

		21 might be total or partial neither any limb or faculty can be totally destroyed nor can it be partially damaged. Further deprivation is not an act which is complete once and for all, it is a continuing act and so long it is a continuing act and so long as it lasts, it must be in accordance with the procedure established by law."
Air 1978 SC 597	Maneka Gandhi v. Union of India	This case widened the Scope of Human Rights Jurisprudence. In this case the Court gave a fundamental character to the right in article and changed the unfortunate position of the case of A.D.M. Jabalpur v. Shivkanta Sukla, AIR 1976 SC 1207 The Court did it by establishing a relationship between Article 14, 19 and 21 which had apparently been denied in Gopalan, particularly in respect of Articles 19 and 21.
AIR 1988 SC 1782	Vikram v. State of Bihar	The right to life includes the right live with human dignity; inmates of a care homes to have a right to live with human dignity. A home should provide minimum living conditions ensuring human dignity. The home may be or destitute persons or a hospital for a mental patients. It is implicit in Article 21 which accords protection against torture, and cruel inhuman or degrading treatment.
AIR 1988 Cal 136.	Sankar Banerjee v. Durgapur Projects Limited	It was observed by the Court that compelling a person to live with his family in one small room or a two room quarter and to share toilet and kitchen with another family was violative of decent standard of life and also indirectly to status in life.
AIR 1997 SC 3297	Samatha v. State of Andhra Pradesh	Right to lif enshrined in Article 21 of the Constitution of India means something more than mere survival of animal existence. The view of the Court is that the right to live with human dignity with minimum sustenance and shelter and all those rights and aspects of life which would go to make a man's life complete and worth living, would form part of the right to life. Enjoyment of life and its attainment -social, cultural and intellectual- without which life cannot be meaningful, would embrace the protection and preservation of life

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		guaranteed by Article 21.
(2006) 8 SCC 212	M. Nagraj & Others v. U.O.I.	The right to life guaranteed under Article 21 embraces within its sweep not only physical existence but also quality of life which includes living with human dignity.
(2006) 8 SCC 399	Confederation of Ex-Servicemen Assns.v. Union of India	The Apex Court has taken a view that medical facilities to ex-serviceman are also necessary part of their right to live.

EMERGING TRENDS

Thus during the period 1987 – 2007 under study the Supreme Court of India brought out the following trend in relation to interpretation of the word 'life' as mentioned in Article 21 of the Constitution of India.

1. Life is more than mere existence and it includes dignity of life of a human being
2. Procedure established by law had to be fair, non-arbitrary and just.
3. Life also includes quality of life
4. Deprivation is a continuing act as long as it lasts.

b. Table Delineating the Boundaries of Dignity in Arrest:

CRONOLOGICAL DATE/CITATION	NAME OF THE CASE	DECISION
1994(3)SCC 423	Joginder Singh v.State of Punjab	Joginder Singh ¹ the Supreme Court set four major guidelines that are to be followed by the police in all cases of arrest. They are: - As arrested person in custody is entitled, if he so requests, to have one friend or relative or other person know to him or likely to take interest in him told as far as is practicable, that he has been arrested and details as to where he is being detained In; The officer shall inform the arrested person of the above rights;

		<p>An entry is to be made in the case diary as to who was informed of the arrest (in the concern)</p> <p>Departmental instructions are to be issued that a police officer making arrest should record in the case diary, the reasons for making the arrest.</p> <p>In order to ensure that the above directions are complied with, the court declared that it shall be the duty of the jurisdictional Magistrate before whom the arrested person is produced to satisfy that these requirements have been made. (in the concerned case); and</p>
AIR 1997 SC 610	D.K. Basu v. State of West Bengal	<p>Taking cognizance of the reporting of large number of custodial crimes in India, the Supreme Court delivered a historic judgment in D.K. Basu v. State of West Bengal which laid down the rules for custody jurisprudence. The apex court felt the urgency of streamlining the structure and functions of the law enforcement machinery responsible for effecting arrests in the country. The court observed that there should be more transparency and accountability in the system so far as arrests and detentions of the offenders are concerned. In addition to the statutory and constitutional requirements it was made mandatory on part of the law enforcement agencies to follow the following guidelines at the time of effecting arrest of an offender: -</p> <p>The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.</p> <p>That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest. Further more in order to ensure that the above directions are complied</p>

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		with, the Court declared that it shall be the duty of the Jurisdictional Magistrate before whom the arrested person is produced to satisfy that this requirements have been made.
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EMERGING TRENDS

1. The police personal carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations.
2. The particulars of all such police personal who handle interrogation of the arrestee must be recorded in a register.
3. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.
4. Further more in order to ensure that the above directions are complied with, the Court declared that it shall be the duty of the Jurisdictional Magistrate before whom the arrested person is produced to satisfy that this requirements have been made.

c. Bail an important component of dignity:

CHRONOLOGICAL DATE/ CITATION	NAME OF THE CASE	DECISION OF THE CASE
AIR 1978 SC 527	Babu Singh v.State of UttarPradesh	The Apex Court by justice Krishna Iyer, observed that personal liberty is deprived when bail is refused. It is too precious value of our Constitutional system recognised under Article 21, because of which the power to negate it must be exercised not casually, but judicially with lively concern for the cost to the individual and community. It was then observed: "..... to glamorize impressionistic orders as discretionary may on occasions, make a legislative gamble decisive of a fundamental right. After all, personal liberty or an accused or convicts is fundamental suffering lawful eclipse only in terms of procedure



		established by law".
AIR 1980 SC 1632	Gurubaksh Singh Sibbia v. State of p Punjab	The court held that in order to meet the challenge of Article 21, the procedure must be fair, just and reasonable, and so, word may not be read in the section to make it urgent or unfair. On the basis of their judgment, it can be states that if a bail order imposes unjust condition that would be hit by this Article.
1991 SCC (Cr.i)67	Gouri Shankar Sharma v. State	The Apex court passed the order of conviction against alleged police personal under section 304 of I.P.C and following observation was made by Justice Ahmadi: "The offence is of a serious nature aggravated by the fact that a person who is supposed to protect the citizens and not to misuse his uniform and authority committed it to brutality assault them while in his custody. Death in police custody must be seriously viewed for otherwise we will help take a stride in the direction of police raj. It must be curved with a heavy hand. The punishment be such as deter others from indulging in such behaviour
(1992)3SCC 155	CBI V. Anupam j. Kulkarni	The Supreme Court refused to hand over the accused to the police on remand after his initial custody in judicial remand. The prosecution is also argued in favour of police remand in most of the cases. In this case, J. Ahmedi laid down that: "There cannot be any detention in police custody after the expiry of first fifteen days even in case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage"
(1993)5 SCC 410	Sanjay Dutta v. State through C.B.I	The liberal bail right has been recognized by Supreme Court.
(1994) 4 SCC 602	Hitendra Vishnu Thakur v. State of Maharastra	the Supreme Court, while construing Section 20 (4) (bb) of the TADA in the light of section 167 of the Cr. P. C, held that "with the amendment of clause (b) of subsection (4) of section 20 read

		<p>with the provision to subsection 2 of section 167 of Cr. P.C or indefeasible right to be enlarged a bail accrues in favour of the accused if the police fails to complete the investigation and put up a challan against him in accordance with law under section 173, Cr. P. C.</p> <p>The court further said that the obligation of court in such cases are : - a) to declare police request for further remand in all cases where the assigned period has expired and no formal extension of period is granted, and b) to inform the accused of his right to bail and also enable him to file an application on that behalf.</p>
(1995) 4 SCC 190	Union of India v. Thamisarast	<p>The Supreme Court disfavored the continued remand detention beyond the period of 90 days even in a case of arrest under the narcotics Drugs and Psychotropic Substances Act, 1985.</p> <p>The Court further said that the naked violations of human rights take place in the course of investigation, when the police under pressure to secure the most clinching evidence often resort to third degree methods and torture. Recently, the police torture and custodial death are increasing day by day. Courts have not only exposed the seamy side of police investigation process but have in several cases prevented exemplary punishment to ensure human conditions of investigation.</p>

EMERGING TRENDS

1. That personal liberty is deprived when bail is refused. It is too precious value of our Constitutional system recognised under Article 21, because of which the power to negate it must be exercised not casually, but judicially with lively concern for the cost to the individual and community.

2. In order to meet the challenge of Article 21, the procedure must be fair, just and reasonable,
3. Death in police custody must be seriously viewed for otherwise we will help take a stride in the direction of police raj. It must be curbed with a heavy hand. The punishment be such as deter others from indulging in such behaviour
4. There cannot be any detention in police custody after the expiry of first fifteen days even in case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage
5. infeasible right to be enlarged a bail accrues in favour of the accused if the police fails to complete the investigation and put up a challan against him in accordance with law under section 173, Cr. P. C. The court further said that the obligation of court in such cases are : -
 - a) to declare police request for further remand in all cases where the assigned period has expired and no formal extension of period is granted, and b) to inform the accused of his right to bail and also enable him to file an application on that behalf.

d. Guidelines regarding handcuffing

CHRONOLOGICAL DATES/CITATION	NAME OF THE CASE	DECISION OF THE CASE
AIR 1980 SC 1535	Prem Shankar Shukla v. Delhi Administration	Handcuffing should be resorted to only when there is clear and present danger of escape' breaking out the police control and for this there must be clear material, not merely an assumption. In special circumstances the application of iron is not ruled out. The court pointed out that where in extreme cases the accused is to be handcuffed; the escorting authority must inform the court and record reasons for doing so. It is only after getting judicial approval that handcuffing should be resorted to. His lordship said:

		Handcuffing is prima-facie inhuman and therefore, unreasonable and harsh and at the first flush arbitrary... to inflict iron's is to resort to zoological strategies repugnant to Art 21
Air 1981 SC 625	Kishore Singh Ravinder Dev v. State of Rajasthan	The Supreme court observed, "Human Dignity is dear value of our constitution not to be bartered away from mere apprehensions entertained by jail officials." Keeping in view the human rights and recognizing human dignity the Apex Court forbade putting any prisoner is bar fetters. The picture of the prisoners subjected to fetters was pointed in the real colour of life by this court. "A large number of prisoners - a few hundred at times - minors and under trials too - are shackled day and night for days and months or and by bar fetters too shocking to contemplate with cultural equanimity. This, prime-facie, shows the class character of jail injustice for an incisive sociologist
AIR 1981SC 1514	Charles Sobraj v. Supdt. Jail, Tihar	it was held that there was no arbitrary power to put an under trial under bar fetters. The descrerition to impose, irons is a quasi judicial decision and a precious hearing is essential before putting prisoners in fetters. It was further laid down that no "fetters" shall continue beyond daytime and a prolonged continuance of bar - fetters shall be with the approval of the chief judicial magistrate or a Session judge.
AIR 1981 SC 746	Francies Coralie v. Union Territory of Delhi	The Supreme Court ruled that the right to life and liberty included his right to live with human dignity and therefore a detainee



		would be entitled to have interviews with family members, friends and lawyers without these severe restrictions. Further the Supreme Court stated. "Personal liberty would include the right to socialize with members of the family and friends subject, of course to any valid prison regulations and under Art. 14 and 21 such prison regulations must be reasonable and non - arbitrary
AIR 1982 SC 6	Prabhu Dutta v. Union of India	The Supreme Court allowed the interviews upholding the right of press to have access to prison inmates.
(1995)3 SCC 743	Citizen for Democracy v. State of Assam	The Supreme Court has threatened to invoke contempt jurisdiction for non enforcement of the guideline of the Supreme Court with regard to handcuffing in a PIL instituted on the basis of a letter written by sri Kuldip Nayar.
AIR 1991 SC 2176	Delhi Judicial Service Association v. State of Gujarat	The outrageous conduct of the police seriously undermined the dignity of the Courts and shocked the judges, Judicial officers and Magistrates who felt insecure and humiliated at the hands of the guardians of law. The Court also found the police officers guilty interference with the course of justice by their ignominious conduct.

EMERGING TRENDS

1. Handcuffing should be resorted to only when there is clear and present danger of escape' breaking out the police control and for this there must be clear material, not merely an assumption.
2. Human Dignity is dear value of our constitution not to be bartered away from mere apprehensions entertained by jail officials
3. there was no arbitrary power to put an under trial under bar fetters. The descretion to impose, irons is a quasi judicial decision and a precious hearing is essential before putting prisoners in fetters.

4. Personal liberty would include the right to socialize with members of the family and friends subject, of course to any valid prison regulations and under Art. 14 and 21 such prison regulations must be reasonable and non - arbitrary

E. Right to free legal aid:

CHRONOLOGICAL DATES/CITATION	NAME OF THE CASE	DECISION OF THE CASE
AIR 1979 SC 1369	Hussainara Khatoon v. State of Bihar	The Supreme Court observed that a procedure which does not make legal services available to a poor under trial person cannot be regarded as just fair and reasonable and therefore, violates of right to legal aid of the poor accused as contemplated by Art 21 of the constitution. The court in this case ordered release of those under trials that were languishing in jails for an inordinately long period. The court under Article 142 read with Article 21 and 39 A of the constitution can exercise its implicit power to assign counsel to the accused person provided he does not take objection of a lawyer for his defense.
1981, SC 928	Khatri v. State of Bihar	The Supreme Court held that the right to legal aid under Article 39A is implicit under Article 21.
AIR 1982 SC 1167	Kadra Pahadiya v. State of Bihar	Supreme Court specifically declared that the right to legal assistance of under trial prisoner's in the form of competent lawyer at states expense is part of their fundamental rights under Art - 21. Moreover, there is no Justification to detail a criminal lunatic though he has becoming perfectly sane and fit for discharge.
(1986)2 SCC 401	Suk Das v. Union Territory of	the Apex Court held that failure

clarification




	Arunachal Pradesh	to provide free legal aid to an accused at the state's court would violate the trial. The Court had set aside the conviction of an accused on the ground that he was not provided with legal aid at the time of his trial and thus there was violation of Art 21 of the constitution.
AIR 1986 Pat 324	Madheswardhari Singh v. State of Bihar	"That the rights to speedy trial extend to all criminal prosecution for all offences generally. It applies to both trial and investigation as per the code of Cr. P. C 1973 It extends to all criminal proceeding inclusive of the stage of trial and appellate stage. Delay of 7 years or more in trial and investigation other than capital punishment violation Art 21 of the constitution."
AIR 1993 Ker 1	P.A.Jacob v. Supdt. Of police Kattayam	"Compulsory exposure of unwilling persons to dangerous and disastrous levels of noise, would amount to a clean infringement of their constitutional guarantee of right to life under article 21. right to life comprehends right to safe environment, including safe air quality, safe from noise"
AIR 1990 Ker. 324	F.k. Hussain v. Union of India	The Kerala High Court pointed out that the right to sweet water and the right to free air are attributes to the right to life, for, those and basic elements which sustain life itself.

EMERGING TRENDS

1. A procedure which does not make legal services available to a poor under trial person cannot be regarded as just fair and reasonable and therefore, violates of right to legal aid of the poor accused as contemplated by Art 21 of the constitution.
2. The right to legal aid under Article 39A is implicit under Article 21.

3. Failure to provide free legal aid to an accused at the state's court would violate the trial.
4. That the rights to speedy trial extend to all criminal prosecution for all offences generally. It applies to both trial and investigation as per the code of Cr. P. C 1973 It extends to all criminal proceeding inclusive of the stage of trial and appellate stage. Delay of 7 years or more in trial and investigation other than capital punishment violation Art 21 of the constitution.

F. Right to speedy Trial:

CHRONOLOGICAL DATES CITATION	NAME OF THE CASE	RATIO OF THE CASE
Air 1979 SC 1369	Hussainara Khaton v. Secretary, State of Bihar	<p>The Court imposed a constitutional obligation on the Supreme Court for: augmenting and strengthening the investigative machinery, sitting up new courts, building new courts houses providing none staff and equipment to the courts, appointment of additional judges and other measures calculated to ensure speedy trial.</p> <p>The Supreme Court went a step further and gives necessary direction to the state of Bihar and other appropriate authorities, to secure the right to a speedy trial for the accused. Often these directives come in the form of an order to the High Court to try cases within certain periods of time, such as 3 or 4 months. As a result, Supreme Court there has been a significant increase in the number of judges in the state of Bihar, yet this increase was not proportionate to the increase in number of cases in the docket</p>
AIR 1988 SC 1531	A.R. Antulay v.R.S. Naik	<p>The right to speedy Trial is available at all stages, namely the stages of investigation, inquiry, trial, appeal, and re - trial. No criteria can be fixed to determine where there is undue delay. The Court by adopting the balancing process determines in each case whether the right to speedy trial has been denied. However, the court</p>

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		definitely ruled that frivolous proceedings or proceedings taken merely fare delaying the date of reckoning will attract the right to speedy trial, lastly, the court also laid down the courses open to judiciary while the right to speedy trial was infringed it included quashing the charges or conviction, to conclude the trial within the fixed time where the trial is not concluded or reducing the sentence when the trial has concluded as may be deemed just and equitable in when the trial has concluded as may be deemed just and equitable in the circumstances of the case
(1992)2 Cal LT 295	Amaendra Nath Dutta v. State of West Bengal	"The right to speedy Trial has not been expressly concerned as a fundamental right in our Constitution. But it has now been settled beyond doubt by a series of decisions of our Apex Court that the same right is fully covered by and comprised in Article 21 of the Constitution guaranteeing non deprivation of life and liberty save according to procedure established by law...It is not the numbers that matters, what really matters is the principle and rationale behind the delay. No prosecution should be allowed to drag on for years to the prejudice of the accused unless the prosecuting agency satisfies the Court that there were compelling reasons for such delay which could be helped"
1993(1) Cal LT 59	Mohanlal Khandelwal v. State	The situation has not improved inspite of several directions and the matters remains in the same condition although ten years have elapsed. Prejudice is inherent in such delay and it must be held that the accused petitioners right to speedy trial has been infringed by such delay requiring quashing of the proceedings.
AIR 1996 SC 1619	Common Cause, a Registered Society v. Union of India	The Supreme Court supplemented the proposition laid down by the constitution bench in the Antulay's case with the following directions: In cases when the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the court shall close the

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		<p>prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witness or not, within the said period and the court can proceed to next step provided by law for the trial of the case.</p> <p>in such cases mentioned above, if the accused has been in jail for period of not less than one half on the maximum period of punishment prescribed for the offence, the trial court shall release the accused on bail forthwith on such conditions as it deems fit;</p> <p>If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witness or not within the said period and the court can proceed to the next step provided by law for the trial of the case, unless for very exceptional reasons to be recorded and in the interest of justice the court considers it necessary to grant further time to the prosecution to adduce beyond the aforesaid time limit;</p>
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EMERGING TRENDS

1. Augmenting and strengthening the investigative machinery, sitting up new courts, building new courts houses providing none staff and equipment to the courts, appointment of additional judges and other measures calculated to ensure speedy trial.
2. The right to speedy Trial is available at all stages, namely the stages of investigation, inquiry, trial, appeal, and re - trial. No criteria can be fixed to determine where there is undue delay. The Court by adopting the balancing process determines in each case whether the right to speedy trial has been denied.
3. In cases when the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the

accused on the charges framed whether the prosecution has examined all the witness or not, within the said period and the court can proceed to next step provided by law for the trial of the case.

4. in such cases mentioned above, if the accused has been in jail for period of not less than one half on the maximum period of punishment prescribed for the offence, the trial court shall release the accused on bail forthwith on such conditions as it deems fit;
5. If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witness or not within the said period and the court can proceed to the next step provided by law for the trial of the case, unless for very exceptional reasons to be recorded and in the interest of justice the court considers it necessary to grant further time to the prosecution to adduce beyond the aforesaid time limit;

G. Custodial Violence:

CHRONOLOGICAL DATES CITATION	NAME OF THE CASE	DECISION OF THE CASE
(1979)4 SCC 719	Rattan Singh v. State of Punjab	The Court observed: "It is a weakness of our jurisprudence that victim of crime and the desire of dependents of the victim do not attract the attention of law. In fact, victim reparation is still the vanishing point of our Criminal law. This is the deficiency in the system, which must be rectified by the legislature"
AIR 1981 SC 65	Kishore Singh Ravinder Dev v. State Of Orissa	The Supreme court held that use of third degree methods by police or arrested persons, violation their rights under Art. 21.
AIR 1980 SC 1579	Sunil Batra II v. Delhi Administration	it was held that integrity of physical person and his mental personality is an important right of a prisoner, and must be protected from all kinds of atrocities. In this case the petitioner sought protection from inhuman labour treatment inflicted upon him in jail. The court converted the petition of petitioner into a habeas corpus petition and the court gave following directions to the control and state government and the jail authorities: 1. The petitioner's torture was illegal and

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		<p>he shall not be subjected to any such torture until fair procedure is complied with.</p> <p>2. No corporal punishment a personal violence or the petitioner shall be inflicted.</p> <p>3. Lawyer nominated by the D.M. Session judge, High Court and the Supreme Court will be given all facilities to interviews, right to confidential communications with prisoners subject to discipline and security considerations.</p> <p>4. Grievances deposit boxes shall be maintained in jails, which shall be opened by D.M and session judge frequently prisoners shall have occurs to such boxes.</p> <p>5. D.M. and Session Judge shall inspect jail once every week, shall make enquiries into grievance remedial and take suitable action.</p> <p>6. No solitary or punitive cell, no hard labour or dilatory charge, denial of privileges and amenities no transfer to other prison as punishment shall be imposed without judicial approval of the session judge.</p>
AIR 1993 SC 1970	Nelabati Behra v. State of Orissa	The Supreme Court depreciated the barbaric Act of the police and declared that any person, whose fundamental rights have been violated by state action, can move either the High Court under Article 226 or the Supreme Court under Art - 32 for monitory compensation.
AIR 1997 SC 610	D.K. Basu v. State of West Bengal	"Fundamental rights occupy a place of pride, in the Indian constitution. Art. 21 provide "no person shall be deprived of his life or personal liberty except according to procedure established by law. Personal liberty thus is a sacred and cherished right under the constitution. The expression: life or personal liberty has been held to include to right to live with human dignity and thus or would also include within itself a guarantee against torture and assaults by the state or its functionaries"
(1995) 4 SCC 262	Nathu Banjara case	The Court made the following observations: "Torture in custody flouts the basic rights of citizens recognized by the Indian constitution and is affront to human dignity. Police excesses and the maltreatment of détenues under-trial prisoners or suspects furnish the image of any civilized nation and encourages the men in khaki to consider themselves to be

		above the law and to sometimes become the law unto themselves. Unless stern measures are taken to check the malady, the foundations of criminal justice delivery system would be taken and the civilization would itself risk the consequences of headings towards perishing. The Courts must therefore deal with such cases in a realistic manner and with sensitivity which they deserve; otherwise the common man may lose faith in the judiciary itself, which will be a sad day."
AIR 2003 Del 50	Poonam Sharma v. Union of India	Life or Personal liberty includes the Right to live with Human Dignity, every would mean infringement of life and liberty of any citizen and, thus, would include within itself guarantees against torture or custodial violence meted out against any arrestee. Where the life and liberty of any citizen has been violated, he is entitled to monitory compensation under Public Law for violation of Fundamental Rights in addition to claims or reliefs available under the law of the country.

EMERGING TRENDS

1. The petitioner's torture was illegal and he shall not be subjected to any such torture until fair procedure is complied with.
2. No corporal punishment a personal violence or the petitioner shall be inflicted.
3. Lawyer nominated by the D.M. Session judge, High Court and the Supreme Court will be given all facilities to interviews, right to confidential communications with prisoners subject to discipline and security considerations.
4. Grievances deposit boxes shall be maintained in jails, which shall be opened by D.M and session judge frequently prisoners shall have occurs to such boxes.
5. D.M. and Session Judge shall inspect jail once every week, shall make enquiries into grievance remedial and take suitable action.
6. No solitary or punitive cell, no hard labour or dilatory charge, denial of privileges and amenities no transfer to other prison as punishment shall be imposed without judicial approval of the session judge.
7. any person, whose fundamental rights have been violated by state action, can move either the High Court under Article 226 or the Supreme Court under Art - 32 for monitory compensation.

h. COMPENSATION AS REMEDY:

clarification

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CHRONOLOGICAL DATE CITATION	NAME OF THE CASE	DECISION OF THE CASE
AIR 1966 SC 424	State of Maharashtra v. Prabhakar	For the first time Prisoner's right of reading and writing books in jail is recognized as the right springs from article 21 of the constitution.
AIR 1974 SC 2092	Bhuvan Mohan Patnaik v. State of Andhra Pradesh	Resort to oppressive measures to curb political belief was subjected to inhuman treatment and it was held that, that could not be permitted. However, a prisoner will not complain of installation high-voltage live wire, and mechanism on jail walls to prevent escape from prisons because no prisoner has fundamental right to escape from lawful custody.
AIR 1976 SC 1139	Krishan Lal v. State of Bihar	penological innovation in the shape of parole to check recidivism because of which liberal use of the same was recommended.
Air 1977 SC 1926	Mohamad Glasuddin v. State of Andhra Pradesh	Reformatory aspect was emphasized by stating that the State has to take responsibility to rehabilitate the prisoner. Furthermore, Krishna Iyer pointed out that "sub-culture that leads to anti social behaviour has to be countered not by undue cruelty but by re-collateralization". In a series of cases it was held that under trial prisoners have right of speedy trial and Supreme Court directed for release of those under trial prisoners who were languishing in jail for a period exceeding half of the punishment provided in the particular Act. These directions were followed in the case of SC Legal Aid

		Committee v. Union of India ² and Common Cause v Union of India.
Air 1978 SC 1514	Charles Sobraj v. Supdt. Central Jail Tihar.	In these cases Supreme Court has laid down the Constitutional dimension and right available to a person behind stone walls and Iron bars.
(1982) 2 SCC 583	Veena Sethi v. State of Bihar	It was ruled that jailing of non - criminal, mentally ill persons is unconstitutional and confinement of such person should be stopped.
(1993) 2 SCC 746	Nilabati Behra v. State of Orissa	The Supreme Court held that the state is liable to pay compensation to the victim on his heir by way of monetary compensation and redressal for custodial death.
(1995) 1 SCC 14	Delhi Domestic Working Women's Forum v. Union of India	The Supreme Court considering the plight of many rape victims in the country wasted the national commission for women to drawing a scheme for compensatory payment to victims of sexual violence.
(1996) 1 SCC 490.	Bodhi Sattwa Goutam v. Subhra Chakroborty	The Court awarded compensation of Rs. 1000 every woman to the responders as interim compensation during the pendency of the criminal case and also directed the petitions to pay arrears of compensation at the same rate from the date on which the complaint was filed till date. The Supreme Court further observed: - "If the court trying an offence of Rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the court the right to award interim compensation. The jurisdiction to pay

		interim compensation shall be treated to be part of the overall jurisdiction of the courts trying the offence of rape of which is an offence against the basic human rights and also the fundamental right of personal life and liberty..... unfortunately, a woman 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 men with whom they, fortunately under Constitution enjoy equal rights."
(2000) 2 SCC 465	Chairman, Railway Board v. Chandrima Das	The Apex Court observed Rs. 10 Lakh compensation from a foreign tourist from Bangladesh who was raped by the railway employee in the Yatri Niwas of Calcutta on feb 26, 1998. endorsing the Calcutta High Court's view, the court held that the foreign national is also entitled to the fundamental right to life in India. The Court said: - "As a national of another country, Smt Hanuffa Khatoon could not be subjected to physical violence at the hands of the govt. employees who outraged her modesty. The right available to her under article 21 was thus violated consequently; the state was under a constitutional liberty to pay compensation to her"
(2001) Cri.LJ 3573	Meena Singh (Mrs) v. State of Bihar	It is the prime duty of the jail authority being custodian to provide security and safety to the life of prisoners while in jail custody, even though he is a criminal or in accused in a criminal case.

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AIR 1997 SC 1739	Rama Murthy v. State of Karnataka	<p>It was observed that "Constitutional rights of the prisoners shall have to be interpreted in such way that larger public interest does not suffer while trying to be soft and considerate towards the prisoners". For this, "it has to be seen more injury than is necessary is not caused to a prisoner". "At the same time efforts have to be made to reform him so that when he comes out of prison he is a better citizen and not a hardened criminal." The Supreme Court laid down the dos and donts, relying on 1994-95 Annual report of National Human Rights commission. The Commission has disclosed that "the situation in prisons visited was varied and complexovercrowded....The diet was inferior, and; the management was denounced by the inmates as brutal and corrupt.....Though care is taken to separate juveniles from others, petty offenders from hardened criminals major efforts required to reform conditions, to generate employment in a worthwhile and remunerative way, to encourage education and restore dignity.....callousness prevailed, prisoner were seen in shackles, mentally disturbed inmates-regardless of whether they were criminal or otherwise were incarcerated with others, with no real effort to rise above the very minimum required for the meanest survival.....Prisoners worked but their remuneration often was pittance, offering scant</p>
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clarification

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		hope of savings being generated for future rehabilitation in society. By and large, the positive experiences were the exceptions rather than rules, dependant more upon the energy and commitment of individual officials rather than upon the capacity of the system to function appropriately on its own".
(2000)(1)Cr.LJ 118(M.P.)	Anil Kumar v. State of M.P.	It was observed that the state govt. are to be taken initiative to tackle the problem of prisoners from serious disease like T.B. or AIDS etc. Further, the court observed the adequate steps should be taken by the govt. to prevent the diseases in prison. It is pertinent to note here that the existing prison Act, 1894 is more than a century old, needs to be thoroughly revised and even restated in view of the changed Socio economic and political conditions of India over the years. Many provisions of this Act have now become obsolete.

EMERGING TRENDS

1. The Supreme Court held that the state is liable to pay compensation to the victim on his heir by way of monitory compensation and redressal for custodial death.
2. If the court trying an offence of Rape her jurisdiction to award the compensation at the final stage, there is no reason to deny to the court the right to award interim compensation. The jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the courts trying the offence of rape of which is an offence against the basic human rights and also the fundamental right of personal life and liberty.....
3. Constitutional rights of the prisoners shall have to be interpreted in such way that larger public interest does not suffer while trying to be soft and considerate towards the prisoners

i. Violence Against women:

CHRONOLOGICAL DATES/ CITATION	NAME OF THE CASE	DECISION OF THE CASE
AIR 1983 SC 378	Sheela Barse v. State of Maharashtra.	<p>The court held that it is violated art. 21. The Supreme Court laid down detailed guide lines in this regard which include³</p> <p>'Female suspect should not be kept in police lockup in which male suspects are detained. Female suspects must be kept in separate police lockup guarded by female constables:</p> <p>Interrogation of female suspects should be carried out only in the presence of female police officer/constables.</p> <p>When ever a person is arrested and taken to the police lockup, the police will immediately give information of the fact of such arrest to the nearest legal aid committee which will provide legal assistance to the arrested person at the cost of state, provided he is willing to accept such help.</p> <p>The District and Sessions judge will make surprise visit to police lockups in the city periodically with a view to providing the arrested person give an opportunity to air their grievances and ascertaining what are the conditions in police lock ups and take up the matter with the Commissioner of police or Home department of Chief justice of the High Court.</p> <p>Whenever a person is arrested the police must</p>

		obtain from him the name of friend or relatives of the person whom he would like to be informed about the arrest.
AIR 1988 SC 1782	Vikram Deo Singh Tomar v. State of Bihar	Pathak, C.J., aptly observed: "The right to live with human dignity is the fundamental right of every Indian Citizen And so, in the discharge of its responsibilities to the people the state recognizes, both women and children, who are the castaways of an imperfect social order and for whom, therefore of necessity provision must be made for their protection and welfare."
AIR 1996 SC 1050	Chameli Singh v. State of U.P.	The Apex court held that the right to life ⁴ has a human being is not ensured by meeting only the animal needs of a man, right to live guaranteed in any civilized society includes the right to food, water, decent environment, education, medical care and shelter. Right to shelter includes adequate living space, safe and decent structure, clean and decent surroundings sufficient life, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily evocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all infrastructure necessary to enable then to live and develop as a human being.

(1997) 6 SCC 241	Vishaka v. State of Rajasthan	In this case the Supreme Court virtually a piece of legislation on the ground there is a vacuum in the legislation field of sexual harassment of working woman. The S.C further laid down some guide lines and norms which are directed to be treated as law. It was also submitted that these guidelines cannot be treated as laying down a precedent under Art 141. But this should be treated as unauthorized ad-hoc legislation by the judiciary. Interpreting certain provision of the existing law and laying down certain principles in the form of the precedent is what is envisaged under art 141 and not ad-hoc legislation by judiciary when there is a vacuum in the field. Vishaka's an example of judicial trespass in legislative domain.
AIR 1996 SC 1393	State of Punjab v. Gurmit Singh	... The Courts , therefore ,shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions and insignificant discrepancies in the statement of prosecutrix, which are not of a fatal nature to through out an otherwise reliable prosecution case.If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars.

EMERGING TRENDS

1. Female suspect should not be kept in police lockup in which male suspects are detained. Female suspects must be kept in separate police lockup guarded by female constables:
2. Interrogation of female suspects should be carried out only in the presence of female police officer/constables.
3. When ever a person is arrested and taken to the police lockup, the police will immediately give information of the fact of such arrest to the nearest legal aid committee which will provide legal assistance to the arrested person at the cost of state, provided he is willing to accept such help.
4. The District and Sessions judge will make surprise visit to police lockups in the city periodically with a view to providing the arrested person give an opportunity to air their grievances and ascertaining what are the conditions in police lock ups and take up the matter with the Commissioner of police or Home department or Chief justice of the High Court.
5. Whenever a person is arrested the police must obtain from him the name of friend or relatives of the person whom he would like to be informed about the arrest.

j. Death Penalty:

CHRONOLOGICAL DATES/ CITATION	NAME OF THE CASE	DECISION OF THE CASE
AIR 1973 SC 547	Jag Mohan Singh v. State of U.P.	The Supreme Court held that the sentencing discretion is to be exercised judicially on "well recognized principles" after balancing all the aggravating and mitigating circumstances of the crime. By well recognized principles, the court meant the principles crystallized by judicial decisions, illustrating as to what were regarded as aggravating and mitigating circumstances in those cases. The application of these well recognized principles are now guided by the legislative policy

		embodied in sections 235(2) and 354(3) of the code of Criminal Procedure, 1973. Section 235(2) speaks for the right of sentences hearing to be given to the offender and section 354(3) speaks for the special reasons to the stated for awarding death penalty and lays down life imprisonment as a rule and death sentence as an exception in murder cases.
AIR 1973 SC 473	Mithu v. State of Punjab	This case was an instance where judiciary unanimously supported J.Krishna Ayer in Maneka Gandhi case and observed that law could be tasted under Article 21 also. In this case, Chandrachur C.J.emphasised that the last word on the question of justness and fairness did not rest with legislature. It was for the court to decide that the deprivation was fair, just and reasonable. Furthermore, section 303 of the Indian Penal Court declared unconstitutional under Article 21 because the procedure by which Section 303 of Indian Penal Court authoised the deprivation of life was unfair and unjust.
AIR 1978 SC 597	Maneka Gandhi v. Union of India	In this case, Chandrachur C.J. emphasised that the last word on the question of justness and fairness did not rest with legislature. It was for the court to decide that the deprivation was fair, just and reasonable.
AIR 1979 SC 916	Rajendra Prasad v State of U.P.	The majoring of the four judges in Bachan Singh negated the challenge to the constitutionally of the death penalty, affirmed the decision in Jagmohan and overruled the case of

		<p>Rajendra Prasad in so far as it sought to restrict the imposition of death penalty only to cases where the security of the state and society, public order and the interest of the general public were threatened. The perceived majority view supporting retention meant that death penalty as an alternative punishment was neither unreasonable nor lacking in public interest.</p>
AIR 1980 SC 898	Bachan Singh v. State of Punjab	<p>The principles of law enunciated by the Supreme Court for awarding death sentence in this case, are reiterated by the Supreme Court as follows: The extreme penalty of death need not be inflicted in gravest case of extreme capability. Before opting for the death penalty, the circumstances of the offender also require to be taken into consideration along with the circumstances of the crime. Life imprisonment is the rule and the death sentence is an exception. In other words, death sentence must be imposed only when life imprisonment appears to be altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, the option to impose sentence of imprisonment for life can not be considerably increased having regard to the nature and circumstances of the crime and all relevant circumstances.. A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so</p>

		the mitigating circumstances have to be accorded full weight and a just balance has to be maintained between the aggravating and mitigating circumstances before the option is exercised.
AIR (1983)3 SCC 470	Machhi Singh v. State of Punjab	<p>The court emanating from Bachan Singh's case and spelt out the task for the sentencing judge. It said:</p> <p>"A balance sheet of aggravating and mitigating circumstances has to be drawn up and doing so the mitigating circumstances have to be accorded full weight and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised."⁵ The court then explained how the guidelines would apply. The questions that the sentencing court had to ask were:</p> <p>Is there something uncommon about the crime, which renders sentence of imprisonment for life inadequate and calls for a death sentence?</p> <p>Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weight to the mitigating circumstances, which speaks in favour of the offender?</p> <p>the court emanating from Bachan Singh's case and spelt out the task for the sentencing judge. It said:</p> <p>"A balance sheet of aggravating and mitigating circumstances has to be drawn up and doing so the</p>

		<p>mitigating circumstances have to be accorded full weight and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.⁶ The court then explained how the guidelines would apply. The questions that the sentencing court had to ask were:</p> <p>Is there something uncommon about the crime, which renders sentence of imprisonment for life inadequate and calls for a death sentence?</p> <p>Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weight to the mitigating circumstances, which speaks in favour of the offender?</p>
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EMERGING TRENDS

It sought to restrict the imposition of death penalty only to cases where the security of the state and society, public order and the interest of the general public were threatened. The perceived majority view supporting retention meant that death penalty as an alternative punishment was neither unreasonable nor lacking in public interest. A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weight and a just balance has to be maintained between the aggravating and mitigating circumstances before the option is exercised.

CLARIFICATION ABOUT 'B & C' (PAGES 88 & 89)

B

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Pages 88 & 89 are a small part of the Chapter II of the Thesis which deals with the role of the functionaries of the Criminal Justice System in West Bengal under a sub-heading. Actually the entire Chapter deals with the national scenario and not with any particular State. Reference to state of West Bengal is made only in the passing as the researcher belongs to the state of West Bengal. Since West Bengal is not the topic of study, statistics from APDR, WBHRC and NHRC Was not collected for analysis. Moreover, statistics regarding number of cases of violation of custodial dignity received by these organisations do not fall within the scope of the thesis. Therefore, "examination of the number of cases of violation" Custodial Protection "in Police, Prison and other institutions of detention" as suggested by the examiner does not form a part of the thesis. However, in clarification to the points raised and adhering to the suggestions made by the Examiner the following addendum is submitted.

It is seen that in West Benal most cases of crime have a political dimation. In the last decade or so arrest because of poll violence and resulting detention has led to gross violation of human right to dignity. It may be recalled that during the period 1987-2007, the following instances of atrocities are taken place in West Bengal which is in common public knowledgr.

1. Singur, land acquisition and the resulting violence and rape and killing of Taposhi Mali
2. Mizanoor Rehaman and Priyanka case.
3. Nandigram, land related violence where the police opened fireon innocent and unarmed villagers.
4. Rajarhat, land related violence.
5. Political violence during the Lok Sabha poll.
6. Bhikari Paswans case.
7. Choto Angaria case-Tapan, Sukurwere responsible for man slaughter and pre-poll violence, holding of illegal and unlicensed arms.
8. Netai pre poll violence.
9. Basanti pre poll violence.

10. Panskura pre poll violence.

11. Lalgarh pre poll violence.

12. Garbeta pre poll violence.

All these above incidents bares testimony to the Report of the Amenesty International that a large number of torture and custodial violence takes place in West Bengal often with the political support from the ruling party.

Attention is drawn to page no. 89,90,91,92,93,94,95&96 of my thesis where i have made "detailed analysis" of the reported cases received by NHRC,APDR,WBHCRC.

I further draw attention to page no 106, 107 &108 wherin i have laid down several recommendations for improvement of the current state of affairs. These recommendations are given below:

GENERAL RECOMMENDATIONS

- a) The investigating wing should be separated from the law and order wing.
- b) National security commission and the state security commission at the state level should be constituted or recommended by the national police commission.

RECOMMENDATIONSTO IMPROVE THE QUALITY OF INVESTIGATION

1. The post of an Additional Superintendent of Police may be created exclusively for supervision of a crime.
2. Another Additional Superintendent of Police in each district should be made responsible for collection and dissemination of criminal intelligence, maintenance and analyses of crime date and investigation of important cases.
3. Each state should have an officer of IGP rank in the state crime branch exclusively to supervise. The functioning of the crime police. The crime



branch should have specialized squads for agencies crime and other major crimes.

4. Grave and sensational crime having interstate and transnational ramification should be investigated by a team of officers and not by a single I.O.
5. Session cases must be investigated by the senior most police officer posted at the police station.
6. Fair and transparent mechanisms shall be set up in places where they do not exist and strengthened where they exist, at the district police range and state level for redressal of public grievances.
7. The existing system of Police Commissioners office which is found to be more efficient in the matter of crime control and management shall be introduced in the urban cities and towns.
8. Criminal cases should be registered promptly with utmost promptitude by the SHO'S.
9. Stringent punishment should be provided for false registration of cases and false complaints. Sections 182/211 of I.P.C. be suitably amended.
10. Specialized units or squads should be set up at the state and district level for investigating specified category of crime.
11. With emphasize on compulsory registration of crime and removal of difference between non-cognizable and cognizable offences, the work load of investigating agencies would increase considerably.
12. The training infrastructure, both at the level of central government and state government, should be strengthened for imparting state of the Art training to the fresh recruits as also to the in-service personnel⁷.

RECOMMENDATIONS REGARDING TRAINING

- A. Law should be amended to the effect that the literate witness sign the statement and illiterate one puts his thumb impression thereon.
- B. Audio/video recording of statements of witness dying declarations and confessions should be authorized by law.
- C. Interrogation centers should be set up at the district head quarters, in each district, where they do not exist, and strengthened wher they exist, with facilities like tape recording or video photography etc.

⁷ www.pucl.org/topics/law/2003/malimath-recommendations.htm visited on 10 June 2009

B

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- D. Forensic sciences and modern technology must be used in investigation right from commencement of investigation. Moreover, the network of CFSL's and FSL's needs to be strengthened for providing optimal forensic cover to the investigating officers. Mobile forensic unit should be set up at the district level.
- E. A mechanism for co ordination among investigators, forensic experts and prosecutors at the state and district level for effective investigation and prosecution should be devised.
- F. Preparation of police briefs in all great crimes must be made mandatory.
- G. An apex criminal intelligence bureau should be set up at the national level for collection and dissemination of criminal intelligence. A similar mechanism may be devised at the state, district at police station level.
- H. As the Indian police act 1861 has become outdated, a new police act must be enacted on the pattern of the draft prepared by the national police commission. Moreover some Section that is 167(2) and 167 should be amended.

I have therefore, made an analysis of the incidents of violence recorded by the various agencies in West Bengal and made suitable recommendations. Since statistical Analysis of the cases of custodial violence and comparing and contrasting them is not within the scope of my research, it has not been done.

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