Singh Committee in its Report (1983) also 92

testifies to the economic factors, local rivalry, acquiring control over and sharing of the gains of economic ventures. It is asserted that most of the employers, industrialists, etc., are Hindus, whereas most of the workers and artisans are Muslims. Therefore, communal violence is a distorted form of class conflict. Communal clashes encourage in ensuring that people do not begin identifying themselves with the economic class to which they belong. The economic factors played a significant role at those industrial places where Hindus and Muslims both were engaged in the same industry. The problem becomes complex, where Muslims occur to be wage- earning artisans. The bigger wealth among the Muslims leads to increase majority's bigotry. Economic competition obviously results in social tensions. It was an underlying cause of communal riots being frequently mentioned in some recent writing on the subject. The riots of Aligarh, Moradabad, Bihar Sharif, Udaipur, etc., are the example. Mushirul Hasan explains that the riots in Moradabad, Khurja, Aligarh, Bhagalpur, Ahmedabad, Baroda and Surat were specially targeted because in these towns Muslim craftsmen, artisans, foundry owners and weavers reap the reward of favourable economic climate and trading relations with oil rich Gulf countries. Suranjan Das argues that the 1992 riots were actually 'a land-grabbing riots under a criminal garb'. The real estate developer—'anti-social' nexus sought to exploit the post-Ayodhya communal uneasiness in seizing stretches of land occupied by particular slums. Often, communal forces exploit the economic backwardness of their community to mobilize it against other community. The economic crisis in our society leads not only to communal violence but also to atrocities over women, Scheduled Castes (SC) and members of weaker sections of society. The present inflation and worrying economic condition is also responsible for communal violence. Business Rivalries Business rivalries are also regarded as the cause behind the communal disturbances. The society is so interdependent in its business activities that it is difficult to visualize a situation where give and take among various sections is non-existent. Hindu and Muslim entrepreneurs and artisans cannot flourish without each other's assistance. Any bitterness in their relationship would affect the whole industry adversely. If we carefully study the causes of certain communal riots, we will find that business rivalry between the traders forms the real background for communal violence. The comparative economic prosperity among the Muslims leads to greater political aspirations among them. This results in a communally dangerous situation. During the last few decades, a perceptible qualitative difference is being felt in many towns. Communal forces have identified certain contradictions in their relationships to create situations in which further communal clashes are encouraged. The contribution of land mafias in communal violence is visible in Ahmedabad and Mumbai. In Hyderabad riots (1990-91), it was found that the role of land mafias in collaboration with their political mentors was derisive in engineering and sustaining these riots for long periods. The riot of Bhiwandi (1970) is the clear example of business rivalries among traders resulting in planned and organized attacks on the looms working for rival traders. Similar tendencies are visible in some other riots also. The economic targeting of Muslims in the Gujarat riots (2002) is unprecedented. Muslim businesses have been systematically destroyed. The Tribunal recorded extensive evidence of the divesting loss of property of the Muslim community in the state. Due to business rivalry, the anti-social elements are encouraged to attack the opposite business establishments. Administrative Failures 93

Weak law and order is one of the causes of communal violence. After partition, the most of communal violence took place because of the weak law and order. There was failure of the police and administrative officers in gauging the intensity of the communal situation in advance. This very cause is attributed behind many serious communal riots including Ahmedabad and Baroda (1969), Bhiwandi (1970), Hyderabad (1978 & 81), Bihar Sharif (1981), Bhagalpur (1989), and several other major riots. N.S. Saxena argued that if the administration had been strong and police force alert, the incidence of communal violence would have been tiny. Citing the Charan Singh's administration he pointed out that "in spite of the fact that there was no serious disturbance of any kind, riot figures went up from 7,158 in 1969 to 8,570 in 1970 because even the smallest breach of orders resulted in registration of riot cases." He further adds that the administration is responsible for all major communal riots. The Madon Commission enquired into the riots of Bhiwandi and Jalgaon by recording regarding the adequacy of the administrative measures that: D. The authorities had failed to take steps to check communal propaganda; E. The authorities had failed to judge correctly the objectives of the organizers of the Shiv Jayanti procession; and F. The authorities had failed to take action against the misuse of temples. The commission had further recorded several instances, which proved that the concerned police officers and personnel did not prevent rioters from their acts of arson and rioting. Due to the nexus among police and anti-social elements, administration does not remain effective in curbing communal violence. Communal violence is prolonged and people's faith in civic administration is adversely affected because of weak law and order. The Report of the Srikrishna Commission on Mumbai riots (1992-93), which was submitted in 1998, points out that the failure of state administration was primarily responsible for the extra- ordinary situations. The Srikrishna Commission Report indicts that "four precious days were lost for the Chief Minister to consider and issue the orders as to effective use of army for controlling the riots." Partisan Behaviour of Police The partisan role of state machinery particularly police goes in sustenance of communal violence and reactive motivation by the group feeling. The partisan attitude of police allows petty clashes to turn into a major communal violence. The Madon Commission on Bhiwandi riots (1970) has recorded that the concerned police officers and personnel showed communal bias and actively assisted the Hindu rioters in burning and looting Muslim properties and the communal discrimination was practiced in making arrests. The police turned a blind eye to what the Hindu rioters were doing. The Moradabad riots (1982) and the Maliana and Hashimpura episode in Meerut (1987) are the glaring examples of one-sided action of the Uttar Pradesh (UP)-Provincial Armed Constabulary (PAC). Harish Sharma quoted the statement of the then State Minister, Abdul Rahman Nashtar, regarding Meerut riots, "after Moradabad riots, Meerut became the second instance when the PAC was blamed along with the local administration for the riots. In both the cases, a minor issue was given the colour." N.C. Saxena enquiry into the Meerut riots of 1982 summarizes the orders of senior police officers in one phrase: 'Muslims must be taught a lesson'. The police and PAC faithfully implemented this policy. Looting and arson in this context was considered legitimate and necessary and was therefore ignored. The 94

other examples of PAC being responsible for communal violence are Aligarh, Badaun, Bulandshahar, Bijnor and Kanpur. V.N. Rai, an ex-police officer of UP held the police partisan as the cause of communal violence. He feels that it is already imprinted in the police mind that Muslims initiate the communal riots and hence as precautionary measures, the police arrests particularly Muslims and searches their homes. He describes that in all the major riots including Ahmedabad (1969), Bhiwandi-Jalgaon (1970), Tellicherry (1970), Meerut (1982 & 87) and Bhagalpur (1989), role of the police has been highly anti-Muslims. The Srikrishna Commission Report indicates that the police personnel were found actively participating in riots, communal incidents or incidents of looting arson and so on. The partisan role of the police in Mumbai riots (1992-93), Gujarat killings and in Orissa riots (2008) has been equally shameful. The partisan role of the police in Mumbai riots is well documented in a compilation from the Times of India. The Srikrishna Commission accuses the Mumbai Police of 'built in biases' against Muslims, which became more pronounced after attacks on the force. Rumours False and exaggerated rumours pave an easy way to communal violence. In almost all riots the role of rumours in rousing communal zeal is quite famous. Rumour plays a mischievous role in fanning the flames in a surcharged atmosphere. It is always a key in the hands of communal elements to engineer communal violence. The most effective to incite the mass is the rumour of the women or girl of one community being molested, raped or kidnapped by the members of another community; or the killing of a cow by a Muslim; etc. In 1950, rumours about alleged ill treatment of Hindus in certain districts of East Bengal, reports of alleged forcible mass conversion to Islam, desecration of images of Hindu Gods, etc., invoked communal violence in a number of districts of West Bengal. In 1961, rumours played a vital role in Jabalpur riots. The communal violence was provoked by rumours about a Hindu girl being assaulted by two Muslims. The main cause of Nellie, Assam riot (1983) was rumour that the Bengali Muslim had cut off the breasts of Hindu women and displayed them in the Hindu areas to show their power. In Bhagalpur riots (1989) too, the role of rumours was significant. In December 1990, during the second phase of kar seva in Ayodhya, violence broke out in Aligarh, among other towns on December 7. On December 8, rumours gripped the town that Muslim doctors at the J.N. Medical College, A.M.U., Aligarh, deliberately killed a number of Hindu patients. Such rumours and propaganda did maximum damage. During Gujarat killings (2002), the Gujarati press became the agent provocateur. Sandesh published false reports, rumours and biased reports, which aggravated the flames of communal violence. The story starts with the Godhra incident. On February 28, Sandesh published a front-page story that, "10 to 15 Hindu women were dragged away by a 'religious fanatic' mob from the railway compartment." The story was entirely false. Next day, Sandesh carried a follow up to this false story with the heading "Out of kidnapped young ladies from Sabarmati Express, dead bodies of two women recovered—breasts of women were cut off." 25 This false story has spread like wildfire across Gujarat and was compounded by extreme sexual violence and bestiality against Muslim women. Rumours are circulated rapidly and their distortions grow with each repetition. It should be the imperative duty of the district administration to counter rumours floated around by unscrupulous persons. Lack of Communication During communal violence, there is no free exchange of views and opinions between the two communities and both the communities perceive as inimical. Such absence of inter-group communication is favourable for 95

communal violence.During communal violence, both communities paste and distribute posters and pamphlets thereby increasing communal tensions and continuation of communal violence. Such communication preaches communal hatred and prejudice to incite communal violence. Isolated individual instances of injustices and loss rightly or wrongly are published and communicated in the newspapers and consequently communal groups get support for continuing communal violence, as one community perceives that the other community committed violent acts against it. An individual personal attack is sometimes misconstrued as an attack against the entire community. As a result, people become scared and frustrated and thereby more violence takes place. Insecurity and Fear Communal violence takes place, as members of one community perceive the threat, harassment, fear and danger from the members of the other community. The response to the threat is either fight or departure. The latter generates fear and terror and the former cause's hatred and anger phobia. There is a lack of inter- personal trust and mutual understanding resulting in subsequent fear and worry among the communities.During communal violence, neighbors and acquaintances become enemies to one another. Though they are staying nearby, some persons from the same locality participate in communal violence. Thus, the people known to each other over a period become assailants. During communal violence, there is lack of rapport between the people and police. People do not report many communal incidents to police, as they are afraid of personal assaults by the criminals in the absence of adequate protection by police. b) Religious Causes Many scholars have discussed the problem of communal violence through different angles, but they have perhaps forgotten the violative point of religion as the perpetrator behind communal violence. However, it has been observed by various studies that religion was not the sole factor responsible for the origin or growth of communal violence before and after partition. However, religion acts more as an agent determining the attitude of its followers than the motivation or mainspring of communal violence. Religion has become a cat's paw in the hands of unscrupulous elements. Let us now examine some causes in order to understand the problem of communal violence from the religious aspect and the religious causes responsible for communal violence may be discussed under the following heads: 1) Proselytisation/Conversion Proselytisation is a source of communal conflict and communal violence. Frequent conversions caused a great resentment among people. Assimilation is peaceful co-existence in a heterogeneous system, which presupposed passivity on the part of the assimilated. During the continuous phase of communal violence in Bengal from 1905 to 1947, and pre-partition communal riots in several parts of the country, conversion was one of the main causes of communal violence. After, partition, the fundamentalist also did not give up the idea of conversion. The conversion of Dalits to Islam at Meenakshipuram in Tamil Nadu communalized the Hindu mind in India. The outbursts of communal conflicts after the 'conversion' episode indicate that caste and communal problems have become intertwined in Indian politics. The conversion issue intensified communal discord in the country and resulted in communal violence in many parts of the country. The communal violence in Ahmedabad, Pune and Sholapur in 1982 had been the direct result of the Meenakshipuram conversions. The recent communal violence against the Christian community in Gujarat, Madhya Pradesh (MP) and Uttrakhand and particularly in Orissa in 2008 was due to the conversion of Adhivasis and Gorkhas to the Christianity. 96

2) Religious Conflicts Religious conflicts are the expressions of beliefs on the ground of superiority. The man is influenced by instinctive impulse and remains on the brute plane and due to ignorance, fear and fancy; deceit becomes dominant with cruelty, jealousy and violence. There is a general religious revival among the different communities in our country. The newfound faith in religion by the communities has, however, given rise to several problems. Every religion teaches its followers that its understanding and interpretation of God, Prophet, etc., is the best and the ultimate. The tremendous faith in one's religious beliefs and a feeling that non-believers in these are misguided people who derive to be told regarding the correct path, lead to conflicts, which may be termed as religious conflicts. Normally, the destruction of places of worship of other community and forced or voluntary conversions were supposed to be part of religious duty. Thus, communal violence breaks out because of 'Jehads', 'Crusades', etc., the religious dogmas, division and worship lead to open conflict, threats to social order and integration. 3) Religious/Communal Organisations Before partition, the communal organizations were able to convince their co-religionists that their problems were because of the other religionists and the solution to these non-religious issues was available in religion. This was the basic cause of widespread communal violence between the two communities. Later, both Hindus and Muslims have established various organizations such as Bajrang Dal, Rashtriya Swayamsevak Sangh, Shiv Sena, VHP, Jamat-e-Islami, etc., to protect their interests and as a result communal tensions and violence have increased. Similarly, people have become conscious of religion and religious fanaticism has increased among Hindus and Muslims. These organizations have vast resources and command workers to protect their interests due to alleged injustice done to them. These organizations have enormous capital formation, buildings, workers and land and regular massive income from their patrons. The issues rose by these organizations and large- scale mobilization of the people to achieve communal objectives, helped such organizations in gaining legitimacy by posing themselves as the real representatives of their community. These organizations have been promoted as the prestigious forums of a particular community and they take a lead to create all types of communal disturbances. Various inquiry commissions have established the role of communal organization in fomenting communal trouble. The Madon Commission (1970) held branches of communal organizations like the Shiv Sena, Bhartiya Jan Sangh, Hindu Mahasabha and Tamir-e-Millat responsible for fomenting communal tension. However, religious/communal groups in free India continue to exploit the situation; the tug of war between them has intensified the communal divide; their leaders thrive on spreading hatred. One believes in extermination of the other group the other in retaliation.The communal violence is thus organized by vested powerful semi and quasi-politically affiliated groups. It is, therefore, necessary that such organizations should not be allowed to ransack the lives and properties of innocent people. 4) Religious Processions and Celebrations The manipulation of religious processions by political leaders is an old phenomenon. Processions became significant vehicles of violence, when local power politics was at stake. Communalists use religiosity for boundary definitions in political and other spheres. Their emphasis remains on religious festivals, processions, etc. They try to promote solidarity by exaggerating incidents when such processions have been infringed upon. The revisionalism as a weapon was pressed into service by political leaders to develop base after 1920. The communalists are also behind the increase of religious ceremonies and processions like 97

'Bhagwati Jagran', 'Durga Pooja', 'Ganesh Utsav', 'Rath Yatras', 'Shiv Jayanti', 'Ramnavmi Utsav', 'Laxmi Puja', 'Sarasvati Pujan', 'Ganesh Pujan', 'Ram Lila', 'Tazia', etc. These religious processions have increased in number and the scale of participation over the years. Planned and organized efforts are made for the public performance of religious rituals. Even the scale of organizing the public performance of religious rituals becomes an issue for competition among rival communalists. Show of strength at the time of religious festivals has also become a new behavioural pattern. When a procession of a particular community passes through the area of the other community, attempts are made to shout slogans or tease them. This often creates a communal clash. Sometimes religious celebrations and processions sparked off communal violence. This happened in Silhat (1782), in Pilibhit (1871), in Prabhashtam (1882), in Bareilly (1871, 1887 & 1962), in Etawah and Delhi (1886), in Ayodhya (1912), in Patna (1916), in Gaya and Shahbad (1921), in Allahabad (1924 & 1968), in Hazaribagh (1935, 1957 & 1983), in Cawnpore (now renamed Kanpur) (1939) in Bhopal (1953 & 1956), in Lucknow (1959), in Firozabad and Saharanpur (1960), in Vidisha (1961), in Ratnagiri (1962), in Islampur (1963), in Ranchi (1967), in Meerut (1968 & 1987), in Hubli (1969), in Chaibasa (1970), in Varanasi (1977), in Jamshedpur (1979), in Moradabad (1980), in Hyderabad (1981), in Hazaribagh (1983), in Ahmedabad (1713, 1953, 1985, 1986 & 1992), in Calcutta (now renamed Kolkata) (1924, 1939, 1941, 1969 & 1996), etc. Recently, due to religious celebrations and processions communal disturbances have been reported from Baroda, Sewari, Moradabad, Jabalpur, Titwala, Ahmednagar, Ujjain, Nandurbar, Lucknow, Bareilly, Hyderabad, Dhule, Malerkotla, Varanasi, Kolhapur and Azamgarh. Thus, religious processions become an irritant for causing communal violence. Further, other religious processions, on occasions of both Hindu and Muslim festivals are primary factors responsible for communal violence. 5) Religious Rituals Seeds of distrust are planted by exploiting deep religious traditions of both communities; difference in their different religious practices and rituals are highlighted and often, it is shown that one is out to destroy the other. Religiosity imparts passion and intensity to communalism. The extent of religiosity is very high. Even minor variations in the public performance of religious rituals evoke violent reactions. These reactions are the outcome of the constant reinforcement of religious group's identities through the propagation of communal ideology. 6) Religious Fanaticism Religious fanaticism among the people also has its source in the constant preaching and actions of communal organizations. Since they are interested in sharpening the differences between religious groups, it is in their interest to make their followers hard-boiled, unreasonable and passionate followers of a manipulated form of the religion concerned, a form which is, in fact, farthest from the actual tenets of the faith. That is why it is a common feature, observed in every religious/communal group, to unite whenever the 'religion in danger' slogan is raised. Politicians and priests mobilize people around this slogan, and they preserve in keeping the slogan alive all the time. This fostering of fanaticism is of course, facilitated by the ignorance and the lack of awareness amongst the people. That is why vested interests have a stake in keeping ignorant as many people as possible and as long as possible. 7) Revival of Fundamentalism The last three decades witnessed emergence of fundamentalism in all sections of our society. Prominent display of the religious signs and slogans on vehicle and public places has caught up rapidly. The increasing 98

participation of people of different communities into religious places is an indicator of the rise of religious fundamentalism even amongst the educated persons. Almost all the communities have been insisting on talking out new processions and that too through non-conventional and disputed route leading to violence. Later, stress is also being laid on the construction of new buildings and the renovation of old, dilapidated and abandoned religious places, which have been resented to by the opposite community at many places on several occasions. Ever increasing use of loudspeakers on religious places create disharmony at many times. Attempts to restrict such activities are termed as anti-religious. Another feature is exploiting the sentiments of the respective communities in furtherance of their agenda by undertaking mass mobilization programme such as 'Rath Yatra'. All such programmes add to the hardening of attitude, mutual bitterness, intolerance and aggression towards each other. These are really unwelcome signs for any civilized and harmonious society. 8) Religious Fundamentalists In the beginning, both communities were mixed with each other but soon the relations between the two started straining, doubt and hate started creeping in among the members of both the communities. Hindu fundamentalism began in the later part of the 19 th century. The establishment of Arya Samaj gave rise to Hindu nationalism based on religion. The cow slaughter and stoppage of music before the mosque became areas of conflicts between the two communities. Hindu communalists put breaks into the efforts of unity by the Hindu nationalists while the British openly patronized Muslim communalists. The Muslim fundamentalists often brand the Indian State as 'Hindu'; Hindu fundamentalists accept this and start prescribing a code of conduct for all 'Muslims', and they charge 'Muslim' with being strongly organized and blind supporters of their own co-religionists. Muslims accept this allegation and claim that if they do not defend their religion the 'Hindus' will stamp out Islam. Thus, Hindu fundamentalists view minorities as enemies of the nation and communal violence as deliberate acts intended to humiliate and injure the Hindus. While Muslim fundamentalists view communal violence as well organised and pre-planned and designed to terrorize the Muslims—to depress them, to drive them out of their own areas and to reduce them into second-class citizens. Fundamentalists in either community use their influence in creating certain biases. They have taken all possible opportunities to incite the minds of the people and at times even resorted to the use of foul language. However, it cannot be ignored that Hindus and Muslims have deep-rooted prejudices against each other, which are taken advantage of by the fundamentalists. For instance, by mobilizing the masses on communally sensitive issues, the communalists succeeded in inflaming the already existing prejudices. The fundamentalists exploit the discrepancy between the self-perception of one religious group and perception of it by the antagonistic communal group to spread fear, suspicions, mistrust and insecurity among their co-religionists. Thus, fundamentalists of one group, instead of emasculating the communalism of another group, feed and fatten it through violence or communal propaganda. 10) Hurting Religious Sentiments Very often, provocation due to hurting of religious sentiments resulted in the communal violence. For instance, communal violence in Srinagar in 1967 broke out when some torn pieces of the Holy Quran were found in college latrine. In 1968, at Tinsukia in Assam, communal violence took place due to the killing of a cow by a Muslim. In December 1986, communal riots broke out in Bangalore and Mysore, because of defamatory article against last Prophet Mohammad (pbuh). The Moradabad riot (1980) was due to the intrusion of a pig into the Idgah during 'Eid' prayer. The incident had its repercussions in many other towns of the state and in 99 Delhi, MP and Kashmir. In 1982, communal violence broke out in Amritsar and Patiala, due to the demand for a total ban on smoking and cigarette sale in Amritsar, a holy city. The demand was mainly because of religion as the use of tobacco was forbidden to Sikhs. Both politicians and priests of their religion succeed in stoking the flames of communal hatred, bias and prejudice and in triggering communal clashes whenever convenient to them. 11) Spending on Religious Activities Due to frustration and stress, people become more religious and as a result, communal bodies are flourishing all over the country taking advantage of liberal democracy and freedom of association. Increased number of sacrifices and ygnas at the cost of thousands of rupees are organized and a large number of people visit religious places and attend celebrations. The activities of religious groups, by spending on religious and semi-religious activities have been held responsible for communal violence. The real cause of conflict between two communities in Moradabad riots (1980) was economic competition and the increased degree of spending on religious and semi-religious activities such as construction of more mosques, madarsas and maktabs, which were construed as flow of Arab money into India to strengthen the Muslim fundamentalists. Thus, such activities could easily cause a greater degree of hostility among the other communities and succeeded in creating an atmosphere for communal violence. Sharp reactions are also seen where any place of worship is erected or established by one community in an area where the other community exceeds in numbers.It should also be kept in mind that contrary to the impression carried by the people in general, religion is not the root cause of the communal violence; it is rather a powerful instrument in the hands of those interests, which seek to play their game through it. Religious causes are sometimes peculiar to the extent that one fails to understand the real motive behind the fire except that of the religious rigidity. However, religious issues should not be taken as single causative factor of communal violence. c) Trivial Causes The studies on communal riots have established a clear nexus between various trivial causes and communal violence which cannot be denied. Besides the general and religious causes, some of the trivial causes responsible for communal violence and disturbance are summarized as under: ? Changing the root of processions ? Clashing of times of prayers of different communities ? Cow slaughter ? Demarcating new places for Tazias ? Desecration or destruction of places of worship ? Disputes over places of worship ? Dispute between property owners and tenants ? Distribution of objectionable pamphlets viii) Disturbances in religious processions/functions ix) Due to the migrated Muslims and refugees x) Emotion and insecurity ? Intolerance during fairs and festivals ? Laying the foundation for new statues ? Marriage, eve-teasing and sexual relations between members of the opposite groups or cases of elopement ? Mischievous media reporting 100

? Objection to playing of music, singing and dancing in front of mosque and other religious places ? Objectionable speeches ? Obstructions placed during religious processions ? Pelting stones to disturb the religious processions ? Performing Qurbani (i.e. sacrifice) in a public place ? Petty quarrels between members of different communities ? Personal quarrels ? Presence of objectionable animals at the time of prayers as happened in Moradabad riot in 1982 ? Provocative and abusive slogans against the other community ? Publishing of provocative articles and objectionable writings ? Reaction for religious conversions ? Reaction and repercussion of riots of other places, i.e., Delhi riots of 1987 as a fall out of Meerut riots of 1987, etc. ? Road accident ? Sacrificing of cow on 'Bakharid' (i.e. the festival of sacrifice) ? Sexual offences ? Showing signs or symbols of insulting ? Sudden quarrel ? Taking out processions through unconventional and non-permitted routes ? Throwing of colours, gulal, etc., on mosque or other religious places ? Throwing of colours, gulal, etc., on persons who resent it ? Throwing of liquor and flesh of objectionable animals at religious places ? Vulgar display of religious fervors on the localities especially at the places inhabited by the members of the other community, etc The other causative factors responsible for communal violence inter-alia, are free-rumour mongering, lack of counter measures to dilute the effect of rumours, transmission lag in the information flows, lack of effective implementation of laws, lack of public cooperation, unrestrained use of loudspeakers at religious places and other similar practices, no regulation on religious processions, existence of different disputes, lack of responsive and responsible behaviour by local administration and lack of coordination between the various administrative units on the spot. However, all the above causes simply initiate the process and it cannot be suggested the above list is exhaustive. It may be correct to state that there are the catalysts, which galvanize into violence an atmosphere, which is permeated with the poison of communalism. The creating of this atmosphere and the perception of the both communities about each other have all to be viewed in the context of the several factors, which have been discussed earlier as responsible for communal violence. The tension between the two communities has placed them on two opposite poles, where the scope of compromise is possible only if flexibility in interpretation of religious tenets is shown. Humayun Kabir believed that "in a plural and democratic society communalism is inevitable because of the clash of interests between minority groups and the majority community. 101
Unit: IV Rights of the Accused In this unit, you will learn about, ? Introduction ? Protection in respect of conviction for offences ? Protection or safeguard or remedies – Article 22 ? Some other provisions of accused Introduction A person in custody of the police, an under-trial or a convicted individual does not lose his human and fundamental rights by virtue of incarceration. The two cardinal principles of criminal jurisprudence are that the prosecution must prove its charge against the accused beyond shadow of reasonable doubt and the onus to prove the guilt of the accused to the hilt is stationary on the prosecution and it never shifts. The prosecution has to stand on its own legs so as to bring home the guilt of the accused conclusively and affirmatively and it cannot take advantage of any weakness in the defence version. The intention of the legislature in laying down these principles has been

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that hundreds of guilty persons may get scot free but

even one innocent should not be punished. Indian Constitution itself provides some basic rights/safeguards to the accused persons which are too followed by the authorities during the process of criminal administration of justice. There are some provisions which expressly and directly create important rights in favour of the accused/arrested person. Protection in respect of conviction for offences Following are some important provisions creating rights in favour of the accused/ arrested person regarding protection in respect of conviction for offence: 1.

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No person shall be convicted for any offence except for violation of a law in force at the time of commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. 2.

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No person shall be prosecuted and punished for the same offence more than once. 3.

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No person accused of any offence shall be compelled to be a witness against himself. The article 20 of the constitution of India

provides three types of safeguard to the person accused of crimes namely: 1. Protection against ex-post facto Law: 2. Guarantee against double Jeopardy, and 3. Privilege against self-incrimination 1. Protection against ex postfact law article 21 [1]

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Article 20[1] of the constitution contains two parts: 1. No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence; 103 2. No person shall be subject to penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

Clause (1) of Article 20 of the

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Indian Constitution says that "no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

Article 11, para 2 of the Universal Declaration of Human Rights, 1948 provides freedom from ex-post facto laws. An ex post facto law is a law which imposes penalties retrospectively, i.e., on acts already done and increases the penalty for such acts. The American Constitution also contains a similar provision prohibiting ex post facto laws both by the Central and the State Legislatures.

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If an act is not an offence at the date of its commission, it cannot be an offence at the date subsequent to its commission.

The protection afforded by clause (1) of Article 20 of the Indian Constitution is available only against conviction or sentence for a criminal offence under ex post facto law and not against the trial. The protection of clause (1) of Article 20 cannot be claimed in case of preventive detention, or demanding security from a person. The prohibition is just for conviction and sentence only and not for prosecution and trial under a retrospective law. So, a trial under a procedure different from what it was at the time of the commission of the offence or by a special court constituted after the commission of the offence cannot ipso facto be held unconstitutional. The second part of clause (1) protects a person from a penalty greater than that which he might have been subjected to at the time of the commission of the offence. I" n Kedar Nath v. State of West Bengal", the accused committed an offence in 1947, which under the Act then in force was punishable by imprisonment or fine or both. The Act was amended in 1949 which enhanced the punishment for the same offence by an additional fine equivalent to the amount of money procured by the accused through the offence. The Supreme Court held that the enhanced punishment could not be applicable to the act committed by the accused in 1947 and hence, set aside the additional fine imposed by the amended Act. In the criminal trial, the accused can take advantage of the beneficial provisions of the ex-post facto law. The rule of beneficial construction requires that ex post facto law should be applied to mitigate the rigorous (reducing the sentence) of the previous law on the same subject. Such a law is not affected by Article 20(1) of the Constitution. 2 Doctrine of "guarantee against double jeopardy" article 20[2] The expression 'Double Jeopardy' used in the American law, but not in our constitution, the term double jeopardy ' means exposé to loss or injury for double tine. The English common law rule is that "nemo debut bi's punibi prouno delicto" which means that no one should be punished twice for one fault.

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The Fifth Amendment to the American to the American constitution in corporate, "No person shall any person be subjected for the same offence to be put twice in jeopardy of life or limb."

According to this doctrine, if a person is tried and acquitted or convicted of an offence, he cannot

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be tried again for the same offence or on the same facts for any other offence.

This doctrine has been substantially incorporated in the Article 20(2) of the Constitution and is also embodied in Section 300 of the Criminal Procedure Code, 1973. When once a person has been convicted or acquitted of any offence by a competent court, any subsequent trial for the same offence would certainly put him in jeopardy and in any case would cause him unjust harassment. Such a trial can be considered anything but fair, and therefore has been prohibited by the Code of Criminal Procedural as well as by the Constitution.

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A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted

for

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such offence 104 shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section. Constitutional provision to the same effect is incorporated

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in Article 20 (2) which provides that no person shall be prosecuted and punished for the same offence more than once.

These pleas are taken as a bar to criminal trial on the ground that the accused person had been once already charged and tried for the same alleged offence and was either acquitted or convicted. These rules or pleas are based on the principle

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that “a man may not be put twice in jeopardy for the same offence”.

Article 20(2) of the Constitution recognizes the principle as a fundamental right. It
says,”

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no person shall be prosecuted and punished for the same offence more than once”. While, Article 20(2)

does not in terms maintain a previous acquittal, Section 300 of the Code fully incorporates the principle and explains in detail the implications of the expression “same offence”. In order to get benefit of the basic rule contained in Sec 300(1) of Criminal Procedure Code is necessary for an accused person to establish that he had

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been tried by a “court of competent jurisdiction” for an offence.

An order of acquittal passed by a court which believes that it has no jurisdiction to take cognizance of the offence or to try the case is a nullity and the subsequent trial for the same offence is not barred by the principle of autrefois acquit. To operate as a bar the second prosecution and consequential punishment there under, must be for the “same offence”. The crucial requirement for attracting the basic rule is that the offences are the same, i.e. they should be identical. It is therefore necessary to analyze and compare not the allegations in the two complaints but the ingredients of the two offences and see whether the identify is made out. 3 Prohibition against self-incrimination or testimonial compulsion article 20[3]
Article 20[3] provides
that
no person accused of any offence

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shall be compelled to be a witness against himself. Thus Article 20(3) embodies the general principles of English and American jurisprudence that no one shall be compelled to give testimony which may expose him to prosecution for crime. The cardinal principle of criminal law

which is really the bed rock of English

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jurisprudence is that an accused must be presumed to be innocent till the contrary is proved. It is the duty of the prosecution to prove the offence. The accused need not make any admission or statement against his own free will. The

fundamental rule of criminal jurisprudence against self-incrimination has been raised to a rule of constitutional law in Article 20(3). The guarantee extends to any person accused of an offence and prohibits all kinds of compulsions to make him a witness against himself. Explaining the scope of this clause in M.P. Sharma v. Satish Chandra, the Supreme Court observed that this right embodies the following essentials: p)

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It is a right pertaining to a person who is "accused of an offence. q) It is a protection against "compulsion to be a witness". r) It is a protection against such compulsion relating to his giving evidence "against himself."

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In Nandini Satpathy v. P.L. Dani, the Supreme Court has considerably widened the scope of clause (3)

of Article 20. The Court has held that the prohibitive scope of Article 20(3) goes back to the stage of police interrogation not commencing in court only. It extends to and protects the accused in regard to other offences-pending or imminent, which may deter him from voluntary disclosure. The phrase compelled testimony „must be read as evidence procured not merely by physical threats or violence but by psychic " (mental) torture, atmospheric pressure, environmental coercion, tiring interrogatives, proximity, overbearing and intimidatory methods and the like. Thus,

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compelled testimony is not limited to physical torture or 105 coercion but extend also to techniques of psychological interrogation which cause mental torture

in a person subject to such interrogation. Right to silence is also available to accused of a criminal offence. Right to silence is a principle of common law and it means that normally courts tribunal of fact should not be invited or encouraged to conclude, by parties or prosecutors that a suspect or an accused is guilty merely because he has refused to respond to question put to him by the police or by the Courts. The prohibition of medical or scientific experimentation without free consent is one of the human rights of the accused. In case of Smt. Selvi & Ors. v. State of Karnataka & Ors., wherein the question was- Whether involuntary administration of scientific techniques namely Narcoanalysis, Polygraph (lie Detector) test and Brain Electrical Activation Profile (BEAP) test violates the "right against self-incrimination" enumerated in Article 20(3) of the Constitution. In answer, it was held that it is also a reasonable restriction on "personal liberty" as understood in the context of Article 21 of the Constitution. Following observations were made in this landmark case: 1. No individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty. 2. Section 53, 53-A and 54 of Criminal Procedure Code permits the examination include examination of blood, blood-stains, semen swabs in case of sexual offences, sputum and sweat, hair samples and finger nail dipping by the use of modern and scientific techniques including DNA profiling. But the scientific tests such as Polygraph test, Narcoanalysis and BEAF do not come within the purview of said provisions. 3. It would be unjustified intrusion into mental privacy of individual and also amount to cruel, inhuman or degrading treatment. 4. Voluntary administration of impugned techniques is, however, permissible subject following safeguards, but test results by themselves cannot be admitted in evidence. (a)

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No Lie Detector Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test. (b) If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and

the

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physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer. (c) The consent should be recorded before a Judicial Magistrate. (d) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer. (

e)

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At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a "confessional statement to the Magistrate but will have the

status of a

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statement " made to the police. (f) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation. (g) The actual recording of the Lie Detector Test shall be done by an independent agency (such as

a

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hospital) and conducted in the presence of a lawyer. (h) A full medical and factual narration of the manner of the information received must be taken on record.

The underlying rational of right against self-incrimination is as under, ? The purpose of the "rule against involuntary confessions" is to ensure that the testimony considered during trial is reliable. The premise is that involuntary statements are more likely to mislead the judge and the prosecutor, thereby resulting in a miscarriage of justice. 106
? The right against self-incrimination is a vital safeguard against torture and other „third- " degree methods that could be used to elicit information. " ? The exclusion of compelled testimony is important, otherwise the investigators will be more inclined to extract information through such compulsion as a matter of course. The frequent reliance on such „short cuts will compromise the diligence required for conducting " meaningful investigations ? During trial stage the onus is on the prosecution to prove the charges levelled against the defendant and the „right against self-incrimination is a vital protection to ensure that the " prosecution discharges the said onus PROTECTION OR SAFEGUARD OR REMEDIES: ARTICLE - 22 Article 22[1] and 22[2] of the Indian constitution provide the following rights to the person arrested and detained in custody under the ordinary law of crimes. a) Right to be informed of grounds of arrest: Article 22[1]

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Article 22 (1) of the Constitution provides that a person arrested for an offence under ordinary law be informed as soon as may be the grounds

of arrest. In addition to the constitutional provision, Section 50 of Criminal Procedure Code also provides for the same. The grounds of arrest should be communicated to the arrested person in the language understood by him;

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otherwise it would not amount to sufficient compliance with constitutional requirements.

b) Right to be defended by lawyer Article 22[1] It is one of the fundamental rights enshrined in our Constitution.

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Article 22 (1) of the Constitution provides, inter alia, that no person who is arrested shall be

denied
the
right to
consult and

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to be defended by a legal practitioner of his choice. The right of the accused to have a counsel of his choice is fundamental and essential to fair trial. The right is recognized because of the obvious fact that ordinarily an accused person does not have the knowledge of law and the professional skill to defend him before a court of law wherein the prosecution is conducted by a competent and experienced prosecutor.

This has been eloquently expressed by the Supreme Court of America in Powell v. Alabama. The Court observed that "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and the knowledge adequately to prepare his defence, even though he has a perfect one. He requires the guiding hand of counsel at every step of the proceeding against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect?"

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In Huassainara Khatoon (IV) v. Home Secretary, State of Bihar, the Supreme Court

after adverting to Article 39-A of the Constitution and after approvingly referring to the creative interpretation of Article 21 of the constitution as propounded in its earlier epoch-making decision in Maneka Gandhi v. Union of India, has explicitly observed as follows:

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The right to free legal services is, therefore, clearly an essential ingredient of "reasonable, fair and just procedure for a person accused of an offence and it must be

held implicit

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in the guarantee of Article 21. " 107 This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the provision of such lawyer.

It has been categorically laid down by the Supreme Court that the constitutional right of legal aid cannot be denied even if the accused failed to apply for it. It is now therefore clear

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that unless refused, failure to provide legal aid to an indigent accused would vitiate the trial, entailing setting aside of conviction and sentence.

These questions are now of academic importance only. Because the Supreme Court has now recognized that every indigent accused person has a fundamental constitutional right to get free legal services for his defence. The Constitution as well as Section 303 of Code of Criminal Procedure recognized

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the right of every arrested person to consult a legal practitioner of his choice.

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Article 22 (1) provides, " No person who is arrested shall be detained in custody without being inform, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice".

The
right begins from the moment of arrest i.e. pre-trial stage. The arrestee could also have consultation with his friends or relatives.

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The consultation with the lawyer may be in the presence of police officer but not within his hearing.

c) Right to be produced before magistrate: Article 22[2] As per Article 22 (2) of the Constitution provides that an arrested person must be taken to the Magistrate within 24 hours of arrest. Similar provision has been incorporated under

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Section 56 of Criminal Procedure Code. A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

In Hariharnand v. Jailor, the court been held that the arrested person will be entitled to be released, if twenty four hours passed and the person arrested has not been produced before Magistrate. The magistrate before whom the arrested person is presented is required to apply his judicial mind to determine be whether the arrest is regular and in accordance with law. Arrested person no detention beyond 24 hours except by order of the magistrate Article 22(2)

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of the Constitution provides: "Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate."

The right to be brought before a Magistrate within a period of not more than 24 hours of arrest has been created with aims: ? to prevent arrest and detention for the purpose of extracting confessions, or as a means of compelling people to give information; ? to prevent police stations being used as though they were prisons – a purpose for which they are unsuitable. ? to afford an early recourse to a judicial officer independent of the police on all questions of bail or discharge. If a police officer fails to produce an arrested person before a magistrate Within 24 hours of the arrest, he shall be held guilty of wrongful detention. d) Right to free legal aid Article 39-A 108
The "right to counsel" would remain empty if the accused due to his poverty or indigent conditions has no means to engage a counsel for his defence. The state is under a constitutional mandate (implicit in Article 21 of the constitution, explicit in Article 39-A of the constitution-a directive principle)

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to provide free legal aid to an indigent accused person

Sukhdas V. Union Territory of Arunachal Pradesh.

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In Khatri (II) V. State of Bihar , the Supreme Court has held that the State is under a constitutional mandate to provide free legal aid to an indigent accused person, and that their constitutional obligation to provide legal aid does not arise only when the trial commences but also when the accused is for the first time produced before the Magistrate as also when he is remanded from time to time.

However, this constitutional right of an indigent accused to get free legal aid may prove to be illusory unless he is produced before promptly and duly informed about it by the court when he is produced before it. The Supreme Court has therefore cast a duty on all Magistrate and courts to inform the indigent accused about his right to get free legal aid. e) Right to be tried in presence of accused

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The personal presence of the accused throughout his trial would enable him to understand properly the prosecution case as it is unfolded in the court.

This would facilitate in the making of the preparations for his defence. A criminal trial in the absence of the accused is unthinkable.

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A trial and a decision behind the neck of the accused person are not contemplated by the Code, though no specific provision to that effect is found therein. The requirement of the presence of the accused during his trial can be implied from the provisions which allow the court to dispense with the personal attendance of the accused

person under certain circumstances. f) Right to speedy trial Justice delayed is justice denied. This is all the more true in a criminal trial where the accused is not released on bail during the pendency of the trial and trial is inordinately delayed. However, the code does not in so many words confer any such right on the accused to have his case decided expeditiously.

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In Hussainara Khatoon (IV) V. State of Bihar, the Supreme Court

considered the
problem in all its seriousness and
declared

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that speedy trial is an essential ingredient of „reasonable, fair and just" procedure guaranteed by Article 21 and that it is the constitutional obligation of the state of devise such a procedure as would ensure speedy trial to accused. The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this court, as the guardians of the fundamental rights of the people, as a sentinel on the qui vie, to enforce the fundamental right of the accused to speedy trial by issuing necessary directions to the State. The

spirits underlying these observations have been consistently rekindled by the Supreme Court in several cases. This has again been expressed in Raj Deo Sharma v. State of Bihar wherein the court ordered to close the prosecution cases, if the trial had been delayed beyond a certain period in specified cases involving serious offences. The right to speedy trial came to receive examination in the Supreme Court in Motilal Saraf v. State of J&K.

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Dismissing a fresh complaint made after 26 years of an earlier complaint the Supreme Court explained the meaning and relevance of speedy trial right thus: The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with actual restraint imposed by arrest and consequent incarceration, and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impressible and avoidable delay from the time of the commission of the offence will if consummates into a finality, can be averted. 109

g) Right of Appeal The Supreme Court has observed: "One component of fair procedure is natural justice. Generally speaking and subject to just exceptions, at least

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a single right of appeal on facts, where criminal conviction is fraught with loss of liberty, is basic to civilized jurisprudence. It is integral to fair procedure; natural justice and normative universality

save in special cases like the original tribunal being a high bench sitting on a collegiate basis. Appeal is one of the two important review procedures. An appeal is an inferior one, whose judgment or decision the court above is called upon to correct or reverse. An appeal is a creature of statute and there can be no inherent right of appeal from any judgment or determination unless an appeal is expressly provided for by the law itself. Complaint to a superior court of an injustice done or error committed by an accused. h) Right of Parole and Probation Probation and parole are privileges which allow criminals to avoid prison or to be released from prison after serving only a portion of their sentences. The goals of probation and parole are to rehabilitate offenders and guide them back into society while minimizing the likelihood that they will commit a new offense. Probation A judge may grant probation as an alternative to imposing a jail sentence. Probation is ordered when the circumstances and seriousness of the crime suggest that the probationer is not a threat to society and that incarceration is not an appropriate punishment. The probationer may freely live in the community but must abide by certain conditions of probation for a period of time specified by the court and report regularly to an appointed probation officer. General conditions of probation may include living where directed, participating in rehabilitation programs, submitting to drug and alcohol tests and maintaining employment. Probationers may be required to show proof to the court that they have complied with all conditions of probation. If a probationer fails to comply with all required conditions, the court may revoke probation and require the probationer to serve a jail sentence. Parole Parole is granted after an offender has served a portion of his or her prison sentence. Thus, parole differs from probation in that it is not an alternative sentence, but rather a privilege granted to some prisoners after a percentage of their sentence has been served. Parolees must abide by certain terms and conditions while they are on parole. These terms include living within state or county lines, meeting regularly with a parole officer, submitting to drug and alcohol tests, and providing proof of residence and employment. If a parolee violates the conditions of parole, his parole will be revoked, and he will be re-imprisoned. Parole Eligibility Most states limit parole to inmates convicted of certain crimes who have served a certain percentage of their sentence. For instance, offenders who have been convicted of first degree murder, kidnapping, rape, arson, or drug trafficking are generally not eligible for parole. For other offenders, the parole board will consider each inmate's personal characteristics, such as age, mental stability, marital status and prior criminal record. Parole boards do not grant parole to offenders simply for "good behaviour" exhibited during incarceration. The parole board will also consider the nature and severity of the offense committed, the length of sentence served and the inmate's degree of remorse for the offense. Finally, the parole board will examine the inmate's ability to establish a permanent residence and obtain gainful employment upon release. Parole will be 110 granted if there is no apparent threat to public safety and the inmate is willing and able to re-enter the community. Fourth Amendment Rights The Fourth Amendment of the United States Constitution protects the public from unlawful searches and seizures by law enforcement officers. However, this protection does not extend to those on probation and parole. The homes of those on probation and parole can; however, be searched at any time without a search warrant. If drugs, weapons or other paraphernalia is found that violates the conditions of probation or parole, those items may be seized and used in evidence against the offender. In addition to revocation of probation or parole, the offender may face additional criminal charges for possessing the drugs, weapons or other paraphernalia recovered during the search. Some other provisions of Accused The above said rights are not the exhaustive rights of accused/arrested persons; other rules have also been made in the consideration of interest of them. Some of them have been created by the judiciary and later on incorporated in the concerned laws. The idea underlying is to protect the basic human rights of accused in all circumstances. Some of these are as follows: Rules for Bail “Bail not Jail” is the celebrated dictum of Justice Krishna Iyer.

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The law of bails has to dovetail two conflicting demands, namely, on one hand, the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence, viz., the presumption of innocence of an accused till he is found guilty.

The quality of a nation's civilisation can be largely measured by the methods it uses in the enforcement of criminal law. Right Against Solitary Confinement Although, one of the mode of punishment is solitary confinement, but certain restrictions have imposed on the type of punishment to protect the right of convict to mingle with other convicts. In Sunil Batra (1) v. Delhi Administration, it was held

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If by imposing solitary confinement there is total deprivation of camaraderie (friendship) among coprisoners commingling and talking and being talked to, it would offend

Article 21 of the Constitution.

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The liberty to move, mix mingle, talk, share company with co-prisoners if substantially curtailed would be violative of Article 21 unless curtailment has the backing the law.

The Court held that continuously keeping a prisoner in fetters day and night reduces

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the prisoners from a human being to an animal and that this treatment was cruel and unusual that the use of bar fetters was against the spirit of the Constitution.

Right Against Inhuman Treatment The accused and convict in criminal system of the country have the rights to live with dignity. Therefore, they should not be subjected to the inhuman treatment.

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In Kishore Singh v. State of Rajasthan the Supreme Court held that the use of third degree method by police is violative of Article 21 and directed the Government to take necessary steps to educate the police so as to inculcate a respect for the human person. The

Court also held that punishment of solitary confinement for a long period from 8 to 11 months and

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putting bar fetters on the prisoners in jail for several days on flimsy ground like loitering in the prison, behaving insolently and in an uncivilized manner, tearing of his history ticket must be regarded as barbarous and against human dignity and hence violative of Article 21, 19 and 14 of the Constitution Krishna Iyer, J. declared, "Human dignity is a clear value of our Constitution not to be bartered away for mere apprehension entertained by jail officials". 111

Similarly, torture and ill treatment of women suspects in police lockups has been held to be violative of Article 21 of the Constitution. The Court gave detailed instructions to concern authorities for providing security and safety in police lockup and particularly to women suspects. The

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female suspects should be kept in separate police lockups and not in the same in which male accused are detained and should be guarded by female constables. The Court directed the I.G. prisons and State Board of Legal Aid Advice committee to provide legal assistance to the poor and indigent accused male and female whether they are under trials or convicted prisoners.

Fair Trial The fair trial is the foremost requirement of criminal proceedings and it is utmost right of an accused. In the recent case titled as Dr. Rajesh Talwar and another v. C.B., and another the Supreme Court observed that Article 12 of the universal declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of Criminal jurisprudence and, in a way, an important facet of democratic polity and is governed by rule of law. Denial of fair trial is crucifixion of human right.

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Denial of fair trial is as much injustice to the accused as is to the victim and

the society. It necessarily requires a fair

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trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm.

Since the object of

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the trial is to meet out justice and to convict the guilty and protect the innocent, the trial should be a search for truth

and not about over technicalities and

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must be conducted under such rules as will protect the innocent and punish the guilty.

Justice should not only be done but should be seen to have been done. Therefore, free and fair trial is a sine quo none of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of Constitution, in so many judgments the Supreme Court has expressed the importance of fair trial to accused. Curative Petitions The Supreme Court has ruled in Rupa Ashok Hurra v. Ashok Hurra that while certainly of law is important in India, it cannot be at the cost of justice. The court has observed in this connection that in the area of personal liberty for some time now, this is the manifestation of the "dynamic constitutional jurisprudence" which the Supreme Court is evolving in this area. A curative petition can be filed by accused himself or on his behalf by any other person in the Supreme Court to review the earlier order of the Supreme Court itself. (vii) Right to Information under Right to Information Act, 2005 even when a person is convicted

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and deprived of his liberty in accordance with the procedure established by law,

a prisoner still retains the residue of constitutional rights. Article 14, 19 and 21 "are available to prisoners as well as freemen. Prison walls do not keep out Fundamental Rights." The arrestee has a right to submit an application through Superintendent Jail for receipt of documents/information as permissible under the Right to Information Act, 2005. 112
Unit: V Prison System And Rights Of Prisoners In this unit, you will learn about, ? Prison System ? Rights of the Prisoners o Right to Fundamental Rights o Right to life and Personal Liberty o Right to Speedy Trial o Right to free legal aid o Protection against instruments of restraint o Protection of custodial and mal treatment in prisons o Right to bail during the pendency of appeal o Right to be released on due date o Right to education o

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Right to reasonable wages for work o Special rights to women prisoners o Right to

child of women prisoners o Right to security of life inside the jail Prison System India got the independence on 15 August 1947. Independent India has a lot to do not only in the field of prison reforms, but in every field. It was the state of Uttar Pradesh who first of all looked for prison reforms. With the dawn of independence, prison reforms especially in the state of Uttar Pradesh, was given increased attention. Indian leaders were ready with a blue print for the industrial development of the country, but the jail reforms could not escape their eyes as well of them passed their prime time of life in jails and most of their writings were conceived and accomplished in the prisons. Moreover, all the leaders were in the situation placement as for prison reform was concerned many of them were the victims of the jail administration. The Government of Uttar Pradesh appointed a very important committee known as U.P. Jail Reform Committee 1946, and all its recommendations were accepted by the Government." The chief objective for the appointment of the committee was to bring the prison administration of the state at par with that of some of the advanced countries of the world. It was this committee which conceived the idea of a model prison for the experiment of its recommendations. The approach of the committee was sociological in nature and it emphasized classification, education, training and self – sufficiently. The committee was alike to the difficulties facing prison reforms; the greatest of them was social prejudice against criminals and non - availability of trained personnel. Because of these difficulties which led to the idea of establishing "a model prison where most of the latest principles of penology could be tried and the prison may serve as a pilot project for stimulating reforms in other jails and penitentiaries of the state as well as in the country. At present custodial institutions of the state are broadly divided into two categories: - 113

a) District Jails - where convicts of all sorts of crimes are confined for some time and later lifers and other convicts of heinous crimes are sent to central prisons. At that time there are forty eight district jails in the state. b) Central Prisons - The Central Prisons are of three kinds: - i) Central Prison for lifers and for other heinous crimes are five ii) Open Camps are two in the state where mostly casual prisoners are kept, and they earn their wages and iii) Model Prisons is one in the state where all latest sociological principle of penal reform is incorporated. The committee advocated the idea of classification on the basis of habitual and casual criminals and recommended that the best should be segregated from the ward. The casual convicts varying between 25-40 years, having good health, families tie and industrious by nature should not be left to their lot. But every effort should be made to restore their lost dignity, to reclaim their lost personality, morality and integrity and cultivate such an environment which they could develop a sense of self-reliance and insight into the life situation both, inside and outside the prison. The self-supporting community of the prison was emphasized to cut expenditure and relieve the society of the burden of growing taxes and infuse a sense of self respect among the inmates. Therefore, the committee, for the realization of these objectives, gave priority to education, training in trades, generous parole and scheme for wage payment. Subsequently, began the experiment of the recommendations of the committee in Fategarh Central Prison, with a batch of twenty four prisoners. It was the pilot project where the applicability of the views of the committee was tested. The success of the experiment at Fategarh led to the conversion of Lucknow Central Prison, which was constructed in 1860, into the Model Prison in 1949 and open prison was also attached to it in the same year, based on the suggestions of Pakwasa Committee. Here prisoner was made to work on handloom machines and engaged in other home industries. The first open jail for women was established in Maharashtra at Yarwadain 1955. In the year 1951, the Government of India paid heed towards prison reforms and correctional programmer. The Government requested the United Nations, under the Technical Assistance Programme, to lend an expert in criminology and correctional administration for training a batch of jail officers and to advise the Government of India for furthering development of correctional administration in India. Dr. Walter C. Reckless, an expert of the U.N.O., arrived in India on October 21, 1951. In his report he recorded the scope of the mission: - "Although the mission was designed primarily for the training of jail officers in progressive methods of jail administration, a secondary aspect of the mission, namely the stimulation of local and national interests in the newer approaches to the treatment of adult and juvenile offenders has loomed very large." With this view Dr. Reckless Reporting have some valuable recommendations, both national and state level for improving correctional administration in India, particularly of jail administration, as some of which could be summarized as under: - National Level ? An advisory bureau of correctional administration should be established at the Central Government immediately so that the state could be helped in the development of their correctional programme, ? The Government of India should consider the need for specialized technical assistance in this field ? Fellowships in the correctional field to prepare competent persons to fill higher positions, e.g. Inspector General of Prisons and his Deputies, ? The Central Government should encourage the development of professional conferences of the superior staff members, and ? An all India conference of persons working in the correctional field, both adults and juveniles, 114
? Solitary confinement as a mode of punishment should abolish. State Level ? Establishment of whole time revising boards for selection of prisoners for mature release, ? Revision of jail manual with greater responsibility on the superintendent and staff members for constructive programmes for prisoners, ? Superior staff of a jail to have training for their work, ? The larger states should develop integrated departments of correctional administration under on minister, including jails, Borstools, Revising Boards, and Probation and after care, ? Professional individualized services and handling of the prisoners by specialists like supervision of education, vocational guide, recreation officer, clinical psychologists, therapeutic psychiatrist etc., ? Special institution for training ?

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The reformative methods of probation and parole should be used to lessen the burden on prisons. ?

Classification of prisoners for the purpose of their treatment were necessary, Almost at the same time the Government of India called a Conference (eighth) of the Inspector General of Prisons at Bombay from 11th to 13th March 1952. On the recommendations of that Conference the Government of India asked the Government of Bombay to set up a Committee and take up the revision of Jail Manual and the Central Act relating to prisons. The Committee took its first meeting in June 1957 at Bombay followed by twelve other sittings and visits to twenty eight correctional institutions. The Committee prepared a Model Prison Manual and its report, which was circulated to all the State Governments, but till 1980 only four States, namely Andhra Pradesh, Karnataka, Kerala and Maharashtra had revised then Jail Manual in accordance with the Model Prison Manual. However, the Government of India established a Central Bureau of Correctional Services in 1961. The Chief objective of this institution is to impart training and promote research studies in the area of prevention of crimes and treatment of prisoners.' Even after it

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the reformative measures listed here, the general condition of prisons in India was still far from satisfaction. The social contempt for prison life kept all sections of society uninformed

about what was going on inside the prison cells. From time to time media and press highlights the empirical relations of prison life and public opinion seems little concerned about modernization of prison.' The Government of India constituted a working group in 1972 to examine measures for streamlining and improving the jail administration and conditions of living in the prisons. The working group observed: - The Prison administration in the country is generally in a depressing state, convicts and under trials are lodge in the same institutions throughout the country. Adults, adolescents, juveniles, women and lunatics are also generally confined in common institutions and there is a serious lack of separate institutions for these various categories of prisoners. Partly due to the fact that service of specialists has not been mobilized, we do not find any evidence of any effort for the individualized treatment of offender. Probation and other correctional services are scarce and ineffective. There is little co-ordination between the prison and correctional services. It is obvious that the entire system calls for a thorough overhaul and many reforms." The group also emphasized the need of a National Policy on Prisons. It also suggested the inclusion of prison administration in the Five year plan and amendment

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of the Indian Constitution to include the subject of prisons and allied institutions in the concurrent list. The seventh

finance commission in its report in 1978 acknowledged the facts that jails had been neglected far too long. With this background and large scale criticism of the prison administration, due to inhuman treatment of the prison personnel and unsatisfactory living conditions and prolonged detention of under trial prisoner the Government of India appointed an "All India Committee on Jail Reforms in 1980 with Mr. 115
Justice (Retired) A. N. Mulla as Chairman. The Committee in 1983 submitted a 511 pages report to the Government of India, with a strong recommendation of a National Policy in Prisons. The Committee made the suggestions that
the existing dichotomy of prison administration of
Union and State level should be removed. It recommended a

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total ban on the heinous practice of clubbing together juvenile offenders with the hardened criminals in prison. The atrocities and personal assaults on juvenile prisoners which came to the notice of authorities in the notorious Tihar Jail Inmate case and

the Agra Protective Home Case have served as an eye opener for the administration.

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Consequently, a comprehensive was enacted for the security and protective care of delinquent juveniles, The Mulla committee

also

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recommended segregation of mentally disturbed prisoners and their placement in mental asylums.

Yet another recommendation of the Jail committee was regarding classification of prisoners and scientific and rational basis. For this purpose, certain advanced countries have appointed Ombudsman for deciding the prisoner's grievances. Similar procedure may be adopted in India as well. Some other recommendations of the Mulla Jail Committee were as follows: - 1. The condition of prisons should be improved making adequate arrangements for food, by clothing, sanitation, ventilation etc. 2. The prison staff should be properly trained and organized into different cadres. It would be advisable to constitute
an All India Service called the Indian Prisons and

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correctional service for recruitment of Prison officials. 3. Aftercare, rehabilitation and probation should constitute an integral part of prison service.

Unfortunately, probation law is not being properly implemented in the country. 4. The media and public men should be allowed to visit prisons and allied institutions periodically so that public may have first-hand information about conditions inside prisons and be willing to cooperate with prison officials in rehabilitation work. 5. Lodging of under trial in jail should be reduced to bare minimum and they should be kept separate from the convicted prisoners. Since under trials constitute a sizable portion of prison population, their number can be reduced by speedy trials and liberalization of bail provisions. 6. The Government should make an endeavour to provide adequate resources and funds for prison reforms. Meanwhile, the eighth finance commission submitted as report in 1984, which recommended support central assistance for improvement of existing infrastructure of the prisons. In the year 1988, the National expert committee on women prisoner headed by Justice V. R. Krishna Iyer in its report submitted to the Government in February 1988, recommended

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induction of more women in the police force in view special rule in tackling women and child offenders.

Envisaging a for greater significant and useful rule of women police in context of changing needs of society, the Committee observed that women police have a greater potential to cool, defuse and de-escalate many situations and therefore, greater use should be made of them. Women can be employed in non-combative rules requiring restraint, patience and endurance. The women police should be an integral part of the police set up, with a special role in juvenile crime squads especially in urban areas.

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They should be specially trained to deal with agitations and mob upsurges in humane and sensitive manner and acquire mastery over tactics of unarmed combat. Thereafter, the

National Human Rights Commission (N.H.R.C) after acquainted with problem of prisoners in the prisons in India in general took initiation to formulate a national prison law by consolidating the existing prisons law framed during British Period more than two hundred years back, A Draft Bill (Indian Prisons Bill, 1995 - proposed) was circulated to all the state governments in India during February 1996 regarding formulation of comprehensive law in prisons. The N.H.R.C has submitted its recommendation Bill for adoption by the Government of India which is still under consideration of the Law Ministry. 116
It is notable here that the West Bengal Legislative Assembly already passed "the West Bengal Correctional Service Act, 1992", the first of its kind in India characterizing prison administration as correctional services accepting reformation of prisoner as the objective of prison law. No other state yet passed such legislation till now. RIGHTS OF THE PRISONERS It is very unfortunate that a civilised country just like India has not codified rights of the

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prisoners. However, it cannot be denied that Hon'ble judiciary has not forgotten them and recognised a long list of rights

of prisoners and all authorities have to follow these directions in the absence of legislation. But, practically, in absence of legislation these rights find place only on the paper with, hardly any prison's authority following them. There are some important differences between precedent and legislation. Legislative law is clear and available to everyone, but precedent law lies with various publications at different places and there is no clarity and availability of it in one uniform book. The precedent is more powerful law than legislation and binding on all the courts in India. It is felt that, all rights of the prisoners should be codified for the awareness in the State. Moreover, prisoners are not aware of these rights, or not aware of procedure thereof. V.R. Krishna Iyer (J) has rightly observed: "

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In our world prisons are still laboratories of torture, warehouses in which human commodities are sadistically kept and where spectrums of inmates range from drift-wood juveniles to heroic dissenters"

The concept of prison discipline has undergone a drastic change in the modem administration of criminal justice system. The trend shows a shift from the deterrent aspect to reformative and rehabilitative one. The recommendations of the Jails Committee of 1919-20 paved the way for the abolition of inhuman punishments for indiscipline. This resulted in the enforcement of

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the discipline in a positive manner. All India Jail Reform Committee 1980-83 has also

recommended various rights of prisoners and prison discipline. Thus, a gradual trend developed in the form of enforcement of discipline motivated and encouraged by inducements like remission of punishment due to good conduct, payment of wages for labour rendered, creation of facilities like canteen and granting

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the privilege of writing letters and allowing interviews with friends and relatives. It must be noted that most of these “benefits” are now recognised by judiciary as part of the basic rights

of the prisoners. Rights of Prisoners: It is established that

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conviction for a crime does not reduce the person into a non-person,

so he is entitled to all the rights, which are generally available to the non-prisoner. On the other hand, it cannot be denied that he is not entitled for any absolute right, which is available to a non-prisoner citizen but subject to some legal restrictions. The Supreme Court of United States as well as the Indian Supreme Court held that prisoner is a human being, a natural person and also a legal person. Being a prisoner, he does not cease to be a human being, natural person or legal person.

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Conviction for a crime does not reduce the person into a non-person, whose rights are subject to the whim of the prison administration and therefore, the imposition of any major punishment within the prison system is conditional upon the absence of procedural safeguards.

The
courts which send offenders into prison, have an onerous duty to ensure that during detention, detenues have freedom from torture and follow the words of William Black that “Prisons are built with stones of Law”. So, when human rights are harassed behind the bars, constitutional justice comes forward to uphold the law. a) Right to Fundamental Rights: 117
The Hon’ble Supreme Court held

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that imprisonment does not spell farewell to fundamental rights although by a realistic re-appraisal, courts will refuse to recognize the full panoply of Part-HI enjoyed by

the free citizens. Article 21

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read with Article 19 (1) (d) and (5), is capable of wider application than the imperial mischief which gave it birth and must draw its meaning from the evolving standards of decency and dignity that mark the progress of

the matured society. Fair procedure is the soul of Article 21.

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Reasonableness of the restriction is the essence of Article 19 (5) and sweeping discretion degenerating into arbitrary discrimination is anathema for Article 14. Constitutional karuna is thus injected into incarceratory strategy to produce prison justice.

Earlier, the Supreme

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Court held that conditions of detention cannot be extended to deprivation of fundamental rights.

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Prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement.

Moreover,

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the rights enjoyed by prisoners, under Articles 14, 19 and 21, though limited, are not static and will rise to human heights when challenging a situation arises.

Mr. Justice Dougals reiterated his thesis when he asserted: "

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Every prisoner's liberty is, of course, circumscribed by the very fact of his confinement, but his interest in the limited liberty left to him only the more substantial.

Conviction
of

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a crime does not render one a non- person whose rights are subject to the whim of the prison administration, and therefore, the imposition of any serious punishment within the prison system

requires procedural safeguards." Mr. Justice Marshall also expressed himself clearly and explicitly in the same

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terms: "I have previously stated my views that a prisoner does not shed his basic constitutional rights at the prison gate and I fully support the court's holding that the interest of inmate." b) Right to

Life and Personal Liberty: The Hon'ble Supreme Court has adopted annotation of Article 21 and expanded connotation of "life" given by Field J. that "

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life means more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye or the destruction, of any other organ of the body through which the soul communicates with the other world." Right to live is not restricted to mere animal existence. It means something more than just physical survival.

c) Right to live
with human dignity: In new dimension of Article 21, the Hon'ble Supreme Court held
that "

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right to live" does not mean mere confinement to physical existence but it includes within its ambit the right to live with human dignity.*

While expending this concept, the Hon'ble Supreme
Court held that the word 'life' includes that it goes along with; namely the bare necessaries of the

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life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

After some time, the Supreme Court extended
the concept of 'life'
and held that 'life' is not limited up to

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death but, when a person is executed with death penalty and doctor gave death certificate and dead body was not lowered for half an hour after the certificate of death, is violating of right to life under Article 21. The Supreme Court held that right to life is one of the basic human rights, guaranteed to every person by Article 21 and not even the State has authority to violate it. A prisoner

does not cease to be a

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human being even when lodged in jail; he continues to enjoy all his fundamental rights including the right to life.

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It is no more open to debate that convicts are not wholly denude of their fundamental rights. 118 However, a prisoner's liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is the more substantial

d) Right to health and medical treatment: The Hon'ble Supreme Court in series of cases held "

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right to health care" as an essential ingredient under Article 21 of the Constitution. Article 21 casts an obligation on the State to preserve life. A

doctor at the Government hospital positioned to meet this state obligation is, therefore, duty bound to extend medical assistance for preserving life. Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protection of life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, law of procedure whether in statutes

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or otherwise which should interfere therefore with the discharge his obligation cannot be sustained and must therefore give way. Denial of the Government's hospital to an injured person

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on the grounds of non-availability of bed amounts to violation of 'right to life' under Article 21. Article 21 imposes an obligation on the State to provide medical assistance to injured person. Preservation of human life is of

paramount importance. The right to medical treatment is the basic human right. The Gujarat High Court directed the jail authorities to take proper care of ailing convicts. The petitioners convicted in the Central Prison, Vadodara suffering from serious ailments were deprived of proper and immediate medical treatment for want of jail escorts required to carry

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them to hospital. The Gujarat High Court expressed shock and called I.G. Prison and Addl. Chief Secretary and they both acted

with promptness and issued with necessary directions in this regard and held that negligent Officers were to

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be held personally liable. In 2005, same High Court issued directions to State Government, that all Central and District jails should be equipped with ICCU, pathology lab, expert doctors, sufficient staff including nurses and

latest instruments for medical treatment in a suo mo to writ.

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Delhi High Court held that where the Unit has obtained an interim order directing the Union of India to continue providing anti-retroviral treatment to the petitioner who

was provided the same in Tihar jail and has since been released

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on bail. e) Right to Speedy Trial: The Supreme Court held that right to speedy trial is

a part of the fundamental right envisaged under Article 21 of the Constitution. Delay in disposal of cases is denial of justice, so the court is expected to adopt necessary steps for expeditious trial and quick disposal of cases. The Hon'ble

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Supreme Court has laid down detailed guidelines for speedy trial of an accused in a criminal case, but it declined to fix any time limit for trial of offences. The burden lies on the prosecution to justify and explain the delay. The court held that the right to speedy trial flowing from Article 21, is available to accused at all

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stages, namely, the stage of investigation, inquiry, trial, appeal, revision and re-trial.

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The court further said that the accused cannot be denied the right of speedy trial merely on the ground that he had failed to demand a speedy trial.

The time limit has to be decided by balancing the attendant circumstances and relevant factors, including

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the nature of offence, number of accused and witness, the workload of the court, etc. The court comes to conclusion in the interest of natural justice that when the right to speedy trial of an accused has been infringed the charges of the conviction shall be quashed.

In case of Rajdev Sharma, the accused was not found responsible for the delay in disposal of the criminal case and proceeding having endlessly delayed. After 13 years not a single witness had been examined after framing the charges. In such circumstances attitude of the investigating agency was absolutely callous. The court held that prolonged trial because of the fault of prosecution is a sufficient ground to set aside the trial. 119

Justice Hasan through Patna High Court in a minority judgement, expressed the opinion that a day may come sooner or later when the period of less than ten years also will be treated as unjustified delay and it will be brought down to two years and it will be only then that the interest of justice will be served. He also hoped that courts everywhere and at all levels will be conscious of the right of the

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indicted person to get speedy disposal of his indictment and consequently the hardship that

delay beyond the control of the accused causes. f) Over 21000 undertrial prisoners released from Jails: It was noticed by Joint Selection Committee that in many cases the accused persons were kept in prisons for a very long period as undertrial prisoners and in some cases the period spent in jail by undertrial prisoners far exceeded the sentence of imprisonment ultimately awarded. So, large numbers of prisoners, in the overcrowded jails of the country, were undertrial prisoners. In the landmark and eye-opener judgement the Hon'ble Supreme Court has held that if the Government fails to conduct a trial within reasonable time, it violates the guarantee of the life and personal liberty enshrined in Article 21. A PEL was filed in the form of habeas corpus writ in the interest

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of undertrial prisoners, who were languishing in jails in the State of Bihar for years awaiting their trial. The Supreme Court held that "right to speedy trial'

is a fundamental right implicit and

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guarantee of "life and personal liberty" enshrined in Article 21 of the Constitution. Speedy trial is an essence of criminal justice.

Justice

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Bhagwati held that unlike the American Constitution speedy trial is not specially enumerated as a fundamental right,

but

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it is implicit in the broad sweep and content of Article 21 as interpreted in Maneka Gandhi's case. No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair

and just.21
The court ordered to conduct survey, which found that 21,000 undertrial prisoners were languishing in the prisons, who had spent the period of the maximum period of their alleged offence, under which they were accused.

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For this reason, the court ordered the Bihar Government to release undertrial prisoners on their personal

bond. By virtue of this order 18,000 undertrial prisoners were released solely from the State of Bihar in 1981. g) Over 600 prisoners released from Tihar: Against strength of at what time 6500 inmates, over 13000 prisoners are languished in Tihar Jail. 623 prisoners were released on bail from Tihar Jail on the direction of Delhi High Court, including four women. They were facing charges of minor offences like breach of peace and many were under preventive arrest. Such direction came from court in a bid to decongest the jail, as it had seen eight deaths, including that of a prison official, within ten days. The court passed such direction after going through the report of a three-member committee appointed by it which pointed out those recent deaths in the jail happened due to overcrowding and lack of proper facilities. The jail authority claimed that all the deaths were natural due to excessive heat conditions. h) Acquitted or discharged of undertrial suffered more term: The undertrial prisoners, who are accused of multiple offences and who have already been in the jails for the maximum term for which they be sentenced on conviction, even if the sentence awarded to them were consecutive and not non convention, should not be allowed to continue to remain in jail for a movement longer, since such continuance of detention would be clearly violative of not only of human dignity but also of their fundamental rights under Article 21 of the Constitution. The Hon'ble Supreme Court issued the directions while dealing with the problems of undertrial prisoner and said that all the undertrial prisoners, who have been in remanded for offences other than the offences under any of the Act, including the offence under IPC, shall be released discharged or acquitted forthwith, if they have been in jail

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for periods longer than the maximum term for which they could have been sentenced if convicted. 120

i) Governments are
directed to prevent unreasonable delay: The Supreme Court directed the Centre and all State Governments to prevent unreasonable delay in disposal of criminal cases. In order to make the administration of criminal justice effective, vibrant and meaningful, the Union of India, the State Governments and all authorities must take necessary steps immediately so that the constitutional right of the accused to speedy trial does not remain only on paper. While it is incumbent on the court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and accused persons are not indefinitely harassed. The constitutional guarantee of speedy trial is an important safeguard to prevent undue

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and oppressive incarceration prior to trial; to minimise anxiety and concern accompanying public accusation and to limit the possibilities that long delays will impair the ability of an accused to defend himself.

It is the bounden duty of the court and the prosecution to prevent unreasonable delay. The apex court in a number of cases reiterated that speedy trial was one of the facets

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of the fundamental right to life and liberty enshrined in Article 21

and the law must ensure reasonable, just and fair procedure. "

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No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or just and it would fall foul of Article 21.

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The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality can be averted. In

the instant case, not a single witness had been examined by the prosecution in the last 26 years without there being any lapse on the part of the appellant officer. Permitting the state to continue with the prosecution and trial any further would be a total abuse of the process of law. d) Right to Free Legal Aid: A substantial part of the prison population in the country consists of undertrials and those inmates whose trials have yet to commence. Thus, access to court and legal facilities is essential for giving a free and fair trial to these inmates, which is the mandate of Article 21 of the Constitution. The Supreme Court condemns the fact that Session Judges were not appointing counsel for the poor accused in grave cases. The defence should never be refused legal aid of competent counsel. This implies that true and legal papers should be made available to defendant along with the service of counsel.

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The Supreme Court held that a free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty.

In another case it was held

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that the right to free legal service is clearly an essential ingredient of reasonable, just and fair procedure for a person accused of an offence and it is implicit in the guarantee of Article 21. The

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State Government cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability.

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The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the State.

Moreover, this

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constitutional obligation to provide free legal services to an indigent accused does not arise only when trial commences but also attaches when

the accused

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is for the first time produced before the Magistrate. That is the stage at which an accused person needs competent legal advice and representation

and no procedure can be said to be just, fair and reasonable which denies legal advice and representation to him at this stage. To fulfil the requirement of the free legal aid, the Supreme Court has extended this right and directed the Government to provide financial aid also to the affiliated law colleges as the Government is providing to the medical and engineering colleges. 121
The duty of the Magistrate and Government were pointed out by the Supreme Court, where blind prisoners were not produced before Magistrates subsequent to their first production and they continued to remain in jail without any remand order is plainly contrary to law. The Supreme Court also directed the State of Bihar and required every other State in the country to make provision for grant of free legal services to an

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accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or

in communicate situation. The only qualification would be that the offence charged against the accused is such that on conviction, it would result in a sentence of imprisonment

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and is of such a nature that the circumstances of the case and the need of the social justice require that he should be

given a free legal representative. There may be cases involving offences such as economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal services need not be provided by the State. The Supreme Court
held
that

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the Magistrate or Session Judge, before whom the accused appears, is under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty

or indigence,

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he is entitled to obtain free legal services at the cost of the State.

Necessary directions and guidelines were issued to Magistrates, Sessions Judges and the State Government in this regard. The Supreme Court while considering the prisoner's right to have a lawyer and reasonable access to him without undue interference from the prison staff, held that

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the right of a detenue to consult a legal advisor of his choice for any purpose is not limited to criminal proceeding but also for securing release from preventive detention

or for filing a writ petition or for prosecuting any civil or criminal proceeding. A prison regulation cannot prescribe any unreasonable and arbitrary procedure to regulate the interviews between the detenue and the legal advisor. ?

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Free legal aid is the state's duty and not government charity:

Regarding the right of free legal aid,

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Justice Krishna Iyer declared that "this is the State's duty and not Government's charity".

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If, a prisoner is unable to exercise his constitutional and statutory right of appeal including Special Leave to Appeal for want of legal assistance,

the court will grant such right to him under Article 142, read with Articles 21 and 39A of the Constitution. The power to assign counsel to the prisoner provided that he does not object to the lawyer named by the court. On the other hand, on implication of it he said that the State which sets the law in motion must pay the lawyer an amount fixed by the court. The Hon'ble Supreme Court has taken one more step forward in this regard and held that failure to provide free legal aid to an accused at the State cost, unless refused by the accused, would vitiate the trial. It is not necessary that the accused has to apply for the same. The Magistrate is under an obligation to inform the accused of this right and enquire that he wishes to be represented on the State's cost, unless he refused to take advantage of it. ? To receive copy of the judgement at free of cost: The accused is entitled to be supplied a copy of the judgement of the convicting court. The failure to provide the copy would be violative of Article 21 of the Constitution. In the case of M.H. Haskot the petitioner sought to appeal against the order of the High Court, but he did not receive a copy of the judgment for about three years from the prison authorities. The court found this to be violative of his rights under Articles 21, 22 read with Articles 3 9-A and 42 of the Constitution. The court laid down the following principles in this regard: (1)

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Courts shall forthwith furnish a free transcript of the judgement when sentencing a person to

a

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prison term. (2) In the event of any such copy being sent to

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jail authorities for delivery to the prisoner by the appellate, revisional or other court, the official concerned shall with quick dispatch get it delivered to the sentenced person and obtained an acknowledgement thereof from him. 122 (3) Where the prisoner seeks to file an appeal or revision, every facility for

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exercise of that right shall be made available by the jail administration. (4) Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so require, assign a competent counsel for the prisoner's defence, provided the party does not object to that lawyer. (5) The State which prosecuted the person and set in motion the process which deprived him of his liberty shall pay to assigned counsel such sum as the court may equitably fix".

e)

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Protection against instruments of restraint: Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances: ? As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority; ? On medical grounds by direction of the medical officer; ? By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary. ? Handcuffing of undertrial prisoner is unconstitutional: The Hon'ble

Justice Krishna Iyer, while delivering
the majority judgement held that the provisions of Punjab Police

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Rules, that every undertrial who was accused on non-bailable offence punishable with more than three years jail term would be handcuffed,

were violative of Articles 14, 19 and 21 of the Constitution of India. Hence, they were held

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unconstitutional.37 The Hon'ble Supreme Court again held, where an undertrial prisoner challenged the action of Superintendent of jail putting him into bar fetters and kept him in solitary confinement was an unusual and against the spirit of Constitution and declared it a violation of right of locomotion. ?

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No need of handcuffing, while escorting the voluntary surrendered person: In case of Sunil Gupta the petitioners were educated social workers. They were handcuffed and taken to the court from the jail and back from court to the prison by escort party. They had voluntarily submitted themselves for arrest from "dharana". They had no tendency to escape from the jail. In fact, they even refused to bail but chose to continue in prison for the public cause. It was held that this act of the escort party was violative of the Article 21 of the Constitution. There was reason recorded by the escort party in writing for this inhuman act. The court directed the Government to take appropriate action against the erring escort party for having unjustly and unreasonably handcuffing the petitioner. ? Undertrial prisoner cannot be kept in "leg irons": It was held by the Supreme Court in the case of Kadra Pehadiya that, it was difficult to see how the four petitioners who were merely undertrial prisoners awaiting trial could be kept in leg irons contrary to all prison's regulations and in gross violation of the decision of this court in Sunil Batra's case. The court directed the Superintendent to immediately remove leg irons from the feet of the four petitioners. The 123 court also directed that no convict or undertrial prisoner shall be kept in leg irons except in accordance with the ratio of the decision of Sunil Batra's case. Later on the Supreme Court declared, directed and laid down a rule that handcuffs or other fetters shall not be forced on a prisoner, convict or undertrial, lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back, the police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmates of a jail in the country or while transporting from one jail to another or from jail to court and back. While intending to enforce the order, the court emphasised that if any violation of any of the direction issued by Supreme Court by any rank of the police in the country of member of the jail

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establishment shall be summarily punished under the Contempt of Court Act apart from other penal consequences under law.

f) Protection of custodial
torture and mal-treatment in prisons: The right to life and personal liberty may be curtailed to a certain extent when a person is sent to imprisonment, but it is not absolutely taken away. Thus, the person imprisoned is the possessor of other fundamental rights and the residual part of Article 21 as well. The State does not give a right to take away the life or its important facets to the officers enforcing the law. If the life of an offender has been taken away, without the procedure established by the law, it would definitely amount to violation of Article 21 of the Constitution. Similarly, the life of an offender cannot be jeopardized by indulging in illegal physical torture

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by the jail authorities. The Supreme Court on a complaint of custodial violence to women prisoners in jail directed that those helpless victims of prison injustice should be provided legal assistance at the State's cost and protected against torture and maltreatment. As earlier, the court held that prisoners cannot be thrown at the mercy of policemen as if it were a part of an unwritten law of crime. The Supreme Court was not happy with the attitude of prison authority and suggested that the prison authorities should change their attitudes towards prisoners and protect their human rights for the sake of humanity. The Article 5 of the UDHR, states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". There are words that crop up again. They mean severe beatings on the body and the soles of the feet with rubber hoses and truncheons, electronic shocks being run through the genitals and tongue, near-downing, hanging arms and legs, cigarette bums over the body, sleep deprivation or subjection to a high pitched noise and much more.

These words repeated all through Amnesty's leaflets and news settlers in the organisations mandate, in urgent action appeals and in letter members write - "cruel inhuman or degrading treatment or punishment". Amnesty knows that

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two out of three people on earth live in country where torture occurs. "Torture is fundamental violation of human rights", ".....

an offence to human dignity and prohibited under national and international law". Amnesty described torture as "an epidemic that seemed to spread like a cancer". In the 1970s and in the 1980s torture was reported from more than 90 countries. One point amnesty tries hard to bring home to people is that torture, is not something that only happens in

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third world countries. Certain regions do have a notorious history of abusing human rights but many countries

carry out cruel, inhuman and degrading treatment of their citizen - even in some of the most "Enlighted" countries like France, Italy and Britain where Police ill treatment is known to occur. In October 1983, Amnesty put together a twelve

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point plan for the prevention of torture. It told Governments, how they could take steps to prevent the torture of prisoners. For example, the highest authorities of a country can make statement telling the law enforcer that torture will not be tolerated. Amnesty called for an end to secret detention and the use of statements extracted under torture. It asked Governments to make torture illegal and to prosecute those found guilty of it. It suggested that places where prisoners are held be visited and examined regularly so that the public knows what goes on. 124

The Hon'ble Supreme Court has observed that "

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right to life is one of the basic human rights. Even when lodged in jail, he continues to enjoy all his fundamental rights including the right to life guaranteed to him under the Constitution.

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On being convicted of crime and deprived of their liberty in accordance with the procedure established by law,

prisoners shall retain the residue of the constitutional rights. This right continues to be available to prisoners and those rights

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cannot be defeated by pleading the old and archaic defence of immunity in respect of sovereign acts which have been rejected several times by the Supreme Court". State is liable for the death of undertrial who continues to enjoy all fundamental rights including right to life. Again, it was observed by the Supreme Court that "custodial violence, torture and abuse of police powers are not peculiar to this country, but it is widespread. It has been the concern of the International Community because the problem is universal, and the challenge is almost global. The courts are also required to have a change in their outlook, approach, appreciation, and attitude, particularly in cases involving custodial crimes so that as far as possible within their powers, the truth is found and the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed." The Hon'ble Supreme Court had passed an order for producing a prisoner before it. It was alleged that while the prisoner was being taken to the court, he was manhandled severely by the escort police. After an enquiry, the court expressed the hope the basic pathology which makes police cruelty possible will receive Government's serious attention and the roots of the third degree would be plucked out or otherwise Article 21, with its profound concern for life and limb, will become dysfunctional useless the agencies of the law in the police and prison establishments have sympathy for the humanist creed of that Article.49 Where the petition under Article 32 was filed by undertrials for enforcement of their fundamental right under Article 21 on the allegation that they were blinded by the police officer either at the time of their arrest or after their arrest, whilst in police custody, production of the report submitted by the police officer to the State Government and correspondence exchanged by police officers or noting on files made by them in enquiry order by the State Government into alleged offence.

g) Right to bail during the pendency of appeal: The Hon'ble Supreme Court held that "refusal to grant bail" in a murder case

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without reasonable ground would amount to deprivation of personal liberty under Article 21. In this case six appellants were convicted by the Session Judge in a murder case

and High Court in appeal also convicted the appellants and sentenced them to life imprisonment. The appellants suffered sentence of 20 months. These

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appellants were male members of their family and all of them were in jail. As such their defence was likely to be

jeopardized. In the instance case,

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any conduct on their part suggestive of disturbing the peace of the locality, threatening anyone in the village or otherwise thwarting the life of the community or the course of justice,

had not been shown on the part of these appellants, while they were on bail for a long period of five years during the pendency of appeal before High Court. The appellants applied for bail during pendency of their appeal before the Supreme Court, while granting the bail, the court held that refusal to grant bail amounts to deprivation of personal liberty of the accused persons. Personal liberty of an accused or convict is fundamental right and can be taken away only in accordance with procedure established by law. So,

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deprivation of personal liberty must be founded on the most serious consideration relevant to the welfare objectives of

the society specified in the Constitution. In the circumstances of the case, the court held that subject to certain safeguards, the appellants were entitled to be released on bail. All the undertrial prisoners, who have been in remand for offences other than the specific offences under the various Acts, who have been in jail for period of

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not less than one half of the maximum period of 125 punishment prescribed for the offence

shall be released on bail forthwith in accordance with the direction of the Supreme Court. Andhra Pradesh High Court directed that all the criminal courts including the Sessions Courts, shall try the offences where the undertrial prisoners cannot be released, on the priority basis by following the provisions of section 309 of the Code. All the undertrial prisoners have been in jails for maximum term of which they could be sentenced on conviction, shall be released on bail on furnishing a personal bond of an appropriate amount. For the purpose of above directions for release on bail, all the criminal courts on the next date fixed for extension of remand or otherwise shall sou motu on the authority of this order shall consider the bail cases and grant bail to the undertrial prisoners on furnishing personal bond for appropriate amount and/or the appropriate sureties as necessary. All the mentally challenged / mentally retarded undertrial prisoners, who have been under detention for 18 years, 15 years and 6 years, shall be dealt with in accordance with the provisions of Chapter XXV of the Code. If, the Medical Officer of the State Government certifies that the undertrial prisoner is not mentally healthy, all such undertrial prisoners who completed maximum sentence period shall be released forthwith; and all such persons of unsound mind shall forthwith be shifted to any government institute of mental health pending necessary order from the competent criminal court for release of such persons. Further, the court emphasised that the direction issued by the court in the order, shall be complied within a period of two weeks. The court also directed that all the district judges shall regularly visit the Central Jails, District Jails, and sub-jails in their jurisdiction and take appropriate action as per

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the provisions of the Code. h) Right to be released on due date: No doubt, it is absolute right; all the prisoners shall be released from prison on the completion of their sentence. It is the duty of the prison staff to notify the releasing date of every prisoner in the register to be maintained by Jailer. If, any formality is needed to be done for releasing purpose, should be completed before the releasing date. ? Detention undergone to be 'set-off' against final sentence: Section 428 of the Code, states for set-off of the period of detention of an accused as an undertrial prisoner against the term of imprisonment imposed on him on his conviction. It only provides for a 'set-off but does not equate an 'undertrial detention or the detention with imprisonment on conviction'. The provision as to set-off expresses a legislative policy; this does not mean that it does away with the difference in the two kinds of detention and puts things on the same footing for all purposes. The two requisites postulated in section 428 are: (a) During the stage of investigation, enquiry or trial of a particular case, the prisoner should have been in jail at least for a certain period; and (b) He should have been sentenced to a term of imprisonment in that case. If, the above said two conditions are satisfied, then the operative part of the provision comes into play, i.e., if the awarded sentence of imprisonment is longer than the period of detention undergone by him during the stages of investigation, enquiry, or trial, the convicted person needs to undergo only the balance period of imprisonment after deducting the earlier period from the total period of imprisonment awarded. The Hon'ble Supreme Court has interpreted the above provisions in a wider sense and held that period of detention undergone is to be set-off against the sentence of imprisonment.

Section 428

96% **MATCHING BLOCK 244/263** SA Dissertation- Rights of an Accused with refere ... (D51793588)

only provides for set-off but does not equate an undertrial detention, or

detention with imprisonment on 126
conviction. The

91% **MATCHING BLOCK 245/263** SA Dissertation- Rights of an Accused with refere ... (D51793588)

detention under preventive detention laws is essentially a precautionary measure intended to prevent and intercept a person before he commits an infra active act, which he had done earlier

and is not punitive. Therefore, it is impermissible to set-off, period of detention under COFEPOSA against sentence of imprisonment imposed on conviction under Customs Act, in terms

99% **MATCHING BLOCK 246/263** SA Dissertation- Rights of an Accused with refere ... (D51793588)

of section 428. It is a settled legal position that detention under the preventive detention laws is not punitive but is essentially a precautionary measure intended to prevent and intercept a person before he commits an infra active act which he had done earlier. (i) Delay in release from jail amounts to 'illegal detention': The Hon'ble Supreme Court held that a person was acquitted by the court but was not released by the jail authority for 14 years of his precious life. The Supreme Court was first shocked by the sordid and disturbing State of affairs disclosed by the writ petition for habeas corpus filed by the petitioner for the release of a person for the unlawful detention, who was already acquitted by the court more than 14 years ago. Accordingly the petitioner also asked for compensation of illegal incarceration in which the detenue had lost his precious 14 years of life behind the bars even though he was acquitted by court. The Supreme Court held the following principles in its judgement- (1) The monetary compensation for violation of fundamental rights to life and personal liberty can be determined; and (2) If infringements of fundamental rights cannot be corrected by any other methods open to judiciary, then right to compensation is opened. The Supreme Court granted interim relief amounting to Rs. 35,000 to petitioner and also right to file regular suit in the ordinary court to recover damages from the State and its erring officials for taking away his precious 14 years of independent life which could never come back. The court has directed the subordinate court to hear the case on merit basis.56 Please remember that this petition was a habeas corpus writ where the remedy is only to release the illegal detenue and not to punish the offender. The Supreme Court has opened the remedy in the monetary form where there is no other way to correct it on the violation of fundamental right. We must not assess that the Supreme Court has given only Rs. 35000 as compensation for the darkest 14 years of the illegal detention but as it was habeas corpus writ and Supreme Court is also bound with the law. Here the Hon'ble Supreme Court has restrained itself from crossing the constitutional provisions. ? Power of High Court to release prisoners after pardon : Any High Court may, in any case in which it has recommended to Government the granting of a free pardon to any prisoner, permit him to be at liberty on his own recognizance. i) Right to Education: 5. Right to

higher education: The Hon'ble Supreme Court directed the State Government to see within the framework of the Jail Rules, that the appellant is assigned work not of a monotonous, mechanical, intellectual or like type mixed a title manual labour..." and said that

78% MATCHING BLOCK 247/263 SA Shalvin Sharma Dissertation MATS University.pdf (D139107050)

the facilities of liaison through correspondence course should be extended to inmates who are desirous of taking up advanced studies and

woman prisoners should be provided training in tailoring, doll-making and embroidery. The prisoners who are well educated should be engaged in some mental-cum-manual productive work. In an interim order dated 21st February 2005, the Gujarat High Court allowed an undertrial to appear in the board examination commencing from 14 April, 2005 and passed a mandatory interim order directing the Gujarat Higher Secondary Education Board (GSEB) to accept Gandhi's form, even if it was late by 9 days and issue a provisional seat number. One of the accused Mitesh Gandhi (accused of murder) filed an application before the High Court pleading that he should be allowed to appear in the class XII 127
(Commerce) examination, while he was refused bail. It was submitted in the court that nine days delay on the part of the applicant in filling up of form was because he could not get proper information in the jail about the schedule. Rejection of the form amounted to violation of inmate's fundamental right. Undertrial prisoner Hitesh Gandhi (20 years) was given temporary bail by Hon'ble High Court to appear in HSC Exam begins on 14th March 2005. Again, in 2006, he was allowed to appear at the Exam. ? Right to receive Books and Magazines inside the Jail: The Superintendent of Nagpur Central Prison had arbitrarily fixed the number of books to be allowed to each prisoner at 12. The court held that under the Bombay Conditions of Detention Order, 1951 there was no restriction on the number of books and the only ground on which a book may be disallowed is that it was, in the opinion of the Superintendent, 'unsuitable'. The Superintendent could not fall back on any implied power to disallow the books. Of all the restraints on liberty, that no knowledge, learning and pursuit of happiness is the most irksome and least justifiable. Improvement of mind cannot be thwarted but for exceptional and just circumstances. It is well known that books of education and universal praise have been written in prison cells. The prison officials had refused to Mr. Khan certain journals and periodicals, even though the prisoner had offered to pay for them. It was refused on the ground that, they were not included in the officials' list. The court held that prisoners can be refused reading materials only if the newspapers are found 'unsuitable' by the authorities. In the present case prison authorities had supposedly found the journals 'unsuitable' because they 'preached violence' and criticized policies of the government in respect of Kashmir. Preventing prisoners from reading papers does not in any way relate to maintenance of discipline. Further, the court said that the word 'unsuitable' in clause 16 gave the State arbitrary and unregulated discretion as there were no guidelines for the exercise of power. Where a prisoner was prevented from receiving "Mao literature" by authorities, he challenged the same through the petition in Kerala High Court. The Kerala High Court held that no passage from these books could be shown, if read, to endanger security of the State or prejudice public order and so the books were allowed. The court held that there was no ground to prevent Kunnikal from obtaining these books.

37% MATCHING BLOCK 248/263 SA Akrita Kaur dissertation on Prison Reforms- Wi ... (D123339977)

Article 19 (i) (a) includes the freedom to acquire knowledge, to pursue books and read any types of literature subject only to certain restrictions for maintaining the security of State and pubic order. ? Right to

publication: Where a scientific book was not allowed to be published by the prison authorities, the Hon'ble Supreme Court held that there was

80% MATCHING BLOCK 249/263 SA Khajit Thukral Final File (1).docx (D142653446)

nothing in the Bombay Detention Order, 1951 prohibiting a detenue from writing or publishing a book.

The court further observed that the book being a scientific work 'Inside the Atom' could not in any case

71% MATCHING BLOCK 250/263 SA Akrita Kaur dissertation on Prison Reforms- Wi ... (D123339977)

be detrimental to public interest or safety as envisaged under the Defence of India Rules, 1962.

The person detained under

65% MATCHING BLOCK 251/263 SA Akrita Kaur dissertation on Prison Reforms- Wi ... (D123339977)

Preventive Detention Act was not permitted to hand over his written work to his wife for

publication, is violative of Article 21 of Constitution of India. In another case, the Hon'ble Supreme Court held that to deny the permission of publication of autobiography of Auto Shanker under the fear of defamation of IAS, IPS and its officials have no authority in law to impose prior restraint on publication of defamatory matter. The public official can take action only after the publication of it is found to be false. j)

100%	MATCHING BLOCK 253/263	SA	Dissertation- Rights of an Accused with refere ... (D51793588)

Right to reasonable wages for work: For the first time in 1977, the Hon'ble Supreme Court held that the unpaid work is bonded labour and humiliating. The court

expressed its displeasure on this issue. Surprisingly, even after two decades in spite of, all discussions regarding correction and rehabilitation in the country, the A.P Government has yet to 128
frame rules for the payment of wage to the prisoners. It was held that some wages must be paid as remuneration to the prisoner; such rate should be reasonable and not trivial at any cost.

98%	MATCHING BLOCK 254/263	SA	Dissertation- Rights of an Accused with refere ... (D51793588)

The court held that when prisoners are made to work, a small amount by way of wages could be paid and should be paid so that the healing effect on their mind is fully felt. Moreover, proper utilisation of service of prisoners in some meaningful employment, whether a cultivator or as craftsmen or even in creative labour will be good from society's angle, as it would not be the burden on the public exchequer and the tension within.

In fact, the question relating to wages of prisoner was explained by Kerala High Court in 1983, which seems to have taken the lead by the division bench. It was suggested that wages given to the prisoners must be at par with the wages fixed under the Minimum Wages Act and the request to deduct the cost for providing food and clothes to the prisoners from such wages was spumed down. On the notice of court, the Government has fixed the rate of wages as 50 paise and maximum of Rs. 1.26. The court has rejected their fixation of wages for prisoner and directed the State Government to design a just and reasonable wage structure for the inmates, who are employed to do labour, and in the meanwhile to pay the prisoners at the rate of Rs.8/- per day until Government is able to decide the appropriate wages to be paid to such prisoners. In the same year, the Hon'ble Supreme Court has held that

55%	MATCHING BLOCK 252/263	W

labour taken from prisoners without paying proper remuneration was "forced labour" and violative of Article 23 of the Constitution. The

prisoners are entitled to payment of reasonable wages for the work taken from them and the court is under duty to enforce their claim. The Court went one step ahead and said that there are three kinds of payment - 'fair wages', 'living wages' and 'reasonable wages'. The prisoners must be paid reasonable wages, which actually exceeded minimum wages. The Hon'ble Supreme Court held that no prisoner can be asked to do labour without wages. It is not only the legal right o f a workman to have wages for the work, but it is a social imperative and an ethical compulsion. Extracting somebody's work without giving him anything in return is only reminiscent of the period of slavery and the system of beggar.

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Like any other workman a prisoner is also entitled to wages for his work.

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It is imperative that the prisoners should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to prisoners the State concerned shall constitute a wage fixation body for making recommendations.

The
Court also directed that each State to do so as early as possible.

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Until the State Government takes any decision on such recommendations every prisoner must be paid wages for the work done by him at such rates or revised rates as the Government concerned fixed in the light of the observations made above.

The Court also directed all the State Governments to fix the rate of such interim wages within six weeks from the date of decision and report to this court of compliance of the direction. In the same case Thomas J said that equitable wages payable to the prisoners can be worked out after deducting the expenses incurred by the Government on food, clothing and other amenities provided to the prisoners from the minimum wages fixed under Minimum Wages Act, 1948. Wadwa J in the same case, held that the prisoner is not entitled to minimum wages fixed under Minimum Wages Act, 1948, but there has to be some, rational basis on which wages are to be paid to the prisoners.

94% MATCHING BLOCK 258/263 SA Dissertation- Rights of an Accused with refere ... (D51793588)

More recently, MP High Court held that, if the twin objectives of rehabilitation of prisoners and compensation to victims are to be achieved, out of the earnings of the prisoners in the jail, then the income of the prisoner has to be equitable and reasonable and cannot be so meager that it can neither take care of rehabilitation of prisoner nor provide for compensation to the victim. k) Special rights to women prisoners: ? Right to female guard for female security: The Hon'ble Supreme Court has given detailed instructions to the concerned authority for providing security and safety in police lock-up and particularly woman suspects. Female suspects should be kept in a 129 separate lock-up and not in the same in which male accused are detained and should be guarded by female constables. And also directed the IG Prison and State Boards of Legal Aid Advice Committee to provide legal assistance to the poor and indigent accused (male or female) whether they are undertrial or convicted prisoners.

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Rights to pregnant prisoners: The Hon'ble Supreme Court directed that before sending a pregnant woman to a jail, the concern authorities must ensure that jail in question has the basic minimum facilities for delivery of child as well as for providing pre-natal and post-natal care for both, the mother and the child. As far as possible and provided the woman prisoner has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases causality constituting high security risk or cases of equivalent grave descriptions can be denied this facility. o Rights to mother prisoners: The Hon'ble Supreme Court held that female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years, the child shall be handed over to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child

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shall not be transferred to an institution outside the town or city where the prison is located in order to minimize undue hardships on both mother and child due to the physical distance. Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet the mother at least once in a week.

l) Rights to child of women prisoners: Although educational programmes are reported to be running for children in some jails, they have not been able to fulfil the requirements of children from different age-groups. By way of recreational facilities, only playgrounds were available in jails. Since the playgrounds can be utilised by only grownup children, there is clearly a need to provide different types of recreational programmes, which can cater to the recreational needs of children of different age-groups. The mother prisoners have mixed perceptions regarding the health care, educational, recreational and other programmes for their children. While most of them expressed their unhappiness regarding health care, recreational and other facilities (religious) for the children, they were generally satisfied with the educational programmes. Despite their dissatisfaction in certain areas, most mother prisoners are inclined to believe that these programmes are beneficial to their children. The Hon'ble Supreme Court has issued directions, for the development of the children languishing in jail with their undertrial prisoner or convicted mothers. These children are languishing for none of their fault, but per force, have to stay in jail with their mothers; due to tender age or no one is available at home, in their absence to take care of them. m)

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Right to security of life inside the jail: It is the duty of the State to provide security to prisoners. If it fails and any incident takes place in jail, then the Government has to pay compensation to the dependents of the deceased person.

j) Prisoner killed by the co-accused, entitled for compensation: The Supreme Court in the case of Smt. Kewal Pati , directed the State of UP to deposit a sum of Rs. 1,00,000 within three months, with the Registrar of this Court. A sum of Rs. 50,000 out of this amount 130
shall be deposited in fixed deposit in any nationalised bank and the interest of it shall be paid to the wife and the children of the deceased. The remaining amount shall be paid to the wife by the Registrar after being satisfied about the identification of the petitioner. The amount in deposit shall be paid to the wife on her option after all the children become major. In case of petitioner's death prior to the children becoming major, the amount shall be divided equally between the surviving children. In this case a petition was filed by the wife and children of Ramjit Upadhaya, who was killed by a co-accused in the Central Jail, Varanasi. The Government claimed that there were no provisions in the UP Jail Manual for grant of compensation to the family of the deceased convict. Even though Ramjit Upadhaya was a convict and was serving his sentence, yet the authorities were not absolved of their responsibility to ensure his life and safety in the jail. A prisoner does not cease to have his constitutional right to life except to the extent he has been deprived of it in accordance with law. Therefore, he was entitled to protection. Since the killing took place when he was in jail, it resulted in deprivation of his life contrary to law. He is survived by his wife and three children. His untimely death has deprived the petitioner and her children of his company and affection. Since it has taken place while he was serving his sentence, due to failure of the authorities to protect him, the court was of the opinion that they are entitled to be compensated. ? Murder by co-accused in Sabarmati Central Jail, Ahmedabad: Chetan Patel, alias "Battery" inmate in Ahmedabad Central Jail, was murdered on 7th Aug, 2005, allegedly for refusing to pay "protection money" to strongmen inside the central jail. The State authorities conceded that though the top-security jail had earlier witnessed cases of organised violence between rival groups, the prison officials had failed to take corrective measures in time. Three jailers were suspended, pending an official inquiry into Patel's death. A rival group had attacked Patel with knives and two people were injured when they rushed to protect him. While Patel succumbed to the injuries, the other two were recuperating. The five accused were identified and investigation is on. The probe would also focus on the smuggling of weapons like knives into jail. The use of mobile phones by some of the inmates, as was found in an official checking earlier, would also be investigated. Another case of murder also was reported from the same jail in 2006. In 2007, it was reported that ten inmates were murdered inside highly secured Tihar Jail within a short time, worried the court, and compelled it to release more than 600 undertrial prisoners on bail. In such cases,

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it is the duty of the State to give reasonable compensation to the

kin of deceased irrespective of being him a prisoner, undertrial prisoner or detenue, without interfering of judiciary. ? Prison staff made prisoners blind: Everyone is aware about the incident of Bhagalpur, where many undertrial prisoners were made blind by putting acid into their eyes and moreover this act was done by the prison staff This sordid act of prison staff shows how unsecured inmates are from the prison staff in this country. G. Prison is taken over by prisoners: In Chhapra (Bihar), the jail was overtaken by the prisoners themselves. This shows not only omission by the prison staff but also indicates involvement in such a sordid act. In another case, Jahanabad Jail (Bihar) was attacked by around 1000 persons in the month of November 2005. In the same year, Raigiri-Udaigiri Jail of Orissa also was attacked by Naxalities. Further Readings: ? Bava, Noorjahan, (ed), (2000), Human rights

100% MATCHING BLOCK 262/263 W

and Criminal Justice Administration in India, Uppal Publishing House, New Delhi:, 131 ?

Vibhute Baxi, Upendra, (1988), Clemency, Extradition and Death: The Judicial Discourse in Keher Singh, Journal of Indian Law, Vol. 30, and No. 4. ? Bhagwati, P.N.,(1985,) Human Rights in the Criminal Justice System, Journal of Indian Law Institute, Vol. 27, No. 1. ? Arora, Nirman, (1999), Custodial Torture in Police Stations in India: A Radical Assessment, Journal of Indian Law Institute, Vol. 41, Nos 3 and 4. ? Vibhute, K.I, (1990), Compensating Victims of Crimes in Indian Society, Delhi Shubhi ? Ghosh, S.K., (1993), Torture and Rape in Police Custody, New Delhi: Asish Publishing House. ? Guttal, G.H, (1986), Human Right: The Indian Law, Indian Journal of International Law, vol. 26. ? Vada Kumchery, James, (1991), The Police and Delinquency in India, New Delhi: APH Publishing Corporation. 132

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1/263	SUBMITTED TEXT	48 WORDS	79%	MATCHING TEXT	48 WORDS

The concept of crime involves the idea of a public as opposed to a private wrong with the consequent intervention between the criminal and injured party by an agency representing the community as whole. Crime is thus the international commission of an act deemed socially harmful; or dangerous and

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2/263	SUBMITTED TEXT	11 WORDS	100%	MATCHING TEXT	11 WORDS

dangerous and specifically defined, prohibited, and punishable under the criminal law. 22.

SA NEELAM Dissertation.docx (D27172470)

3/263	SUBMITTED TEXT	23 WORDS	87%	MATCHING TEXT	23 WORDS

which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant".

which a police officer may, in accordance with the First Schedule of the Code of Criminal or under any other law for the time being in force, arrest without warrant. 473

W http://docshare01.docshare.tips/files/21553/215538909.pdf

4/263	SUBMITTED TEXT	16 WORDS	61%	MATCHING TEXT	16 WORDS

non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant"

Non-cognizable crime is a crime in respect of which a police officer has no right to arrest without warrant.

W https://ijcrt.org/papers/IJCRT2110108.pdf

5/263	SUBMITTED TEXT	67 WORDS	73%	MATCHING TEXT	67 WORDS

proceeding to the spot; ascertaining facts and circumstances; discovery and arrest of the suspected offender; collection of evidence relating to the commission of offence, which may consist of the examination of various persons including the accused and taking of their statements in writing and the search of places or seizure of things considered necessary for the investigation and to be produced at the trial; formation of opinion as to whether

proceeding to the spot; ascertainment of the facts and circumstances of the case; discovery and arrest of the suspected offender; collection of the evidence relating to the commission of the offence which may consist of examination of various persons including the accused and recording of their statements if the Investigating Officer thinks it necessary and search of places, seizure of things considered necessary for the investigation and to be produced at the time of trial; and formation of opinion as to whether

W http://egyankosh.ac.in/bitstream/123456789/52040/1/Block-2.pdf

6/263	SUBMITTED TEXT	34 WORDS	100%	MATCHING TEXT	34 WORDS

Criminal Justice System The criminal justice system is the set of agencies and processes established by government to control crime and impose penalties on those who violate laws. There is no single criminal justice system

SA NEELAM Dissertation.docx (D27172470)

7/263	SUBMITTED TEXT	24 WORDS	69%	MATCHING TEXT	24 WORDS

Warrant-case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years; A warrant case

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8/263	SUBMITTED TEXT	15 WORDS	96%	MATCHING TEXT	15 WORDS

offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

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9/263	SUBMITTED TEXT	11 WORDS	100%	MATCHING TEXT	11 WORDS

offences punishable with death, life imprisonment or imprisonment for a term

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10/263	SUBMITTED TEXT	14 WORDS	75%	MATCHING TEXT	14 WORDS

In a summary trial no sentence of imprisonment for a term exceeding three months

In a summary trial, the Court cannot pass a sentence of imprisonment for a term exceeding three months.

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11/263	SUBMITTED TEXT	16 WORDS	96%	MATCHING TEXT	16 WORDS

A summons case means a case relating to an offence not being a warrant case,

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12/263	SUBMITTED TEXT	30 WORDS	88%	MATCHING TEXT	30 WORDS

tried summarily in which the accused does not plead guilty the magistrate records the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

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13/263	SUBMITTED TEXT	43 WORDS	72%	MATCHING TEXT	43 WORDS

upon consideration of the record of the case and documents submitted and after hearing the accused person and the prosecution in this behalf, the judge considers that there is not sufficient ground for proceeding, the judge discharges the accused and records reasons for doing so. The

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14/263	SUBMITTED TEXT	17 WORDS	79%	MATCHING TEXT	17 WORDS

guilty, the judge shall record the plea and may, with discretion convict him however if the accused

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15/263	SUBMITTED TEXT	34 WORDS	90%	MATCHING TEXT	34 WORDS

the proceeding shall be held as expeditiously as possible and in particular, when the examination of witnesses has once begun, the same shall be continued day-to-day until all the witnesses in attendance have been examined. 3.

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16/263	SUBMITTED TEXT	28 WORDS	87%	MATCHING TEXT	28 WORDS

If after taking the evidence for the prosecution, examining the accused and hearing the prosecution and defense, the judge considers that there is no evidence that the accused

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17/263	SUBMITTED TEXT	21 WORDS	50%	MATCHING TEXT	21 WORDS

be compounded with the permission of the court should now be allowed to be compounded without eh permission of the court

be compounded with the permission of the court while some can be compounded by the parties without the permission of the court.

W http://egyankosh.ac.in/bitstream/123456789/52040/1/Block-2.pdf

18/263	SUBMITTED TEXT	38 WORDS	30%	MATCHING TEXT	38 WORDS

Supreme Court of India Supreme Court of India is the highest level of court of Indian juridical system which was established as per Part V, Chapter IV of the Constitution of India which endorses the concept of Supreme Court

Supreme Court of India. The Supreme Court is the apex Court of India. It is established by Part V, Chapter IV of the Constitution. Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court

W https://www.nmu.ac.in/Portals/46/SLM/LL.%20M.%20Paper-III.pdf

19/263	SUBMITTED TEXT	26 WORDS	57%	MATCHING TEXT	26 WORDS

when examination of the witnesses for the defense, if any, is complete, the prosecutor shall sum up the prosecution case and the accused is entitled to reply.

SA Lovepreet Singh Roll.no 20231219 LL.M Part II Dissertation file--merged.pdf (D160311183)

20/263	SUBMITTED TEXT	24 WORDS	83%	MATCHING TEXT	24 WORDS

The accused may apply for the issue of process for compelling attendance of any witness or the production of any document or thing. The

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21/263	SUBMITTED TEXT	14 WORDS	78%	MATCHING TEXT	14 WORDS

the judiciary from the administrative executive deployed in the public services of the state.

the judiciary from the executive in the public services of the State."

W http://docshare01.docshare.tips/files/21553/215538909.pdf

22/263	SUBMITTED TEXT	20 WORDS	50%	MATCHING TEXT	20 WORDS

of High Court is done by the President of India with the consultation of the Chief Justice of India, the

SA Lovepreet Singh Roll.no 20231219 LL.M Part II Dissertation file--merged.pdf (D160311183)

23/263	SUBMITTED TEXT	14 WORDS	96%	MATCHING TEXT	14 WORDS

that any person is likely to commit a breach of peace or disturb public

SA Lovepreet Singh Roll.no 20231219 LL.M Part II Dissertation file--merged.pdf (D160311183)

24/263	SUBMITTED TEXT	18 WORDS	83%	MATCHING TEXT	18 WORDS

the whole of the fine recovered to be applied: o in defraying the expenses properly incurred in the

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25/263	SUBMITTED TEXT	12 WORDS	100%	MATCHING TEXT	12 WORDS

of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

SA Plagiarism check.docx (D142509794)

26/263	SUBMITTED TEXT	22 WORDS	58%	MATCHING TEXT	22 WORDS

and oppressive incarceration prior to trial and limits the possibilities that long delays will impair the ability of an accused to defend himself.

SA Khajit Thukral Final File (1).docx (D142653446)

27/263	SUBMITTED TEXT	18 WORDS	97%	MATCHING TEXT	18 WORDS

The right to a speedy trial is first mentioned in landmark document of English law, the Magna Carta.

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

28/263	SUBMITTED TEXT	16 WORDS	96%	MATCHING TEXT	16 WORDS

right to speedy trial has grown in age by almost two and a half decades.

SA Dissertation-Shiv Dayal.doc (D110444806)

29/263	SUBMITTED TEXT	11 WORDS	100%	MATCHING TEXT	11 WORDS

the goal sought to be achieved is yet a far-off peak.

SA Dissertation-Shiv Dayal.doc (D110444806)

30/263	SUBMITTED TEXT	97 WORDS	100%	MATCHING TEXT	97 WORDS

Article 21 declares that “no person shall be deprived of his life or personal liberty except according to the procedure laid by law.” Justice Krishna Iyer while dealing with the bail petition in Babu Singh v. State of UP, remarked, "Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial' whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings."

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

31/263	SUBMITTED TEXT	15 WORDS	100%	MATCHING TEXT	15 WORDS

Right to speedy trial is a concept gaining recognition and importance day by day.

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

32/263	SUBMITTED TEXT	34 WORDS	87%	MATCHING TEXT	34 WORDS

the mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself.

SA Dissertation-Shiv Dayal.doc (D110444806)

33/263	SUBMITTED TEXT	31 WORDS	93%	MATCHING TEXT	31 WORDS

which go to the extent of almost enacting by judicial verdict bars of limitation beyond which the trial shall not proceed and the arm of law shall lose its hold. The

SA Dissertation-Shiv Dayal.doc (D110444806)

34/263	SUBMITTED TEXT	14 WORDS	89%	MATCHING TEXT	14 WORDS

speedy trial is the essence of criminal justice and there is no doubt that

SA Khajit Thukral Final File (1).docx (D142653446)

35/263	SUBMITTED TEXT	10 WORDS	100%	MATCHING TEXT	10 WORDS

In United States speedy trial is one of the constitutionally

SA Dissertation_Danish Shakeel _LL.M. Law_ Ms. Nandini Raizada.docx (D111744736)

36/263	SUBMITTED TEXT	21 WORDS	76%	MATCHING TEXT	21 WORDS

that everyone arrested or detained shall be entitled to trial within reasonable time or to release pending trial. Though right to

SA Khajit Thukral Final File (1).docx (D142653446)

37/263	SUBMITTED TEXT	28 WORDS	82%	MATCHING TEXT	28 WORDS

There can be, hence, no doubt that speedy trial (reasonably expeditious trial) is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21(

There can, therefore, no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial is an integral and essential part of the Fundamental Right to life and liberty enshrined in article 21." 477

W http://docshare01.docshare.tips/files/21553/215538909.pdf

38/263	SUBMITTED TEXT	14 WORDS	85%	MATCHING TEXT	14 WORDS

procedure cannot be fair unless it ensures speedy trial for determination of the guilt

SA Plagiarism check.docx (D142509794)

39/263	SUBMITTED TEXT	19 WORDS	77%	MATCHING TEXT	19 WORDS

Crime is the outcome of a diseased mind and Prison must have an environment of hospital for treatment and care''.

SA Dissertation_Danish Shakeel _LL.M. Law_ Ms. Nandini Raizada.docx (D111744736)

40/263	SUBMITTED TEXT	15 WORDS	96%	MATCHING TEXT	15 WORDS

there can be no doubt that speedy trial -- and by speedy trial we mean

There can, therefore, be no doubt that speedy trial, and by speedy trial we mean

W http://docshare01.docshare.tips/files/21553/215538909.pdf

41/263	SUBMITTED TEXT	19 WORDS	97%	MATCHING TEXT	19 WORDS

reasonably expeditious trial -- is an integral and essential part of fundamental right to life and liberty enshrined in

reasonably expeditious trial is an integral and essential part of the Fundamental Right to life and liberty enshrined in

W http://docshare01.docshare.tips/files/21553/215538909.pdf

42/263	SUBMITTED TEXT	16 WORDS	66%	MATCHING TEXT	16 WORDS

a social order in which such justice shall inform all the institutions of national life {(

a social order in which justice, social, economic and political, shall inform all the institutions of the national life." 3 3.

W http://docshare01.docshare.tips/files/21553/215538909.pdf

43/263	SUBMITTED TEXT	14 WORDS	90%	MATCHING TEXT	14 WORDS

per one hundred thousand of population which is one of the lowest in the world."

SA 5_6075519471152269231.docx (D143369429)

44/263	SUBMITTED TEXT	13 WORDS	100%	MATCHING TEXT	13 WORDS

The State shall secure that the operation of the legal system promotes justice;

SA Plagiarism check.docx (D142509794)

45/263	SUBMITTED TEXT	48 WORDS	92%	MATCHING TEXT	48 WORDS

the Supreme Court has held that "social justice would include 'legal justice' which means that the system of administration of justice must provide a cheap, expeditious and effective instrument for realization of justice by all section of the people irrespective of their social or economic position or their financial resources".

The Supreme Court has held that social justice would include 'legal justice' which means that the system of administration of justice must provide cheap, expeditious and effective instrument for realization Page 8 of 208 of justice by all sections of the people irrespective of their social or economic position or their financial resources. 4

W http://docshare01.docshare.tips/files/21553/215538909.pdf

46/263	SUBMITTED TEXT	17 WORDS	68%	MATCHING TEXT	17 WORDS

that speedy trial is a fundamental right of an accused, the Supreme Court has directed the

that speedy, open and fair trial is a fundamental right of an accused under Article 21 of the 50 Constitution. The Supreme Court further directed the

W http://lawhelpline.in/PDFs/HUMAN_RIGHTS/Human_Rights1.pdf

47/263	SUBMITTED TEXT	20 WORDS	100%	MATCHING TEXT	20 WORDS

to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities" (

SA Plagiarism check.docx (D142509794)

48/263	SUBMITTED TEXT	13 WORDS	100%	MATCHING TEXT	13 WORDS

of the fundamental right to life and liberty enshrined in Article 21

of the Fundamental Right to life and liberty enshrined in article 21.” 477

W http://docshare01.docshare.tips/files/21553/215538909.pdf

49/263	SUBMITTED TEXT	26 WORDS	100%	MATCHING TEXT	26 WORDS

No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or just and it would fall foul of Article 21."

No procedure which does not ensure a reasonably quick trial can be regarded as ‘reasonable, fair or just’ and it would fall foul of article 21.

W http://docshare01.docshare.tips/files/21553/215538909.pdf

50/263	SUBMITTED TEXT	31 WORDS	84%	MATCHING TEXT	31 WORDS

and oppressive incarceration prior to trial; to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delays will impair the ability of an accused to defend himself.

SA Khajit Thukral Final File (1).docx (D142653446)

51/263	SUBMITTED TEXT	60 WORDS	100%	MATCHING TEXT	60 WORDS

The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality can be averted."

SA 5_6075519471152269231.docx (D143369429)

52/263	SUBMITTED TEXT	11 WORDS	100%	MATCHING TEXT	11 WORDS

The National Commission to review the working of the Constitution

SA Plagiarism check.docx (D142509794)

53/263	SUBMITTED TEXT	128 WORDS	96%	MATCHING TEXT	128 WORDS

In hussainara khatoon v. State of Bihar which formed the basis of the concept of the Speedy Trial, it was held that where undertrial prisoners have been in jail for duration longer than prescribed, if convicted, their detention in jail is totally unjustified and in violation to fundamental rights under article 21. Inordinate delays violate article 21 of the constitution: for more than 11 yrs the trial is pending without any progress for no faults of the accused-petitioner. Expeditious rights is a basic right to everybody and cannot be trampled upon unless any of the parties can be accused of the delay. Delay in trial unnecessarily confers a right upon the accused to apply for bail. Under sec. 482 read with 483, Cr. P.C lays that every possible measure to be taken to dispose

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

54/263	SUBMITTED TEXT	55 WORDS	97%	MATCHING TEXT	55 WORDS

the case within 6months from today. No adjournments to be granted until n unless circumstances are beyond the control of judiciary. It is the responsibility of the judiciary to keep a check on under trial prisoners and bring them to trial. Overcrowded courts, inadequate resources, fiscal deficiency cannot be the reasons for deprivation of a person. In

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

55/263	SUBMITTED TEXT	20 WORDS	97%	MATCHING TEXT	20 WORDS

Article 11 (1) of the Universal Declaration of Human Rights, Article 14(2) of the International Covenant on Civil and Political Rights

SA Dissertation_Danish Shakeel _LL.M. Law_ Ms. Nandini Raizada.docx (D111744736)

56/263	SUBMITTED TEXT	13 WORDS	100%	MATCHING TEXT	13 WORDS

of personal liberty except as a result of conviction for an offence

SA Ramkripal Gupta LLM 4th sem. Desertation.docx (D111857528)

57/263	SUBMITTED TEXT	12 WORDS	95%	MATCHING TEXT	12 WORDS

of personal liberty as a result of conviction for an offence.

SA Ramkripal Gupta LLM 4th sem. Desertation.docx (D111857528)

58/263	SUBMITTED TEXT	16 WORDS	87%	MATCHING TEXT	16 WORDS

Convention against Torture and Other Cruel, Inhuman or
Degrading Treatment or Punishment, the Convention on the

SA Akrita Kaur dissertation on Prison Reforms- With Special Reference to Under-trial Prisoners.docx (D123339977)

59/263	SUBMITTED TEXT	12 WORDS	100%	MATCHING TEXT	12 WORDS

in Article 9(3) of the International Covenant on Civil and
Political Rights.

SA NEELAM Dissertation.docx (D27172470)

60/263	SUBMITTED TEXT	13 WORDS	100%	MATCHING TEXT	13 WORDS

right to be produced before the Magistrate within 24 hours of his arrest,

right to be produced before the magistrate within 24 hours of his arrest.

W https://jurisedge.com/academy/2022/08/04/human-rights-of-undertrial-prisoners/

61/263	SUBMITTED TEXT	12 WORDS	83%	MATCHING TEXT	12 WORDS

must be presented before a Magistrate within twenty-four
hours of arrest.

SA Danish Ansari @ 16.8.2021.docx (D111334450)

62/263	SUBMITTED TEXT	13 WORDS	100%	MATCHING TEXT	13 WORDS

of Article 9 of the International Covenant on Civil and Political
Rights

SA Dissertation_Danish Shakeel _LL.M. Law_ Ms. Nandini Raizada.docx (D111744736)

63/263	SUBMITTED TEXT	16 WORDS	76%	MATCHING TEXT	16 WORDS

the arrested person to be produced before the Magistrate
within 24 hours of arrest. 29

SA Shalvin Sharma Dissertation MATS University.pdf (D139107050)

64/263	SUBMITTED TEXT	13 WORDS	87%	MATCHING TEXT	13 WORDS

duty on the Magistrate before whom the arrested person is produced to

duty of the Magistrate, before whom the arrested person is to

W http://egyankosh.ac.in/bitstream/123456789/52040/1/Block-2.pdf

65/263	SUBMITTED TEXT	19 WORDS	69%	MATCHING TEXT	19 WORDS

Section 57 of the Code provides that person arrested should not be detained in police custody for more than

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

66/263	SUBMITTED TEXT	22 WORDS	100%	MATCHING TEXT	22 WORDS

enquire from the arrested person whether he has any complaint of torture or maltreatment in police custody and inform him that he has

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

67/263	SUBMITTED TEXT	19 WORDS	92%	MATCHING TEXT	19 WORDS

enables the Magistrates to keep check over the police investigation and it is necessary that the Magistrate should try

enables the magistrates to keep check over the police investigation and it is necessary that the magistrates should try

W https://www.nmu.ac.in/Portals/46/SLM/LL.%20M.%20Paper-III.pdf

68/263	SUBMITTED TEXT	11 WORDS	83%	MATCHING TEXT	11 WORDS

produced, to satisfy himself that these requirements are complied with. The above

produced, to satisfy himself that these requirements have been complied with. The above

W http://egyankosh.ac.in/bitstream/123456789/52040/1/Block-2.pdf

69/263	SUBMITTED TEXT	15 WORDS	100%	MATCHING TEXT	15 WORDS

right under Section 54 of the Code of criminal procedure to be medically examined.

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

70/263	SUBMITTED TEXT	13 WORDS	83%	MATCHING TEXT	13 WORDS

a number of international instruments. The Universal Declaration of Human Rights, 1948, the

SA Danish Ansari @ 16.8.2021.docx (D111334450)

71/263	SUBMITTED TEXT	22 WORDS	92%	MATCHING TEXT	22 WORDS

International Covenant on Civil and Political Rights, 1966 and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

SA Ramkripal Gupta LLM 4th sem. Desertation.docx (D111857528)

72/263	SUBMITTED TEXT	16 WORDS	100%	MATCHING TEXT	16 WORDS

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

SA Ramkripal Gupta LLM 4th sem. Desertation.docx (D111857528)

73/263	SUBMITTED TEXT	19 WORDS	100%	MATCHING TEXT	19 WORDS

Custodial death is perhaps one of the worst crimes in a civilised society governed by the rule of law.

Custodial death is perhaps one of the worst crimes in a civilised society governed by the rule of Law.

W http://lawhelpline.in/PDFs/HUMAN_RIGHTS/Human_Rights1.pdf

74/263	SUBMITTED TEXT	30 WORDS	90%	MATCHING TEXT	30 WORDS

Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is nor way to heal it.

SA 5_6075519471152269231.docx (D143369429)

75/263	SUBMITTED TEXT	13 WORDS	100%	MATCHING TEXT	13 WORDS

cubic content of air, minimum floor space, lighting, heating and ventilation.

SA Plagiarism check.docx (D142509794)

76/263	SUBMITTED TEXT	42 WORDS	93%	MATCHING TEXT	42 WORDS

A proper medical examination shall be offered to a detained person as promptly as possible after his admission to the place of detention, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

SA Ramkripal Gupta LLM 4th sem. Desertation (1).docx (D112108570)

77/263	SUBMITTED TEXT	14 WORDS	88%	MATCHING TEXT	14 WORDS

the duty of the Magistrate before whom an arrested person is produced to

the duty of the Magistrate, before whom the arrested person is produced, to

W http://egyankosh.ac.in/bitstream/123456789/52040/1/Block-2.pdf

78/263	SUBMITTED TEXT	81 WORDS	90%	MATCHING TEXT	81 WORDS

person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or a judicial or other authority for a second medical examination or opinion. The fact that a detained underwent a medical examination, the name of the physician and the result of such an examination should be duly recorded. Access to such records should be ensured. Modalities therefore should be in accordance with relevant rules of domestic law.

SA Ramkripal Gupta LLM 4th sem. Desertation (1).docx (D112108570)

79/263	SUBMITTED TEXT	14 WORDS	100%	MATCHING TEXT	14 WORDS

right under Section 54 of the Code of Criminal Procedure to be medically examined.

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

80/263	SUBMITTED TEXT	10 WORDS	95%	MATCHING TEXT	10 WORDS

In D.K.Basu. V .State of West Bengal, Supreme Court

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

81/263	SUBMITTED TEXT	9 WORDS	100%	MATCHING TEXT	9 WORDS

the International Covenant on Civil and Political Rights. The United

SA 5_6075519471152269231.docx (D143369429)

82/263	SUBMITTED TEXT	14 WORDS	85%	MATCHING TEXT	14 WORDS

the right to counsel and to be defended by a lawyer of his choice.

SA Plagiarism check.docx (D142509794)

83/263	SUBMITTED TEXT	16 WORDS	81%	MATCHING TEXT	16 WORDS

right to consult a legal advisor of his choice as soon as he is arrested and

SA Danish Ansari @ 16.8.2021.docx (D111334450)

84/263	SUBMITTED TEXT	74 WORDS	85%	MATCHING TEXT	74 WORDS

by the State. Nor does the clause confer any right to engage a lawyer for a person who is disabled under the law. The right guaranteed is only to have the 'opportunity' to engage a competent legal practitioner of his choice. It has been further held that this right to counsel is not limited only to the persons arrested but can be availed of by any person who is in danger of losing his personal liberty.

SA Shalvin Sharma Dissertation MATS University.pdf (D139107050)

85/263	SUBMITTED TEXT	18 WORDS	93%	MATCHING TEXT	18 WORDS

Criminal Procedure has specifically recognised the right \0 be defended by a pleader of his choice. Section 303

SA Shalvin Sharma Dissertation MATS University.pdf (D139107050)

86/263	SUBMITTED TEXT	49 WORDS	97%	MATCHING TEXT	49 WORDS

contemplates that the accused should not only be at liberty to be defended by a pleader at the time the proceedings are actually going on, but also implies that he should have a reasonable opportunity, if in custody, of getting into communication with his legal adviser for the purpose of his

SA Shalvin Sharma Dissertation MATS University.pdf (D139107050)

87/263	SUBMITTED TEXT	13 WORDS	100%	MATCHING TEXT	13 WORDS

the right to consult a lawyer for the purpose of defence begins

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

88/263	SUBMITTED TEXT	22 WORDS	54%	MATCHING TEXT	22 WORDS

while in police custody. The consultations can be within the presence of the police but it would be unreasonable and unjust to

SA Danish Ansari @ 16.8.2021.docx (D111334450)

89/263	SUBMITTED TEXT	20 WORDS	77%	MATCHING TEXT	20 WORDS

that whenever a person is arrested and taken to the police lock up, intimation of the fact of such arrest

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

90/263	SUBMITTED TEXT	18 WORDS	80%	MATCHING TEXT	18 WORDS

for the purpose of providing legal assistance to the arrested person at State cost. It is necessary to

SA Ramkripal Gupta LLM 4th sem. Desertation.docx (D111857528)

91/263	SUBMITTED TEXT	10 WORDS	90%	MATCHING TEXT	10 WORDS

torture, ill-treatment, oppression and harassment at the hands of his

SA Plagiarism check.docx (D142509794)

92/263	SUBMITTED TEXT	26 WORDS	92%	MATCHING TEXT	26 WORDS

does not arise only when the trial commences but also attaches when the accused is for the first time produced before the Magistrate. It is elementary that

SA Akrita Kaur dissertation on Prison Reforms- With Special Reference to Under-trial Prisoners.docx (D123339977)

93/263	SUBMITTED TEXT	29 WORDS	100%	MATCHING TEXT	29 WORDS

it is at that stage that he gets the first opportunity to apply for bail and obtain his release as also to resist remand to police or jail custody.

SA Akrita Kaur dissertation on Prison Reforms- With Special Reference to Under-trial Prisoners.docx (D123339977)

94/263	SUBMITTED TEXT	14 WORDS	85%	MATCHING TEXT	14 WORDS

That is a stage at which an accused needs competent legal advice and representation

SA Plagiarism check.docx (D142509794)

95/263	SUBMITTED TEXT	13 WORDS	88%	MATCHING TEXT	13 WORDS

the arrestee to meet his lawyer during Interrogation, though not throughout the interrogation.

The arrestee may be permitted to meet his Lawyer during interrogation, though not throughout the interrogation. (11)

W http://lawhelpline.in/PDFs/HUMAN_RIGHTS/Human_Rights1.pdf

96/263	SUBMITTED TEXT	11 WORDS	100%	MATCHING TEXT	11 WORDS

Supreme Court of India in DK Basu v. State of

SA Dissertation-Shiv Dayal 20.08.21.docx (D111495161)

97/263	SUBMITTED TEXT	10 WORDS	100%	MATCHING TEXT	10 WORDS

that hundreds of guilty persons may get scot free but

SA Dissertation-Shiv Dayal.doc (D110444806)

98/263	SUBMITTED TEXT	16 WORDS	100%	MATCHING TEXT	16 WORDS

No person shall be prosecuted and punished for the same offence more than once. 3.

no person shall be prosecuted and punished for the same offence more than once.

W http://egyankosh.ac.in/bitstream/123456789/52040/1/Block-2.pdf

99/263	SUBMITTED TEXT	56 WORDS	96%	MATCHING TEXT	56 WORDS

No person shall be convicted for any offence except for violation of a law in force at the time of commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. 2.

SA 5_607551947115226923 1.docx (D143369429)

100/263	SUBMITTED TEXT	23 WORDS	77%	MATCHING TEXT	23 WORDS

No person accused of any offence shall be compelled to be a witness against himself. The article 20 of the constitution of India

SA Dissertation-Shiv Dayal.doc (D110444806)

101/263	SUBMITTED TEXT	65 WORDS	77%	MATCHING TEXT	65 WORDS

Article 20[1] of the constitution contains two parts: 1. No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence; 103 2. No person shall be subject to penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

SA 5_607551947115226923 1.docx (D143369429)

102/263	SUBMITTED TEXT	59 WORDS	95%	MATCHING TEXT	59 WORDS

Indian Constitution says that “no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

SA 5_607551947115226923 1.docx (D143369429)

103/263	SUBMITTED TEXT	24 WORDS	100%	MATCHING TEXT	24 WORDS

If an act is not an offence at the date of its commission, it cannot be an offence at the date subsequent to its commission.

SA Danish Ansari@ 30.7.2021.docx (D110917626)

104/263	SUBMITTED TEXT	31 WORDS	48%	MATCHING TEXT	31 WORDS

The Fifth Amendment to the American to the American constitution in corporate, "No person shall any person be subjected for the same offence to be put twice in jeopardy of life or limb."

SA Dissertation-Shiv Dayal.doc (D110444806)

105/263	SUBMITTED TEXT	16 WORDS	90%	MATCHING TEXT	16 WORDS

be tried again for the same offence or on the same facts for any other offence.

SA 5_6075519471152269231.docx (D143369429)

106/263	SUBMITTED TEXT	20 WORDS	100%	MATCHING TEXT	20 WORDS

A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

107/263	SUBMITTED TEXT	20 WORDS	86%	MATCHING TEXT	20 WORDS

in Article 20 (2) which provides that no person shall be prosecuted and punished for the same offence more than once.

in Article 20(2) of our provides that no person shall be prosecuted and punished for the same offence more than once.

W http://egyankosh.ac.in/bitstream/123456789/52040/1/Block-2.pdf

108/263	SUBMITTED TEXT	61 WORDS	100%	MATCHING TEXT	61 WORDS

such offence 104 shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

109/263	SUBMITTED TEXT	17 WORDS	90%	MATCHING TEXT	17 WORDS

no person shall be prosecuted and punished for the same offence more than once". While, Article 20(2)

no person shall be prosecuted and punished for the same offence more than once. Article 20(1)

W http://egyankosh.ac.in/bitstream/123456789/52040/1/Block-2.pdf

110/263	SUBMITTED TEXT	14 WORDS	76%	MATCHING TEXT	14 WORDS

that "a man may not be put twice in jeopardy for the same offence".

SA Plagiarism check.docx (D142509794)

111/263	SUBMITTED TEXT	11 WORDS	100%	MATCHING TEXT	11 WORDS

been tried by a "court of competent jurisdiction" for an offence.

SA Akrita Kaur dissertation on Prison Reforms- With Special Reference to Under-trial Prisoners.docx (D123339977)

112/263	SUBMITTED TEXT	42 WORDS	51%	MATCHING TEXT	42 WORDS

shall be compelled to be a witness against himself. Thus Article 20(3) embodies the general principles of English and American jurisprudence that no one shall be compelled to give testimony which may expose him to prosecution for crime. The cardinal principle of criminal law

SA Plagiarism check.docx (D142509794)

113/263	SUBMITTED TEXT	41 WORDS	81%	MATCHING TEXT	41 WORDS

jurisprudence is that an accused must be presumed to be innocent till the contrary is proved. It is the duty of the prosecution to prove the offence. The accused need not make any admission or statement against his own free will. The

SA Plagiarism check.docx (D142509794)

114/263	SUBMITTED TEXT	38 WORDS	85%	MATCHING TEXT	38 WORDS

It is a right pertaining to a person who is "accused of an offence. q) It is a protection against "compulsion to be a witness". r) It is a protection against such compulsion relating to his giving evidence "against himself."

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

115/263	SUBMITTED TEXT	18 WORDS	76%	MATCHING TEXT	18 WORDS

In Nandini Satpathy v. P.L. Dani, the Supreme Court has considerably widened the scope of clause (3)

SA Danish Ansari@ 30.7.2021.docx (D110917626)

116/263	SUBMITTED TEXT	23 WORDS	56%	MATCHING TEXT	23 WORDS

compelled testimony is not limited to physical torture or 105 coercion but extend also to techniques of psychological interrogation which cause mental torture

SA Danish Ansari@ 30.7.2021.docx (D110917626)

117/263	SUBMITTED TEXT	49 WORDS	97%	MATCHING TEXT	49 WORDS

No Lie Detector Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test. (b) If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

118/263	SUBMITTED TEXT	46 WORDS	91%	MATCHING TEXT	46 WORDS

physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer. (c) The consent should be recorded before a Judicial Magistrate. (d) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer. (

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

119/263	SUBMITTED TEXT	33 WORDS	90%	MATCHING TEXT	33 WORDS

At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a "confessional statement to the Magistrate but will have the

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

120/263	SUBMITTED TEXT	43 WORDS	86%	MATCHING TEXT	43 WORDS

statement " made to the police. (f) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation. (g) The actual recording of the Lie Detector Test shall be done by an independent agency (such as

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

121/263	SUBMITTED TEXT	26 WORDS	45%	MATCHING TEXT	26 WORDS

Article 22 (1) of the Constitution provides that a person arrested for an offence under ordinary law be informed as soon as may be the grounds

article 22 of the Constitution provides that no person, who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds

W http://docshare01.docshare.tips/files/21553/215538909.pdf

122/263	SUBMITTED TEXT	28 WORDS	94%	MATCHING TEXT	28 WORDS

hospital) and conducted in the presence of a lawyer. (h) A full medical and factual narration of the manner of the information received must be taken on record.

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

123/263	SUBMITTED TEXT	17 WORDS	70%	MATCHING TEXT	17 WORDS

Article 22 (1) of the Constitution provides, inter alia, that no person who is arrested shall be

Article 22(3) of the Constitution, Article 22(2) mandates that no person who is arrested shall be

W http://lawhelpline.in/PDFs/HUMAN_RIGHTS/Human_Rights1.pdf

124/263	SUBMITTED TEXT	10 WORDS	95%	MATCHING TEXT	10 WORDS

otherwise it would not amount to sufficient compliance with constitutional requirements.

SA Dissertation-Shiv Dayal 20.08.21.docx (D111495161)

125/263	SUBMITTED TEXT	14 WORDS	76%	MATCHING TEXT	14 WORDS

In Huassainara Khatoon (IV) v. Home Secretary, State of Bihar, the Supreme Court

in Hussainara Khatoon v. Home Secretary, State of Bihar, the Supreme Court

W http://docshare01.docshare.tips/files/21553/215538909.pdf

126/263	SUBMITTED TEXT	70 WORDS	93%	MATCHING TEXT	70 WORDS

to be defended by a legal practitioner of his choice. The right of the accused to have a counsel of his choice is fundamental and essential to fair trial. The right is recognized because of the obvious fact that ordinarily an accused person does not have the knowledge of law and the professional skill to defend him before a court of law wherein the prosecution is conducted by a competent and experienced prosecutor.

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

127/263	SUBMITTED TEXT	29 WORDS	72%	MATCHING TEXT	29 WORDS

The right to free legal services is, therefore, clearly an essential ingredient of "reasonable, fair and just procedure for a person accused of an offence and it must be

SA Danish Ansari @ 16.8.2021.docx (D111334450)

128/263	SUBMITTED TEXT	22 WORDS	95%	MATCHING TEXT	22 WORDS

that unless refused, failure to provide legal aid to an indigent accused would vitiate the trial, entailing setting aside of conviction and sentence.

that unless refused, failure to provide free legal aid to an indigent accused would vitiate the trial, entailing setting aside of the conviction and sentence.

W https://www.nmu.ac.in/Portals/46/SLM/LL.%20M.%20Paper-III.pdf

129/263	SUBMITTED TEXT	14 WORDS	100%	MATCHING TEXT	14 WORDS

the right of every arrested person to consult a legal practitioner of his choice.

the right of every arrested person to consult a legal practitioner of his choice (

W https://www.nmu.ac.in/Portals/46/SLM/LL.%20M.%20Paper-III.pdf

130/263	SUBMITTED TEXT	78 WORDS	94%	MATCHING TEXT	78 WORDS

in the guarantee of Article 21. " 107 This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the provision of such lawyer.

SA Khajit Thukral Final File (1).docx (D142653446)

131/263	SUBMITTED TEXT	48 WORDS	93%	MATCHING TEXT	48 WORDS

Article 22 (1) provides, " No person who is arrested shall be detained in custody without being inform, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice".

SA Plagiarism check.docx (D142509794)

132/263	SUBMITTED TEXT	17 WORDS	100%	MATCHING TEXT	17 WORDS

The consultation with the lawyer may be in the presence of police officer but not within his hearing.

SA Dissertation-Shiv Dayal.doc (D110444806)

133/263	SUBMITTED TEXT	49 WORDS	99%	MATCHING TEXT	49 WORDS

Section 56 of Criminal Procedure Code. A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

SA Dissertation-Shiv Dayal.doc (D110444806)

134/263	SUBMITTED TEXT	63 WORDS	95%	MATCHING TEXT	63 WORDS

of the Constitution provides: "Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate."

SA Plagiarism check.docx (D142509794)

135/263	SUBMITTED TEXT	69 WORDS	89%	MATCHING TEXT	69 WORDS

In Khatri (II) V. State of Bihar , the Supreme Court has held that the State is under a constitutional mandate to provide free legal aid to an indigent accused person, and that their constitutional obligation to provide legal aid does not arise only when the trial commences but also when the accused is for the first time produced before the Magistrate as also when he is remanded from time to time.

In, Khatri (II) Vs, State of Bihar, (1981) I S.C.C. 627, the Supreme Court has that the State is under a constitutional mandate (implicit in to provide fee legal aid to an indigent accused person, and that constitutional obligation to provide legal aid does not arise only when the trial commences but also when the accused is for the first time produced before the Magistrate as also when he is remanded from time to time.

W https://www.nmu.ac.in/Portals/46/SLM/LL.%20M.%20Paper-III.pdf

136/263	SUBMITTED TEXT	10 WORDS	100%	MATCHING TEXT	10 WORDS

to provide free legal aid to an indigent accused person

SA 1627182026047_Dissertation-Shiv Dayal.doc (D110905327)

137/263	SUBMITTED TEXT	25 WORDS	82%	MATCHING TEXT	25 WORDS

The personal presence of the accused throughout his trial would enable him to understand properly the prosecution case as it is unfolded in the court.

SA Khajit Thukral Final File (1).docx (D142653446)

138/263	SUBMITTED TEXT	56 WORDS	87%	MATCHING TEXT	56 WORDS

A trial and a decision behind the neck of the accused person are not contemplated by the Code, though no specific provision to that effect is found therein. The requirement of the presence of the accused during his trial can be implied from the provisions which allow the court to dispense with the personal attendance of the accused

SA Khajit Thukral Final File (1).docx (D142653446)

139/263	SUBMITTED TEXT	12 WORDS	100%	MATCHING TEXT	12 WORDS

In Hussainara Khatoon (IV) V. State of Bihar, the Supreme Court

SA NEELAM Dissertation.docx (D27172470)

140/263	SUBMITTED TEXT	125 WORDS	97%	MATCHING TEXT	125 WORDS

that speedy trial is an essential ingredient of „reasonable, fair and just" procedure guaranteed by Article 21 and that it is the constitutional obligation of the state of devise such a procedure as would ensure speedy trial to accused. The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this court, as the guardians of the fundamental rights of the people, as a sentinel on the qui vie, to enforce the fundamental right of the accused to speedy trial by issuing necessary directions to the State. The

SA Dissertation-Shiv Dayal.doc (D110444806)

141/263	SUBMITTED TEXT	108 WORDS	80%	MATCHING TEXT	108 WORDS

Dismissing a fresh complaint made after 26 years of an earlier complaint the Supreme Court explained the meaning and relevance of speedy trial right thus: The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with actual restraint imposed by arrest and consequent incarceration, and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impressible and avoidable delay from the time of the commission of the offence will if consummates into a finality, can be averted. 109

SA Akrita Kaur dissertation on Prison Reforms- With Special Reference to Under-trial Prisoners.docx (D123339977)

142/263	SUBMITTED TEXT	31 WORDS	90%	MATCHING TEXT	31 WORDS

a single right of appeal on facts, where criminal conviction is fraught with loss of liberty, is basic to civilized jurisprudence. It is integral to fair procedure; natural justice and normative universality

SA Plagiarism check.docx (D142509794)

143/263	SUBMITTED TEXT	60 WORDS	83%	MATCHING TEXT	60 WORDS

The law of bails has to dovetail two conflicting demands, namely, on one hand, the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence, viz., the presumption of innocence of an accused till he is found guilty.

SA Plagiarism check.docx (D142509794)

144/263	SUBMITTED TEXT	23 WORDS	72%	MATCHING TEXT	23 WORDS

If by imposing solitary confinement there is total deprivation of camaraderie (friendship) among coprisoners commingling and talking and being talked to, it would offend

SA Dissertation-Shiv Dayal.doc (D110444806)

145/263	SUBMITTED TEXT	27 WORDS	92%	MATCHING TEXT	27 WORDS

The liberty to move, mix mingle, talk, share company with co-prisoners if substantially curtailed would be violative of Article 21 unless curtailment has the backing the law.

SA Plagiarism check.docx (D142509794)

146/263	SUBMITTED TEXT	28 WORDS	80%	MATCHING TEXT	28 WORDS

the prisoners from a human being to an animal and that this treatment was cruel and unusual that the use of bar fetters was against the spirit of the Constitution.

SA Dissertation_Danish Shakeel _LL.M. Law_ Ms. Nandini Raizada.docx (D111744736)

147/263	SUBMITTED TEXT	46 WORDS	90%	MATCHING TEXT	46 WORDS

In Kishore Singh v. State of Rajasthan the Supreme Court held that the use of third degree method by police is violative of Article 21 and directed the Government to take necessary steps to educate the police so as to inculcate a respect for the human person. The

SA NEELAM Dissertation.docx (D27172470)

148/263 **SUBMITTED TEXT** 74 WORDS **68%** **MATCHING TEXT** 74 WORDS

putting bar fetters on the prisoners in jail for several days on flimsy ground like loitering in the prison, behaving insolently and in an uncivilized manner, tearing of his history ticket must be regarded as barbarous and against human dignity and hence violative of Article 21, 19 and 14 of the Constitution Krishna Iyer, J. declared, "Human dignity is a clear value of our Constitution not to be bartered away for mere apprehension entertained by jail officials". 111

SA Plagiarism check.docx (D142509794)

149/263 **SUBMITTED TEXT** 58 WORDS **66%** **MATCHING TEXT** 58 WORDS

female suspects should be kept in separate police lockups and not in the same in which male accused are detained and should be guarded by female constables. The Court directed the I.G. prisons and State Board of Legal Aid Advice committee to provide legal assistance to the poor and indigent accused male and female whether they are under trials or convicted prisoners.

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

150/263 **SUBMITTED TEXT** 18 WORDS **94%** **MATCHING TEXT** 18 WORDS

Denial of fair trial is as much injustice to the accused as is to the victim and

SA NEELAM Dissertation.docx (D27172470)

151/263 **SUBMITTED TEXT** 15 WORDS **100%** **MATCHING TEXT** 15 WORDS

trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm.

SA NEELAM Dissertation.docx (D27172470)

152/263 **SUBMITTED TEXT** 24 WORDS **85%** **MATCHING TEXT** 24 WORDS

the trial is to meet out justice and to convict the guilty and protect the innocent, the trial should be a search for truth

SA 5_607551947115226923 1.docx (D143369429)

153/263 **SUBMITTED TEXT** 15 WORDS **100%** **MATCHING TEXT** 15 WORDS

must be conducted under such rules as will protect the innocent and punish the guilty.

SA 5_607551947115226923 1.docx (D143369429)

154/263	SUBMITTED TEXT	14 WORDS	88%	MATCHING TEXT	14 WORDS

and deprived of his liberty in accordance with the procedure established by law,

SA NEELAM Dissertation.docx (D27172470)

155/263	SUBMITTED TEXT	14 WORDS	80%	MATCHING TEXT	14 WORDS

Right to reasonable wages for work o Special rights to women prisoners o Right to

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

156/263	SUBMITTED TEXT	17 WORDS	87%	MATCHING TEXT	17 WORDS

The reformative methods of probation and parole should be used to lessen the burden on prisons. ?

SA Shalvin Sharma Dissertation MATS University.pdf (D139107050)

157/263	SUBMITTED TEXT	29 WORDS	62%	MATCHING TEXT	29 WORDS

the reformative measures listed here, the general condition of prisons in India was still far from satisfaction. The social contempt for prison life kept all sections of society uninformed

SA Shalvin Sharma Dissertation MATS University.pdf (D139107050)

158/263	SUBMITTED TEXT	19 WORDS	73%	MATCHING TEXT	19 WORDS

of the Indian Constitution to include the subject of prisons and allied institutions in the concurrent list. The seventh

SA Shalvin Sharma Dissertation MATS University.pdf (D139107050)

159/263	SUBMITTED TEXT	39 WORDS	83%	MATCHING TEXT	39 WORDS

total ban on the heinous practice of clubbing together juvenile offenders with the hardened criminals in prison. The atrocities and personal assaults on juvenile prisoners which came to the notice of authorities in the notorious Tihar Jail Inmate case and

SA Shalvin Sharma Dissertation MATS University.pdf (D139107050)

160/263	SUBMITTED TEXT	17 WORDS	85%	MATCHING TEXT	17 WORDS

Consequently, a comprehensive was enacted for the security and protective care of delinquent juveniles, The Mulla committee

SA Shalvin Sharma Dissertation MATS University.pdf (D139107050)

161/263	SUBMITTED TEXT	12 WORDS	100%	MATCHING TEXT	12 WORDS

recommended segregation of mentally disturbed prisoners and their placement in mental asylums.

SA Shalvin Sharma Dissertation MATS University.pdf (D139107050)

162/263	SUBMITTED TEXT	19 WORDS	71%	MATCHING TEXT	19 WORDS

correctional service for recruitment of Prison officials. 3. Aftercare, rehabilitation and probation should constitute an integral part of prison service.

SA Shalvin Sharma Dissertation MATS University.pdf (D139107050)

163/263	SUBMITTED TEXT	18 WORDS	86%	MATCHING TEXT	18 WORDS

induction of more women in the police force in view special rule in tackling women and child offenders.

SA Ramkripal Gupta LLM 4th sem. Desertation.docx (D111857528)

164/263	SUBMITTED TEXT	26 WORDS	87%	MATCHING TEXT	26 WORDS

They should be specially trained to deal with agitations and mob upsurges in humane and sensitive manner and acquire mastery over tactics of unarmed combat. Thereafter, the

SA Shalvin Sharma Dissertation MATS University.pdf (D139107050)

165/263	SUBMITTED TEXT	19 WORDS	67%	MATCHING TEXT	19 WORDS

prisoners. However, it cannot be denied that Hon'ble judiciary has not forgotten them and recognised a long list of rights

SA Khajit Thukral Final File (1).docx (D142653446)

166/263	SUBMITTED TEXT	28 WORDS	70%	MATCHING TEXT	28 WORDS

In our world prisons are still laboratories of torture, warehouses in which human commodities are sadistically kept and where spectrums of inmates range from drift-wood juveniles to heroic dissenters"

SA Khajit Thukral Final File (1).docx (D142653446)

167/263	SUBMITTED TEXT	14 WORDS	76%	MATCHING TEXT	14 WORDS

the discipline in a positive manner. All India Jail Reform Committee 1980-83 has also

SA Khajit Thukral Final File (1).docx (D142653446)

168/263	SUBMITTED TEXT	13 WORDS	100%	MATCHING TEXT	13 WORDS

conviction for a crime does not reduce the person into a non-person,

Conviction for a crime does not reduce the person into a non-person

W http://lawhelpline.in/PDFs/PRISIONERS_&_DUTY_OF_COURTS/PRISONERS_&_DUTY_OF_COURTS.pdf

169/263	SUBMITTED TEXT	41 WORDS	96%	MATCHING TEXT	41 WORDS

Conviction for a crime does not reduce the person into a non-person, whose rights are subject to the whim of the prison administration and therefore, the imposition of any major punishment within the prison system is conditional upon the absence of procedural safeguards.

Conviction for a crime does not reduce the person into a non-person whose rights are subject to the whim of the prison administration and, therefore, the imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguards.

W http://lawhelpline.in/PDFs/PRISIONERS_&_DUTY_OF_COURTS/PRISONERS_&_DUTY_OF_COURTS.pdf

170/263	SUBMITTED TEXT	31 WORDS	76%	MATCHING TEXT	31 WORDS

the privilege of writing letters and allowing interviews with friends and relatives. It must be noted that most of these “benefits” are now recognised by judiciary as part of the basic rights

SA Khajit Thukral Final File (1).docx (D142653446)

171/263	SUBMITTED TEXT	38 WORDS	95%	MATCHING TEXT	38 WORDS

read with Article 19 (1) (d) and (5), is capable of wider application than the imperial mischief which gave it birth and must draw its meaning from the evolving standards of decency and dignity that mark the progress of

read with Art. 19(1) (d) and (5), is capable of wider application than the imperial mischief which gave it birth and must draw its meaning from the evolving standards of decency and dignity that mark the progress of

W http://lawhelpline.in/PDFs/PRISIONERS_&_DUTY_OF_COURTS/PRISONERS_&_DUTY_OF_COURTS.pdf

172/263	SUBMITTED TEXT	34 WORDS	90%	MATCHING TEXT	34 WORDS

Reasonableness of the restriction is the essence of Article 19 (5) and sweeping discretion degenerating into arbitrary discrimination is anathema for Article 14. Constitutional karuna is thus injected into incarceratory strategy to produce prison justice.

reasonableness of the restriction is the essence of Art. 19(5) and sweeping discretion degenerating into arbitrary discrimination is anathema for Art. 14. Constitutional Karuna is thus injected into incarceratory strategy to produce prison justice.

W http://lawhelpline.in/PDFs/PRISIONERS_&_DUTY_OF_COURTS/PRISONERS_&_DUTY_OF_COURTS.pdf

173/263	SUBMITTED TEXT	14 WORDS	96%	MATCHING TEXT	14 WORDS

Court held that conditions of detention cannot be extended to deprivation of fundamental rights.

court held that conditions of detention cannot be extended to deprivation of other fundamental rights

W https://www.nmu.ac.in/Portals/46/SLM/LL.%20M.%20Paper-III.pdf

174/263	SUBMITTED TEXT	25 WORDS	89%	MATCHING TEXT	25 WORDS

that imprisonment does not spell farewell to fundamental rights although by a realistic re-appraisal, courts will refuse to recognize the full panoply of Part-HI enjoyed by

SA Ramkripal Gupta LLM 4th sem. Desertation.docx (D111857528)

175/263	SUBMITTED TEXT	17 WORDS	100%	MATCHING TEXT	17 WORDS

Prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement.

SA 5_607551947115226923l.docx (D143369429)

176/263	SUBMITTED TEXT	25 WORDS	87%	MATCHING TEXT	25 WORDS

the rights enjoyed by prisoners, under Articles 14, 19 and 21, though limited, are not static and will rise to human heights when challenging a situation arises.

SA 5_607551947115226923l.docx (D143369429)

177/263	SUBMITTED TEXT	31 WORDS	82%	MATCHING TEXT	31 WORDS

a crime does not render one a non- person whose rights are subject to the whim of the prison administration, and therefore, the imposition of any serious punishment within the prison system

a crime does not reduce the person into a non-person whose rights are subject to the whim of the prison administration and, therefore, the imposition of any major punishment within the prison system

W http://lawhelpline.in/PDFs/PRISIONERS_&_DUTY_OF_COURTS/PRISONERS_&_DUTY_OF_COURTS.pdf

178/263	SUBMITTED TEXT	28 WORDS	79%	MATCHING TEXT	28 WORDS

Every prisoner's liberty is, of course, circumscribed by the very fact of his confinement, but his interest in the limited liberty left to him only the more substantial.

SA Khajit Thukral Final File (1).docx (D142653446)

179/263	SUBMITTED TEXT	35 WORDS	64%	MATCHING TEXT	35 WORDS

terms: "I have previously stated my views that a prisoner does not shed his basic constitutional rights at the prison gate and I fully support the court's holding that the interest of inmate." b) Right to

SA Khajit Thukral Final File (1).docx (D142653446)

180/263	SUBMITTED TEXT	81 WORDS	87%	MATCHING TEXT	81 WORDS

life means more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye or the destruction, of any other organ of the body through which the soul communicates with the other world." Right to live is not restricted to mere animal existence. It means something more than just physical survival.

SA Ramkripal Gupta LLM 4th sem. Desertation.docx (D111857528)

181/263	SUBMITTED TEXT	23 WORDS	75%	MATCHING TEXT	23 WORDS

right to live" does not mean mere confinement to physical existence but it includes within its ambit the right to live with human dignity.*

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

182/263	SUBMITTED TEXT	31 WORDS	98%	MATCHING TEXT	31 WORDS

life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

W http://lawhelpline.in/PDFs/PRISIONERS_&_DUTY_OF_COURTS/PRISONERS_&_DUTY_OF_COURTS.pdf

183/263	SUBMITTED TEXT	70 WORDS	48%	MATCHING TEXT	70 WORDS

death but, when a person is executed with death penalty and doctor gave death certificate and dead body was not lowered for half an hour after the certificate of death, is violating of right to life under Article 21. The Supreme Court held that right to life is one of the basic human rights, guaranteed to every person by Article 21 and not even the State has authority to violate it. A prisoner

SA Khajit Thukral Final File (1).docx (D142653446)

184/263	SUBMITTED TEXT	48 WORDS	95%	MATCHING TEXT	48 WORDS

It is no more open to debate that convicts are not wholly denude of their fundamental rights. 118 However, a prisoner's liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is the more substantial

It is no more open to debate that convicts are not wholly denuded of their fundamental rights. However, prisoner's liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is all the more substantial.

W http://lawhelpline.in/PDFs/PRISIONERS_&_DUTY_OF_COURTS/PRISONERS_&_DUTY_OF_COURTS.pdf

185/263	SUBMITTED TEXT	20 WORDS	90%	MATCHING TEXT	20 WORDS

human being even when lodged in jail; he continues to enjoy all his fundamental rights including the right to life.

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

186/263	SUBMITTED TEXT	26 WORDS	45%	MATCHING TEXT	26 WORDS

right to health care" as an essential ingredient under Article 21 of the Constitution. Article 21 casts an obligation on the State to preserve life. A

SA Khajit Thukral Final File (1).docx (D142653446)

187/263	SUBMITTED TEXT	28 WORDS	48%	MATCHING TEXT	28 WORDS

or otherwise which should interfere therefore with the discharge his obligation cannot be sustained and must therefore give way. Denial of the Government's hospital to an injured person

SA Khajit Thukral Final File (1).docx (D142653446)

188/263	SUBMITTED TEXT	36 WORDS	44%	MATCHING TEXT	36 WORDS

on the grounds of non-availability of bed amounts to violation of 'right to life' under Article 21. Article 21 imposes an obligation on the State to provide medical assistance to injured person. Preservation of human life is of

SA Ramkripal Gupta LLM 4th sem. Desertation.docx (D111857528)

189/263	SUBMITTED TEXT	21 WORDS	54%	MATCHING TEXT	21 WORDS

them to hospital. The Gujarat High Court expressed shock and called I.G. Prison and Addl. Chief Secretary and they both acted

SA Khajit Thukral Final File (1).docx (D142653446)

190/263	SUBMITTED TEXT	33 WORDS	63%	MATCHING TEXT	33 WORDS

be held personally liable. In 2005, same High Court issued directions to State Government, that all Central and District jails should be equipped with ICCU, pathology lab, expert doctors, sufficient staff including nurses and

SA Khajit Thukral Final File (1).docx (D142653446)

191/263	SUBMITTED TEXT	26 WORDS	46%	MATCHING TEXT	26 WORDS

Delhi High Court held that where the Unit has obtained an interim order directing the Union of India to continue providing anti-retroviral treatment to the petitioner who

SA Khajit Thukral Final File (1).docx (D142653446)

192/263	SUBMITTED TEXT	16 WORDS	76%	MATCHING TEXT	16 WORDS

on bail. e) Right to Speedy Trial: The Supreme Court held that right to speedy trial is

SA Khajit Thukral Final File (1).docx (D142653446)

193/263	SUBMITTED TEXT	12 WORDS	100%	MATCHING TEXT	12 WORDS

stages, namely, the stage of investigation, inquiry, trial, appeal, revision and re-trial.

stages namely the stage of investigation, inquiry, trial, appeal, revision and re-trial.

W http://lawhelpline.in/PDFs/PRISIONERS_&_DUTY_OF_COURTS/PRISONERS_&_DUTY_OF_COURTS.pdf

194/263	SUBMITTED TEXT	58 WORDS	97%	MATCHING TEXT	58 WORDS

Supreme Court has laid down detailed guidelines for speedy trial of an accused in a criminal case, but it declined to fix any time limit for trial of offences. The burden lies on the prosecution to justify and explain the delay. The court held that the right to speedy trial flowing from Article 21, is available to accused at all

SA Dissertation_Danish Shakeel _LL.M. Law_ Ms. Nandini Raizada.docx (D111744736)

195/263	SUBMITTED TEXT	27 WORDS	89%	MATCHING TEXT	27 WORDS

The court further said that the accused cannot be denied the right of speedy trial merely on the ground that he had failed to demand a speedy trial.

SA NEELAM Dissertation.docx (D27172470)

196/263	SUBMITTED TEXT	45 WORDS	74%	MATCHING TEXT	45 WORDS

the nature of offence, number of accused and witness, the workload of the court, etc. The court comes to conclusion in the interest of natural justice that when the right to speedy trial of an accused has been infringed the charges of the conviction shall be quashed.

SA Ramkripal Gupta LLM 4th sem. Desertation.docx (D111857528)

197/263	SUBMITTED TEXT	14 WORDS	78%	MATCHING TEXT	14 WORDS

indicted person to get speedy disposal of his indictment and consequently the hardship that

SA Ramkripal Gupta LLM 4th sem. Desertation.docx (D111857528)

198/263	SUBMITTED TEXT	27 WORDS	87%	MATCHING TEXT	27 WORDS

of undertrial prisoners, who were languishing in jails in the State of Bihar for years awaiting their trial. The Supreme Court held that "right to speedy trial'

SA Dissertation_Danish Shakeel _LL.M. Law_ Ms. Nandini Raizada.docx (D111744736)

199/263	SUBMITTED TEXT	21 WORDS	92%	MATCHING TEXT	21 WORDS

guarantee of "life and personal liberty" enshrined in Article 21 of the Constitution. Speedy trial is an essence of criminal justice.

SA Dissertation_Danish Shakeel _LL.M. Law_ Ms. Nandini Raizada.docx (D111744736)

200/263	SUBMITTED TEXT	17 WORDS	85%	MATCHING TEXT	17 WORDS

Bhagwati held that unlike the American Constitution speedy trial is not specially enumerated as a fundamental right,

SA Dissertation_Danish Shakeel _LL.M. Law_ Ms. Nandini Raizada.docx (D111744736)

201/263	SUBMITTED TEXT	33 WORDS	100%	MATCHING TEXT	33 WORDS

it is implicit in the broad sweep and content of Article 21 as interpreted in Maneka Gandhi's case. No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair

SA Dissertation_Danish Shakeel _LL.M. Law_ Ms. Nandini Raizada.docx (D111744736)

202/263	SUBMITTED TEXT	16 WORDS	93%	MATCHING TEXT	16 WORDS

For this reason, the court ordered the Bihar Government to release undertrial prisoners on their personal

SA Dissertation_Danish Shakeel _LL.M. Law_ Ms. Nandini Raizada.docx (D111744736)

203/263	SUBMITTED TEXT	16 WORDS	100%	MATCHING TEXT	16 WORDS

for periods longer than the maximum term for which they could have been sentenced if convicted. 120

SA Plagiarism check.docx (D142509794)

204/263	SUBMITTED TEXT	13 WORDS	100%	MATCHING TEXT	13 WORDS

of the fundamental right to life and liberty enshrined in Article 21

of the Fundamental Right to life and liberty enshrined in article 21." 477

W http://docshare01.docshare.tips/files/21553/215538909.pdf

205/263	SUBMITTED TEXT	26 WORDS	100%	MATCHING TEXT	26 WORDS

No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or just and it would fall foul of Article 21.

No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of article 21.

W http://docshare01.docshare.tips/files/21553/215538909.pdf

206/263	SUBMITTED TEXT	31 WORDS	79%	MATCHING TEXT	31 WORDS

and oppressive incarceration prior to trial; to minimise anxiety and concern accompanying public accusation and to limit the possibilities that long delays will impair the ability of an accused to defend himself.

SA Khajit Thukral Final File (1).docx (D142653446)

207/263	SUBMITTED TEXT	60 WORDS	100%	MATCHING TEXT	60 WORDS

The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality can be averted. In

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208/263	SUBMITTED TEXT	33 WORDS	95%	MATCHING TEXT	33 WORDS

The Supreme Court held that a free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty.

SA Ramkripal Gupta LLM 4th sem. Desertation.docx (D111857528)

209/263	SUBMITTED TEXT	36 WORDS	74%	MATCHING TEXT	36 WORDS

that the right to free legal service is clearly an essential ingredient of reasonable, just and fair procedure for a person accused of an offence and it is implicit in the guarantee of Article 21. The

SA Plagiarism check.docx (D142509794)

210/263	SUBMITTED TEXT	21 WORDS	86%	MATCHING TEXT	21 WORDS

State Government cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability.

SA Dissertation-Shiv Dayal 20.08.21.docx (D111495161)

211/263	SUBMITTED TEXT	40 WORDS	100%	MATCHING TEXT	40 WORDS

The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the State.

SA Plagiarism check.docx (D142509794)

212/263	SUBMITTED TEXT	22 WORDS	97%	MATCHING TEXT	22 WORDS

constitutional obligation to provide free legal services to an indigent accused does not arise only when trial commences but also attaches when

SA Plagiarism check.docx (D142509794)

213/263	SUBMITTED TEXT	24 WORDS	100%	MATCHING TEXT	24 WORDS

is for the first time produced before the Magistrate. That is the stage at which an accused person needs competent legal advice and representation

SA Plagiarism check.docx (D142509794)

214/263	SUBMITTED TEXT	17 WORDS	85%	MATCHING TEXT	17 WORDS

accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or

SA Shalvin Sharma Dissertation MATS University.pdf (D139107050)

215/263	SUBMITTED TEXT	24 WORDS	68%	MATCHING TEXT	24 WORDS

and is of such a nature that the circumstances of the case and the need of the social justice require that he should be

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216/263	SUBMITTED TEXT	33 WORDS	93%	MATCHING TEXT	33 WORDS

the Magistrate or Session Judge, before whom the accused appears, is under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty

SA NEELAM Dissertation.docx (D27172470)

217/263	SUBMITTED TEXT	14 WORDS	100%	MATCHING TEXT	14 WORDS

he is entitled to obtain free legal services at the cost of the State.

SA Plagiarism check.docx (D142509794)

218/263	SUBMITTED TEXT	29 WORDS	81%	MATCHING TEXT	29 WORDS

the right of a detenue to consult a legal advisor of his choice for any purpose is not limited to criminal proceeding but also for securing release from preventive detention

SA Plagiarism check.docx (D142509794)

219/263	SUBMITTED TEXT	11 WORDS	95%	MATCHING TEXT	11 WORDS

Free legal aid is the state's duty and not government charity:

SA Ramkripal Gupta LLM 4th sem. Desertation.docx (D111857528)

220/263	SUBMITTED TEXT	14 WORDS	75%	MATCHING TEXT	14 WORDS

Justice Krishna Iyer declared that "this is the State's duty and not Government's charity".

SA Ramkripal Gupta LLM 4th sem. Desertation.docx (D111857528)

221/263	SUBMITTED TEXT	24 WORDS	83%	MATCHING TEXT	24 WORDS

If, a prisoner is unable to exercise his constitutional and statutory right of appeal including Special Leave to Appeal for want of legal assistance,

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222/263	SUBMITTED TEXT	16 WORDS	100%	MATCHING TEXT	16 WORDS

Courts shall forthwith furnish a free transcript of the judgement when sentencing a person to

SA Plagiarism check.docx (D142509794)

223/263	SUBMITTED TEXT	12 WORDS	100%	MATCHING TEXT	12 WORDS

prison term. (2) In the event of any such copy being sent to

SA Plagiarism check.docx (D142509794)

224/263	SUBMITTED TEXT	48 WORDS	86%	MATCHING TEXT	48 WORDS

jail authorities for delivery to the prisoner by the appellate, revisional or other court, the official concerned shall with quick dispatch get it delivered to the sentenced person and obtained an acknowledgement thereof from him. 122 (3) Where the prisoner seeks to file an appeal or revision, every facility for

SA Plagiarism check.docx (D142509794)

225/263	SUBMITTED TEXT	94 WORDS	95%	MATCHING TEXT	94 WORDS

exercise of that right shall be made available by the jail administration. (4) Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so require, assign a competent counsel for the prisoner's defence, provided the party does not object to that lawyer. (5) The State which prosecuted the person and set in motion the process which deprived him of his liberty shall pay to assigned counsel such sum as the court may equitably fix".

SA Plagiarism check.docx (D142509794)

226/263	SUBMITTED TEXT	155 WORDS	98%	MATCHING TEXT	155 WORDS

Protection against instruments of restraint: Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances: ? As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority; ? On medical grounds by direction of the medical officer; ? By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary. ? Handcuffing of undertrial prisoner is unconstitutional: The Hon'ble

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

227/263	SUBMITTED TEXT	21 WORDS	68%	MATCHING TEXT	21 WORDS

Rules, that every undertrial who was accused on non-bailable offence punishable with more than three years jail term would be handcuffed,

SA Plagiarism check.docx (D142509794)

228/263	SUBMITTED TEXT	45 WORDS	96%	MATCHING TEXT	45 WORDS

unconstitutional.37 The Hon'ble Supreme Court again held, where an undertrial prisoner challenged the action of Superintendent of jail putting him into bar fetters and kept him in solitary confinement was an unusual and against the spirit of Constitution and declared it a violation of right of locomotion. ?

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

229/263	SUBMITTED TEXT	353 WORDS	98%	MATCHING TEXT	353 WORDS

No need of handcuffing, while escorting the voluntary surrendered person: In case of Sunil Gupta the petitioners were educated social workers. They were handcuffed and taken to the court from the jail and back from court to the prison by escort party. They had voluntarily submitted themselves for arrest from “dharana”. They had no tendency to escape from the jail. In fact, they even refused to bail but chose to continue in prison for the public cause. It was held that this act of the escort party was violative of the Article 21 of the Constitution. There was reason recorded by the escort party in writing for this inhuman act. The court directed the Government to take appropriate action against the erring escort party for having unjustly and unreasonably handcuffing the petitioner. ? Undertrial prisoner cannot be kept in “leg irons”: It was held by the Supreme Court in the case of Kadra Pehadiya that, it was difficult to see how the four petitioners who were merely undertrial prisoners awaiting trial could be kept in leg irons contrary to all prison’s regulations and in gross violation of the decision of this court in Sunil Batra’s case. The court directed the Superintendent to immediately remove leg irons from the feet of the four petitioners. The 123 court also directed that no convict or undertrial prisoner shall be kept in leg irons except in accordance with the ratio of the decision of Sunil Batra’s case. Later on the Supreme Court declared, directed and laid down a rule that handcuffs or other fetters shall not be forced on a prisoner, convict or undertrial, lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back, the police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmates of a jail in the country or while transporting from one jail to another or from jail to court and back. While intending to enforce the order, the court emphasised that if any violation of any of the direction issued by Supreme Court by any rank of the police in the country of member of the jail

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

230/263	SUBMITTED TEXT	17 WORDS	100%	MATCHING TEXT	17 WORDS

establishment shall be summarily punished under the Contempt of Court Act apart from other penal consequences under law.

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

231/263	SUBMITTED TEXT	172 WORDS	99%	MATCHING TEXT	172 WORDS

by the jail authorities. The Supreme Court on a complaint of custodial violence to women prisoners in jail directed that those helpless victims of prison injustice should be provided legal assistance at the State's cost and protected against torture and maltreatment. As earlier, the court held that prisoners cannot be thrown at the mercy of policemen as if it were a part of an unwritten law of crime. The Supreme Court was not happy with the attitude of prison authority and suggested that the prison authorities should change their attitudes towards prisoners and protect their human rights for the sake of humanity. The Article 5 of the UDHR, states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". There are words that crop up again. They mean severe beatings on the body and the soles of the feet with rubber hoses and truncheons, electronic shocks being run through the genitals and tongue, near-downing, hanging arms and legs, cigarette bums over the body, sleep deprivation or subjection to a high pitched noise and much more.

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

232/263	SUBMITTED TEXT	20 WORDS	50%	MATCHING TEXT	20 WORDS

two out of three people on earth live in country where torture occurs. "Torture is fundamental violation of human rights", "……..

SA Khajit Thukral Final File (1).docx (D142653446)

233/263	SUBMITTED TEXT	17 WORDS	73%	MATCHING TEXT	17 WORDS

third world countries. Certain regions do have a notorious history of abusing human rights but many countries

SA Khajit Thukral Final File (1).docx (D142653446)

234/263	SUBMITTED TEXT	90 WORDS	100%	MATCHING TEXT	90 WORDS

point plan for the prevention of torture. It told Governments, how they could take steps to prevent the torture of prisoners. For example, the highest authorities of a country can make statement telling the law enforcer that torture will not be tolerated. Amnesty called for an end to secret detention and the use of statements extracted under torture. It asked Governments to make torture illegal and to prosecute those found guilty of it. It suggested that places where prisoners are held be visited and examined regularly so that the public knows what goes on. 124

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

235/263	SUBMITTED TEXT	33 WORDS	86%	MATCHING TEXT	33 WORDS

right to life is one of the basic human rights. Even when lodged in jail, he continues to enjoy all his fundamental rights including the right to life guaranteed to him under the Constitution.

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

236/263	SUBMITTED TEXT	18 WORDS	100%	MATCHING TEXT	18 WORDS

On being convicted of crime and deprived of their liberty in accordance with the procedure established by law,

SA NEELAM Dissertation.docx (D27172470)

237/263	SUBMITTED TEXT	316 WORDS	91%	MATCHING TEXT	316 WORDS

cannot be defeated by pleading the old and archaic defence of immunity in respect of sovereign acts which have been rejected several times by the Supreme Court". State is liable for the death of undertrial who continues to enjoy all fundamental rights including right to life. Again, it was observed by the Supreme Court that "custodial violence, torture and abuse of police powers are not peculiar to this country, but it is widespread. It has been the concern of the International Community because the problem is universal, and the challenge is almost global. The courts are also required to have a change in their outlook, approach, appreciation, and attitude, particularly in cases involving custodial crimes so that as far as possible within their powers, the truth is found and the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed." The Hon'ble Supreme Court had passed an order for producing a prisoner before it. It was alleged that while the prisoner was being taken to the court, he was manhandled severely by the escort police. After an enquiry, the court expressed the hope the basic pathology which makes police cruelty possible will receive Government's serious attention and the roots of the third degree would be plucked out or otherwise Article 21, with its profound concern for life and limb, will become dysfunctional useless the agencies of the law in the police and prison establishments have sympathy for the humanist creed of that Article.49 Where the petition under Article 32 was filed by undertrials for enforcement of their fundamental right under Article 21 on the allegation that they were blinded by the police officer either at the time of their arrest or after their arrest, whilst in police custody, production of the report submitted by the police officer to the State Government and correspondence exchanged by police officers or noting on files made by them in enquiry order by the State Government into alleged offence.

SA Khajit Thukral Final File (1).docx (D142653446)

238/263	SUBMITTED TEXT	27 WORDS	61%	MATCHING TEXT	27 WORDS

without reasonable ground would amount to deprivation of personal liberty under Article 21. In this case six appellants were convicted by the Session Judge in a murder case

SA Plagiarism check.docx (D142509794)

239/263	SUBMITTED TEXT	22 WORDS	79%	MATCHING TEXT	22 WORDS

appellants were male members of their family and all of them were in jail. As such their defence was likely to be

SA Plagiarism check.docx (D142509794)

240/263	SUBMITTED TEXT	30 WORDS	100%	MATCHING TEXT	30 WORDS

any conduct on their part suggestive of disturbing the peace of the locality, threatening anyone in the village or otherwise thwarting the life of the community or the course of justice,

SA Plagiarism check.docx (D142509794)

241/263	SUBMITTED TEXT	18 WORDS	91%	MATCHING TEXT	18 WORDS

deprivation of personal liberty must be founded on the most serious consideration relevant to the welfare objectives of

SA Plagiarism check.docx (D142509794)

242/263	SUBMITTED TEXT	16 WORDS	100%	MATCHING TEXT	16 WORDS

not less than one half of the maximum period of 125 punishment prescribed for the offence

SA Dissertation-Shiv Dayal.doc (D110444806)

243/263	SUBMITTED TEXT	295 WORDS	96%	MATCHING TEXT	295 WORDS

the provisions of the Code. h) Right to be released on due date: No doubt, it is absolute right; all the prisoners shall be released from prison on the completion of their sentence. It is the duty of the prison staff to notify the releasing date of every prisoner in the register to be maintained by Jailer. If, any formality is needed to be done for releasing purpose, should be completed before the releasing date. ? Detention undergone to be 'set-off' against final sentence: Section 428 of the Code, states for set-off of the period of detention of an accused as an undertrial prisoner against the term of imprisonment imposed on him on his conviction. It only provides for a 'set-off but does not equate an 'undertrial detention or the detention with imprisonment on conviction'. The provision as to set-off expresses a legislative policy; this does not mean that it does away with the difference in the two kinds of detention and puts things on the same footing for all purposes. The two requisites postulated in section 428 are: (a) During the stage of investigation, enquiry or trial of a particular case, the prisoner should have been in jail at least for a certain period; and (b) He should have been sentenced to a term of imprisonment in that case. If, the above said two conditions are satisfied, then the operative part of the provision comes into play, i.e., if the awarded sentence of imprisonment is longer than the period of detention undergone by him during the stages of investigation, enquiry, or trial, the convicted person needs to undergo only the balance period of imprisonment after deducting the earlier period from the total period of imprisonment awarded. The Hon'ble Supreme Court has interpreted the above provisions in a wider sense and held that period of detention undergone is to be set-off against the sentence of imprisonment.

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

244/263	SUBMITTED TEXT	12 WORDS	96%	MATCHING TEXT	12 WORDS

only provides for set-off but does not equate an undertrial detention, or

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

245/263	SUBMITTED TEXT	29 WORDS	91%	MATCHING TEXT	29 WORDS

detention under preventive detention laws is essentially a precautionary measure intended to prevent and intercept a person before he commits an infra active act, which he had done earlier

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

246/263	SUBMITTED TEXT	403 WORDS	99%	MATCHING TEXT	403 WORDS

of section 428. It is a settled legal position that detention under the preventive detention laws is not punitive but is essentially a precautionary measure intended to prevent and intercept a person before he commits an infra active act which he had done earlier. (i) Delay in release from jail amounts to 'illegal detention': The Hon'ble Supreme Court held that a person was acquitted by the court but was not released by the jail authority for 14 years of his precious life. The Supreme Court was first shocked by the sordid and disturbing State of affairs disclosed by the writ petition for habeas corpus filed by the petitioner for the release of a person for the unlawful detention, who was already acquitted by the court more than 14 years ago. Accordingly the petitioner also asked for compensation of illegal incarceration in which the detenue had lost his precious 14 years of life behind the bars even though he was acquitted by court. The Supreme Court held the following principles in its judgement- (1) The monetary compensation for violation of fundamental rights to life and personal liberty can be determined; and (2) If infringements of fundamental rights cannot be corrected by any other methods open to judiciary, then right to compensation is opened. The Supreme Court granted interim relief amounting to Rs. 35,000 to petitioner and also right to file regular suit in the ordinary court to recover damages from the State and its erring officials for taking away his precious 14 years of independent life which could never come back. The court has directed the subordinate court to hear the case on merit basis.56 Please remember that this petition was a habeas corpus writ where the remedy is only to release the illegal detenue and not to punish the offender. The Supreme Court has opened the remedy in the monetary form where there is no other way to correct it on the violation of fundamental right. We must not assess that the Supreme Court has given only Rs. 35000 as compensation for the darkest 14 years of the illegal detention but as it was habeas corpus writ and Supreme Court is also bound with the law. Here the Hon'ble Supreme Court has restrained itself from crossing the constitutional provisions. ? Power of High Court to release prisoners after pardon : Any High Court may, in any case in which it has recommended to Government the granting of a free pardon to any prisoner, permit him to be at liberty on his own recognizance. i) Right to Education: 5. Right to

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

247/263	SUBMITTED TEXT	21 WORDS	78%	MATCHING TEXT	21 WORDS

the facilities of liaison through correspondence course should be extended to inmates who are desirous of taking up advanced studies and

SA Shalvin Sharma Dissertation MATS University.pdf (D139107050)

248/263	SUBMITTED TEXT	35 WORDS	37%	MATCHING TEXT	35 WORDS

Article 19 (i) (a) includes the freedom to acquire knowledge, to pursue books and read any types of literature subject only to certain restrictions for maintaining the security of State and pubic order. ? Right to

SA Akrita Kaur dissertation on Prison Reforms- With Special Reference to Under-trial Prisoners.docx (D123339977)

249/263	SUBMITTED TEXT	16 WORDS	80%	MATCHING TEXT	16 WORDS

nothing in the Bombay Detention Order, 1951 prohibiting a detenue from writing or publishing a book.

SA Khajit Thukral Final File (1).docx (D142653446)

250/263	SUBMITTED TEXT	16 WORDS	71%	MATCHING TEXT	16 WORDS

be detrimental to public interest or safety as envisaged under the Defence of India Rules, 1962.

SA Akrita Kaur dissertation on Prison Reforms- With Special Reference to Under-trial Prisoners.docx (D123339977)

251/263	SUBMITTED TEXT	16 WORDS	65%	MATCHING TEXT	16 WORDS

Preventive Detention Act was not permitted to hand over his written work to his wife for

SA Akrita Kaur dissertation on Prison Reforms- With Special Reference to Under-trial Prisoners.docx (D123339977)

252/263	SUBMITTED TEXT	19 WORDS	55%	MATCHING TEXT	19 WORDS

labour taken from prisoners without paying proper remuneration was “forced labour” and violative of Article 23 of the Constitution. The

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

W http://lawhelpline.in/PDFs/HUMAN_RIGHTS/Human_Rights1.pdf

253/263	SUBMITTED TEXT	27 WORDS	100%	MATCHING TEXT	27 WORDS

Right to reasonable wages for work: For the first time in 1977, the Hon’ble Supreme Court held that the unpaid work is bonded labour and humiliating. The court

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

254/263	SUBMITTED TEXT	74 WORDS	98%	MATCHING TEXT	74 WORDS

The court held that when prisoners are made to work, a small amount by way of wages could be paid and should be paid so that the healing effect on their mind is fully felt. Moreover, proper utilisation of service of prisoners in some meaningful employment, whether a cultivator or as craftsmen or even in creative labour will be good from society's angle, as it would not be the burden on the public exchequer and the tension within.

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

255/263	SUBMITTED TEXT	14 WORDS	100%	MATCHING TEXT	14 WORDS

Like any other workman a prisoner is also entitled to wages for his work.

SA Plagiarism check.docx (D142509794)

256/263	SUBMITTED TEXT	40 WORDS	100%	MATCHING TEXT	40 WORDS

It is imperative that the prisoners should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to prisoners the State concerned shall constitute a wage fixation body for making recommendations.

SA Plagiarism check.docx (D142509794)

257/263	SUBMITTED TEXT	40 WORDS	96%	MATCHING TEXT	40 WORDS

Until the State Government takes any decision on such recommendations every prisoner must be paid wages for the work done by him at such rates or revised rates as the Government concerned fixed in the light of the observations made above.

SA Plagiarism check.docx (D142509794)

258/263	SUBMITTED TEXT	157 WORDS	94%	MATCHING TEXT	157 WORDS

More recently, MP High Court held that, if the twin objectives of rehabilitation of prisoners and compensation to victims are to be achieved, out of the earnings of the prisoners in the jail, then the income of the prisoner has to be equitable and reasonable and cannot be so meager that it can neither take care of rehabilitation of prisoner nor provide for compensation to the victim. k) Special rights to women prisoners: ? Right to female guard for female security: The Hon'ble Supreme Court has given detailed instructions to the concerned authority for providing security and safety in police lock-up and particularly woman suspects. Female suspects should be kept in a 129 separate lock-up and not in the same in which male accused are detained and should be guarded by female constables. And also directed the IG Prison and State Boards of Legal Aid Advice Committee to provide legal assistance to the poor and indigent accused (male or female) whether they are undertrial or convicted prisoners.

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

259/263	SUBMITTED TEXT	172 WORDS	99%	MATCHING TEXT	172 WORDS

Rights to pregnant prisoners: The Hon'ble Supreme Court directed that before sending a pregnant woman to a jail, the concern authorities must ensure that jail in question has the basic minimum facilities for delivery of child as well as for providing pre-natal and post-natal care for both, the mother and the child. As far as possible and provided the woman prisoner has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases causality constituting high security risk or cases of equivalent grave descriptions can be denied this facility. o Rights to mother prisoners: The Hon'ble Supreme Court held that female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years, the child shall be handed over to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

260/263	SUBMITTED TEXT	58 WORDS	100%	MATCHING TEXT	58 WORDS

shall not be transferred to an institution outside the town or city where the prison is located in order to minimize undue hardships on both mother and child due to the physical distance. Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet the mother at least once in a week.

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

261/263	SUBMITTED TEXT	42 WORDS	100%	MATCHING TEXT	42 WORDS

Right to security of life inside the jail: It is the duty of the State to provide security to prisoners. If it fails and any incident takes place in jail, then the Government has to pay compensation to the dependents of the deceased person.

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)

262/263	SUBMITTED TEXT	12 WORDS	100%	MATCHING TEXT	12 WORDS

and Criminal Justice Administration in India, Uppal Publishing House, New Delhi:, 131 ?

and Criminal Justice Administration in India, Uppal Publishing House, New Delhi, 1985.

W http://docshare01.docshare.tips/files/21553/215538909.pdf

263/263	SUBMITTED TEXT	14 WORDS	76%	MATCHING TEXT	14 WORDS

it is the duty of the State to give reasonable compensation to the

SA Dissertation- Rights of an Accused with reference to Bail.pdf (D51793588)