

CHAPTER- IV

PROTECTION OF CUSTODIAL DIGNITY IN INDIA: A STUDY OF THE STATUTORY FRAMEWORK

Respect for Human Rights is the hall mark of a civilized society. A civilized nation cannot ignore the violations of Humans Rights of its people. It must have effective system for the prevention of such violations and for punishing the violators. A liberal democratic society, like India, depends for its very existence on rule of law and respect for human Rights. Human Right is not a new concept in India. Our ancient texts are replete with examples where the importance of Human Rights for dignity and protection of individual are emphasized. In *The Ramayana* where Lord Rama tells Sita – “Ruler wield the bow so that there is no cry of helplessness”. This thought implies that the state power can only be deployed for the sustenance of human dignity. It also reflects the aspirations of great leaders of modern India viz. the desire of Mahatma Gandhi- the father of the Nation, to wipe out every tear from every eye.⁴³¹

The movement for securing Human Rights however gained strength after the Second World War. In pursuance of the objective of U.N. Charter, India signed and ratified the U.N. charter 1945 and moreover after the establishment of the Universal Declarations of Human Rights, 1948, the International Covenant on civil and political Rights, 1966 and after the recommendation of the international Bill of rights, the concept of Human Rights constitutes an important aspect of contemporary international, national and political system, it extends to which a nation honors and respects the Human Rights on its citizens and other living within its

431. V.C.Mishra, “Terrorism,Law & Human Rights”, L.N.V.May (1994)38.

territory, is regarded as an important yardstick of a Nation's development.⁴³²

Unlike the western countries, which have a long history of documented human rights, our country sadly lacks it due to the historical reasons. The legal regime developed by the British for administrative purposes, did not provide for basic human rights. Even the Government of India Act, 1935 laying down the basic governmental structure did not contain the guarantees of fundamental rights. As a result of that the progressive march of civilization and the growing incidents of custodial crimes occurring in different parts of our country, has gradually been discarding the cult of violence as well as the practices based on oppression, torture, and inhuman treatment. Their adherence to a democratic political system based on a catalogue of values as enshrined in the republican constitution has hitherto inculcated a belief that human rights can well be nurtured safely within the apparatus of Indian political system.⁴³³

Administration of justice through the instrumentality of law is an essential component of governance. Rule of law is the bed rock of democracy, which is acknowledged as the best system of governance to ensure respect for human rights. The dignity and worth of the individual being at the core of democracy, constitutional governance in a democratic set up is the safest guarantee for the protection of human rights and assurance of human resource development.⁴³⁴

India's freedom in 1947 was indeed a watershed in the world history because it marked the end of the colonial era that had dominated world affairs for centuries within ten years from the date, literally dozens of countries in Asia and Africa had become free. But the freedom of India was

432. K.I.Vibhute, Criminal Justice,[1st Edition,2004],Central Law Publication, Lucknow. P. 97.

433. Vijoy Kumar,Human Rights Under Criminal Justice System in India,C.I.L.Q.2003.

434. Rajani Ranjan Jha,Human Rights and Civil Liberties in Indian Context, Edited by Z.A. Nizami and Devik Paul, Human Rights in the Third World countries,(1994)108.

significant not only as a major historical event marking the end of one and the beginning of another era, but also because India chose democracy.⁴³⁵

After partition, constituent assembly was formed to frame Constitution for India. It functioned as an unfettered body without any restrictions on its powers. The Indian constitution is unique as it embodies the best of American constitution, the unwritten English Constitution as also declaration of Human Rights.

A. PROVISIONS UNDER INDIAN CONSTITUTION

The preamble⁴³⁶ of the Indian constitution conveys the philosophy of the free nation. The preamble provides that India would be "Sovereign Socialist Secular Democratic Republic". The preamble emphasizes on the unity and integrity of the nation and also on the dignity of the individual.

The people of India have, in exercise of their sovereign will as expressed in the preamble, adopted the democratic ideal which assures to the citizen the dignity of individual and other cherished human values as a means to the full evolution and expression of his personality, and in delegating to the legislature, the executive and the judiciary, their respective powers in the constitution, reserved to themselves certain fundamental rights.

The Constitution of India declares certain fundamental rights⁴³⁷ of the individual including the persons in police custody. A fundamental right is inviolable in the sense that no law, ordinance, custom, usage or administrative order can abridge or take away a fundamental right. A fundamental right cannot be taken even by a Constitutional amendment if

435. Dr.Ashutosh, Rights of Accused,[1st Edition,2009], Universal Law Publishing Co. Delhi. P.333.

436. The Preamble provides that the India of its dream would be "Sovereign, Socialist Secular, Democratic, Republic".

437. Part III of the Indian Constitution.

it forms the basic structure of the constitution.⁴³⁸ These fundamental rights include right to equality⁴³⁹, right to freedom⁴⁴⁰, protection in respect of conviction for offences⁴⁴¹, right to life and liberty⁴⁴², protection against arrest and detention⁴⁴³, right against exploitation⁴⁴⁴ and right to constitutional remedy⁴⁴⁵ for enforcement of fundamental rights. But fundamental to these fundamental rights is the right against non arbitrariness, right to fair hearing and a reasoned decision which must be integrated in the procedure established by law.

The prohibition imposed by article 20 of the constitution is directly relevant to the criminal justice delivery system. Article 20 contains some internationally recognized safeguards for a person facing a criminal action, which may ultimately deprive him of his life and liberty. The article 20 and 21 are very closely related to each other. The safeguards provided by article 20 to the person accused of crimes are –

- 1) Against ex post facto law,
- 2) Against Double jeopardy, and
- 3) Prohibition against self incrimination.

Article 20 prohibits retrospective operation of penal legislation. Article 20(2) guards against double jeopardy for the same offence. Article 20(3) provides that no person accused of any offence shall be compelled to be a witness against himself. These three clauses may appear to be dealing with three different topics or facets. But there is a common thread of fairness, equitability and justice running through them. In other words, the common

438. V.N. Sukla, Constitution of India, Revised by Mahendra P. Singh,[1st Edition 1950], Eastern Book Company, Lucknow, P.36.

439. Article 14 to 18 of Indian Constitution.

440. Article 19 of the Indian Constitution.

441. Article 20 of the Indian Constitution.

442. Article 21 of the Indian Constitution.

443. Article 22 of the Indian Constitution

444. Article 23&24 of the Indian Constitution

445. Article 32 to 35 of the Indian Constitution.

theme is that the administration of the criminal justice system should not be so designed or implemented as to destroy the deeper and moral values of justice itself⁴⁴⁶.

Of course, article 20(3) is most directly relevant. The constitution and the law protects against testimonial compulsion on the premise that such compulsion may act as a subtle form of coercions on the accused. This value has not only been given the status of a fundamental right but also is the underlying themes of several statutory provisions. Article 20 (3) comes into operation as soon as a formal accusation is made, whether before the commencement of a prosecution or while it is pending.

In **Pareed v. Nilambaram**⁴⁴⁷; the Kerala High Court decided that if the nonpayment of the panchayat tax was not an offence on the day it fell due, the defaulter could not be convicted for the omission to pay under a law passed subsequently even if it covered older dues. The protection afforded by clause (1) 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,⁴⁴⁸ or demanding security from a person⁴⁴⁹. The prohibition is just for conviction and sentence only and not for prosecution and trial under retrospective law. Hence, a trial under 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.⁴⁵⁰

446. Dr.Ashutosh Rights of the Accused,[1st Edition,200]9,Universal Law Publishing Co. Delhi. P. 334.

447.AIR 1967 Ker.155

449. Prahalad Krishna v. State of Bombay, AIR 1955 Bom.1

449. State of Bihar v. Shailbala, AIR 1952 SC329

450. J. N. Pandey, Constitutional Law of India, 45th Edition, Central Law Agency, Allahabad,P-218.

In **Maqbool Husain v. State of Bombay**,⁴⁵¹ the appellant contended that the second prosecution was in violation of Article 20(2), as he was already prosecuted by the Sea Customs Act. The court held that the sea custom authorities were not a court or judicial tribunal and the adjudging of confiscation under the sea customs Act did not constitute a judgment of judicial character necessary to take the plea of double jeopardy. Hence the prosecution under Foreign Exchange Regulation Act is not barred. Similarly in the Case of the **Venkataraman v. Union of India**,⁴⁵² the second prosecution was held not to attract the applicant of the double jeopardy protection guaranteed by article 20 (2).

The fundamental rule of criminal jurisprudence against self incrimination has been raised to a rule of constitutional law in article 20(3). The Supreme Court explained the scope of this clause in **M.P. Sharma v. Satish**⁴⁵³ and observed the following essentials, namely, -

1. It is a right pertaining to a person who is accused of an offence.
2. It is a protection against compulsion to be a witness
3. It is a protection against such compulsion relating to his giving evidence against himself.

In **Nandini Satpathy v .P.L.Dani**⁴⁵⁴ , the Apex Court considerably widened the scope of clause (3) of Article 20. The court is of the view 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. Hence, it is clear that compelled testimony

451. AIR 1953 SC325.

452. AIR 1954 SC 375.

453. AIR 1954 SC 300.

454. AIR 1977 SC 1025.

is not limited to physical torture or coercion, but extends also to techniques of psychological interrogation which cause mental torture in a person subject to such interrogation.

Right to life is natural Right. It has been guaranteed as one of the fundamental rights under part III of the Indian constitution.⁴⁵⁵ The Constitutional guarantee under Article 21 is that "no person shall be deprived of his life or personal liberty except according to procedure established by law". This article guarantees the important rights of the accused (suspects and under trial prisoners) right to life. Because of the expansive interpretation placed on the words "procedure established by law", this article has been held to cover a variety of Governmental acts which have an impact on personal liberty. In the **Gopalan** case⁴⁵⁶ the Supreme Court has given a literal interpretation to the provisions of Article 21. It was held by the court that 'law meant a law made by the state and courts were not competent to enquire the reasonableness or otherwise of that law'. The issue of interpretation of 'procedure established by law' was again raised before the Supreme Court for consideration in **Maneka Gandhi v. Union of India** case⁴⁵⁷. The Supreme Court overruled the decision of **A.K. Gopalan** case and held that it means the right, just and fair procedure that embodies the principles of natural justice and not an arbitrary, forceful or oppressive procedure. The procedure laid down must satisfy the test of reasonableness as mentioned in Article 19 of the constitution. The court showed the seeds for future development of the law enlarging this most fundamental of the fundamental rights.

Though Article 21 does not contain any express provision against torture or custodial crimes, the expression "life or personal liberty" occurring in the Article has been interpreted to include constitutional guarantee against

455. Article 21 of the Indian Constitution.

456. A.K.Gopalan v. State of Madras, AIR 1950 SC 27.

457. Maneka Gandhi v. Union of India, (1978)1 SCC 248.

torture, assault or injury against a person under arrest or under custody. The Supreme Court through the process of judicial activism has widened the scope of the right to life. Right to life does not mean animal existence; it means something much more than physical existence of the individual. It means "the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expression oneself and diverse forms, freely moving about and mixing and co - mingling with fellow beings"⁴⁵⁸ An under – trial or convicted prisoners cannot be subjected to physical or mental restrained. Which is not warranted by the punishment awarded by the court?

- a) Which is in excess of requirement of prisoner's discipline, or
- b) Which amounts to human degradation?⁴⁵⁹

In **Babu Singh v. State of U.P.**⁴⁶⁰, the court observed that refusal to grant bail in a murder case without reasonable ground would amount to denial of personal liberty to the accused person under Article 21. The court further stated that:"Personal liberty, deprived when bail is refused, is too precious value of our constitutional system recognized under Article 21 that the crucial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right."⁴⁶¹

458. Francis Coralie v. Union Territory of Delhi,(1981)1 SCC 608.

459. Sunil Batra v. Delhi Administration, AIR 1967 SC 1675.

460. (1978)1 SCC 579.

461. Babu Singh v. State of U.P., (1978)1 SCC 579.

The question of solitary confinement of prisoners came up before the Supreme Court in the case of **Sunil Batra (1) v. Delhi Administration**⁴⁶². The court considered that it was violative of Articles 14, 19, 20 and 21 of the constitution. The court was of the opinion that prison act did not empower the prison authorities to impose solitary confinement upon a prisoner, who is in jail under sentence of Death.

The court further started that solitary confinement is in itself a substantive punishment which can be imposed by a court of law under section 73⁴⁶³ and 74⁴⁶⁴ of I.P.C. Hence, exercise of such power cannot be left to the whim and capricious of prison authorities.

In a landmark case of **Joginder Singh v. State of Uttar Pradesh**⁴⁶⁵, the Supreme Court has explained the manner in which the law of arrest is to be worked in a democracy and conveyed effectively the mandatory action that the police will have to comply in all cases of arrest under the law. In effect, the Apex Court sought to strike a balance between the violations of human rights and indiscriminate arrests, weighing the rights, liberties and privileges of the single individual and the collective interests of the community as a whole. The doctrine of personal liberty guaranteed by the constitution would in effect expect that no arrest should be made merely because it is lawful for the police to do so, as according to the court.

"The existence of the power of arrest is one thing and the justification for the exercise of it is quite another. The officer must be able to justify the arrest that the arrest and detention could cause incalculable harm to reputation and self esteem of the person, no arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for an officer in the citizen's interest

462. (1978)4 SCC 494.

463. Section 73 of Indian Penal Code 1861.

464. Section 74 of Indian Penal Code, 1861.

465. (1994)3 SCC 423.

and in his own interest that no arrest should be made without reasonable satisfaction as the genuineness and bonafides of a complaint and reasonable belief as to the person's complicity and the need to affect the arrest. A person is not liable to be arrested merely on the suspicion of complicity is an offence. Except in heinous offences, an arrest must be avoided if a police officer issues notice to a person to attend the station house and not to leave the premises without permission would do".⁴⁶⁶

Police authorities strongly feel that handcuffing of accused persons and suspects and parading them on the roads on the way to court or Jail will minimize the crime rate. But such a wind of inhumane treatment given to accused persons is not fair and permissible. Accused/Suspected persons when paraded are humiliated and punished by the police authorities without waiting for the court verdict.⁴⁶⁷

In **Prem Shanker Shukla v. Delhi Administration**,⁴⁶⁸ the Supreme Court explained the validity of handcuffing in the right of Article 21 of the Constitution. The court held that "Handcuffing is *prima facie* inhuman and therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent fair, procedure and objective monitoring, to inflict 'Irons' is to resort to zoological strategies repugnant to Article 21".

In **Sheela Barse v. State of Maharashtra**⁴⁶⁹ the apex court held that ill treatment meted out to women suspects in police lockups was considered to be violative of Article 21. The court gave declared directions to the police authorities to improve conditions of police lockups and provide safety and security bars to male as well as female inmates in police custody. It specially directed that female suspects be guarded by female constables.

466. Joginder Singh v. State of U.P.(1994)3 SCC 423.

467. K.I.Vibhute, Criminal Justice, 1st Edition, 2004, Eastern Book Co. Lucknow, P-135.

468. AIR 1980 SC 1535.

469. (1983)2 SCC 96.

In **D.K. Basu v. State of West Bengal**⁴⁷⁰, the Supreme Court had given a new dimension in the administration of criminal justice system by reconciling balance between the protection of fundamental rights and human rights of the criminal vis-a-vis duties of the police. The court clearly stated that any form of torture or cruelty in human or degrading treatment given to the detenu convicts under trials and other prisoners would fall within the inhibition of Article 21 of the constitution whenever it occurs during investigation or interrogation or otherwise. The Supreme Court commenting on custodial deaths, the apex court stated "custodial torture is a valued violation of human dignity, which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and flag of humanity must on each occasion fly half-mast".⁴⁷¹

Article 22(1) and 22(2) of the constitution are also relevant for the protection of human rights of accused in the criminal justice system because it is the primary object to ensure that certain checks exist in the law to prevent abuse of power of arrest and detention. Article 22(1) provides that no person who is arrested shall be detained in custody without being informed as soon as possible, of the ground of such arrest, nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice.

The protective sweep of Article 22(1) is further buttressed by the wide reach of Article 21 which unequivocally prohibits the deprivation of personal liberty otherwise than by procedure established by law. This means and includes the law enacted by the parliament and the state legislative which are within its legislative competence.⁴⁷²

470. (1997)1 SCC 416.

471. D.K. Basu v. State of West Bengal(1997)1 SCC 416.

472. N.R.Madhav Menon, A Training Manual for Police on Human Rights, Human Rights Centre, 1997, NLSIU Publications Centre, Bangalore, P. 254.

The arrest and detention must be in conformity with law not only at the arrest stage but throughout. Even if the detention is valid ab initio, it may cease to be so if some provision of law of the constitution is violated subsequently and in that case the person detained shall be entitled to be set at liberty forthwith.⁴⁷³

Article 22(2) provides that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

Both the provisions referring to above have a vital importance to the theme of the present report. The right to consult a lawyer intended to enable the detained person, inter alia,

- a) To secure release, if the arrest is totally illegal.
- b) To apply for bail, if the circumstances so warrant.
- c) To prepare for his defense, and
- d) To ensure that while he is in custody, no illegality is perpetrated upon him.

The right to be produced before the magistrate under Article 22 (2) is intended, inter alia, to ensure that:

1. There will be an independent scrutiny of the legality of the detention.
2. There will be an adequate and defective opportunity for seeking release or bail.
3. There will be available an avenue where the person detained can ventilate his grievances that he might be against the treatment meted out to him in custody.

473. Ibid.

The Directive Principles of state police as enshrined in our constitution has a pivotal role in protecting the individual's right because, to give the fundamental right an effect, there should be a real attempt at harmonizing and reconciling between fundamental right and directive principle and any collision between the two should be avoided as far as possible⁴⁷⁴. The Directive principles imposes obligation upon the state to take positive action to promote the welfare of the people by securing and protecting as effectively as may be, the social order in which justice, social, economic and political, shall inform all the institutions of natural life.⁴⁷⁵

An important mechanism to protect and regulate the social fabric is the criminal justice delivery system. One of the dangers of the system is an overzealous personnel charged with protection and prevention of crime. In a country where police are taught that prevention of crime can be achieved through exemplary punishment, the idea of human justice is difficult to push through. However the law makers have been conscience of this fact and have tried to take some restrictive measures by integrating principles of justice and dignity within the enactment itself. A look at the three criminal major acts, viz. The Indian Penal Code, 1860, The Criminal Procedure Code 1897 and later amended in 1973, and the Evidence Act 1872, which are largely a legacy of the colonial period have certain provisions which makes torture of the accused in custody by a police officer a punishable offence.

B. THE INDIAN PENAL CODE

As an enactment containing the general criminal law of the country, the Indian penal code does not omit to take notice of the need to create criminal sections against conduct that harms another person. It needs to be

474. Pollock Basu, Law Relating to Protection on Human Rights, 2nd Edition, 2008 Modern Law Publishers, Delhi, P.12.

475. U. Chandra, Human Rights,[7th Edition, 2007]Allahabad Law Agency, Allahabad,P.204.

emphasized that the codes takes as much notice of intangible harm as of tangible harm. The detention in section 44 of the code which defines expression ‘injury’ as covering harm to body, mind, reputation or property⁴⁷⁶.

The provision of the code that are relevant for the present purpose fall into two categories: -

1. Provision applicable as protecting all categories of person against specified types of harms, such provision being expressed in language wide enough to cover persons in custody.
2. Provision specifically focused upon the protection of persons in custody.

Thus, most of the provision contained in chapter 16 of the code, cover persons in custody as well as others. It covers 88 sections and it clearly indicates the importance attached to the prevention and protection of right to life and liberty – the two most precious rights guaranteed under Article 21 of the constitution. In contrast, section 330 of the code is specifically addressed the issue of causing hurt to extort a confession.

Section 166⁴⁷⁷ makes disobedience by public servant of any direction of law with intent to cause injury to any person of an offence. The disobedience must be willful and should be an express direction of the law⁴⁷⁸. To bring an act of disobedience within the purview of the section it must be proved that the accused have abetted an offence, and the offence abetted fall under section 161 or section 165. Further more this section provides that if the

476. ‘The word “injury” denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.’

477. “Whoever being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or both”

478. K. D. Gour, A text book on the Indian Penal Code, [1st Edition 1992], Universal Law Publishing Co. Delhi. P. 258.

accused commits offence under section 166, he/she shall be punished with simple imprisonment for a term which may extend to one year, or with fine or with both.

Section 167 provides for punishment of a public servant framing an incorrect document with intent to cause injury, etc.

SECTION 220: Section 220⁴⁷⁹ of the code' provides punishment to an executive who abuses his authority in confining an innocent person knowing that in so doing he is acting contrary to law. This section is enacted to prevent abuse of power by a person holding an office, which authorizes him to commit persons for trial or to confinement.

SECTION 330, 331:

Chapter 16 of the Indian Penal Code (offences affecting the human body) is the second longest chapter of the code. It provides punishment for almost every kind of restraint, interference with or harms to body, ranging from the lowest degree of physical attack (arrest) to the highest category of physical harm, namely, the extinction of human life. However, for the present purpose, it is sufficient to confine the discussion to certain specific sections which are of direct relevance to violation of the dignity of the accused in custody. Under section 330⁴⁸⁰, a person who voluntarily causes hurt to extort "any confession or any information which may lead to the

479. "Whoever, being in any office which gives him legal authority to commit persons for trial or to commitment, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description or a term which may extend to seven years, or with fine, or with both"

480. "Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct , or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine".

directions of an offence or misconduct". Or for compelling restoration of any property etc. becomes punishable with imprisonment up to seven years and with fine.

Section 331 punishes as person who causes grievous hurt to extort confession or to compel restoration of property. The offence is punishable with imprisonment up to 10 years and with fine.

SECTION 340 to 348: Sections 340⁴⁸¹ to 348 of the Indian penal code constitute a group of sections dealing with wrongful restraint and wrongful confinement and their aggravations. Of course, they envisages that the confinement itself is illegal – an ingredient prominently brought out by the adjective 'wrongful'; But we must refer to section 348⁴⁸² which provides the punishment to a person who wrongfully confines any person for extorting any confession etc. The section also punishes extortion committed to extract information leading to the detection of offence or misconduct.

SECTION 376 (2):

The Indian Penal Code which deserves to be noted in section 376 (2), deals with an aggravated form of rape committed by police officer, or by a public servant, or by a person on the management or on the staff of the jail, remand home, or women's or children institution, or hospitals, etc.

SECTION 376 B to 376 D

Custodial sexual offences are specially taken care of, by sections 376 B to 376 D of the Indian penal code, dealing with –

481. 'Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said "wrongfully to confine" that person.'

482. "Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for any purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also liable to fine".

- a) Intercourse by a public servant with women in custody⁴⁸³.
- b) Intercourse by superintendent of jail, remand home etc⁴⁸⁴.
- c) Intercourse by member of the management or staff of hospital with an inmate of the hospital⁴⁸⁵.

SECTION 503 and 506:

Criminal intimidation is punished by section 503⁴⁸⁶ read with section 506⁴⁸⁷ of the Indian penal code.

One principal object of criminal law is protecting the society by punishing the offenders. However, Justice and fair play require that no one be punished without a fair trial.

C. UNDER CRIMINAL PROCEDURE CODE

The relevance of the Code of Criminal Procedure code to the theme of custodial dignity of the accused is two fold. In the first place the code itself contains provisions intended to operate as a safeguard against custodial torture. These represents, what may be called, the positive side. Secondly, the provision of the code which confer various powers or law enforcement agencies need to be kept in mind, in so far as they create possibilities of abuse of authority. These may be regarded as a negative side. Besides

483 “Whoever being a public servant, takes advantage of his official position and commits rape on a women in his custody as such public servant or in the custody of public servant subordinate to him”.

484. “Whoever being on the management or on the staff of a jail ,remand home or other place of custody established by or under any law for the time being in force or of a women’s or children’s institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution;

485. “Whoever being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital;

486. “Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitle to do, as the means of avoiding the execution of such threat, commits criminal intimidation

487. “ Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both”

these two categories of provisions, we are concerned with the questions how far the provisions of the code need to be supplemented, with reference to custodial crime, so that the investigation, trial, punishment and remedial measures in respect of such crimes are taken care of in an adequate manner in the scheme of the code.

SECTION 41 – Arrest

In a free society like ours, law is quite protective of the personal liberty of every individual and does not tolerate the detention of any person without legal sanctions. Thus the personal liberty being the corner – stone of our social structures, the legal provisions relating to arrests have special significance and importance⁴⁸⁸.

The power of arrest is conferred on any police officer by section 41 of the code of Cr. P.C 1973. For the present purpose, section 41(1)⁴⁸⁹ is the most important provision as the process of taking into custody begins here. Under this provision a police officer may arrest with or without a warrant any person – “who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exist, of his having been concerned”. The law respecting arrest is one of the balancing individual rights and privileges on one hand and his duties and responsibilities on the other. Therefore, there must be sufficient reasons for exercise of power of arrest.⁴⁹⁰

Section 49-Restraints:

Humane treatment of persons in custody or while under escort reflect the spirit of Universal Declaration of Human Rights and International Covenant of Civil and Political Rights [ICCPR] and their ideals are reflected adequately

488. A.G.Shivanna, Rights and Privileges of Accused, Wordsworth Publications(India),Edition 2008,P. 160.

489. “Any police officer may without an order from a magistrate and without a warrant, arrest any person on the grounds mentioned in clause (a) to (h)”.

490. Ram Prapanna v. State of Uttar Pradesh, 2007 Cri. L J. (NOC) 439 (All).

in section 49 of the code of Cr. P.C. 1973. It provides that the person arrested shall not be subjected to more restraints than is necessary to prevent his escape. The emphasis is on the prevention of his escape, which may supply the need for restraint. It is noteworthy that the entire provisions begin with a categorical prohibition, because the command of the law is that the arrested person shall not be subjected to unnecessary restraint⁴⁹¹. Any excessive restraint would definitely give rise to a cause of action for damages, because in such a case the immunity from civil action referred by the doctrine of lawful authority would be applicable. In **Prem Shankar Shukla v. Delhi Administration**⁴⁹² the issue whether an accused should be handcuffed has been debated. The court was of the view that handcuffing is more than to mortify the accused as it is to dehumanize him and therefore, violates his personal liberty.

SECTION 50 – Right of the person arrested:

Under section 50(1) of the Code, the arrested person shall have the following rights: –

- (1) Every police officer or any other person arresting a person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.⁴⁹³
- (2) If a police officer arrests without warrant any person other than a person accused of a non bailable offence, he shall inform the

491.“The person arrested shall not be subjected to more restraint than is necessary to prevent his escape”

492. AIR 1980 SC 1535

483.“Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which h is arrested or other grounds for such arrest”

person arrested that he is entitled to be released on bail and that he may arrange for securities on his behalf.”⁴⁹⁴

Section 50 has been regarded as mandatory, particularly in the light of Article 22(1) of the constitution, so that non compliances with the section render the arrest and detention illegal. In order to have transparency in the accused - police relation, the Supreme Court in **Jogender Kumar’s**⁴⁹⁵ case formulated the rules of arrest. Furthermore, to ensure the rules of arrest complied with, the Court declared that it shall be duty of the jurisdictional Magistrate (before whom the arrested person is produced) to satisfy that rules of arrest or requirements have been met. Where arrest is made without a warrant and where the offence is bailable the police officer may offer bail as per the code. Where the police think it unfit to give bail, then the arrested person has to be taken to the magistrate having jurisdiction to try the case.

Section 57⁴⁹⁶ of the Code, states that no police officer shall detain in custody a person arrested without a warrant for a longer period than under all circumstances of the case is reasonable, and such period shall not in the absence of a special order of a magistrate under section 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the magistrate’s court. In **Khatri(II) v. State of Bihar**,⁴⁹⁷ the Supreme Court has strongly urged upon the State and its police authorities to see that this

494. “Where a police officer arrest without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf”.

495. Jogender Singh v. State of Uttar Pradesh(1994)3 SC 423.

496. “No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a magistrate under section 167, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Mgistrate’s Court.”

497. 1981 SCC (Cri) 228.

constitutional and legal requirements to produce an arrested person before a Judicial Magistrate within 24 hours of the arrest must be scrupulously observed. This healthy provision enables the magistrates to keep check over the police investigation. This section of the code, deals essentially with the question of legal and constitutional rights of a person in police custody.

Section 58 of the code Cr. P.C states that officer in charge of police station shall report to the District Magistrate, or if he so directs, to the sub divisional magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise. This is to prevent misuse of power of arrest by the police without warrant so that there is a close watch over the exercise of the power and timely corrections are available to ensure strict compliance of the law by the police authorities.⁴⁹⁸

SECTION 75 and 76: Arrest Under Warrant :

Where the arrest of a person under the code of Cr.P.C. 1973 is under a warrant, Section 70 to 81 of the Code become applicable, of which section 75 and 76 are relevant for the present purpose. They read as under –

Section 75 provides that the police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and if so required, shall show him the warrant.

Section 76 states that the police officer or other person executing a warrant of arrest shall without unnecessary delay, bring the person arrested before the court before which he is required by law to produce such person:

498. Dr. Deepa Singh, Human Rights and Police Predicament[1st Edition,2004], J.C.Bangia Publication, Delhi,P.193

Provided that such delay shall not, in any case, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the magistrate's court.

SECTION 154-Information to Cognizable offence:

In order that the criminal process may be involved in respect of any offence, two principal modes of approach are available under the code of criminal procedure, 1973. A person may report the matter to police if the offence is cognizable case. In the alternative he may make a complaint before the magistrate, whether or not the offence is a cognizable one. Section 154 of the code deals with information given to the police in a cognizable case. It is worthwhile to emphasize here that an information to have the status of first information report under section 154 must be an information relation to the commission of a cognizable offence including offences concerned with wrongful arrest and torture etc. by the police. The First Information Report under section 154 must not be vague but definite enough to enable the police to start investigation. The scheme of section 154 may be analyzed, as under: -

- a) The information given to an officer in charge of a police station shall be reduced in writing⁴⁹⁹.
- b) It shall be signed by the person giving it and its substance shall be entered in the prescribed book.
- c) A copy of the recorded information shall be given forth with, free of cost, to the informant.
- d) If there is a refusal by one police to record the information, the person aggrieved may send the substance of the information by post to the superintendent of police concerned.

499. Section 154(1) Cr. P. C.

If the Superintendent of police concerned is satisfied that the information discloses the commission of a cognizable offence, the Superintendent of police investigates the offence himself or directs a subordinate officer to do so.

While under section 161 of the Code, the investigating police officer can examine orally any person suppose to be acquainted with the facts of the case and reduce into writing the statement made by such person, section 162 of the code provides that the statement shall not be signed by the witness and further the statement shall not be used for any purpose at enquiry or trial in respect of an offence under investigation at the time when such statement was made. In this stage section 164 of the code becomes useful.

Section 313 – Examination of the accused in court:

Under section 313⁵⁰⁰ of the Code, the criminal court is required to examine accused after the prosecution case is over, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him. But section 313 (2)⁵⁰¹ prohibits the administration of oath to the accused.

Section 315 – Accused person to be competent witness:

Section 315⁵⁰² of the code makes the accused a competent witness for the defense in which case he may give evidence on oath in disproof of the charges, but this can be only on his own written request, thus fortifying the constitutional privilege against testimonial compulsion. Section 315 (1) proviso (b) further provides that the failure by the accused to give any

500. "In every enquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him".

501. "No oath shall be administered to the accused when he is examined under subsection (I).

502. "Any person accused of an offence before a Criminal Court shall be a competent witness for the defense and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial."

evidence shall not be made the subject of any comment by the parties or by the court, nor shall it give rise to any presumption against him or against the co – accused⁵⁰³.

Section 357 – Compensation:

In pursuance of the recommendations of the law commission of India in its forty –first report (1969) a comprehensive provision for compensation to the victims of crime has been provided in section 357 of the new Criminal Procedure Code of 1973. According to section 357 sub section (1)⁵⁰⁴ and sub section (3),⁵⁰⁵ the court may award compensation to victims of crime at the time of passing of the judgment, if it considers appropriate in a particular case in the interest of justice¹.under section 357 Cr. P.C the trial court and the appellate courts (while exercising revisional powers) are competent to award compensation to victims of crime only after the trial and conclusion of guilty of accused.

Under section 357⁵⁰⁶the compensation can be awarded to the victims of crime in the following four cases. Namely, Meeting proper expenses of prosecution,

1. Compensation to a person for the loss and injury caused by the offence when he can recover compensation in a civil court.
2. Compensation to person entitled to damage under fatal accident Act⁵⁰⁷.

503.“ his failure to give evidence shall not be made the subject of any comment by any of the parties or the court or give rise to any presumption against himself or any person charged together with him at the same trial”

504. “When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the court may, when passing judgment, order the whole or any part of the fine recovered to be applied”.

505. “When a Court imposes a sentence , of which fine does not form a part , the court may , when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order of the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.”

506. “When a Court imposes a sentence of fine or a sentence (including a sentence of death)of which fine forms a part, the court may, when passing judgment, order the whole or any part of the fine recovered to be applied”

3. Compensation to bonafide purchaser of property which being the subject of the theft⁵⁰⁸, criminal misappropriation, cheating⁵⁰⁹, etc is ordered to be restored to the person entitled to it.

According to sub section (3) of section 357 Cr. P.C.⁵¹¹, the court is empowered to award compensation for loss or injury suffered by a person, even in cases where fine does not form a part of a sentence.

Relying on the decision of **Delhi Domestic working women's forum**⁵¹² case, a division bench comprising of justice Kuldeep Singh and S.Sager Ahmed observed "If the court trying an offence of rape has jurisdiction to award compensation at the trial stage, there is no reason to deny to the court the right to award interim compensation. The jurisdiction to the police atrocities and custodial deaths have prompted the Supreme Court to have a review of its decision like **Jogender Kumar's case**,⁵¹³ **Nilabati Behra**⁵¹⁴, **Shyam Sunder Trivedi**⁵¹⁵ and formulated detailed guide line of arrest in the case of **D.K.Basu v. State of West Bengal**⁵¹⁶.

Section – 53 – Medical Examination of the Accused:

In certain circumstances, medical Examination of the accused may become necessary and this is taken care of by Section 53 of the code. As the law stands at present, it is lawful for a registered medical practitioner at the request of a police officer not below the rank of sub inspector to make a medical examination of the accused, if there are reasonable grounds for

507. Fatal Accident Act 1855.

508. Section 378 of Indian Penal Code.

509. Section 420 of Indian Penal code.

510. Delhi Domestic Working Women's Forum v. Union of India, (1995)1 SCC 14.

511. "When a Court imposes a sentence , of which fine does not form a part , the court may when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order of the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced."

512. (1995)1SCC14.

513. (1994)4 SCC 260.

514. (1993)2SCC746.

515. (1995)4 SCC 26.2

516. AIR1997SC 3017.

believing that the examination of the person will afford evidence as to the commission of an offence. Such force as is reasonably necessary for this purpose can be used. In case of women section 53(2) provides that the examination "shall be made only by, or under the supervision of a female registered medical practitioner" a provision obviously intended to guard against sexual malpractices if the time of such examination.

It appears in the Bill to amend the Code, that it is sought to be clarified that examination shall include the examination of Blood, Swabs in case of sexual assault, sputum and sweats; hair sample and finger nail clippings and such other texts which the registered medical practitioner seems necessary in a particular case.⁵¹⁷ Though this would not violate the fundamental rights of the person arrested under Article 20 and 21 of the Constitution, there should be a balance between the public interest and the rights of the accused under the said Articles. Therefore, the Orissa High Court in **Thogorani v. State**,⁵¹⁸ has enumerated the following consideration to be taken note of:

- a) Extent of the accused's participation in commission of the offence.
- b) The gravity of the crime and the circumstances thereof.
- c) Age and mental and physical health.
- d) Whether there is any less intrusive and practical way of collecting evidence.
- e) Whether there is a refusal to give sample, is there any reason for the same.⁵¹⁹

The Apex Court in **Goutam Kundu v. State**⁵²⁰ has issued certain guidelines in regard to blood test and they can be summed up as below:

- a) Court cannot order blood test routinely.

517. Section 53(2) of Cr. P. C.

518. (2004) Cri. L.J. 4003.

519. Thogorani v. State, (2004) Cri. L.J. 4003.

520. AIR 1993 SC 2259.

- b) If an application seeking blood test is made with an object of having a roving enquiry, the Court should reject the same.
- c) There should be a strong *prima facie* case.
- d) The Court should examine the consequences of granting the prayer, carefully.
- e) Lastly but very importantly, no one can be compelled to give blood sample.

In **Haribhat Chanabhai v. Keshubhai haribhai Vora**,⁵²¹ it was held that no one can be compelled to submit himself to DNA test. If refused, at the most, an adverse inference can be drawn at the final conclusion.

Section 54 – Medical Examination at the request of the arrested person
 Section 54 of the code of Cr. P.C.1973, provides for examination of the arrested person by a medical practitioner at the request of the accused person.

The procedure to be followed under section 54 of the code and obligatory role of the court were explicit in **Sheela Barse**⁵²² that: "The magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or maltreatment in the police custody and inform him that he has right under section 54 of the code of criminal procedure,1973 to be medically examined".⁵²³ Similarly in the case of **Sakla Abdul Gafar Khan v. Vasant Raghunath Dhoble**,⁵²⁴ held that under Section 54 of the Code of Criminal Procedure, it is the right of the accused, if he so desires, to be examined by a medical practitioner and duty of the Court to inform him of this right.

Section 160 – Attendance of witness.

521. AIR 2005 Guj. 157.

522. AIR1983,SC 378.

523. Sheela Barse v. State of Maharastra AIR1983,SC 378.

524. AIR 2003 SC 4567.

Under section 160 of the Code of Cr. P.C. 1973, the law authorizes an investigating officer to summon the witnesses concerned in a case under investigation, to appear before him and it is obligatory or the person so required to appear before the investigatory officer to give information as known to him. However, it is provided that no male persons under the age of fifteen years or women shall be required to attend at any place other than the place in which such male person or women resides⁵²⁵.

The expression prohibition or seeking the women to give information by coming to the police station or before the investigating officer is illegal and the Supreme Court has clearly and categorically deprecated such unjustified and illegal practices⁵²⁶.

Section 163 – Prohibition of Inducement:

Taking note of the fact that a person in custody may be subjected to subtle influences to make a confession, Section 163 (1) of the code expressly provides that no police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise, as is mentioned in Section 24⁵²⁷ of the Indian Evidence Act 1872.

Section – 164 – Confession before Magistrate:

The code in section 164 contains provisions of great importance to the criminal process and vital for the preservation of integrity in the process and vital for the preservation of integrity in the process. The full

525. "Any police officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required."

526. Nandini Satpaty v. P.L.Dani AIR1978 SC 1025.

527. "A confession made by an accused person is irrelevant in a criminal proceedings, if the making of the confession appears to the court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceedings from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him".

significance of this section can not be appreciated unless; one keeps in mind certain important provisions of Indian Evidence Act of the code of Cr. P.C.

It is to be noted at the outset that the confession made before the judicial officer is admissible and provable in nature. However, this rule is subject to the provision of section 164 of the Code of Criminal Procedure, which is as follows: -

1. A confession can be recorded only by a metropolitan or a Judicial Magistrate. Further, no confession shall be recorded by a police officer on whom any power of a magistrate may have been conferred under any law. If any executive magistrate or any other magistrate not empowered under sub section (1) above, records a confession, the record of the confession can not be put in evidence, and further no oral evidence of the magistrate to prove the confession in such a case shall be admissible.
2. Confession or statement can be recorded under 164 either the course of an investigation, or at any time afterwards before the commencement of enquiry or trial⁵²⁸.
3. Before recording any such confession the magistrate is required to explain to the person making the confession that –
 - (1) He is not bound to make such a confession and
 - (2) If he does so it may be used as evidence against him.These provision contained in the section 164(2), if administered in the proper spirit, are most salutary. They should not degenerate into idle formalities.
4. Sub section (2) of section 164 further enjoined the magistrate not to record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily.

528. Raja Ram v. State AIR 1966 All 192.

Section 56, 57 and 58: Protection against arbitrary or illegal detentions in custody:

Action resulting in the curtailment of liberty of an individual is to be judicially verified as to its reasonableness and Justification. The law has provided that person arrested without a warrant shall be produced before a magistrate having the Jurisdiction in the case. The person arrested can not be detained by the police for more than 24 hours by such arrest. Section 56 of the code of Cr. P.C 1973 provides that a police officer making an arrest without a warrant shall send the person arrested before a Magistrate without unnecessary delay. An arrested person should be produced before a Magistrate having jurisdiction over the place of occurrence. Even if the arrest is justified, it is declared in **K. Rajanna v. Govt. of Andhra Pradesh**,⁵²⁹ the police can not arrest a person from the place of occurrence and take him to altogether a different place which has no jurisdiction over the place of occurrence and this violates Section 57 of the Code of Criminal Procedure. Moreover, the magistrate has the jurisdiction to allow the interim compensation in trying the offence of rape, which is an offence against the basic human rights and also the fundamental right of the victim which is enshrined in Article 21 of the Constitution as personal life and liberty. unfortunately, women in our country belongs to a class or group of society who are in a disadvantaged position on account of several social barriers and impediments and have therefore, been the victim of tyranny at the hands of the men with whom they, fortunately under constitution enjoy equal rights. Under Section 58 of the code of Criminal Procedure the officer in-charge of a police station is duty bound to give report to the District Magistrate or Sub-divisional Magistrate having jurisdiction, the cases of all persons arrested without warrant and the information whether

529. (2007)Cri.LJ.2031(AP).

such arrested person have been admitted to bail or otherwise .The object of the report is to keep the District Magistrate etc. informed of the situation regarding grave offences.⁵³⁰ Therefore, the report under this Section would enable the District Magistrate or Sub-divisional Magistrate to see whether the police are exercising their powers properly or not.

Section 173-Accused right to expect fair and speedy investigation:

A series of prescription have been made under the code of Cr. P.C 1973 to ensure speedy trial of an accused in consonance with the spirit of Article 21⁵³¹. But it is equally clear that speedy trial is certainly dependant on fair and speedy investigation of the case by the police. Admittedly, there is no specific provision in Cr. P.C regarding speedy and fair investigation. However, such a mandate can be inferred by the prescription contained in Section 173(1)⁵³² and also the definition given to the word "investigation" under Section 2(h) of the Code. Inordinate delay in submitting the final report may lead to the grievances that investigation is carried on unfairly or with any ulterior motive⁵³³. The Supreme Court has in unmistakable term indicated that – "The duty of the investigating officer is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth"⁵³⁴.

It is clear that fair and speedy investigation means a truthful and prompt investigation without any unnecessary delay as warranted under section 173(1) of the code.

Section 100(6) and 100(7): - Search: The object of these sections is to ensure as honest and genuine search and to prevent trickery by planting

530. Thaniel Victor v. State of T.N.1991 Cri.LJ.2416(Mad).

531. Article 21 of Indian Constitution.

532. "As soon as the investigation is completed a report which is commonly called as "charge-sheet" or "challan" is to be submitted to the Magistrate having jurisdiction. The necessity of completing the investigation expeditiously is emphasized by giving a general direction that every investigation shall be completed without unnecessary delay."

533. Kapoor v. State 1990Cri .L.J1924.

534. Jamuna Choudhury v State of Bihar1974,Cri.L.J.890.

the things to be found at searches. Search of the person of the police officers and search witness before entering the house should not be neglected so that there may be no suspicion that anything has been planted, persons shall not be allowed to enter rooms without being searched and failure to observe the formalities of personal search of the searching officer and witness render the recovery highly suspicious. This Section requires that the occupant of the place of search shall in every case be permitted to attend during the search. Denial of such permission may cause suspicion as to the reliability of the discoveries made out.⁵³⁵ However, where the securing of the presence of the occupier or his nominee might cause such delay as to frustrate the purpose of the search, it may be permissible to dispense with his presence.

Section 100(6) provides that the occupancy of the place searched or some person on his behalf, shall in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witness, shall be delivered to such occupant or person.

Section 100(7) states that when any person is searched a list of all things taken possession of shall be prepared and a copy thereof shall be delivered to such person. Things seized under an illegal search warrant may never be used as evidence.

Section 51, 100 and 160-Rights of women Accused –

Under the code of Cr. P.C 1973 two specific areas are identifiable in relation to the protection of the rights of female accused persons. Section 51 of the code provides that whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency. In **State of Punjab v. Baldev Singh**,⁵³⁶ it was held by the Apex Court that if the person arrested is a female, the arresting officer should take extra precaution and a female cannot be searched except by a female.

535. Ramesh Chandra Banerjee v. Emperor, ILR 41 Cal 350.

536. AIR 1999 SC 2378.

Section 100(3) of the code, 1973 in relation to searches under a warrant provides that – “where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is women, the search shall be made by another female with strict regard to decency”.

Under section 160 of the code, the law authorizes an investigating officer to summon the witness concerned in case under investigation, to appear before him and it is obligatory on the person so required to appear before the investigating officer to give information as known to him. However, vide sub section (1) it is provided that no male persons under the age of fifteen years or woman shall be required to attend at any place in which such male person or woman resides. This provision is intended to give special protection to children and women against the probable indignities and inconveniences that might be caused to them by the abuse of police powers.

In the case of **Pakala Narayana Swamy v. Emperor**⁵³⁷, the supreme court observed the following in relation to the refusal of the accused to report before the investigating officer, the supreme court has this to say:- “To serve the ends of justice, when woman is commanded into a police station, violating the commandment of section 160 on the code the right thing is to quash the prosecution as it stands at present”⁵³⁸.

D. RELEVANT PROVISION IN THE INDIAN EVIDENCE ACT

The subject of confession is of vital relevance to the theme of custodial crimes, because it is often found that the urge to procure a confession tempts the law enforcement officers to resort the unfair means.

Section 24 to 26 of the Indian Evidence Act forms a trio containing safeguards against accused persons being coerced or induced to confer

537. AIR 1939,SC 1025.

538. Pakala Narayan Swamy v. Emperor, AIR 1939,SC105.

guilt. These provisions reflect the spirit on U.N Convention against torture and other cruel, in humane or degrading treatment or punishment.

Section 24⁵³⁹ makes a confession irrelevant in criminal proceedings if it is made as a result of inducement, threat or promise from a person in authority, and it is sufficient to give an accused person grounds to suppose that by making it he would gain any advantage or avoid any evil in reference to the proceedings against him. The principle upon which a confession induced by a promise or threat held by a person in authority is treated as in admissible is that such confession is untrustworthy as testimony.⁵⁴⁰

Section 25⁵⁴¹ provides that no confession made to a police officer shall be proved as against a person accused of any offence. The object of the legislature in enacting the present section was to put a stop to the extortion of confessions by the police by malpractice. Under this Section law does not repose any confidence in a police officer. A police officer is never trusted in the matter of receiving of confession from the accused. In **Queen-Emperor v. Babulal**,⁵⁴² it has been held " The Legislature had in view, the malpractices of the police officers, in extorting confessions and that these malpractices went to the length of positive torture, nor do I doubt it as the legislature, in laying down such strongest rules regarding the evidence of police officers as untrustworthy and the object of the rules

539.. "A confession made by an accused person is irrelevant in a criminal proceedings, if the making of the confession appears to the court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceedings from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him"

540. Dr Ashutosh, Rights of Accoused, 1st Edition,2009,Universal Law Publishing co, Delhi,P.357

541. "No confession made to a police officer shall be proved as against a person accused of any offence"

542. (1884)6 ALL. 509.

was to put a stop to extortion of confession, by taking away from the police officers the advantage of proving such extorted confessions during the trial of the accused person."

Section 26⁵⁴³ provides that a confession made by an accused of an offence whilst in the custody of a police officer is irrelevant unless it is made in the immediate presence of a Magistrate. The object of this Section is to prevent the abuse of the power by the police. The custody of a police officer provides easy opportunity of coercion for extorting confession obtained from accused persons through any undue influence being received in evidence against them. This section deals with confession which are made not to police officers but to persons other than police officers, e.g. to a fellow prisoners, a doctor or a visitors and makes such confessions in admissible if they were made whilst the accused was in the custody of a police officer.

In **R v. Bepin Behari**,⁵⁴⁴ it has been held that the reason why the law in Section 25 and 26 exclude a confession made by an accused whilst in the custody of a police officer, who is armed with large powers over accused persons, may unwillingly excite terror in their minds and extort false and involuntary confessions, and his duty to investigate criminal cases and to detect offenders and bring them to justice may make him feel tempted to obtain confessions from accused person by threat, promise, or other improper influence. Section 27⁵⁴⁵ of The Indian Evidence act lays down that when any fact is deposited to as discovered in consequence of information received from an accused person in the custody, of a police officer, then so

543. "No confession made by any person whilst he is in the custody of a police officer, unless it be done in the immediate presence of a Magistrate, shall be proved as against such person."

544. 2 Cal, WN 71,at 74.

545. "Provided that, when any fact is deposited to as discovered in consequence of information received from a person accused of information, whether it amounts to confession or not, as relates distinctly to the fact thereby discovered, may be proved"

much of such information as distinctly relates to the fact so discovered, is relevant whether or not it amounts to a confession. In so far as section 27 overrides the exclusionary rules relating to confessions made by a person in custody. It puts a powerful weapon in the hands of police.

Position under Probation of Offenders Act - 1956:

It is a social legislation which imposes restrictions on imprisonment of offenders under twenty one year of age and section 6⁵⁴⁶ of that enactment provides that as a normal practice young person below that age are not consigned to prisons after the due process of ascertaining the guilt, and unless it is satisfied that having regard to the nature of the offence and the character of the offender, it would not be desirable to deal with person under the beneficial provisions of that law and record reasons therefore.

Position under juvenile justice Act, 1986:

It is designed to ensure, inter alia, the effort of the state to conceive a uniform legal frame work for juvenile justice to avoid lodging of children in jails and police lock – ups, and to establish norms and standards of juvenile justice administration different from the usual criminal procedure for investigation, trial and disposition of juvenile delinquents. The juvenile courts are empowered to order a matters of bail and custody of delinquents juvenile procedure are arrest of such persons by the police ensures communication of the fact to the parents and returning the child to home after admonition or release on probation or sending him to special homes or imposing a fine if the child is over fourteen years of age and is earning money, are envisaged.

546. "When any person under twenty one rears of age is found guilty of having committed an offence punishable with imprisonment(but not with imprisonment for life) the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so."

In **Sheela Barse v. Union of India**⁵⁴⁷, the Supreme Court of India has pointed out that by ignoring the non custodial alternatives prescribed by law and exposing the delinquent child to the trauma of custodial cruelty, the state and the society runs the risk of sending the child to the criminal clan. The court cautioned that this is no more a matter of concession to the child but its constitutional and statutory right.

E. POLICE ACT 1861 AND OTHER MANUALS

The Police Act 1861 which had a more martinet and an utilitarian dictate determining the role and responsibility of the police in India, was devised on the one hand as an effective instrument for the prevention and detection of crime and on the other as an effective tool at the disposal of the foreign power to thwart the design of the natives who may venture to challenge their authority⁵⁴⁸.

In this act, emphasis was more given on an effective law and order approach in a sense that the British Raj could be perpetuated using any lit or hinder. It was therefore, natural that various mandatory injunctions of the code of Cr. P.C in the context of human rights of the accused were located move as regulatory guidelines. But after the advent of the constitution of India the issue of human rights of accused is having a new and unharmed dimension. They are no more the mere legal safeguards in operation, but as the constitutional commitments of the country as a whole and each of these provisions⁵⁴⁹ are intended the dynamic characters to the very law enforcement ethos itself.

In the Police Act 1861, though, very wide power has given to police under section 23⁵⁵⁰ and 24⁵⁵¹ of the Act. It also invariably curtails and streamlines

547. Sheela Barse v. Union of India, AIR 1986 SC 2211.

548. Dr S. Krishnamurthy, Human Rights and The Indian Police, Edition 1998, R.R.Publishers, Bangalore, P.74

549. The Police Act-1861.

550.“It shall be the duty of every police officer promptly, to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and

police powers to avoid unreasonable use of force by the police. These statutory instruments (Police Act and other manuals), among others provide for disciplinary as well as punitive action against erring police officers. The two important sections namely, Section 7⁵⁵² and 29⁵⁵³ of the Act that provide punishment for breach of discipline. Section 7 authorizes higher police officials to dismiss, suspend or reduce any police officer of the subordinate rank when they think that they have been remained or negligent in the discharge of the duty or unfit for the same. They may also award lesser punishment to subordinate ranks that are careless or negligent in the discharge of the duty or unfit for the same. Similarly, section 29 provides inter alia for a penalty of imprisonment, with or without labor, not exceeding three marks or fine not exceeding three norms pay or both, if a police officer causes any unwarrantable personal violence to a person in his custody.

The above outlived legislative sketch not only exhibits a variety or assured safeguards to individuals but also puts restrictions on the police. In this

communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisance, to detect and bring offences to justice and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists, and it shall be lawful for every police officer, for any of the purposes mentioned in this Section, without a warrant to enter and inspect, any drinking-shop, gaming-house or other place of resort of loose and disorderly characters.”

551. “It shall be lawful for any police officer to day any information before a Magistrate and to apply for a summon, warrant, search warrant or such other legal process as may, by law, be issued against any person committing an offence.”

552. Section 7 of Indian Police Act 1861

553. “Every police officer who shall be guilty of any violation of duty or willful breach or neglect of any rule or regulation of lawful order made by competent authority, or who shall withdraw from the duties of his offence without permission, or without having given previous notice for the period of two months, [or who, being absent or leave shall fail, without reasonable cause, to report himself for duty on the expiration of such leave] or who shall engage without authority in any employment other than his police duty, or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in custody, shall be liable, or conviction before a Magistrate, to a penalty not exceeding three months pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both.”

regard Supreme Court observed that "in spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of certain, growing incidents of torture and deaths in police custody have been a disturbing factor. Experience shows that worst violation of human right take place during the course of investigation, when the police with a view to secure evidence of confession other resorts to third degree methods including torture...A reading of the morning news paper almost everyday carrying reports of dehumanizing torture, assault rape and death in custody of police ... is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming propositions that it is affecting the credibility of the rule of law and the administration of criminal justice system"⁵⁵⁴.

Perhaps, sensing this significant and elementary inadequacy the third National police commission suggested introduction for a specific provision in the proposed police act, which would categorically and unmistakably enjoying or the police a duty to uphold and enforce the rights of all persons, including rights of the accused in all the process of the criminal justice administration.⁵⁵⁵

The government of India recommended that same provisions may be incorporated in police manual to the police in the human rights perspective. The Amnesty international feels that the government of India should play a role in pressing for speedy adoption by the U.N. of the strongest possible optional protocol to the U.N convention against torture, providing for a global system of inspection visits to places of detention as a safeguard against torture.

554. D.K.Basu v. State of .W.B(1997)1 SCC 4 16.

555. Dr.S.Krishnamurty Human Rights and The Indian Police, [Edition 1998], R.R.Publishers, Bangalore, P.339.

F. PRISON ACT, 1894

The Prison Act, 1894 is the only enactment to deal with the prisoners and the prison matters in any state or by centre after the independence and only the rules and official instructions are being adhered to, to run the prison administration. This Act is mainly based on Prison Act 1870, which was enforce in certain parts of the country at that time, with amendments, embodying the conclusions arrived at by govt. of India on the report of the Jail Committee of 1889, and the report of the prison conference of 1892, to which it appeared necessary to save legislative form⁵⁵⁶. This Act, enumerates the provision of rights and duties of the prisoner. Furthermore, punishment has been provided by this act to the prisoners under section 45⁵⁵⁷ for different offences.

The prison discipline is to be maintained not only by the prisoners but also by those dealing with them. Hence, even a person other the prisoner is liable to punishment under the prison Act for violating such discipline. Therefore, whoever, contrary to any rule or direction or made under the prison Act introduces or removes or attempts to supply to any means whatever to introduce or remove into or from any prison or supplies or attempts supply to any prisoner outside the limits of the prison, any prohibited article and every officer associated with said Act is, on conviction by the magistrate, liable to imprisonment for a term not exceeding 6 months or a fine not exceeding 200 or to both⁵⁵⁸.

556. Dr.Ashutosh, Rights of Accoused,[1stEdition,2009] Universal Law Publishing Co, Delhi, P-330.

557. Prison Act-1894

558. “Whoever, contrary to any rule under section 59 introduces or removes o attempts by any means whatsoever to introduce or remove, into or from any prison, or supplies or attempts to supply to any prisoner outside the limit of a prison, any prohibited article,

And every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner, or to be supplied to any prisoner, outside the limit of a person,

And whoever, contrary to any such rule, communicates or attempts to communicate with any prisoner,

G. PRISON BILL,1996 & 1998

The National Human Rights Commission (NHRC) has prepared an outline of the Indian Prison Bill 1996, which has been circulated among State Governments and Union Territories welcoming their valuable suggestion and different observations. This Bill specifically emphasizes the necessity of dealing with Prisoners compatibly and with human dignity. It also suggests significantly regarding residence, sanitation, health care and fooding . But most importantly, Bill 1996 focuses on the after care strategy and staff development mechanism which are basically needed to maintain a pragmatic Prison Management Policy. Apart from these the bill also suggests for an advisory board for the development of the prisons and Correctional services

The introduction of the Prison Administration and Treatment of Prisoners Bill 1998 ensures the reformation of the Prison administration in our country. It emphasizes the proper care and treatment of the prisoners. It combines all basic and relevant points of the previous legislations and manuals on the subject of prison administration in India.⁵⁵⁹ This Bill puts stress on the development of prison infrastructure and availability of necessary amenities. It also suggests to provide the inmates with minimum requirement and rights of man. Some new category of prisoners have been recognized by this Bill. They include Prisoners security risk , Prisoners suffering from deadly diseases, mentally challenged persons, drug addicted person, person involved in agitation, Preventive detenue and person who had courted arrest on political cause. In addition, the bill also throws light on the issue live after care, prisoner's rehabilitation, open institution, prison facilities and visitors. Above all, the Bill of 1998 has suggested certain

And whoever abets any offence made punishable by this section, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred Taka or to both."

559. <http://www.scribed.com/doc/21248655/Prison-Acts-old-New.India.visited> on 12.4.2009.

specific amendments in Indian Penal Code and Criminal Procedure Code dealing with punishment and imprisonment under various sections.⁵⁶⁰

The prison administration is one area which is the most neglected one by the state authorities on the pretext or the other. However, keeping in view of the prison population, this is one field which requires immediate care and treatment on the part of the government, so that even they can equally participate in the development of the country. Despite number of committees and commissions having been formed to look into this area no need has been paid to their recommendations, which have been made time and again for effective prison administration.⁵⁶¹

It is noteworthy here that though in jail manuals of different states we find same reflections of these recommendations and even the courts also time and again, in various pronouncements have advocated these recommendations after mentioning the need for the jail reforms, but there is no uniformity throughout the country in this regard⁵⁶²

H. THE PROTECTION OF HUMAN RIGHTS ACT, 1993(PHRA)

The Protection of Human Right Act was enacted in the year 1993 and this came into force on 28th September 1993. It appears that National Human Rights Act and the setting up of a National Human Right commission in India were a salutary outcome of external pressure that originated outside the sovereign border of India. It was imperative to establish other concurrent system for the protection of human rights. The 1993 Act states in its preamble that it was passed to provide for the constitution of a National Human Rights commission in the states and human rights courts for better protection of human rights. The creation of NHRC was received

560. <http://www.scribed.com/doc/21248655/Prison-Acts-old-New.India.visited on 12.4.2009>.

561. Dr.Ashutosh, Rights of Accused,[1st Edition,2009] Universal Law Publisher Co, Delhi. P.131.

562. Id. 132.

with considerable skepticism. As Virendra Dayal, a member of the first NHRC puts it, "..... A significant number and among them many who were strongly committed to the promotion and protection of Human Rights – felt that the statute was fatally flawed, not the commission would be a tooth less tiger", that it would function as a post office and that as a sarkari body it would, in the final analysis, invariably choose to provide the steel of good house keeping to government wrong doing, rather than ensure the "better protection of human rights" in the country. However in the very first decade of its existence, the NHRC succeeded in establishing its credibility, independence and effectiveness in promoting and protecting Human Rights⁵⁶³.

However the National Human Rights commission has played an important role in monitoring and investigating human rights violation in India, in advising the government on human rights issues and furthering human rights awareness. The NHRC has played an important role in addressing the issue of custodial violence. State human rights commission have now been set up in 11 states and have similarly been taking up cases of torture and deaths in custody and a broad range of other human rights issues⁵⁶⁴

The relevant objectives of the commission's provisions are⁵⁶⁵: -

1. to study, investigate and review all matters relating to the safeguards provided under the constitution and the laws for protection of human rights of all sections of the society, and make recommendations on the steps necessary for effective implementation of the safeguards provided for this purpose,
2. To study and review existing constitutional and legislative provision relating to the preservation of human rights, recommend

563. Human Rights, Halsbury's Law, vol.-2, December-2008.

564 .Deeapa Singh, Human Rights and Police Predecament, [1st Edition, 2002], J.C. Bangia Publication, New Delhi,P.171.

565. Ibid.

amendments thereto so as to overcome any lacuna, inadequacies or shortcomings in such legislation,

3. To recommended enactment of new laws, as may be considered necessary by the commission, to further strengthen the legal frame work for protection and preservation of Human Rights of all sections of society.
4. To study and make recommendations in respect of the system of criminal administration and prison reform etc which may be relevant in the context of prevention of violation of Human Rights.

The NHRC has wide powers and functions under section 12 to enquire into violations of Human Rights or Negligence in the prevention of such violation by a public servant. But it cannot be enquired into any matter pending before a state commission or any other commission. The functions of the commission include to enquire suo- moto or an complain by victim⁵⁶⁶, or by any one else on his behalf into complaints of violations of all Human Rights, whatever provided or not under the constitution or under the existing laws, to study and review the existing laws providing for human rights and to suggest amendments and other steps for the effective implementation of the safeguards provided for this purpose⁵⁶⁷, to conduct promotional and educational activities with a view to promote human rights literacy⁵⁶⁸, to start training and orientation programs for members of the administration and the public, to study and suggest improvement in criminal administration to suggest prison reform, to study the relevant international

566. “ inquire, suo motu on a petition presented to it by a victim or any person on his behalf, into complaint of-

(i) violation of human rights or abetment thereof or
(ii) negligence in the prevention of such violation, by a public servant;”

567. “ review the safeguards provided by or under the Constitution or any law for the time being in foce for the protection of human rights and recommend measures for their effective implementation”

568. “spread human literacy among various section of society and promote awareness of the safeguards available for the protection of these rights through publications, the media seminars and other available means;”

covenants etc, to advise the government on the way to improve the human rights situation in the country and many other related matters⁵⁶⁹. But the most important of its functions should be to take stock of the socio economic situation in the country in order to expose where the real malady lies.

Section 12(c)⁵⁷⁰ of the Protection of Human Rights Act provides that the commission shall visit, under inhumations to the state government, any jail or institution under the control of the state government, where persons are detained or lodged for purpose of treatment, reformation or protection to study the living conclusions of the inmates and make recommendations thereon.

The commission enjoys the power of a civil court while enquiring into the complain under the Act⁵⁷¹. It enjoys investigation power and utilizes the services of any government's investigative agency⁵⁷². While enquiring into complaints of violation of human rights, the commission may call for information or report from the government concerned or any authority and satisfy itself as to the action taken by the government in the matter. It may make its own enquiries if there is no response from the government concerned⁵⁷³.

After the completion of the inquiry under the act, the commission may take any of the following steps⁵⁷⁴: -

1. Recommend prosecution of the guilty public servant.
2. Approach the Supreme Court or High Court for appropriate directions

569 “ study treatise and other international instruments on human rights and make recommendation for their effective implementation”.

570. Secton 12 of The Natonal Human Rights Act-1993

571. Id .Section 13.

572 Id.Section14.

573. Id .Section 17.

574. Id. Section 18

3. Recommend the Sanction of interim monetary relief to the victim or his or her family

One of the major concerns of the commission has been the functioning of the police, preventing custodial violence, torture, custodial deaths or fake encounters and improving condition in jail.

Apart from getting such crimes registered and investigated, the omission has also undertaken a major programme to sensitize the police on human rights issue. The commission endorsed the recommendation of the police reforms commission, regarding insulting the police from political over extraneous influences.

Unfortunately, the commission has no power to investigate complaint against the armed forces. There is no reason why the armed forces, while discharging civil crime duties, should not be within the preview of the commission. The approach of the commission, seeking co-operation of the state, even a relevant state, and its persistence in getting the state to act, has resulted in many jail reforms, including the revision of old jail manuals, providing milk and food for the young children, who are in jail with their mothers, having properly equipped hospitals for jail inmates and so on. Mentally affected under trials kept in jail for long period have also been released.

The West Bengal Correctional Services Act, 1992:

The West Bengal correctional services act 1992 was enacted by the government of West Bengal to amend and consolidate the law relating to prisons and persons detained in the prison⁵⁷⁵. The act provides the law relating to prison administration and provided correctional services to the prisoners. By this act state govt. undertakes to perform services for proper

575. The West Bengal Correctional Services Act. 1992

management, administration and functioning of correctional home established under the state. The constitutional mandate of article 21 guaranteeing individual freedom is recognized by this act.

Under Section 3 of this Act ,the state govt. shall have the authority to establish the following categories of correctional home. Namely-

1. Central Correctional home,
2. District Correctional home,
3. Special Correctional home,
4. Subsidiary Correctional home,⁵⁷⁶

Sub section 4 of section 3 provides that the act open correctional home shall not be surrounded by any boundary wall and it can not be used for confinement of long term prisoner. The prisoners must have more liberty and more opportunity of association to lead social life outside a correctional home and facilities for rehabilitation should be given to the prisoners after release⁵⁷⁷.

Section 4 of the act, the function of correctional home which inter alia are:

1. to give correctional treatment to the prisoners in custody so as to efface from their mind the evil influence of antisocial ways of life and rehabilitate them in the society as good and useful citizen.

576. Section 3 of West Bengal Correctional Services Act 1992.

577. Id. Sub Section 4 of Section 3,

2. to provide the prisoners with food, clothing , accommodation and other necessaries for life and adequate medical treatment and care in case of sickness.
3. to take measures for mental and moral uplift of the prisoners and to provide them with educational and other facilities for upgrading their qualities, character and mental attitude.
4. to adopt measures to ensure effective after case service of the released prisoners.
5. to enforce discipline among its officers other employees and the prisoners in accordance with the provisions of this act and the rules made hereunder⁵⁷⁸.
6. to provide such other facilities and amenities to the prisoners as the state govt. may prescribe.

Section 8 of the chapter 4 of this act, provides the name of authorities and their function respectively. Under section8 the chief controller of correctional services shall⁵⁷⁹ 1.be responsible for the safe custody of the records condemned warrants and all other documents and the money and other articles taken from the prisoners. 2. Perform such other duties and discharge such other functions as may be prescribed.

The duty of the chief discipline officer is 1. to assist the chief controller of correctional services in the maintenance of security and discipline in the correctional home, specially in between gates.

1. to receive prisoners from courts .other correctional homes and places of detention with requisite writs, warrants and orders along with the

578. Section 4 of West Bengal Correctional Services Act,1992.

579. Id. Sub Section 2 of Section 4.

prisoners personal earn and other properties and to pass the prisoners.

2. to prevent smuggling of any prohibited or unauthorized articles in the correctional home.
3. The duty of the welfare officer is preserved in section 11 which are as follows:
4. to look after the correctional services and to see that the prisoners are not deprived of the amenities and the privileges under this act or under any one law for the time being in force.
5. to organize and develop recreational, educational and cultural activities (including sports, game, physical and cultural and the like) amongst the prisoners.
6. to give incentive to literary and artistic pursuit to the prisoners.
7. to make efforts for betterment of educational, moral, cultural and vocational equipments of the prisoners⁵⁸⁰.

Section 18 of chapter 5 regulates the administration of the prisoners.

The rules are:-

1. No prisoner or any other person shall be admitted into a correctional home for detention unless a warrant, unit and orders authorizing his detention signed by a competent authority and duty created, is produced before the officer who for the time being, remains in charge of the correctional home⁵⁸¹.

580. Sub-Section(3) of Section 10, West Bengal Correctional Services Act, 1992.

581. Id. Sub-Section(1) of Section 18.

2. Every prisoner or person received in a correctional home for detention shall before admission the section (1) ,be reached at the gate office and the searching officer shall take into custody such articles as are not permitted under this act. The search shall be made in such manner as may not subject the prisoners or the person to unnecessary harassment, humiliation or ignominy. A female prisoner or person shall be searched by the matron or a female warden. When a female prisoner or a person is admitted into a correctional home or there is no other female prisoner or person, a female warden shall be deputed to remain inside the ward where such female prisoners or person is accommodated.

3. A register for recording the weight of every newly admitted prisoner or person shall be maintained in the office of correctional home by the medical officer. After admission, every prisoner or person shall be weighted or a weighting machine be kept in the office of the correctional home and his weight shall be recorded with or which he is weighted in the regular before he is sent to any cell or ward⁵⁸².

Section 19 lays down the rules relating to segregation of prisoners. The provisions are:-

1. Female prisoners shall be completely segregated from the male prisoners.
2. Convicted prisoner shall be segregated from the under trial prisoners.
3. Political prisoner and political detenu shall be kept separate from all other classes of prisoners.

582. Sub-Section (3) of Section 18, West Bengal Correctional Services Act, 1992.

4. Female prisoners convicted for any offence involving great moral depravity or having any previous conviction for any such offences shall be kept completely separate from all other female prisoners⁵⁸³.
5. Prisoner suffering from any contagious or infectious disease shall be kept completely separate from other prisoners.
6. Civil persons shall be kept separate from criminal prisoners.

Under sub-section(2) there is provision that Superintendent of correctional home may permit any civil prisoner or any under trial or convicted political prisoner or political detenu to have his food supplied by the relatives shall be examined by the medical officer of correctional home and if the medical officer thinks the same is likely to be injurious to the health of the prisoner and thereupon the said food shall be returned to the supplier thereof⁵⁸⁴.

Section 28 provides the constitution of Advisory Board for co-ordination between the various departments and have the power to advise the govt. relating to:

1. The matters concerning prevention control, and treatment of the delinquent and crime⁵⁸⁵.
2. The measures for eradication of vices of corruption, smuggling, sexual depravity and ill-treatment of prisoners.⁵⁸⁶

Under section 29 of the Act, the state govt. shall have the power to constitute the District Advisory Board and this Board shall advice the District Magistrate on the following matters :-

583. Section .19 of West Bengal Correctional Services Act,1992.

584. Id Sub-Section (2) of Section 20.

585. Id. Sub-Section (3) of Section 28.

586. Clause (c) of Section 28(3).

1. Concerning prevention; control and treatment of delinquency and crime within the district⁵⁸⁷.

2. Concerning the measures for eradication of vices corruption, smuggling, sexual depravity and ill-treatment of prisoners.

There is a provision that the state govt. shall by notification prepare a panel of such member of official and non official visitors for each correctional home as it may deem fit. During the time of visit, visitors shall have the power, namely-(1) may call for any book, paper or other record of the correctional home. (2) May inspect any ward, workshop or cell and in every case of complaint, shall ensure that the rules in force are duly complied with.

3. They examined if the punishment are being imposed on the prisoner.

Under this section 17, the visitors is of the opinion that any irregularity is going on in correctional home; he has the power to report it to the Inspector General of correctional homes and correctional services, and he shall make such report together with his comments⁵⁸⁸.

Section 32 to 34 of chapter X, provides the provision relating to care and

Treatment of prisoners . The main provisions are:

1. Every prisoner shall be served break fast, mid-day meal and evening meal. The item and quality of article to these meals and mode of catering of the meals shall be such as may be prescribed⁵⁸⁹.

587. Clause (a) of Section 29(3) West Bengal Correctional Services Act, 1992.

588. Id. Section 30(3).

589. Id. Section 33(1).

2. In every correctional home, the medical officer shall inspect the quality of articles of food before they are put in the cooking pot .If it appears to the medical officer that any article of food is sub-standard or defective in quality or is likely to be injurious to the health of the prisoners, he shall send a note to the chief controller of correctional services for replacement of that article⁵⁹⁰.
3. In every correctional home there shall be dining shed for the prisoners⁵⁹¹.
4. The state govt. may provide such other amenities or privileges to the prisoners as may be prescribed.
5. Every prisoners shall be supplied with clothing of such quality, type and quantity as may be prescribed⁵⁹².
6. If an under trial prisoner is found unable to provide himself with necessary clothing and bedding, he shall be supplied with the same from the stock of the correctional home at the request of such prisoner.
7. In each correctional home there shall be arrangements for working of clothing and bed sheets in such manner as may be prescribed.

The medical facilities are also provided by the state under this act. Section 35 of that made a clear provision for educational facilities like the following:-

590. Subsection (3) of Section 33 West Bengal Correctional Services Act, 1992.

591. Id. Sub-Section (5) of Section 33.

592. Id. Sub-Section (7) of Section 33.

1. In every correctional home there shall be adequate facilities for development of educational qualification and various recreation such as indoor and out door games, news paper reading, and cultural activities for the prisoners⁵⁹³.
2. If a prisoner who had given up his studies before his imprisonment, express his intention to proceed with the studies with a view to appear in any examination conducted by any university or other statutory body, he shall in addition to the facilities provided in sub section(2), be given such other facilities as may be prescribed.
3. If any detenu confined in correctional home has dependent children, brothers and sisters who are prosecuting studies in school or colleges. The state govt. shall make provision for education allowance for such children, brothers and sisters as such rate as may be prescribed⁵⁹⁴.

The superintendent may allow the person to purchase news papers and magazines from their personal case or to receive news papers and magazine supplied by their friends or relatives from outside..

Under section 37 the medical officer of a correctional home shall be in-charge of maintaining proper sanitary services and introducing hygienic measures as may be deemed necessary. The medical officer shall inspect daily all wards, barracks, sheds, cells or rooms, hospitals, places of cooking, lavatories and the surroundings thereof to ensure that the inside and outside of those places and the surroundings are kept clean and no garbage or filth are accumulated anywhere.

593 .Id. Sub-Section (2) of Section 35 West Bengal Correctional Services Act, 1992.

594. Sub-Section (3) of Section 35.

1. The cell or rooms and wards and the places where the prisoners work shall be kept clean by such sweeping and washing measures as medical officer may consider necessary.
2. In areas where there is prevalence of mosquitos; the medical officer shall arrange for spraying disinfectants and anti- mosquitos liquid or powder in the surrounding of the correctional home and at such places which are likely to facilitate breeding of mosquitos.
3. There shall be constructed in each correctional home adequate number of sanitary privies and latrines to meet the needs of the prisoners⁵⁹⁵.
4. There shall be provision for adequate and continuous supply of pure water in correctional home.
5. The state govt. may, in the manner prescribed provide for such other hygienic and sanitary measures as it may deem fit⁵⁹⁶.

Section 38 provides the medical care for the prisoner, who are in correctional home. The following important provisions are laid down:

1. Every prisoner shall have right to medical care in case of sickness as well as maintaining good health.
2. The chief medical officer shall supervise, inspect the performance of the medical officers and shall periodically visit the correctional home and check the measures taken by the medical officers in regard to medical care of the prisoners including allotment of special diets to them.

595. Sub-Section(5) of Section 37 of West Bengal Correctional Services Act,1992.

596. Sub-Section (8) of Section 37.

3.Under sub section 2, in each correctional home there shall be separate wing for female prisoners ordinarily under the medical supervision of the female medical officer.

Section 43(1) provides that if any criminal or non criminal lunatic is confined in any correctional home otherwise than for transmission to some medical hospital shortly the correctional home shall obtain the services of such whole time or part time psychiatrists as may be considered necessary to look after the lunatic and to give them proper treatment⁵⁹⁷.

Section 44(1) provides the rule for segregation of sick prisoners from other prisoners and in no case shall a sick prisoner be allowed to make or leave with other prisoners.

Under section 47(2) the state govt. has the power to prepare a panel of specialist, for treatment of different kinds of ailments in correctional homes on the requisition of the inspector general or correctional services⁵⁹⁸.

Under section 50 to 52 of chapter XV of this act, the prisoner shall have the following important rights.::-1. every division I prisoners shall have the facility of writing such number of letters, being not less than one letter in a week, to his relative and friends as may be prescribed by the state⁵⁹⁹.

1. Every political prisoner and every detenu may be allowed to write at his own cost letters in excess of the number fixed by rules made under this act.

597. Id. Sub- Section(1) of section43 of The West Bengal Correctional Services Act,1992

598. Id. Sub- Section (2) of Section 47.

599. Id. Sub- Section (1) of section50.

2. Every prisoner shall have the right to have such number of interviews with the friends and relatives not being less than one in month, as may be prescribed⁶⁰⁰.
3. Any legal practitioner as defined in clause 1 of the advocates act 1961 may interview any prisoner in case with his defence in the presence of the superintendent and or other officer of the correctional home duly authorized by superintendent and such interviews shall not be taken into account while computing the number of interviews admissible under the rules made under this act.
4. A police officer may interrogate a prisoner in a room of the officer of the correctional home in the presence of the chef controller of correctional services who shall if so desired by the police officer, keep himself beyond the hearing distance. For the purpose of investigation of a case under the opium act 1878 or the dangerous Drugs act1930 or the Bengal Excise act 1909, a police officer or Excise officer not below the rank of sub inspector of police, may interrogate prisoner with the written permission of a court having jurisdiction, subject to such condition as the court may impose⁶⁰¹.

The important relevant provisions for female prisoners are laid down in section 66 of chapter xix, the privations are :

1. The state govt. shall establish such number of correctional home for female prisoners as it may consider necessary. Pending the establishment of correctional homes for female prisoners both male and female prisoners shall be confined in the same correctional home. Provided that the female prisoners shall be accommodated in the female ward of a correctional home

600. Sub-Section(1) of Section 51 OF West Bengal Correctional Services Act, 1992.

601. Id. Section 52.

till they are transferred to or correctional home for female prisoners as and when established⁶⁰².

2. A correctional home for female prisoners shall have the status of a district correctional home and shall be of the type of a work center. Medical officers, pharmacists, trainers and other staff of such correctional home shall be female. Provided that male security staff may be employed for duties out side such correctional home and inside the office thereof.

3. Female prisoners convicted or charged for an offence under the Bengal Suppression of immoral Traffic Act, 1933, as for any sexual or other offence involving grave moral depravity, shall be regarded from all other types of female prisoners⁶⁰³.

4. A female prisoner shall not be accommodated in a female ward alone if there is no other female prisoner in the correctional home, the superintendent shall depute a female warden to stay and sleep with the female prisoner at night.

5. The male wardens escorting any visitor shall remain outside the female ward or enclosure and the visitor shall enter the female ward or enclosure accompanied by two officers not below the rank of controller.

6. A police officer may on the orders of a competent court, take the footprint, finger impressions photograph or measurement of a female prisoner in the office of the correctional home, not below the rank of controller and the matron or a female warden.

602. Sub- Section (1) of Section 66, West Bengal Services Act, 1992.

603. Sub- Section (1) of Section 67.

7. When a female prisoner is confined in a cell, the key of the cell shall be in the custody of the female warden who shall be within nearing distance of the female prisoner and for the day and night, two separate female wardens shall be placed on duty as far as practicable⁶⁰⁴.

Under section 78 of this act when a commission has been issued under subsection1 for examination of a prisoner inside a correctional home, the provisions of the code of civil procedure 1973 shall apply in relation to such examination, and the superintendent shall give the facilities to the commission and the lawyers representing the parties to the cause of action to perform their duties and discharge their function according to law⁶⁰⁵.

Section 79 speaks of the right of the prisoner when they are in correctional home. These rights are:-

1. Every prisoner shall have the right of access to law. The superintendent of every correctional home shall provide every prisoner with all reasonable opportunities for invoking the aid of law in all matters concerning his confinement and matters of personal nature⁶⁰⁶.

2. Every prisoner shall have the right:-

- a) to protect against unlawful aggression on his person.
- b) to protection against confinement in unhealthy or obnoxious surroundings.

604. Sub- Section (6) of Section 67 of The West Bengal Correctional Services Act,1992

605. Sub- Section (2) of Section 78.

606. Sub- Section (1) of Section 79.

c) of having proper medical care and service for preventing deterioration of his health and for cure of ailment with which he may be attacked⁶⁰⁷.

d) to protection against unreasonable discrimination.

e) to protection against punishment or hardship amounting to punishment except through procedure established by law and with due opportunity of defense.

f) of being informed of the rules of conduct which may be binding on prisoners and of the amenities and privileges of prisoners admissible under the law.

g) to protection against labour not authorized by law or in excess of the prescribed period or without payment of wages at the prescribed period or without payment of wages of the prescribed rate.

h) to communication with relatives and friends as permissible under the rules.

i) of enjoyment of fundamental rights under chapter iii of the constitution of India in so far as they do not become incapable of enjoyment as an incident of confinement⁶⁰⁸.

Under section 98 the state Govt. has the power to constitute a panchayet with the members from amongst the prisoners, excluding the political prisoners and detenu detained in the correctional home. The prisoner panchayet shall:

607. Sub-Section2 of Section79 of West Bengal Correctional Services Act,1992

608. Sub-Section2 of Section79.

- i) foster co operation of he prisoners with the administrative authority of the correctional home and a spirit of friendliness amongst the prisoners of different correctional home as well as disciplined life amongst the prisoners⁶⁰⁹.
- ii) look after the cooking of prisoners food suggest manual for the breakfast, and midday mill, consistent with the prescribed diet tables and price ceiling.
- iii) look after and render aid is the various sorts of cultural and recreational activities.
- iv) look after the sanitary and hygienic condition inside the correctional home as well as the privileges and amenities admissible to the prisoners under this act or the rules made there under⁶¹⁰.
- v) the female prisoners shall have a separate Panchayet, if the number of such prisoners is 10 or more. Where the number of female prisoners in a correctional home is less than 10 the superintendent shall nominate not more than two female prisoners as their representatives who shall discharge the function of the prisoner's panchayet under sub section.

It is mentioned in the act clearly that the prison act 1894, the prisoner's act1900, the identification of prisoners act 1920, Transfer of prisoners act 1950, and the prisoners (attendance in court)act ,1955 in their application to west Bengal, are hereby repealed.

609. Sub-Section 2(a) of Section 98 of West Bengal Correctional Services Act,1992.

610. Id. Sub-Section 2(c) of Section 98.