

HUMAN RIGHTS BEST PRACTICES RELATING TO CRIMINAL JUSTICE IN A NUTSHELL



National Human Rights Commission



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NATIONAL HUMAN RIGHTS COMMISSION

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Foreword

One of the positive fall-outs of the human rights movement in the post Universal Declaration of Human Rights (1948) era, throughout the world, has been a new found striving amongst the nation states to look for human rights best practices and standards and to re-orient their institutions and their functions in that light. In a way human rights have assumed the character of a new benchmark of the present civilization.

However, the task of setting the human rights standards, as well as re-orienting the institutions, is crucially dependent upon creation of better human rights awareness in the society. Since the implementation of human rights is largely dependant upon the zeal and initiatives of the public functionaries, human rights education and awareness programmes primarily directed at them, assume special significance.

The present compilation of the "Human Rights Best Practices Relating to Criminal Justice in a Nutshell" is meant mainly for the benefit of the judiciary, police and the prosecution agencies. The underlying idea of the compilation is to infuse Human Rights dimensions in the understanding and enforcement of the criminal process norms and I am sure that the compilation would ultimately be helpful in bringing about this purpose in the operation of the criminal justice process throughout the country.



Justice S. Rajendra Babu
(Former Chief Justice of India)
Chairperson, NHRC

Preface

The Preamble to the Universal Declaration of Human Rights envisages that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law". Article 9 of the same Declaration states that "no one shall be subjected to arbitrary arrest, detention or exile".

The Constitution of India also contains various provisions guaranteeing the rights of the accused in all circumstances. While Article 14 guarantees equality before the law and equal protection of the laws, Article 21 states that "no person shall be deprived of his life or personal liberty except according to procedure established by law." Article 22 of the Constitution guarantees protection against arrest and detention in certain cases. It states that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

Life, liberty and dignity of person are at the core of human rights, without which a human life will be more miserable than animals. The penal and procedural laws enacted should be in consonance with constitutional theme and human rights. The judicial officers, law enforcement officers, prosecutors, advocates and litigants are all involved in the process of criminal justice system. There are a number of penal and procedural laws governing the conduct of the cases. But the implementation of the same stricto sensu protecting the rights of the accused as well as the victims is the essence of the justice system in the democratic countries governed by the Constitution.

The Commission had come-out with a Handbook on Human Rights for Judicial Officers in the year 2000. On a review of the book, the Commission felt the need for bringing out a new comprehensive and shorter version of the handbook for use of the judicial officers who are at the helm of administration of criminal justice system. While implementing the laws, it is the duty of the judicial officers to keep in mind the human rights and the constitutional rights which are implicit in the procedural laws while disposing off the case. A fair procedure is the bedrock of the criminal justice system. This is the only way in which the faith of the people in the rule of law can be reinforced.

The sensitivity about human rights is needed more particularly while dealing with the cases involving women, children, and other vulnerable and weaker sections of the society.

It is hoped that this book will go a long way in helping the functionaries of criminal justice system for protection and promotion of human rights of the accused as well as the victims.



(Justice Y. Bhaskar Rao)

Member, NHRC

From the Editor's Desk

It has been the endeavour of the Commission to enhance human rights awareness in our society through every possible means. With this end in view the Commission has already published booklets in simple language for the common citizenry and the NGO's under the Know Your Rights Series. The Commission also fully realized that for creating real and enduring human rights awareness the whole lot of public functionaries, who bear the burden of implementation of human rights, need to be sensitized and periodically updated. This task of sensitization and updation is to be done through specialized handbooks or compilations that will impart human rights dimensions to the traditional functions performed by them.

The present compilation is a step in the direction of sensitizing and updation of the functionaries of the criminal justice process. The primary focus of the compilation is the judiciary that is responsible for enforcing the norms right from the stage of investigation down to the sentencing and, now, even the execution of sentence stage.

The 'nutshell' presentation is an outcome of the combined effort of Consultant (Research), Law Division staff and the Hon'ble Members. The support received from the research and secretarial staff in bringing out the booklet in the present form has been equally vital. In the end it is hoped that the compilation will be found useful by the end users and serve the purpose for which it is meant.



(Aruna Sharma)

Joint Secretary

National Human Rights Commission

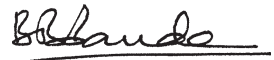
Prefatory Note

The former Chairperson of the National Human Rights Commission, Justice J.S.Verma, had observed in the context of need for creating a better understanding and awareness about human rights, thus: "While human rights awareness and sensitivity has grown by leaps and bounds over the last few decades, their actual application and realization at the ground level has been rather modest. The gap between growing awareness and sensitivity via-a-vis practical application has therefore been recognised as the central obstacle in the substantive realization of human rights... A very important link in this process is equipping the grass-root level judiciary" (p.ix). The aforesaid underscores the need for developing human rights awareness and sensitivity, not only amongst the investigation and prosecution officials, but even the members of the primary judiciary. Since the roles played by diverse agencies in the criminal justice processes are inextricably bound-up with each other, the present compilation has tried to address all of them combinedly, though the focus remains to be on the judiciary.

The core idea of the present compilation is to infuse a human rights dimension in the understanding and the application of the diverse statutory measures deployed by the different criminal justice functionaries. This is done in the light of the 'human rights best practices' relating to diverse criminal justice functions. In turn the 'human rights best practices' are culled-out from the statutory and conventional human right norms. Since the compilation is to serve the needs of judges and Magistrates in their day-to-day functioning, special care is taken to maintain strict fidelity to the written text of law and the authentic judicial rulings. However, the thrust of the compilation is the inculcation of respect for the constitutional and human rights of the target population,

the accused and the victims. The compilation covers the most significant criminal justice measures in the six chapters that are given traditional headings and sub-headings for an easy understanding. The relevant criminal process norms are arranged in a box form (total 38 boxes), which comprise of negative or positive propositions for conveying the meaning of the core norm. A fifteen page Annexure is appended with a view to making the authentic normative text of the diverse International and National norms readily available, which may ordinarily not be easily accessible to the members of the primary judiciary throughout the country.

It is hoped that the compilation would be helpful in augmenting the human rights awareness and sensitivity and ultimately help the cause of human rights implementation in the most critical area of human rights in our society.



Prof. B.B. Pande
Consultant (Research)

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Chapter-I

Powers to Arrest, Interrogate, Search, Seize and Collect Evidence

The Code of Criminal Procedure, 1973 [as amended by the Criminal Law (Amendment) Act, 2005, the Code of Criminal Procedure (Amendment) Act, 2005; for short, the Code], confers wide powers on the police to arrest, with or without warrant, interrogate and search, seize property, record statements of witnesses, get confession recorded by a Magistrate, etc. The police exercises all such powers in the course of investigation of crimes (SS 154 to 173 of the Code) or in the course of general law and order maintenance function. Investigation powers of the police can arise in either of the three ways:

- (a) on receiving information relating to the commission of a cognizable offence from an informant (Under S. 154(1)),
- (b) on receiving order from any magistrate to investigate (Under S. 156(3)), and
- (c) on receiving information from any source about commission of a cognizable offence within his jurisdiction (Under S. 156(1)).

Since the power to arrest entails serious infringement with the physical liberty of a person, there are several provisions under the Cr. P.C. for guiding it, such as Ss. 41 to 60, S. 151, etc. These provisions not only empower the police but also provide the necessary inbuilt safeguards against abuse of power of arrest as contained in S. 50 (arrestee to be informed of ground of arrest and of right to bail), S.50A (obligation to inform about the arrest and place of detention to a nominated person), S.54 (medical examination on the request of the arrestee), S. 56 (arrestee to be brought before a magistrate or a Police Officer without undue delay) S.57 (arrestee to be produced before a judicial authority within twenty four hours) and S.59 (arrestee to be discharged only by an appropriate judicial order), etc. Like the power of arrest the police is conferred with the power to interrogate, search and the seizure the property involved in criminal design. Power to interrogate witnesses can be exercised in the pre-arrest stage under Ss. 160, 161 and 162 or in the post-arrest stage either in police custody or in the judicial custody. Similarly, search and seizure may be conducted in terms of general

provisions under Ss. 93-105 or special powers of search and seizure after arrest under Ss. 51-52 of the Code.

It is significant that the Code that has express provision like S. 162 which, prohibits statements given to the police during investigation from being admitted as evidence, also contains provisions like proviso to S. 162, that permits use of discovery evidence under S.27, S.32(1) of the Evidence Act or S. 164, that provides elaborate measure for judicial recording of confession. The conditions required to be met before recording a confession in terms of S. 164 provides adequate safeguards against the aberration of extorting confession. In the post investigation stage confessions are to be recorded in terms of Sec.281 of the Code.

While effecting arrest, the enforcement authority shall not:

- | | | |
|--|------|---|
| Ss.41 Cr.P.C. | 1. | Arrest a person without warrant, unless there is a reasonable satisfaction about the person's involvement in a cognizable offence. |
| S.151 | 2. | Arrest a person u/s 151 Cr. P.C, to prevent the commission of cognizable offence, unless the officer concerned has a knowledge of design of such person to commit any cognizable offence and it appears to such officer that the commission of the offence cannot otherwise be prevented. |
| | **3. | When a person is arrested without warrant, the officer may handcuff the accused only if he is satisfied that it is necessary to do so, and he may do so only till the accused is taken to the police station and thereafter his production before the Magistrate. Any use of fetters thereafter can only be under the orders of the Magistrate. |
| S.49 and Art. 21 of the Const. | 4. | Use more force than is necessary to restrain an arrested person. |
| Art. 5 of the Uni. Decl of Hu. Rt., 1948 & Art. 10 Of the Int. Cov of Civ & Pol. Rights, 1966. | 5. | Perform public display or parade the person arrested at any cost. |

*** Citizens for Democracy v State of Assam (1995) 3 SCC 743*

While effecting arrest, the enforcement authority shall:

- | | |
|------------------------------|---|
| Art. 21 of the Constitution. | 1. Ensure that no person is deprived of his/her right to life or personal liberty, except in accordance with a procedure established by law. |
| Art. 22 (1) of the Const. | 2. Ensure that the arrestee is informed of the full particulars or the grounds for arrest |
| S.50 A (1) Cr. P. C | 3. Ensure that no person is denied the right to consult and be defended by a legal practitioner of his/her choice. |
| S.57 Cr. P.C. | 4. Ensure that the accused is produced before the nearest Magistrate within 24 hours, excluding the time taken for travelling from the place of arrest to the Magistrate's court. |
| S.50 (2) | 5. Ensure that a person arrested without a warrant for a bailable offence is informed that he/she is entitled to be released on bail, so that he may arrange for sureties. |
| S.50-A (1) | 6. Ensure that a friend or relative or other person who is known to him/her and is likely to take interest in his/her welfare, is informed about the fact of arrest and the place where he/she is being detained. |

S.50 A (3) & S 50 (A) (4)

7. Ensure that an entry of fact about the person informed regarding the arrest has to be made in a book to be kept in a police station about which the Magistrate is duty bound to enquire.

8. Ensure that the identity of the police officer effecting arrest must be clearly indicated.

S.53

9. Ensure that, if at the time of arrest, some injuries are found on the person of the arrestee, the same must be specified in the Arrest Memo and the arrestee must be got medically examined.

S.46 (4)

10. Ensure that no woman is arrested after sunset and before sunrise, except in exceptional circumstances for which a prior permission of a Magistrate is necessary.

11. Ensure that while effecting arrest of a woman, a woman police officer should be associated, as far as practicable, and due regard must be had to the dignity of the arrestee.

12. Ensure that no force or beating is administered under any circumstances while effecting arrest of a juvenile or a child.

While effecting interrogation of the accused, the enforcement authorities shall:

- | | |
|---------------------------|--|
| Art. 20 (3) of the Const. | 1. Ensure that no person accused of an offence be compelled to be a witness against himself/herself. |
| Art. 22 (1) | 2. Ensure that the accused is provided with legal assistance if he/she so wishes.

3. Ensure that during interrogation presence of a lawyer is allowed if the accused so desires. |
| S. 54 Cr. PC. | 4. Ensure that the police official take the arrestee for medical examination on his request.

5. Ensure that the interrogation by the police is conducted on clearly identifiable places which have been notified by the Government. |

While effecting interrogation of the witness, the investigating authorities shall not:

- | | |
|--|--|
| S.160(1) Prov.

Cr. P.C | 1. Require any male person below 15 years of age or woman to attend at any place other than the place in which such male person or woman resides. |
| Art. 20 (3) of the

Const S.161(2) | 2. Compel the person being examined to answer such questions as would expose him/her to a criminal charge or to penalty or forfeiture. |
| S.163 | 3. Procure ‘compelled testimony’ which includes evidence procured by physical threats, violence, psychic torture, atmospheric pressure, environmental coercion, intimidatory methods, frequent threats of prosecution, and the like. |
| S.162(1) | 4. Obtain signature/thumb impression of the witness on any statement made by him to the police during the investigation. |

While performing functions relating to search and seizure, the concerned authority shall:

- | | |
|------------------|--|
| S.165 (1) Cr. PC | 1. Ensure that the enforcement authority before entering into any premises to effect search/seizure of relevant evidence, shall record in writing, as far as possible, the reasons for believing that search would lead to discovery of such evidence. |
| S.91 | 2. Ensure that where the production of a document or a thing is necessary, summons are obtained from the appropriate court or orders secured from an authorised officer requiring the person in whose possession or power the relevant document or thing is believed to be, to produce said document/thing at a stipulated time and place specified in the warrant/order |
| S.93 | 3. Ensure that where the Court has reasons to believe that a person to whom summons or requisition is made would not produce the required document or thing or where the person or in whose possession a document or a thing is not known, and where the Court considers that the purpose of inquiry/trial will be served, it may issue of search warrant for the discovery of such a document or a thing. |

4. Ensure that before proceeding to search the suspect or his belonging with a view to recover contraband under NDPS Act the person concerned is informed that he has a right to insist on a search to be conducted in the presence of a magistrate/gazetted officer and, if the person concerned exercises his right, he must be searched in the presence of such magistrate/gazetted officer. Obtain a search warrant for a person who is allegedly in unlawful confinement by another person and order her production before the Magistrate.
5. Ensure that generally raids for conducting search should not be made after sunset and before sunrise. But where exigencies require immediate search, the reasons must be recorded in writing for making such exception.
6. Ensure that the dignity and privacy of the person searched is respected and there is no use of force or aggression.
7. Ensure that search of a woman is made only by a woman keeping in with the dignity of a woman.

Art. 21 of the Const.

While conducting Test Identification Parade, the investigating officer shall:

S.54A Cr. PC.

1. Ensure that a permission of the court is duly obtained for conducting the identification parade of the accused.
2. Ensure that the necessary application for fixing a date for test identification parade is made at the earliest before the appropriate court.
3. Ensure that the rules pertaining to test identification are followed by both the parties.

While recording confessions under S.164, the Judicial authorities shall:

S.164 Cr. PC

1. Ensure that a confession is recorded only by a Metropolitan Magistrate or a Judicial Magistrate.

S. 164(1)Prov.

2. Ensure that a police officer on whom the powers of a Magistrate are conferred upon by law shall not be considered competent to record a confession under Section 164.
3. Ensure that a confession be recorded under Section 164, either in the course of an investigation or any time afterwards before the commencement of the trial.

S. 164(1)

4. Ensure that the Magistrate shall, before recording the confession, (1) explain to the person making it that he/she is not bound to make a confession, and (2) that, if he/she does so, it can be used as evidence against him/her.
5. Ensure that the Magistrate warns the accused and follows the above stated procedure, before the recording on the adjourned day.
6. Ensure that the warning was given to the accused and that fact is recorded in the memorandum of the confession.
7. Ensure that no confession is recorded unless after questioning the accused the Magistrate has reason to believe that the confession is being made voluntarily.
8. Ensure that the accused is given time to reflect upon the statement/ confession to be made and shall ensure that enquiry must be made whether the accused is receiving dignified treatment devoid of threats or torture before the confession is recorded.
9. Ensure that the accused person is not remanded to police custody if the accused refuses or states that he/she is not willing to make the confession. Such person may be remanded to judicial custody.

In recording confession after the investigation stage, the judicial authority shall:

S.281 Cr. P.C.

1. Ensure that the confession may be recorded in either question and answer form or any other prescribed form.
2. Ensure that the accused may confess in the language that he/she knows and wishes to confess in.
3. Ensure that an interpreter shall be present to interpret the language of the accused if the Magistrate does not know the language of the accused.
4. Ensure that the record shall be made in the same language or, if that is not practicable, in the language of the Court.
5. Ensure that the record shall be read over to the accused and interpreted, if required.
6. Ensure that the confession recorded shall be signed by the accused.
7. Ensure that the confession shall not be recorded by administering an oath to the accused.

Leading court rulings on the relevant subject:

1. *Citizen for Democracy v. State of Assam* (1995) 3 SCC 743
2. *Sheela Barse v. State* (1983) 2 SCC 96
3. *Joginder Kumar v. State of U.P* (1994) 4SCC 260
4. *D. K. Basu v. State of W.B* A.I.R 1997 SC. 610
5. *Nandani Sathpathy v. P.L. Dani* (1978) 2 SCC 424
6. *Tewari v. State* A.I.R 1978 SC. 1544
7. *State of Rajasthan v. Rehman* A.I.R 1960 SC 210
8. *Shyam Lal v. State* A.I.R 1972 SC 886
9. *Jagdish Narian v. State of U.P* (1986) 8 SCC 199
10. *Vinod Chaturvedi v. State of M.P* (1984) 2 SCC 350
11. *Raja Ram v. State* (1971) 3 SCC 945
12. *Shivappa v. State* (1995) 2 SCC 76

Chapter-II

Limitations on Wide Investigatory Powers

The wide investigatory powers conferred on the police or other agencies, that authorize arrest, search, seizure, etc., are put under close check by virtue of several constitutional and statutory measures that are designed to constantly monitor the working of the investigatory agencies as well as safeguard the interest of the accused that are likely to suffer on account of arbitrary and excessive exercise of powers, particularly of arrest.

2.1 Safeguard through Remand Proceedings

Article 21 of the Constitution of India confers the fundamental right to personal liberty, which can be curtailed only by due process of law. Due process of law shall ensure that the basic human rights of the concerned person are not violated. Various judicial decisions of the Apex Court* have given wide interpretation to such fundamental rights, including right to live with human dignity. It also ensures that a person shall be presumed innocent until proved guilty by a competent court of law. S.56 of the Code of Criminal procedure requires the arresting officer to send without unnecessary delay the arrestee before a Magistrate or before an Officer in charge of a police station. S.57 puts a prohibition on the detention of the arrestee in custody beyond a period of twenty-four hours, excluding the time taken in the course of journey from the place of arrest to the Magistrate's Court. And, in case the investigation is likely to extend beyond twenty-four hours, the police shall request the Magistrate for grant of remand in terms of S.167. The Magistrate is empowered by S.167 Cr. P.C. to order the detention either in police/judicial custody for a period not exceeding fifteen days at a time (in case of police custody, only for initial fifteen days). Judicial authorization of detention amounts to curtailment of personal liberty and, therefore, due caution should be exercised while authorizing detention of an accused in police or judicial custody on production of the accused.

*1. *Kharak Singh v. State of U.P* A.I.R 1963 SC 1295

2. *Nilabati Behara v. State* (1993) 2 SCC 496

3. *D. K Basu v. State of W.B* A.I.R 1997 SC 610

4. *Raja Ram v. State* (1971) 3 SCC 945

While authorizing detention of an accused in judicial/police custody, the court shall:

- | | | |
|---------------------------------------|----|---|
| Art.22(2) of the Const. S.57 Cr. P.C. | 1. | Ensure that detention beyond twenty-four hours is not made. |
| S.167 (1) | 2. | Ensure that there are reasonable/adequate grounds for believing that the accusations/information against the accused is well founded for seeking remand. |
| S.167 (1) | 3. | Ensure that the police official seeking remand has forwarded copies of entries in the case diary in support of the case to the concerned Magistrate. |
| S.167 (2) Exp. II | 4. | Ensure that the accused is physically produced before the Magistrate in every remand proceedings and his signatures are obtained on the remand order which under the law is proof of his having been produced in the Court. |
| S. 167(3) | 5. | Ensure that in the event of authorizing detention in police custody, the Magistrate shall record the elaborate reasons for it. |
| S.167(2) | 6. | Ensure that, where an accused person is forwarded to him, irrespective of his jurisdiction to try the case, he authorizes the detention in the custody which he deems appropriate. |

S.167(4)

7. Ensure that a copy of every remand order along with reasons for making it is forwarded to the Chief Judicial Magistrate.

S.167(5) Cr. P.C.

8. Ensure that in all cases triable by Magistrate as summons case, where investigation is not completed within six months of arrest, the Magistrate shall order stopping further investigation unless there are special reasons for doing so in the interest of justice.

Box-10

While conducting remand proceedings, the judicial authorities *shall not*:

S.167(2)

Cr. P.C.

1. Authorise detention of the accused in the custody for a term exceeding 15 days in the whole, whether he has or has no jurisdiction to try the case and, if further detention is unnecessary and the Magistrate has no jurisdiction to try or commit the case, then the accused may be forwarded to the Magistrate having such jurisdiction.

S.167(1)

Prov.(a)

2. Ordinarily, authorise detention in police custody beyond a period of initial fifteen days.

S. 167(2)

Prov.(C)

3. Authorise detention of the accused person in judicial custody beyond a period of ninety days, where the investigation relates to offences punishable for a period of more than ten years imprisonment and sixty days where it relates to any other offence.

S.167(2)

Prov.(C)

4. Exercise the powers of remanding a person in police custody unless he is a Magistrate of first class or any Magistrate specially empowered in this behalf by the High Court.

Leading Court ruling on the relevant subject:

1. *Madhu Limaye v. State of Orissa* A.I.R 1969 S.C 1014
2. *D.G & I.G of Police v. Prem Sagar* (1999) 5 SCC 700
3. *Natbar Parida v. State of Orissa* A.I.R (1975) SC 1465
4. *Manoj Kumar v. State of M.P.* (1999) 3 SCC 715
5. *Naga Peoples Human Rights Movement v. U of India* (1998) 2 SCC 109

2.2 Safeguard through Bail Proceedings

Every arrested person has been conferred with right to seek bail. If the arrest is for an offence that is categorized as a bailable offence (the Code of Criminal Procedure lists-out in the classification of Offences provided in the First Schedule, the offences that are bailable and those that are non-bailable) the accused has an absolute right to be released on bail, subject to requirements of bail conditions. Section 436 provides the law relating to bailable offences. Similarly, S.437 that relates to non-bailable offences, is also couched in a language that permits release on bail subject to stringent statutory conditions. However, as the right to be released on bail is considered an important incident of presumption of innocence of the accused, it is vital for the judicial authorities to view bail right in this light. It is interesting that S.436 A, introduced in 2005 recognizes the right of every under-trial to be released on bond, with or without sureties, only if he has remained under detention for a period that is half of the maximum period for which the accused could be sentenced. This provision is likely to have a salutary effect on prison over-crowding as well.

While granting bail for a bailable offence, the judicial authorities shall:

- | | |
|------------------|---|
| S.436(1) Cr.P.C. | 1. Ensure that an arrestee for a bailable offence, who is arrested and detained without a warrant, may be released on bail as a matter of right. |
| | 2. Ensure that the arrestee is released on bail, as soon as he/she furnishes personal-cum-surety bond of the required amount. |
| S.436(1) Prov. | 3. Ensure that where the arrestee is an indigent person to the satisfaction of the Court and is unable to furnish surety, instead of taking bail, such person is released on executing a personal bond without sureties for his appearance later. |
| S.436(1) | 4. Ensure that, where an arrestee of a bailable offence is unable to furnish surety within a week of his application for bail, the court may presume that he is an indigent person. |
| | 5. Ensure that, the arrestee is informed by the Court at the first instance about his right to bail. |
| | 7. Ensure that the arrestee is not required to furnish surety for unreasonable and excessive amount, so that the economic standing of the arrestee does not impede his right to bail. |

While considering bail for a non-bailable offence, the Court of Magistrate shall not:

- | | |
|-------------------------|---|
| S.437(i)
Prov.Cr.P.C | 1. Release a person accused of a non-bailable offence punishable with death or imprisonment for life or if the accused has been previously convicted for an offence punishable with death or imprisonment for 7 years or more, excepting offenders falling in the following category: (a) person below 16 years of age (b) a woman (c) a sick or infirm person whose life is endangered due to sickness or infirmity. |
| S.437(1)(i) | 2. Grant bail to a person accused of an offence where there are reasonable grounds for believing that he/she is guilty of an offence punishable with death or with imprisonment for life. |
| S.437(1)(ii) | 3. Grant bail to any person previously convicted of an offence punishable with death, imprisonment for life or imprisonment for 7 years or more, or has been previously convicted on two or more occasions of a non-bailable and cognizable offence, is accused of or suspected of the commission of any non-bailable and cognizable offence, is arrested and detained without warrant by an officer in charge of a police station, or is brought before a Court other than a High Court or Sessions Court. |
| S.437 | 4. Cancel bail, except under new and supervening circumstances that may impede the interests of justice. |

While considering bail for a non-bailable offence, the court shall:

1. Ensure that the factors to be taken into account are: the chances of accused absconding from trial; his tempering with the evidence or likelihood of extending threats or alluring the witnesses and the gravity of the offence.
2. Ensure that, in a case of arrest for accusation or suspicion for the commission of a non-bailable offence, if an application for bail is moved on behalf of the accused, the court by considering the facts of the case, pass a bail order if it is found that there are no grounds for his further detention as no further investigation is required for enquiry into his guilt.
3. Ensure that in a case triable by a Magistrate, the trial of a person, accused of any non-bailable offence is not concluded within a period of 60 days from the first date for taking evidence in the case, such person shall, if he is in the custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, but where he decides to direct otherwise, reasons must be recorded in writing.
4. Ensure that previous convictions, criminal record of the accused, and likelihood of commission of the offence, are taken into account while considering the bail to such an accused.

S.437(2) Cr.P.C

S.437(6)

S.437(1)

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| S.437(4) | 5. | Ensure that detailed reasons are recorded while releasing any person on bail if the accused is involved in a non-bailable offence. |
| S.437(3) | 6. | Ensure that conditions are imposed while granting bail for offences punishable with imprisonment which may extend to 7 years or more : that such person shall attend the court in accordance with the conditions of the bond; that such person shall not commit a similar offence of which he is suspected and shall not directly or indirectly make any threat or promise to any witness. |
| S.439(2) | 7. | Ensure that the accused is arrested and committed to custody, if the bail is cancelled by the High Court or Sessions Court considering it necessary to do so. |

While considering the maximum period of detention for which an undertrial can be detained, the judicial authorities *shall*:

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| S.436-A Cr.P.C. | 1. Ensure the release of a person on personal bond with or without sureties, where he or she has during the period of investigation, inquiry or trial under any law (not being an offence for which the punishment of death has been specified as one of the punishments under the law) undergone detention for a period up to half of the maximum period of imprisonment specified for the offence. |
| S.436-A Prov. | 2. Ensure that if on the request of a public prosecutor, the court decides to continue the detention beyond the aforementioned period, the court must record its reasons in writing and may release him on bail instead of the personal bond. |
| S.436-A Prov. | 3. Ensure that no accused is detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under the law. |

The Court while considering anticipatory bail application, shall:

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| S.438(1) | 1. Ensure that, the factors to be taken into consideration are nature and gravity of the accusations, antecedents and the previous convictions, if any, the possibility of the applicant evading justice, or the possibility of accusation being used to humiliate or injure the reputation of the applicant. |
| S.438(1-A) | 2. Ensure that, in case an interim bail has been granted u/s 438(1), a notice for not less than seven days is given to the public prosecutor and the concerned Supdt. of Police with a view to giving them a reasonable opportunity of being heard. |
| S.438(1-B) | 3. Ensure that the applicant is present in the court at the time of final hearing of the application and passing of the final order by the court, if the court considers such presence to be necessary in the interest of justice.

4. Ensure that, in case anticipatory bail is granted, it may include such conditions as prescribed u/s 438(2) Cr. P.C. in the lights of the fact of the particular case.

5. Ensure that the conditions imposed while granting the anticipatory bail |

commensurates with the gravity of the offence alleged to have been committed.

S.438(3)

6. Ensure that, where an accused who is granted anticipatory bail is arrested later on by the police without warrant, the police shall release him on bail if he is willing to abide by the anticipatory bail order.

S.438(3)

7. Ensure that, if the Magistrate has already taken cognizance of such an offence for which anticipatory bail is granted, a bailable warrant may be issued against such person as per the direction of the Court u/s 438 (1).

of Cr. P.C.

Leading Court rulings on the relevant subject:

1. *Gudikanti Narasimhalu v. Public Prosecutor* (1978) I SCC 240
2. *Hussainara Khatoon (IV) v. Home Secretary* (1980) I SCC 98
3. *Free Legal Aid Committee v. State of Bihar* (1982) 3 SCC 378
4. *Moti Ram v. State of M.P* (1978) 4 SCC 47
5. *Gurucharan Singh v. State (Delhi Adm.)* (1978) I SCC 118
6. *Niranjan Singh v. P.R. Kharote* (1980) 2 SCC 559
7. *Gurubaksh Singh Sibbia v. State of Punjab* (1980) 2 SCC 565
8. *State represented by CBI v. Anil Sharma* (1997) 7 SCC 187

2.3 Safeguard through Discharge Proceedings

S.59 of the Code imposes a limitation on the criminal justice functionaries which lays down: “No person who has been arrested by a police officer shall be discharged, except on his own bond, or on bail, or under the special order of a Magistrate”. But in view of the special significance attached to the liberty of the arrestee the law confers powers even on the officer incharge of the police station under S.169 of the Code that in case, after investigation, it is found that the evidence collected against the accused is not sufficient and the accused is in custody, such person may be released on his executing a bond with or without sureties with a direction to appear before the concerned Magistrate who is empowered to take cognizance on the police report or to commit the case. Similarly much wider powers are conferred on the judiciary to terminate proceedings by way of discharge under any of the provisions such as SS 227, 239, 245 or 258 of the Code. It may be emphasized that mechanical framing of charge by the Court may amount to violation of human rights of an innocent person and therefore it is very important that, while conducting the proceedings of framing charge/discharge of an accused person, the Court should take into account the material presented by way of charge sheet. At this stage, the court should also keep in mind the principles of admissibility of evidence as provided under the Indian Evidence Act. Also similar power of termination of proceedings can be inferred from S. 167 of the Code that confers powers on a Judicial Magistrate to authorize detention beyond a period of 24 hours only, if “there are grounds for believing that the accusation or information is well founded”.

The Court, while considering the question of framing charge, shall:

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| S.227 Cr. PC. | 1. | Ensure that the accused is discharged under Ss. 227, where the Sessions Court finds that after description of charge and the evidence on the basis of which the prosecution proposes to establish the guilt there are no sufficient grounds for proceeding against the accused. |
| S.239 Cr. PC. | 2. | Ensure that a Magistrate trying a Warrant case on police report after hearing the prosecution and accused and examination of the record, comes to a conclusion that the charge is groundless, he shall discharge the accused. |
| S.245 Cr. PC. | 3. | Ensure that where after considering all the evidence rendered in terms of S.244 he arrives at a conclusion that no case against the accused is made out which would warrant his conviction if unrebutted, he shall discharge the accused. |
| S.258 of Cr P.C | 4. | Ensure that any summons case instituted otherwise than upon complaint, a Magistrate of the first class or any other authorised Judicial Magistrate, may stop proceedings at any stage, after recording reasons for such a step, without pronouncing judgement, but where stoppage of proceedings is made after recording the evidence of principal witnesses, a judgement of acquittal and release of the accused may be passed. |

While receiving a charge-sheet, the Court shall:

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| S.173(1)Cr.P.C | 1. Ensure that the charge-sheet has been filed on the completion of investigation without unnecessary delay. |
| S.173(2). | 2. Ensure that, on completion of investigation, S.H.O shall forward to the appropriate Magistrate a report stating the details enumerated in Section 173(2) (1) |
| S.173(5) | 3. Ensure that, along with the charge sheet, all documents or relevant extracts thereof, on which the prosecution proposes to rely and the statements recorded u/s 161 IPC of all the persons whom the prosecution proposes to examine as its witnesses, are also filed. |
| S.173 (6) | 4. Ensure that, where the police officer is of the opinion that any part of the statement or information be withheld in the interest of justice or public expediency, he should request the Magistrate stating in writing the reasons for such a request. |
| S.173(8) | 5. Ensure that nothing in the aforesaid provision should inhibit further investigation and subsequent report where evidence is found after filing the report. |

Leading Court rulings on the relevant subject:

1. *Union of India v. Prafulla Kumar Samal* (1979) Cr. L.J. 154 SC
2. *C.S.M. Co. Ltd. v. State of Maharashtra* A.I.R (1972) SC 545
3. *Niranjan Singh Karam Singh Panjabi v. B. Bijja* A.I.R 1990 SC 1962
4. *S. Bangarappa v. G.N Hegade* (1992) Cr. L.J.3788
5. *State of Haryana v. Bhajan Lal* (1992) Supp. I SCC 335
6. *R.S. Nayak v. A.R. Antulay* A.I.R 1986 SC 2045
7. *Drugs Inspector v. B.K A Krishaniah* (1981) 2 SCC 454

Chapter-III

Diversion through Plea-Bargaining

The Criminal Law (Amendment) Act, 2005 (which came into force with effect from 5.7.2006) has inserted Chapter XXI A in the Code of Criminal Procedure, 1973, that for the first time accords recognition to the idea of plea-bargaining within the Indian Criminal Justice System. For providing the working details of the plea-bargaining system, new Sections 265 A to 265 L have been introduced with a view to providing for the qualifications for plea-bargaining, the stage and procedure for making an application, the role of court and the parties, the guidelines for mutually satisfactory disposition, the final disposition of the case by the court and its finality, the according of set-off benefit, the prohibition against use of plea-bargaining depositions in any other proceedings and non-applicability of plea-bargaining in juvenile justice proceedings, etc. Plea-bargaining proceeding is a new technique for simplifying the rigor of the formal system as well as a measure for the speedier disposal of cases. But this technique has immense significance from the point of view of the accused, who is accorded an option to bargain-plea within the existing system. Thus, the rules relating to plea-bargaining have special value not only for the accused, but also for those who are responsible for operating the system at the ground level.

Box-18

While conducting the plea-bargaining proceedings, the judicial authorities shall:

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| S. 265A | 1. | Ensure that plea-bargaining can be claimed only for offences that are likely to entail a punishment that is below seven years imprisonment. |
| Of Cr.P.C | | |
| S.265B | 2. | Ensure also that plea-bargaining is not available for such offences that affect the socio-economic conditions of the country. |

3. Ensure also that plea-bargaining is not available, if such offence is committed against a woman or a child below fourteen years.
4. Ensure also that plea-bargaining is not available, if the accused has been convicted for the similar offence previously by any court.
5. Ensure that a charge-sheet is already filed in respect of the offence, or the Magistrate has taken cognizance on a complaint.
6. Ensure that any accused, whose case does not suffer from the aforesaid disqualifications and whose case is pending before the court, can move an application for plea-bargaining.
7. Ensure that the application for plea-bargaining is accompanied by an affidavit sworn by the accused that he understands the nature and extent of punishment entailed for the offence and that he has voluntarily preferred to bargain plea.
8. Ensure that after receiving the application, due notice is sent to the public prosecutor or the complainant and the accused, requiring them to appear on a fixed date.
9. Ensure that after being satisfied that the application is filed voluntarily, the court provides time to the prosecutor/ complainant and the accused to work out a mutually satisfactory disposition of the case, including giving compensation to the victim.

For arriving at a mutually satisfactory disposition, the judicial authorities are required to follow the *following guidelines*:

S.265-C
Of Cr.P.C.

1. In respect of cases instituted on a police report, the notice should be issued to PP, Investigating officer, the accused and the victim in the case.
2. In respect of complaint case, the notice should be issued to the accused and the victim in the case.
3. The aforesaid parties must be facilitated by the court to participate in the meeting to work out a satisfactory disposition of the case.
4. The court must ensure that the entire process is completed voluntarily, solely by the parties to the meeting.
5. The court is to further ensure that, where the accused so desires, he may be given the benefit of being represented by a pleader.
6. Similarly, in cases instituted otherwise than on police report, the victim also, if he so desires, may be given the benefit of being represented by a pleader.

For the purposes of preparation of satisfactory disposition report, disposal of case, delivery of final judgement, etc. the judicial authorities shall:

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| S.265D | 1. | Prepare a report of the satisfactory disposition after the meeting. |
| S.265D | 2. | Prepare the report signed by the presiding officer and all the other parties present. |
| S.265G,265H
&265-I Cr.P.C. | 3. | In all cases of satisfactory disposition the court is given three dispositional alternatives, after recording conviction for the offence charged, namely: <ol style="list-style-type: none">a. Award compensation to the victim as per disposition and hear the parties on the issue of punishment, particularly releasing the accused under probation, admonition, etc. and pass probation etc. release orders.b. Award compensation as per agreement and, after hearing if it is found that the offence in question entails a minimum punishment, sentence the accused to half of such minimum punishment.c. Award compensation as per agreement and, after where none of the above sentence is applicable, sentence the accused to one fourth of the maximum period of the punishment for the offence. |
| | 4. | Deliver the aforesaid dispositional order in open court, after signing it. |

S.265F	5.	Where no disposition is worked out the court shall record such observation and proceed further in accordance with the provisions of the Code.
S265-G	6.	The plea-bargaining judgement of the court shall be final, not subject to appeal, except through special leave petition before the Supreme Court or the High Court.
S.265-H	7.	The plea-bargaining court will have all the powers that are ordinarily enjoyed in bail and trial proceedings under the code.
S.265-I	8.	Extend to the accused the benefits of the set off for the period already spent in custody.

Box-21

In dealing with plea-bargaining application, the judicial authorities shall not:

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| Ss.265J
to 265L Cr.P.C | 1. | Subject the plea-bargaining provisions to anything contained in any other provisions of the Code and any other provisions which may be inconsistent with the plea-bargaining provisions. |
| S.265-K | 2. | Permit the statements made or facts stated by the accused in plea- bargaining to be used for any purpose other than plea-bargaining. |
| S.265-L | 3. | Apply plea-bargaining measures to any juvenile justice proceeding under the Juvenile Justice Act, 2000. |

Chapter-IV

Criminal Trials and Adjudication of Offences

In the initial two chapters there is an elaboration of judicial officer's powers that related mainly to the investigatory officers and the prosecutorial officers. The present and the subsequent chapters lay down the human right law in the adjudicatory / the trial stages, which relates to some of the most crucial rights, such as right to legal aid, right against double-jeopardy, right not to be compelled to be a witness against himself, and also protections against other forms of abuse of process, etc. that mainly relate to the functions of the lower level judiciary itself.

Box-22

In the trial of any person accused of an offence, every trial Judge/ Magistrate shall:

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| Arts.20(1) &21 of the Const. | 1. | Ensure that every accused person is presumed to be innocent till he is found guilty. |
| SS.101, 102. of the Evidence Act,1872 | 2. | Ensure that presumption of innocence is a normative and legal requirement. |
| | 3. | Ensure that the entire trial process is conducted fairly that there are no legal infirmities in the trial in matters examination of witnesses, speedy trial and the right to presumption of innocence. |

Art.20(2) of the Const.	<p>4. Ensure that there is a speedy trial and expeditious disposal of a case.</p> <p>5. Ensure that no person is prosecuted or punished for the same offence more than once, irrespective of whether the accused was acquitted or convicted.</p>
Art.20(3).	<p>6. Ensure that no person is compelled to be a witness against himself.</p>

Box-23

In the trial of every person accused of an offence, the authorities <i>shall</i>:	
Art.39A of the Const. & S.304 of Cr. P.C	<p>1. Ensure that the accused is represented at all stages in a criminal trial by a counsel.</p>
S.304. Cr. P.C.	<p>2. Appoint a pleader, and offer free legal aid to an accused who is not in a position to engage a pleader himself/herself.</p>
Art. 22(1)	<p>3. Ensure that the accused is given the right of free choice of his/her pleader.</p>
Ss.303, 304 Cr.P.C	<p>4. Ensure that the accused is informed of his/her right to free legal aid at the cost of the State, where he/she on account of his/her indigency is not able to afford one.</p>

During the trial of an accused, the authorities *shall not*:

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| Art.22(1) of the Const. | 1. Refrain from appointing a pleader merely because the accused has not applied for one. |
| | 2. Deny to the accused, in any manner, to be represented by a counsel of his/her choice. |

Leading Court rulings on the relevant subject:

1. *Talab Haji Hussain v. Madhukar P. Mondkar* AIR 1958 SC 376
2. *Kali Ram v. State of Himachal Pradesh* (1973) 3 SCC 808
3. *Dharam Das v. State of Uttar Pradesh* (1974) 4 SCC 267
4. *Sukanraj v. State of Rajasthan* AIR 1967 Raj. 267
5. *Habeeb Mohd. v. State of Hyderabad* AIR 1954 SC 51

Chapter-V

Power of Sentencing and Exercise of Judicial Control Over the Execution of Sentence in the Prisons.

Every criminal trial must come to a conclusion with a judgment, either of acquittal or conviction in terms of S.235(1) or 248 (1) of the Code. All cases of conviction have to be appropriately sentenced as per the requirements of the statute. However, before passing the order of sentence the judge is required in terms of Ss 360 and 361 of the Code to keep in mind the reformatory considerations in matters of sentencing because S. 361 imposes a duty on the Courts to record special reasons with a view to emphasizing the reformatory sentencing alternative. Furthermore, SS 235 (2) and 248(2), create an additional obligation on the Courts to hear the accused on the question of sentence. Only after the accused has been given a pre-sentence hearing, the judge is empowered to pass the appropriate sentence. The exact quantum of sentence would vary as per the nature of the offence, with the most severe form of sentence being death penalty, followed by life imprisonment, followed by term imprisonment with hard labour or without hard labour, followed by fine, followed by probation release, etc. A person sentenced to a term of imprisonment goes into prison for the execution of the sentence. Even after he/she goes into the prison, he/she is entitled to several rights and privileges pertaining to his stay inside, till his conditional or final release. Since the inmate goes into the prison as per the judicial order of both remand and sentence, what happens to him/her during the period when he/she is inside the prison becomes a matter of concern not only to the prison but also to the Court that sends him/her inside.

Before passing the final sentence, the Court shall:

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| Ss.235(2)
248(2) Cr.P.C. | 1. Ensure that after conviction the accused is heard on the question of sentence to determine whether the accused has anything to say regarding the quantum of sentence, but such hearing is not necessary if the court orders the release of the accused on probation or admonition. |
| S.309(2) Prov. Three | 2. Ensure that hearing on sentence is not adjourned to another date merely to enable the accused to show cause against the proposed sentence, to the disadvantage of the accused. |

While sentencing a convict, the Court shall:

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| Ss.389, 360,361 Cr.P.C. 1.
& The Probation of
Offenders Act, 1958 | Ensure that even after conviction, every case does not call for operation of the term of sentence immediately. |
| | 2. Ensure that appropriate cases should be dealt with in terms of the Probation of Offender Act, 1958, which is a Central legislation applicable throughout India. |
| | 3. Ensure that due consideration is given to the aforesaid reformatory legislation as mandated by Sections 360 and 361 of the Code of Criminal Procedure, 1973. |

While sentencing in terms of the Probation of Offenders Act, 1958, the Court shall:

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| Ss.3 of the Probation of Offenders Act | 1. | Ensure that for convictions pertaining to minor offences punishable up to two years imprisonment, in appropriate first offence cases, the convict is released after admonition only, by way of punishment. |
| S.4 of P.O. Act. | 2. | Ensure that in all the cases not punishable with death or imprisonment for life, where the Court, in view of the nature of the Offence and character of the offender, is of the opinion that it is expedient to release on probation, it may order such a release for a period up to three years, subject to a bond, with or without sureties. |
| | 3. | Ensure that where the interest of the accused or of general public demands release him on probation under supervision. |
| | 4. | Ensure that where supervisory release orders are passed, the terms and conditions of supervision order are duly explained to the accused. |
| S.5 of P.O.Act | 5. | Ensure that in appropriate cases apart from probation release, order for the payment of compensation by the accused to the victim be made. |
| S.6.of P.O. Act. | 6. | Ensure that where the accused is below 21 years of age at the time of consideration of sentence and the offence for which he/ |

she is convicted is not punishable with death or with imprisonment for life, but in view of the nature of the offence and circumstances of the case the court is not in favour of release under Sections 3 or 4, it is bound to record its reasons for not releasing after admonition or on probation.

S.6(4)P.O. Act.

7. Ensure that where the Court arrives at a conclusion that an accused below 21 years does not deserve probation release, it is mandatory to base its opinion on the Probation Officer's Report.
8. Ensure that probation release benefit can be accorded at any stage in the criminal trial, whether in the original hearing, appeal or revision.

Box-28

While effecting decision regarding compensation to the victims of crime, the Court shall:

S.357(1)(b)
Cr .P C

1. Ensure that where the Court has imposed a sentence of fine or any other sentence including fine, the whole or part of the fine recovered can be applied in payment of compensation to the victim for the loss or injury caused by the offence.

S. 357 (3)

2. Ensure that where the Court imposes a sentence of which fine does not form a part, even in such cases the accused person may be ordered to pay compensation for the loss or injury suffered by reasons of the act for which he is sentenced.

S.265E(a)	3. Ensure that while awarding compensation under S.357(3), its powers to award compensation to the victim are much wider, because they are not subject to the quantum of fine recoverable as per the relevant punishing section.
S.359 (1) Cr. P.C	4. Ensure that where the accused has preferred a plea-bargaining under S.265 B and a mutually satisfactory disposition agreement is made, the Court shall award the compensation to the victim in accordance with the disposition.
S.5 of the Probation of Offenders Act, 1958	5. Ensure that in non-cognizable cases on conviction of the accused, an order for payment of reasonable cost to the complainant can be made.
	6. Ensure that the Court directing the release of the offender under Ss.3 or 4 of the P.O. Act, may, if it thinks fit, direct the accused to pay compensation and cost to the victim of the crime.

Box-29

While effecting decision regarding payment of compensation to a person falsely accused of crime or arrested groundlessly, the Court shall:

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| S.250 Cr. P. C. | 1. Ensure that in a case instituted upon complaint or an information given to police or to a Magistrate, the Magistrate has discharged or acquitted the accused and showcause given to the complainant or a |
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informant does not satisfy him that there was a reasonable ground to lodge a complaint or inform the police, the Magistrate may direct payment of compensation to the person falsely accused.

S. 358 (1) Cr. P.C.

2. Ensure that whenever any person causes a police officer to arrest another person groundlessly, the Magistrate hearing the cases may award compensation up to one thousand rupees to the person so arrested.
3. Ensure that ordering payment of compensation under this provision shall not absolve the wrongdoer of civil or criminal liability.

Box-30

When a person is serving his/her sentence in jail, the authorities shall:

Art.21of the Const.

1. Ensure that all convicted persons are treated with dignity within the prisons.
2. Ensure that all prisoners are provided with facilities to express their grievances faced within the jail.

Art.21 and 23 of the Const.

3. Ensure that no person is subject to any kind of physical or mental torture, or cruel, inhuman or degrading treatment or punishment within the jails.
3. Ensure that due care is taken of health and personal safety needs of the convicts.

When a person is serving his/her sentence in jail, the authorities *shall not*:

- Art .21of the Const.
1. Isolate a prisoner in a separate cell, except on medical ground or if the prisoner has proven to be dangerous for other prisoners lodged in the prison.
 2. Prevent the person from sending letters to his relatives and to other prisoners irrespective of the relationship.

When a person is serving his/her sentence in jail, the authorities *shall*:

- Art.21of the Const.
1. Ensure that the authorities implement a health program of a high standard and provide for adequate medical personnel, including psychiatrists. There must be adequate pre-natal and post-natal health care treatment.
 2. Permit visits by family members and lawyers at least twice a week.
- Art. 21 of the Const.
3. Permit the prisoners to write books and get them published, if they so desire.
 4. Permit Press people to conduct interviews of the prisoners, subject to reasonable restrictions.

When a person is serving his/her sentence in jail, the authorities shall:

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|-------------------------------|----|---|
| Art.21of the Const. | 1. | Ensure that the prisons do not hold any person in slavery or servitude within the jails. |
| Arts. 21 and 23 of the Const. | 2. | Ensure that the prison authorities do not subject prisoners to any labour that is exploitative in nature. |
| | 3. | Ensure that all labour of prisoners is equitably remunerated. |
| | 4. | Ensure that all wages fixed and given is not less than the prescribed wages. |

Whenever a person with mental illness is facing trial, it would be desirable for the authorities to keep in mind the following Guidelines framed by the NHRC and approved by the Hon'ble High Court of Delhi in 2003:

1. All prisoners should have an opportunity of psychological or psychiatric counselling with a view to have an early detection and prevention of mental illness.
2. All central, district and sub-jails should have facilities for preliminary treatment of mental disorder.
3. All central and district prisons should have the services of a qualified psychiatrists, who is assisted by the psychologist and psychiatric social worker.
4. No mentally ill person, who is not accused of committing a crime, should be sent or kept in a prison.

5. State owes affirmative responsibility to an undertrial or convict who develops mental illness during trial or sentence. The responsibility is for in-house psychiatric treatment, as well as for psychiatric care through private hospitalization.
6. The period spent during psychiatric care and treatment should be counted towards the term of sentence, but the prisoner should continue to receive treatment even as a free person.
7. Mentally ill undertrial should be sent to nearest prison that has psychiatric facilities and his trial ought to be suspended till he is certified 'fit to stand trial'
8. In prison all the inmates suffering from mental illness should be kept in one barrack.
9. All the prisoners who have recovered from mental illness and found guilty for crime would be kept in barracks with normal inmates, but would be subjected to periodic checking by the prison psychiatrist.
10. In view of the State's general responsibility for the mental and physical health of prisoner, every jail or detention center should ensure:
 - (a) An open environment
 - (b) A Humane and not unduly harsh staff
 - (c) Effective grievance redressal mechanism
 - (d) Encouragement to receive visitors and maintain correspondence.
11. In case of all those undertrials whose trials are suspended a report should be sent to the relevant Court on a quarterly basis.
12. On taking notice of mental unsoundness of the undertrial, the trial Court shall follow the procedure laid down in Ch XXV.
13. In all cases where the trial of a mentally ill person is suspended for a period longer than 50% of possible sentence, the matter should be reported to the Hon'ble Chief Justice of the High Court for information and appropriate action.
14. The State Government must strengthen legal aid services in case of mentally ill persons with a view not only to providing appropriate counselling support but also for preventing the dumping of mentally ill in prisons.
15. The State must assume responsibility for the mentally ill persons even after discharge from the prisons.
16. There is a need to shift of focus from institutionalizing vulnerable people to extending institutional support for caring at home, with a view to making rehabilitation of the mentally ill and other vulnerable section more successful.

Chapter-VI

Judicial Control of Abuse of Investigatory and Custodial Power

The police and other custodial institutions are conferred extensive and wide powers to effectively investigate and exercise diverse kinds of restraints over the body or property of the accused persons. However, often the judiciary is required to adjudicate on the issues of abuse of aforesaid powers and make appropriate restorative decisions. The situations leading to abuse of investigatory or custodial powers relate mainly to instances of torture in the course of detention, arbitrary and excessive detention, sexual abuse in custody, death in custody, extra-judicial executions, etc. In the recent times, the problem of abuse of powers in the course of extra- ordinary law and order situations and collusive disappearances and missing persons/children has appeared as a new form of abuse of powers by the state functionaries. Though there are large number of apex court rulings that aim at laying down strict standards of exercise of executive powers, but judiciary at the lower levels still requires explicit enunciation of such standard setting norms of which the notable ones are given in the following tables:

Box-35

The court of the Judicial Magistrate/Metropolitan Magistrate shall:

- S.176 (1A) Cr.P.C.
1. Ensure that in case of death / disappearance of a person from the police/judicial custody, or in the case of rape on any woman while in police/judicial custody, an enquiry is held by a Judicial Magistrate/Metropolitan Magistrate, within whose local jurisdiction the offence has been committed, in addition to the enquiry/ investigation held by the police.
 2. Ensure that the Magistrate holding such an enquiry shall record all the evidences

collected during such enquiry required in to the circumstances of the case.

3. Ensure that in case Magistrate considers it expedient to make an examination of the dead body of any person, who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.
4. Ensure that while conducting such an enquiry, wherever practicable, the known relatives of the deceased are duly informed and such persons are allowed to remain present during the enquiry.
5. Ensure that the body of the deceased is forwarded to the nearest Civil Surgeon or other qualified Government authorized medical man for examination of the dead body.
6. Ensure that if the body cannot be forwarded for medical examination within 24 hours, the reasons for the same are to be recorded in writing.

Box-36

In all cases of custodial death, the enforcement authorities shall:

Ss.174
& 176 (1A)
Cr.P.C.

1. Ensure that in all cases of unnatural death in jail apart from a post-mortem, a Magisterial inquiry is conducted immediately.
2. Ensure that the families of the deceased are awarded interim compensation to the extent of the loss suffered by them due to such death.

While adjudicating a case of what the Court suspects to be a “disappearance/missing”, the Court shall:

1. Direct that the concerned officials to investigate and make inquiries into the following:
 - (i). The circumstances under which the person was missing / abducted.
 - (ii). Reasons for the delay of the inquiry into the complaint.
 - (iii). Whether the incident was or was not notified to the officer-in-command of the police force.
 - (iv). Whether there was an attempt to cover-up the misdoing and, if so, who was involved.
2. Direct that State officials (either the police or other intelligence agencies or relevant government offices) to gather information of the whereabouts of the missing person and furnish the same to the members of the family and other concerned persons as soon as the information is gathered.
3. Ensure that all persons involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal, if necessary.
4. Direct that an investigation should be conducted for as long as the missing person remains unclarified.
5. Prosecute all the concerned persons, i.e., the persons who commit the crime, the persons giving orders and others involved, directly or indirectly, in shielding the accused or blocking the exposure of the ‘disappearance’.
6. Ensure that the persons responsible for the crime are not able to plead and claim sovereign immunity nor evade liability on the excuse of taking orders from the superiors.

7. Ensure that the victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of an enforced disappearance, their dependents shall also be entitled to compensation.

Box-38

During judicial scrutiny of an extraordinary law and order situation, the Court shall:

1. Determine whether an assembly is likely to disturb the public peace as to :
 - (a) Whether the assembly itself is lawful.
 - (b) Whether the assembly is intrinsically calculated to create a riot.
2. Ensure that all orders promulgated under S.144 Cr. PC are done on the basis of the opinion and satisfaction based on sufficient material.
3. Ensure that all petitions for promulgation are thoroughly examined by the court by means such as a sworn statement and it must be seen to it that responsibility is taken for the statements made in the petition.
4. Determine the negative nature of a direction under S.144, with due regard to the substance of the direction and not the form.
5. Ensure that all orders promulgated under S.144 Cr. P.C are short, simple and absolutely clear. The order must specify the area of its operation with such certainty that, in the minds of those to be affected by it there can be no reasonable room for mistake.

Annexures

INTERNATIONAL AND NATIONAL NORMATIVE FRAMEWORK RELATING TO HUMAN RIGHT BEST PRACTICES

I.

The United Nations Human Right Norms

1. The Universal Declaration of Human Rights 1948 (select)

Article 3

Everyone has the right to life, liberty and security of person.

Article 5

No one shall be subjected to torture, or to cruel, inhuman, or degrading treatment or punishment.

Article 7

All are equal before the law and are entitled without any discrimination to the equal protection of the law...

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for the acts violating the fundamental rights granted to him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention, exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of the criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interferences with his privacy, family, home or correspondence...

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or acts contrary to the purposes and principles of the United Nation.

2. International Covenant on Civil and Political Rights (select)

(Adopted and opened for signature and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entry into force 23rd March 1976.)

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency, which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the

present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogations.

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provision of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this Article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provision of the Convention on the Prevention of the Punishment Crime of Genocide.
4. Any one sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of the death shall not be imposed for crimes committed by person below 18 years of age and shall not be carried out on pregnant woman.
6. Nothing in this Article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

No one shall be held in slavery.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty, except on such grounds and in accordance with such procedure as are established by law
2. Anyone who is arrested shall be informed, of his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused person shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate

to their status as unconvicted persons; (b) Accused juvenile persons shall be separated from adults and brought as far as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all part or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interest of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public, except where the interest of juvenile persons otherwise requires or the proceedings concerns matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal charge shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail, in a language which he understands, of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparations of his defense and to communicate with counsel of his choosing;
 - (c) To be tried without undue delay;

- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case, if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witness against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
 6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him
 7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the

offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Every one shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks

3. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (select)

(Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, Entry into force 26 June 1987.)

Part-I

Article 1

1. For the purposes of this convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person

acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 3

1. No State party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant consideration including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each state party shall ensure that all acts of torture are offences under criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each state party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. The States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has not extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence

of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford to one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in Article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 11

Each State party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of person subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State party shall ensure that its competent authorities proceed to a prompt and impartial investigation, whenever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State party shall ensure that any individual who alleges that he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are

protected against all ill treatment or intimidation as consequences of his complaint or any evidence given.

Article 14

1. Each party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in his article shall affect any right of the victim or other persons to compensation which may exist under national law.

4. Convention on the Rights of the Child, 1989. (select)

(Ratified by the Government of India in Dec., 1992)

Article 37

States Parties shall ensure that

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt

access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. State Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

- (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) To have the free assistance of an interpreter, if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. State Parties shall seek to promote the establishment of laws procedures authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.
 - (b) Whenever appropriate and desirable, measure for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguard are fully respected.
4. A variety of dispositions, such as care, guidance and supervisions orders, counseling, probation, foster care, education and vocational training programmes and other alternatives took institutional care, shall be available to ensure that children are dealt with in a manner appropriate to their well being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in

- (a) The law of State Party;
- (b) International law in force for that State.

5. United Nations Code of Conduct for Law Enforcement Officials

(Adopted by General resolution 34/169 of 17 December, 1979)

Article 1

Law enforcement officials shall have the duty imposed upon them by law, of serving the community and by protecting all person against acts, consistent with the high degree of responsibility required by their profession.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Article 5

No law enforcement officials may inflict, instigate torture, other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement officials invoke superiors orders or exceptional circumstances such as state of war or a

threat of war, a threat to national security, internal to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 6

Law enforcement officials shall ensure the full protection of all the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Article 7

Law enforcement shall respect the law any commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reasons to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

II

The National Human Rights Norms

1. The Constitution of India, 1950 (Select)

Article 14

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 19

1. All citizen shall have the right:-

- a) to freedom of speech and expression;
 - b) to assemble peacefully and without arms;
 - c) to form associations or unions;
 - d) to move freely throughout the Territory of India;
 - e) to reside and settle in any part of the territory of India
 - f)
 - g) to practice any profession, or to carry on any occupation, trade or business.
- (2) Nothing in sub-clause(1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such a law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.
- (3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.
- (4)
- (5)
- (6)

Article 20

- (1) No person shall be convicted of any offence except for violation of law in force at the time of commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
- (2) No person shall be prosecuted and punished for the same offence more than once.

- (3) No person accused of any offence shall be compelled to be a witness against himself.

Article 21

No person shall be deprived of his life or personal liberty, except according to procedure establishment by law.

Article 22

- (1) No person who is arrested shall be detained in custody without being informed, as soon as it may be, of the grounds for such arrest nor shall be denied the right to consult, and to be defended by, a legal practitioner of his choice.
- (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.
- (3) Nothing in clauses (1) and (2) shall apply—
 - (a) to any person who for the time being is an enemy alien; or
 - (b) to any person arrested or detained under any law providing for preventive detention.
- (4)
- (5)
- (6)
- (7)

Article 32: Right to Constitutional Remedies

1. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.
2. The Supreme Court shall have power to issue directions or orders or Writs, including Writs in the nature of habeas corpus, mandamus, probation, quo warrant, and certiorari, whichever may be appropriate for the enforcement

of any of the rights conferred by this part.

3. Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)
4. The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Article 39 A

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall in particular, provide free legal aid by suitable legislation or schemes or in other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities.

2. The Protection of Human Rights Act, 1993 (Select)

Sec. 2(1)(d)

“Human Rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India”

Sec. 12 Functions of the Commission

The Commission shall perform all or any of the following functions, namely:

- (a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of –
 - (1) violation of human rights or abetment thereof; or
 - (2) negligence in the prevention of such violation, by a public servant;
- (b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- (c) visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to

study the living conditions of the inmates and make recommendations thereon;

- (d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommended measures for their effective implementation;
- (e) review the factors, including acts of terrorism, that inhibit the enjoyment of Human Rights and recommended appropriate remedial measures;
- (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- (g) undertake and promote research in the field of human rights;
- (h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, media, seminars, and other available means;
- (i) encourage the efforts of non-governmental organizations and institutions working in the field of human rights;
- (j) such other functions as it may consider necessary for the promotion of human rights.

Sec 13. Powers relating to inquiries

- (1) The Commission shall, while inquiring unto complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in respect of the following matters, namely:
 - (a) summoning and enforcing the attendance of witnesses and examining them on oath;
 - (b) discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record or copy thereof from any court or office;
 - (e) issuing commissions for the examination of witnesses or document;
 - (f) any other matter which may be prescribed.

- (2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.
- (3) The Commission or any other officer, not below the rank of Gazetted Officer, specially authorized in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any seize any such document or take extracts or copies therefrom, subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.
- (4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure , 1973 forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused, as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, (1973).
- (5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and, for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and chapter XXVI of the Code of Criminal Procedure, (1973).

Sec. 14 Investigation

- (1) The Commission may, for the purposes of conducting any investigation pertaining to the inquiry, utilize the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or any State Government, as the case may be.

- (2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilized under sub-section (1) may, subject to the direction and control of the Commission:
 - (a) summon and enforce the attendance of any person and examine him;
 - (b) require the discovery and production of any document; and
 - (c) requisition any public record or copy thereof from any office.
- (3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilized under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.
- (4) The officer or agency whose services are utilized under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.
- (5) The Commission shall satisfy itself about the correctness of the fact stated and the conclusion, any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

Sec- 15. Statement made by persons to the Commission

No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him, in any civil or criminal proceedings, except a prosecution for giving false evidence by such statement:

Provided that the Statement:

- (a) Is made in reply to the question which he is required by the Commission to answer; or
- (b) Is relevant to the subject-matter of the inquiry.

Sec- 16. Persons likely to be prejudicially affected to be heard

If at any stage of the inquiry, the Commission:—

- (a) Consider it necessary to inquiry into the conduct of any person; or
- (b) Is of the opinion that the reputation of any persons is likely to be prejudicially affected by the inquiry,

It shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

3. Code of Conduct for the Police in India

(Issued by the Ministry of Home Affairs and communicated to the Chief Secretaries of all the States/Union Territories and Heads of Central Police Organization on July 4, 1985.)

1. The police must bear faithful allegiance to the Constitution of India and respect and uphold the rights of the citizens as guaranteed by it.
2. The police should not question the propriety or necessity of any law duly enacted. They should enforce the law firmly and impartially without fear or favour, malice and vindictiveness.
3. The police should recognize and respect the limitation of their powers and functions. They should not usurp or even seem to usurp the functions of the judiciary and sit in judgement on cases to avenge individuals and punish guilty.
4. In securing the observance of law or in maintaining order, the police should as far as practicable, use the methods of persuasion, advice and warning. When the application of force becomes inevitable, only the irreducible minimum force required in the circumstances should be used.
5. The prime duty of the police is to prevent crime and disorder and the police must recognize that the test of their efficiency is the absence of both, and not the visible evidence of police action in dealing with them.
6. The police must recognize that they are members of the public, with the only difference that in the interest of the society and on its behalf they are employed to give full time attention to duties which are normally incumbent on every citizen to perform.
7. The police should realize that the efficient performance of their duties will be dependent on the extent of ready cooperation that they receive from the

public. This, in turn, will depend on their ability to secure public approval of their conduct and action and to earn and retain public respect and confidence.

8. The police should always keep the welfare of the people in mind and be sympathetic and considerate towards them. They should always be ready to offer individual service and friendship and render necessary assistance to all without regard to their wealth and/or social standing.
9. The police should always place duty before self, should maintain calm in the face of danger, scorn or ridicule and should be ready to sacrifice their lives in protecting those of others.
10. The police should always be courteous and well mannered; they should be dependable and impartial; they should possess dignity and courage; and should cultivate character and the trust of the people.
11. Integrity of the highest order is the fundamental basis of the prestige of the police. Recognizing this, the police must keep their private lives scrupulously clean, develop self-restraint and be truthful and honest in thought and deed, in both personal and official life, so that the public may regard them as exemplary citizens.
12. The police should recognize that their full utility to the State is best ensured only by maintaining a high standard of discipline, faithful performance of duties in accordance with law implicit obedience to the lawful directions of commanding ranks, absolute loyalty to the force and by keeping themselves in the state of constant training and preparedness.
13. As member of secular democratic state, the police should strive continually to rise above personal prejudices and promote harmony and the spirit of common brotherhood amongst all the people of India, transcending religious, linguistic or sectional diversities and to renounce practices derogatory to the dignity of women and disadvantaged sections of society.



"Justice will come when it is deserved by our being and feeling strong."

"Justice that love gives is a surrender, justice that law gives is a punishment."

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