IJCRT.ORG ISSN : 2320-2882

INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM AND RIGHTS OF ACCUSED: ISSUES AND CHALLENGES

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ABSTRACT
The core purpose of criminal procedure is to provide the accused a full and fair trial in accordance with the principles of natural justice. There are various steps which should be followed in order to dispense justice and bring the guilty to the book. Taking cognizance of the offences is one of the procedures. In India the basic step in every criminal case is taking congnizance of such actions.[1]
The whole law as to administration of criminal justice and trial revolves around the accused. Public prosecutors with their full strength of teeth and mind do their best to hold the accused guilty, whereas defense counsels with same vigor and determination, art of advocacy and nice technicalities and lacunae of legal system endeavor to get verdict of not guilty in his favour. Judges bound by oath to do justice without fear, favor, ill-will or affection discharge their judicial functions and make every effort to disengage the truth from falsehood and to shift or separate the grains from the chaffs to preside over a criminal case to see that no innocent man is punished and no guilty man escapes.
Keywords: Accused, Criminal Procedure, Criminal Justice, Legal System, Rights.

INTRODUCTION

"To deprive a man of his natural liberty
and to deny him the ordinary
amenities of life is worse than
starving the body, its is starvation of
The soul, the dweller in the body"

- Mahatma Gandhi

The above quote of father of nation was stated by Justice Sanjay K. Agarwal, Judge of Chattisgarh High Court while deciding a case titled as **"Sunder Lal Patel v. High Court of Chattisgarh"** through Registrar General & Othrs.[2]
In a criminal trial, the presumption of innocence is a principle of cardinal important and so the guilt of the accused must in every case be proved beyond a reasonable doubt, however strong, suspicious and grave can never take the place of proofs. An accused is to be presumed to be innocent unless the presumption is rebutted. Even in an appeal against acquittal, the presumption of innocence in favor of the accused is not weakened and in considering appeal against acquittal, the Court has to keep this presumption in mind. Further, the presumption most favorable to the accused must be accepted.

[1] Dr. Caeser Roy-Cognizance of Criminal Cases and period of limitation under Cr. Procedure Court, 1973, Cr. J. 2017, p.87
[2] 2018(1) RCR (Cr.) p.280.

1. Right of Presumption of Innocence

One of the cardinal principles which should always by kept in our system of administration of justice in criminal cases is that person assigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence, with which he is charged. Another golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case - one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused be accepted.[3]

2. Right of the Accused to know the specific grounds of his Arrest with reference to Constitutional Rights of a Citizen

According to the joint reading of text of Article 22(1) of the Constitution of India and Section 50(1) of the Code of Criminal Procedure, 1973 mandates that every person arrested is to be informed of the grounds of his arrest and of his right to bail. Section 50, Code of Criminal Procedure brings the law in conformity with the provisions of Article 22(1) of the Constitution thereby enabling the person arrested to move for 'Habeas Corpus' to obtain his release. It confers a valuable right and non-conformation to its mandatory provisions is a non-conformation to the procedure established by law.[4]

The provisions of Section 50(1), Code of Criminal Procedure, 1973 and Article 22(1) of the Constitution are mandatory, hence, if the accused has not been informed of the grounds of his arrest nor the full particulars of the offence for which he was arrested, then his detention is illegal and void from the very inception and cannot be sustained despite the fact, that charge sheet has been submitted and he should be directed to be released immediately.[5]

The Allahabad High Court[6] observed that the expression **"Giraftaari ka Kaaran Bataya Gaya"** does not satisfy the requirements of Article 22(1) of the Constitution of India read with the provision of Section 50(1) of the Code of Criminal Procedure which happens to be the procedure established by the law within the meaning of Article 21 of the Constitution of India. The law is that the statement of grounds to the person arrested must contain such particulars as are similar to the particulars set out in a charge framed for the purposes of trial in a Court of law in order to satisfy the requirements of full particulars of the offence under Section 50 (1) of the Code of Criminal Procedure.

A Division Bench Allahabad High Court has observed in ***Ram Chandra alias Munna* v. *The State of U.P.,***[7] that omission to communicate grounds of arrest to the arrested person would make his arrest as well as his remand granted on the basis of such arrest, illegal and would entitle him to be released on bail.

3. Right to Know the Power of Arrest

An arrested person has a right to know the power under which he is being arrested. There are certain rights conferred on an accused to be enjoyed at certain stages under the Code of Criminal Procedure, as such Section 50, where under the person arrested and to his right of bail and under Section 167 dealing with the procedure, if the investigation cannot be completed in 24 hours which are all inconformity with the 'right to life' and 'personal liberty' enshrined in Article 21 of the Constitution and valuable safe-guards provided in Article 22 of the Constitution for the protection of an arrestee in certain cases. But so long as the investigation is in strict compliance with the statutory provisions relating to arrest or investigation of a criminal case and according to the procedure established by law, no one can make any legitimate grievance to stifle or impinge upon the proceedings of a arrest or detention during investigation as the case may be in accordance with the provisions of the Code.[8]

4. Right of Examination by Medical Practitioner

Under the Code of Criminal Procedure, 1973, a new legal right has been given to the accused under Section 54 that when he is produced before a Magistrate or at any time when he is under custody to have his body medically examined with a view to enabling him to establish that the offence with which he is charged was not committed by him or that he was subjected to physical injury.

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[3] *Chandra Kanta Deh* v. *The State of Tripura,* AIR 1986 SC 606.
[4] *Ajit Kumar* v. *The State of Assam,* 1976 CrLJ 1303.
[5] *Subhash Bhandari* v. *The State of U.P.,* 1986 AWC 1049.
[6] *Jang Singh* v. *The State of Haryana,* 1988(1) Crimes 1.
[7] *Jang Singh* v. *The State of Haryana,* 1988(1) Crimes 1.
[8] *Union of India* v. *W.N. Chaddah,* AIR 1993 SC 1082.

An accused released on bail in the event of arrest can be stated to be a person arrested on charge of committing an offence as contemplated under Section 53 of Cr.P.C. and can be subjected to medical examination for the purpose of effective trial. A person released on bail is still considered to be detained in the constructive custody of the Court through his surety. He has to appear before the Court whenever required or directed. Therefore, to that extent, his liberty is subjected to restraint. He is notionally in the custody of the Court and hence, continues to be a person arrested.

5. Right of the Person Arrested to be brought Before the Magistrate without Delay

The Law is very jealous of the liberty of a citizen including accused and does not allow detention unless there is a legal sanction for it. In ***Rameswar* v. *The State of Bihar***,[9] their Lordships of the Supreme Court held liberty of an individual as a matter of great constitutional importance in our system of governance.

On the basis of the provisions of Sections 56, 57, 76 and 167(2) of the Code of Criminal Procedure, the person arrested shall without unnecessary delay and subject to the provisions as to bail be produced before the Magistrate provided such delay shall not, in any case, exceed twenty four-hours exclusive of time necessary for the journey from the place of arrest to the Magistrate's Court. It may be added here that Sections 56 and 57 would apply only in a case when the arrest is without warrant whereas Section 76 would come into operation, when the police officer arrests a person in execution of a warrant.

The Supreme Court in ***Khatri* v. *State of Bihar***[10] had strongly urged upon the State and its police authorities to see that the constitutional and legal requirements to produce an arrested person before a Judicial Magistrate within twenty-four hours of the arrest must be scrupulously observed. The provision inhibiting detention without remand is a very healthy provision which enables the Magistrates to keep check over the police investigation and it is necessary that Magistrate should try to enforce this requirement and where it is found to be disobeyed come down heavily upon the police. When twenty-four hours have passed without compliance of the provision the arrested person is entitled to be released forthwith.[11]

6. Right to Open Trial

It is well settled that in general, all cases brought before the courts, whether civil, criminal or others must be heard in open Court. Public trial in open Court is undoubtedly essential for the healthy objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries, and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity and impartiality of the administration of justice. Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial tribunals, courts must generally hear cases in open and must permit the public admission to the Court room.[12]

In ***State of Punjab v. Gurmit***[13] the court held that the undue publicity is evidently harmful to the unfortunate women victims of rape and such other sexual offences. Such publicity would mar their future in many ways and may make their life miserable in society. Section 327(2) provide that the inquiry into and trial of rape or an offence under Section 376, 376-A. 376-B, 376-C or 376-D of the Indian Penal Code shall be conducted *in camera.*

7. Right of the Accused to be defended by Counsel of His Choice

The requirement of fair trial involves two things: a) an opportunity to the accused to secure a counsel of his own choice, and b) the duty of the state to provide a counsel to the accused in certain cases. The Law Commission of India in its 141th Report has mentioned that free legal aid to persons of limited means is a service which a Welfare State owes to it citizens.

[9] AIR 1968 SC 1303 at 1305
[10] AIR 1981 SC 1928.
[11] *State of U.P.* v. *Abdul Samad*, AIR 1962 SC 1506.
[12] *Naresh Sridhar Mirjakar* v. *State of Maharashtra*, AIR 1957 SC 8.
[13] 1996(2) SCC, 316

In ***Khatri v. State of Bihar***[14] the court held that the accused is entitled to free legal services not only at the stage of trial but also when first produced before the Magistrate and also when remanded.

In ***Suk Das and Ors. v. Union Territory of Arunachal Pradesh***[15], the court strengthen the need for legal aid and held that "free legal assistance at state cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty.

In ***Mohd. Hussain & Jufflkar .Ali Vs. The State (Govt. of NCT) Delhi***[16] the appellant an illiterate foreign national was tried, convicted and sentenced to death by the trial court without assignment of counsel for his defence. Such a result is confirmed by the High Court. The convict, is charged, convicted and sentenced under Sections 302/307 of Indian Penal Code and also under Section 3 of The Explosive Substances Act: 1908. Fifty six witnesses and investigating officer were examined without appellant having a counsel and none were cross-examined by appellant. Only one witness cross-examined to complete the formality.

8. Right of Cross-Examination

Cross-examination is the most effective of all means for extracting truth and exposing falsehood.[17] Right of cross-examination of prosecution witnesses by the counsel of the accused in his own way, is a valuable right and it should not be restricted to headings only.[18] In a criminal trial a fair opportunity to defend him should be given to an accussed. Hence when an accused is not given the opportunity to cross-examine the prosecution witnesses the entire trial stands vitiated.[19]

9 Importance of Fair and Impartial Investigation

The concept of fair trial is based on the basic ideology that State and its agencies have the duty to bring the offenders before the law. In their battle against crime and delinquency, State and its officers cannot on any account forsake the decency of State behaviour and have recourse to extra-legal methods for the sake of detection of crime and even criminals. For how can they insist on good behaviour from other when their own behaviour is blameworthy, unjust and illegal?

In ***Zahira Habibullah Sheikh and ors v. State of Gujarat and ors.***[20] The Supreme Court of India observed "each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and to society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witness or the cause which is being tried, is eliminated."

Principles Of Fair Trial

1. Adversary trial system:

The system adopted by the Criminal Procedure Code, 1973 is the adversary system based on the accusatorial method. In adversarial system responsibility for the production of evidence is placed on the prosecution with the judge acting as a neutral referee. This system of criminal trial assumes that the state, on one hand, by using its investigative agencies and government counsels will prosecute the wrongdoer who, on the other hand, will also take recourse of best counsels to challenge and counter the evidences of the prosecution.

Supreme Court has observed "if a Criminal Court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest."[21]

In ***Himanshu Singh Sabharwa v. State of MP. and Ors***[22], the apex court observed that if fair trial envisaged under the Code is not imparted to the parties and court has reasons to believe that prosecuting agency or prosecutor is not acting in the requisite manner the court can exercise its power under section 311 of the Code

[14] 1981(2) SCC 493
[15] 1986 SCC 401
[16] Cr. App. No. 1091 of 2006
[17] *Bhojraj* v. *Sita Ram.* AIR 1936 PC 60.
[18] *Mohan Singh* v. *State,* 1988 All CrR 171 at 174.
[19] *Man Sidh* v. *Republic of India,* 1984 CrLJ 593.
[20] 2006(3) SCC 374
[21] AIR 1036, 1981 SCR (3)
[22] Manu/SC/1193/2008

or under section 165 of the Indian Evidence Act, 1872 to call in for the material witness and procure the relevant documents so as to sub-serve the cause of justice.

2. Presumption of innocence:

Every criminal trial begins with the presumption of innocence in favour of the accused. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. This presumption is seen to flow from the Latin legal principle ei incumbit probatio qui dicit, non qui negat, that is, the burden of proof rests on who asserts, not on who denies. In ***State of UP. v. Naresh and Ors.***[23] the Supreme Court observed "every accused is presumed to be innoccnt unless his guilt is proved. The presumption of innocence is a human right subject to the steutory exceptions. The said principle forms the basis of criminal jurisprudence in India."

3. Independent, impartial and competent judges:

The basic principle of the right to a fair trial is that proceedings in any criminal case are to be conducted by a competent, independent and impartial court. In a criminal trial, as the state is the prosecuting party and the police is also an agency of the state, it is important that the judiciary is unchained of all suspicion of executive influence and control, direct or indirect. The whole burden of fair and impartial trial thus rests on the shoulders of the judiciary in India.

In ***Shyam Singh v. State of Rajasthan***[24], the court observed that the question is not whether a bias has actually affected the judgement. The real test is whether there exists a circumstance according to which a litigant could reasonably apprehend that a bias attributable to a judicial officer must have operated against him in the final decision of the case.

4. Autrefois Acquit and Autrefois Convict:

According to this doctrine, if a person is tried and acquitted or convicted of an offence he cannot be tried again for the same offence or on the same facts for any other offence. This doctrine has been substantially incorporated in the article 20(2) of the Constitution and is also embodied in section 300 of the Cr. P.C.

In ***Kolla Veera Raghav Rao vs Gorantla Venkatesu'ara Rao***[25] the Supreme Court observed that Section 300(1) of Cr.P.C. is wider than Article 20(2) of the Constitution. While, Article 20(2) of the Constitution only states that 'no one can be prosecuted and punished for the same offence more than once', Section 300(1) of Cr.P.C. states that no one can be tried and convicted for the same offence or even for a different *offence* but on the same facts. In the present case, although the offences are different but the facts are the same. Section 300(1) of Cr.P.C. applies. Consequently, the prosecution under Section 420, IPC was barred by Section 300(1) of Cr.P.C. The impugned judgment of the High Court was set aside.

5. Right of Accused to Speedy Investigation

The fundamental right of an accused to speedy trial enshrined in Article 21 of the Constitution is applicable not only to the proceedings in Court but also includes within its sweep the preceding police investigations as well speedy investigation and trial are equally mandated by both the letter and the spirit of the Code of Criminal Procedure, 1973.[26]

6. Right of Accused as to Examination of Witnesses in His Presence

It is one of the vital principles of criminal justice that in a criminal trial, a Court should not proceed ex-parte against an accused person except in limited cases specially mentioned in the law.[27] The provision of Section 273, Code of Criminal Procedure, 1973 is mandatory. It is not such an error, omission or irregularity which can

[23] 2001(4) SCC 324
[24] 1973 Cr. L.J. 441
[25] 2011(2) SCC 703
[26] *Madheshwari Singh v. The State of Bihar, 1986 CrLJ 1771 at 1785: AIR 1986 Patna 324.*
[27] *Ram Singh v. C. Ram, 1951 CrLJ 99.*

be cured under Section 465, Code of Criminal Procedure. But it is such an illegality which vitiates the whole trial.[28]

Where a new person is added as an accused, the evidence already recorded cannot be used against him because that was not recorded in his presence.[29] The expression shall be taken in the presence of the accused" used in Section 273, Code of Criminal Procedure does not mean that mere physical presence of the accused is not enough. He must be given all opportunities to defend himself by testing the veracity of the witnesses through cross-examination.[30]

7. Right of Accused to Keep Silence

An accused cannot be compelled to be a witness against himself.[31] He has the right of silence under clause (3) of Article 20 of the Constitution. Sub-Section (3) of Section 313, Code of Criminal Procedure, 1973, specifically provides that the accused shall not be himself liable to punishment by refusal to answer such questions or by giving false answers to them.

8. Right of the Accused to Get the Copies the Statements of the Prosecution Witnesses and the Prosecution Documents

In Section 173, Code of Criminal Procedure, only sub-Sections 5, 6 and 7 are relevant. Section 173, Report of the police officer on completion of the investigation:

(1) When such report is in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with the report:

(a) All documents or relevant extracts thereof on, which the prosecution proposes to rely other than those already sent to the Magistrate during investigation:

(b) The statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(2) If the police officer is of opinion that any part of such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part of the copies to be granted to the accused and stating his reasons for making such request.

(3) Where the police officer investigating the ease finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in Sub-Section (5).

9. Documents and Statements of Which the Accused is Entitled to Have Copies as of Right

The accused is entitled to have the copies of the following statements and documents under Section 207, Criminal Procedure Code.

1. Copy of the charge-sheet (Section 207);
2. Copy of the F.I.R. (Section 207);
3. Copies of all other documents or, relevant extracts thereof, on which the prosecution proposes to rely (Section 207);
4. Copies of the statements recorded under Section 161 (3) of the persons whom the prosecution proposes to examine as its witnesses (Section 207)
5. Copies of the confessions and statements, if any recorded under Section 164 (Section 207).[32]
6. Copies of the statement recorded under Section 161 by all the investigating officers.[33]
7. Copies of the reports of the chemical examiner.[34]
8. Copies of the grounds of the Handwriting expert.[35]

[28] *Mritnnjaya Chatterjee v. State, 1955 CrLJ 1117, Sukanraj v. The State of Rajasthan, 1967 CrLJ 1702.*
[29] *Annamma Cherian v. The State of Kerala, 1988 (3) Crimes 596.*
[30] *Tej babu Singh v. State of U.P.1982 Cr. L.J. 43.*
[31] *State of U.P. v. Lakshmi Brahman, 1993 CrLJ 839 at 845: AIR 1983 SC 439:*
[32] *State v. Ranvir Singh, (1955) 67 PLR 1181.*
[33] *S.J. Choudhary v. State, 1984 CrLJ 864.*
[34] *In Re Ranga Swami Gounder, 1957 CrLJ 866 (Mad.) (DB).*
[35] *Himmat Lai Ratti Lai v. State, 1971 CrLJ 763 (Gujarat) (DB).*

9. Copies of the enlarged photos of the disputed Handwriting.[36]
11. Copies of the photographs of the scene of the occurrence.[37]
12. Copies of the notes on site plan.[38]
11. Copies of the short notes prepared by the Investigating Officer at the spot on the basis of which he later on recorded the statement of witnesses.[39]
12. Copies of the statement recorded in the investigation which was illegal.[40]
13. Copies of the statements of the witnesses recorded more than once under Section 161, Code of Criminal Procedure by different Investigating Officers.[41]
14. Copies of the statements of the witnesses recorded in an offence punishable under Section 14 of the Official Secret Act, 1923.[42]
15. Copies of the statements of witnesses in cases in which the police has submitted final reports.[43]
16. Supply of cassettes containing tape recorded conversation which allegedly took place between the accused and other persons. It is not sufficient to supply merely the transcript of the conversation. But duplicate cassettes of the alleged conversation should be supplied.[44]
17. Copies of the statements of the approver.[45]

Right To Bail

1. During Pre-Trial and Pending Trial Period

The essence of the law as to bail is that in bailable offences the bail is a right and not a favour. In such offences there is no question of any discretion in granting bail. The bail can be claimed as of right and there is statutory duty imposed upon the police officer as well as the Court to release a person on bail, if he is prepared to give bail. Such a person can also be released on bail on his own bond in a fit case. It is only where the accused is unable to furnish such sureties or bond, that he should be kept in detention.[46] In other words whenever an application is made to a Court the first question that it has to decide is whether the offence for which the accused is prosecuted is bailable or otherwise. If the offence is bailable, the bail will be granted under Section 436 of the Code of Criminal Procedure, 1973. But granting of bail in the case of a non-bailable offence is discretionary or concession allowed to an accused.[47]

But non-bailable does not mean "Not bail" or "compulsory Jail". The basic rule may perhaps be tersely put as bail, not Jail except where there are circumstances suggestive of fleeing from justice or thwarting the cause of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement of bail from the Court.[48]
The accused has also right U/s 313 of Code of Criminal Procedure to explain the circumstances, the prosecution witnesses had deposed against him during the trial.

2. During Post-Conviction Pending Appeal Period in Certain Cases

Sub-Section (3) of Section 389 of the Code of Criminal Procedure, 1973, provides specific provision as to suspension of sentence pending the appeal and release of the appellant on bail in a case where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal then the Court shall.[49]
(i) Where such person, being on bail is sentenced to imprisonment for a term not exceeding three years, or
(ii) Where the offence of which such person has been convicted is bailable one and he is on bail.

[36]*P.L. Shah* v. *State of Gujarat*, 1982 CrLJ 763 (DM).
[37]*Supra note 547.*
[38]*In Re Natrajan, AIR 1967 Mad. 426.*
[39]*Jeet Singh v. State of Punjab, AIR 1976 SC 1421.*
[40]*Bhuvneshwar Pd. Gupta v. State, AIR 1969 All 503.*
[41] *State of Kerala v. Raghuvan, 1964 CrLJ 1373.*
[42] *L.R. West Bengal v. Satyam Bhowmik, 1981 CrLJ 341.*
[43] *State of M.P. v. Rama Din Bansdhari, 1962 (2) CrLJ 550.*
[44]*S.J. Choudhary v. State, 1984 CrLJ 864.*
[45] *Lai Chandv. State of Haryana,* 1984 CrLJ 164.
[46]*Dharmu Naik v. Rablndra Nath, 1978 CrLJ 664: T.H. Hussain v. M.P. Mondkar.1958 CrLJ 701: AIR 1958 SC 376.*

[47] *State v. Sardool Singh, 1975 CrLJ 1348.*
[48]*State of Rajasthan v. Bal Chanel, AIR 1977 SC 2447.*
[49]*State ofU.P. v. Mwwa. 1973 CrLJ 1708 at 1709 and 1710 (All).*

Order that the convicted person be released on bail, unless there are special reasons for refusing bail for such period as will afford sufficient time to present the appeal and obtain the orders, of the appellate Court under Sub-Section (i); and sentence of imprisonment shall so long as he is so released on bail, be deemed to be suspended.

3. Right of the Accused against Double Jeopardy

Clause (3) of Article 20 provides: "No person accused of any offence shall be compelled to be a witness against himself." This Clause is based on the maxim nemo tenetur prodere accussare seipsum, which means that "no man is bound to accuse himself.

*In **Slate of Bombay vs. Kathi Kahr***[50], the Supreme Court held that "to be a witness" is not equivalent to "furnishing evidence". Self-incrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in Court which may throw a light on any, of the points in the controversy, but which do not contain any statement of the accused based on his personal knowledge. Compulsion means force which includes threatening, beating or imprisoning the wife, parent or child of a person. Thus where the accused makes a confession without any inducement, threat or promise article 20(3) does not apply.

Post Trial Rights

1. Lawful punishment:

Article 20(1) explains that a person can be convicted of an offence only if that act is made punishable by a law in force. It gives constitutional recognition to the rule that no one can be convicted except for the violation of a law in force. In *Om Prakash v. State of Uttar Pradesh*[51], offering bribe was not an offence in 1948.

Section 3 of the Criminal Law (Amendment) Act, 1952 inserted Section165A in the Indian Penal Code,1860, declaring offering bribe as punishable. It was held that the accused could not be punished under Section 165A for offering bribe in 1948. Article 20(1) provides that no person shall 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. It prohibits the enhancement of punishment for an offence retrospectively. But article 20(1) has no application to cases of preventive detention.[52]

2. Right to human treatment:

A prisoner does not become a non-person. Prison deprives liberty. Even while doing this, prison system must aim at reformation. In prison, treatment must be geared to psychic healing, release of stress, restoration of self-respect apart from training to adapt oneself to the life outside.[53] Every prisoner has the right to a clean and sanitized environment in the jail, right to be medically examined by the medical officer, right to visit and access by family members, etc. Recognizing the right to medical facilities, the National Human . Rights Commission recommended the award Rs. **1 Lakh** to be paid as compensation by the Govt. of Maharashtra to the dependents of an under trial prisoner who died in the Nasik Road Prison due to lack of medical treatment.[54]

3. Right to file appeal:

Section 389(1) empowers the appellate court to suspend execution of sentence, or when the convicted person in confinement, to grant bail pending any appeal to it. Court need not give notice to the public prosecutor before suspending sentence or releasing on bail. Existence of an appeal is a condition precedent for granting bail. Bail to a convicted person is not a matter of right irrespective of whether the offence is bailable or non-bailable and should be allowed only when after reading the judgement and hearing the accused it is considered justified.[55]

[50] AIR 1961 SCC 1808
[51] AIR 1957, All. 388
[52] Prahlad Krishna v. State of Bombay, AIR 1955 Bom. 1.
[53] Phul Singh V. State of Haryana 1979(4) SCC 413.
[54] NHRC New Letter, Sept. 1999
[55] Section 436 CRPC

4. Proper execution of sentence:

The hanging of Afzal Guru was criticised by human rights activists, legal experts all over the country. In carrying out Afzal Guru's death sentence, the government deliberately ignored the view of the Supreme Court and courts across the world that hanging a person after holding him in custody for years is inhuman. Mohammad Afzal Guru was convicted by Indian court for the December 2001 attack on the Indian Parliament, and sentenced to death in 2003 and his appeal was rejected by the Supreme Court of India in 2005. The sentence was scheduled to be carried out on 20 October 2006, but Guru was given a stay of execution after protests in Jammu and Kashmir and remained on death row. On 3 February 2013, his mercy petition was rejected by the President of India, Pranab Mukherjee. He was secretly hanged at Delhi's Tihar Jail around on 9 February 2013.

5. Right of the Accused and Application of the Principle of Res-Judicata or Issue-Estoppel to Criminal Proceedings

The maxim Res-judicata pro veritate occipitur is no less applicable to criminal than to civil proceedings. The principle of issue-estopel is a different principle viz. where an issue of fact has been tried by competent Court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or res-judicata against the prosecution not as a bar to the trial and conviction of the accused for a different or distinct offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of Section 300(2), Code of Criminal Procedure, 1973.[56] This is technically called the principle of the issue-estoppel. The principle of issue-estoppel is different from the principle of double jeopardy or Autrefots-acqutt as embodied in Section 300 of the Criminal Procedure Code. For issue-estoppel to arise, there must have been distinctly raised and inevitably decided the same issue in the earlier proceedings between the same parties.[57]

In ***Lalta* v. *the State of U.P.,***[58] the Apex Court of India, held that when as issue of fact has been tired by a competent Court on a former occasion and a finding of the fact has been reached in favour of the accused, such a finding would constitute an estoppel or res-judicate against the prosecution, not as a bar to the trial and conviction of the accused for a different offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even might be permitted by the terms of Section 300(2), Code of Criminal Procedure, 1973. Section 300 does not preclude the applicability of this rule of issue-estoppel. The same view has been affirmed in some other decisions.[59]

6. Right of the Accused viz. Testimonial Compulsion Including Directions which do not come within the Purview of Testimonial Compulsion

Article 20(3) of the Constitution states: "No person accused of any offence shall be compelled to be a witness against himself. Before this provision of the Constitution comes into play, two facts have to be established:

(i) That the individual concerned was a person accused of an offence, and
(ii) That he was compelled to be a witness against himself. If only one of these facts and not the other is established, the requirements of Article 20(3) will be fulfilled.[60]

The scope of the applicability of Article 20(3) consists of the following ingredients:

(i) It is a right pertaining to a person accused of an offence.
(ii) It is a protection against compulsion to be witness; and
(iii) It is a protection against such compulsion resulting in his giving evidence against himself.[61]

7. No Narco Test without Consent, Rules Supreme Court

A bench headed by Chief Justice of India K G Balakrishnan gave its verdict today, saying that narco-analysis is a violation of the fundamental right under Article 20(3) of the Constitution that specifies that no person

[56] *Pritam Singh* v. *State of Punjab,* AIR 1965 SC 415.
[57] *Ravinder Singh* v. *State of Haryana.* AIR 1975 SC 856.
[58] AIR 1970 SC 1331.
[59] *Masud Khan* v. *The State of U.P.*, AIR 1974 SC 28.
[60] *M.D. Dasstagir* v. *State of Madras,* 1960 CrLJ 1159: AIR 1960 SC 756.
[61] *M.P. Sharma* v. *Satish Chandra,* AIR 1954 SC 300: 1954 CrLJ 865

accused of any offence shall be compelled to be a witness against himself.[62] The SC stated that the test must not be taken without the consent of the suspect. The Court further ruled that the results of these tests are unreliable, and may not be admissible in Court as evidence. Chief Justice Balakrishnan said any confession of guilt by an accused during these tests could not be treated as evidence in the trial Court.

In defense, the CBI and the Centre tried to justify the use of these tests saying that they helped deal with organised crime and terrorism, and crack complicated cases. In a narco test, the accused is injected with 'truth serums' that cause the person to become uninhibited and talkative. It is still possible for people to lie under the influence of truth serums, so it is not altogether reliable. While Sodium Pentothal - which sedates only for a few minutes - is used for these tests, drugs like Sodium Amytal and Scopolamine are also used. The results of these tests do not have any legal validity as confessions, and the Court may give limited admissibility depending on the case.[63]

8. Accused must be given an opportunity to submit his case before framing of charge against him

Sections 228 and 240, Code of Criminal Procedure, 1973, envisage provision for hearing the accused before the Sessions Judge. Under Section 228 Sessions Judge and Judicial Magistrate under Section 240 form an opinion that there is ground of presuming that the accused has committed an offence and he decides to frame a charge against such accused? On the basis of stock of decisions, it is mandatory duty of the Court to ascertain that the accused must be provided an opportunity to address the Court whether the charge can be framed at all against him. Where the accused wanted such an opportunity and it was denied then it was a violation of the provision of the Criminal Procedure Code and charge should be quashed. But oral hearing is sufficient.

9. Right of the Accused to be heard before the case against him is committed to the Court of Sessions

Even though Section 209, Code of Criminal Procedure, 1973, does not specially say that the Magistrate should hear the accused before passing an order under Section 209 prima-facie, he should be heard for determining the offence is triable exclusively by the Court of Session or not.[64] Even in a case which is committed to the Court of Sessions under Section 323 of the Code of Criminal Procedure, 1973. It is the duty of the Magistrate to intimate to the accused that he has made up his mind to commit the case. The accused should know when the Magistrate makes up his mind to commit so that his right to produce defence is safeguarded.[65]

10. Right of the Accused to move the Court for Summoning a person not Charge-Sheeted by Police as Co-Accused (Section 319)

Ordinarily when a person is accused of an offence or when a person is accused of more offences than one, the sentences of imprisonment imposed on him are directed to run concurrently, but even on assumption that the sentence of imprisonment may be consecutive, the under trial prisoners concerned have already suffered incarceration for the maximum period for which they could have been sent to jail on conviction. There is absolutely no reasons why they should be allowed to continue to remain in jail for a moment longer, since such continuance of detention would be clearly violative not only of human dignity but also of their fundamental right under Article 21 of the Constitution.[66]

11. The Investigating Officer should not associate himself with the factum of recovery or Investigating Officer or arresting or Recovery Officer should not be one and the same person

The investigating officer should not associate himself with any eye- witness with the recovery memos because that partakes of an attempt to make the witnesses omnibus.[67] The practice of investigation officer being conducted by the same officer who happens to be an ocular witness is looked with disfavour. When the same officer who claims to have witnessed the incident investigates then his evidence has got to be looked upon with

[62] *Selvi* v. *State of Karnatka,* AIR 2010 SC 211.
[63] *Ibid.*
[64] *Tuneshwar Pd. v. State of Bihar, 1978 CrLJ 1000 (Patna) (FB).*
[65] *Chhadami Lai Jain v. The State of U.P., AIR 1960 SC 41.*
[66] *Hussainara Khatoon* v. *Home Secy.,* AIR 1979 SC 1819.
[67] *Narpal Singh* v. *State of Haryana,* AIR 1977 SC 1066.

great caution. In this case the Head Constable who was offered illegal gratification himself registered and investigated a case under Section 165A, Indian Penal Code, against the officer of alleged bribe.[68]

Relying on the observations of the Allahabad High Court in ***Bhagwan Dayal*** **v.** ***Pyare Lai***, it was further held that the investigator who is himself a material witness in the case should not conduct the investigation himself because he is interested in the fruits of his efforts and so in the due course the investigation should be entrusted to some one else. Such investigation is to be looked with suspicion.

12. Right of Accused to be heard on question of sentence in Warrant Cases

The relevant provision as to the right of the accused to be heard on question of sentence in warrant cases exclusively triable by a Court of Session is provided in Section 235(2) of the Code of Criminal Procedure, whereas in cases pending trial before Judicial Magistrate can be located in Section 248(2) of the same Code. This provision of hearing on question of sentence is mandatory.[69] Noncompliance with the provisions of Section 235(2) of the Code of Criminal Procedure, is not an irregularity, but is an illegality which vitiates the sentence. But failing to give hearing on question of sentence would not affect the conviction.[70]

13. Right of the Under-Trial Accused to get the Investigation completed within six months in a Summons Case

Sub-Section 5 of the Section 165(5), Code of Criminal Procedure, 1973, lays down that if in any case triable by a Magistrate as a summons case, the investigation is not conducted within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period of six months is necessary.[71]

14. Right of the Accused Convict as to set off the period of detention undergone by him (Section 428 of the Code)

Section 428, Code of Criminal Procedure is a new provision. It confers a benefit on a convict reducing his liability to undergo imprisonment out of the sentence imposed for the period which he had already served as an under trial prisoner.[72] Section 428 of the Code was brought on the Statute book for the first time in 1973. The purpose of Section 428 is for advancing betterment to the prisoner. The period of his being in jail as an under-trial prisoner would be added as a part of the period of Imprisonment to which he is sentenced.[73]

15. Right of the Accused as to Fair Trail

Assurance of a fair trial is that first imperative of the dispensation of justice.[74] It cannot be denied that one of the most valuable rights of our citizens is to get a fair and impartial trial free from an atmosphere of prejudice. This right flows necessarily from Article 21 of the Constitution which makes it obligatory upon the State not to deprive any person of his life or personal liberty except according to the procedure established by law. It is, therefore, obligatory on all the citizens that while exercising their right they must keep in view the obligations cast upon them. If accused have a right to a fair trial then it necessarily follows that they have a right to be tried in an atmosphere free from prejudice or else the trial may be vitiated on this ground alone.

16. Right of the Accused Under-Trial or Convict to live with human dignity and Right to meet his relations

Under Article 21 of the Constitution of India, the right to life includes the right to live with human dignity and all that goes alongwith it, namely, the bare necessities of life such as adequate nutrition, clothing, and shelter

[68] *Bhagwan Singh* v. *State of Rajasthan*, 1975 CrLJ 1739 (SC).
[69] *Santa Singh* v. *The State of Punjab*, AIR 1976 SC 2386 at 2391.
[70] *Trilok Singh* v. *State of Punjab*, AIR 1977 SC 1747.
[71] *Supdt. & Law Remember an cer, W.B.* v. *Nashim Ranga Rao*, 1978 CrLJ 1830.
[72] *Suraj Bhan* v. *Om Prakash*, AIR 1976 SC 648.
[73] *State of Maharashtra* v. *N.A. Mubarak All*, 2001 (4) SCALE 71.
[74] *Mrs. Meneka Sanjay Gandhi* v. *Miss Rani Jethamalani*, AIR 1979 SC 468.

over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving. Every act which offends against or impairs human dignity would constitute deprivation "Proitanto" of the right to live, and it would have to be in accordance with reasonable, fair and just procedure established by law, which stands the test of other fundamental rights. Therefore, obviously any form of torture or cruel, inhuman or degrading treatment would be offensive to human as constitutionally valid under Articles 14 and 21, unless it is reasonable, fair and just.

17. Right of the Accused as to Speedy Trial

Speedy trial is the essence of criminal justice and there can be no doubt that delays in trial by itself constitutes denial of justice. It is interesting to note that in the United States, speedy trial is one of the constitutionally guaranteed rights. The sixth amendment to the Constitution provides that in all criminal prosecutions, the accused shall enjoy the right of a speedy and public trial. So also Article 3 of the European Convention on Human Rights provides. Every one arrested or detained shall be entitled to trial within a reasonable time or to release pending trial.[75]

18. Right of the Accused Under-Trial or Convict to live with human dignity and Right to meet his relations

Under Article 21 of the Constitution of India, the right to life includes the right to live with human dignity and all that goes alongwith it, namely, the bare necessities of life such as adequate nutrition, clothing, and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Every act which offends against or impairs human dignity would constitute deprivation "Proitanto" of the right to live, and it would have to be in accordance with reasonable, fair and just procedure established by law, which stands the test of other fundamental rights. Therefore, obviously any form of torture or cruel, inhuman or degrading treatment would be offensive to human as constitutionally valid under Articles 14 and 21, unless it is reasonable, fair and just.

19. Right of the Accused to receive Legal Aid at States cost during Trial

The common man looks upon the trial Court as the protector. The Court in Hoskot's case has laid down the law that a person in prison shall be given legal aid at the expense of the State by the Court assigning counsel.[76]

The State is under a constitutional mandate to provide free legal at to an accused person, who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the State, Moreover this constitutional obligation to provide free legal services to an indigent accused does not arise only when the trial commences but also attaches when the accused is for the first time produced before the Magistrate. It is elementary that the jeopardy to his personal liberty arises as soon as a person is arrested and produced before a Magistrate for it is at that stage that he gets the first opportunity to apply for bail and obtain his release as also to resist remand to police or jail custody.

20. Right of the Accused of demanding exclusion of Police Officer or a witness not under examination from Court Room

Section 327, Code of Criminal Procedure, 1973 gives power to the Court of ordering that any particular person shall not remain in the room used by the Court. It makes no exception in the case of a police officer. When the accused's person objects to the presence of police officer or other person the Magistrate has to decide whether the accused fear of prejudice to his case is reasonable, considering the intelligence and susceptibilities of the class to which he belongs and not merely whether the presence is convenient or helpful to the Court or prosecution.[77]

In ***Lalmani* v. *B. Jat Ram,160***[78] Justice Bennet held that the universal practice in the courts in India is that the witnesses should be called in one by one and that no witness who is to give evidence should be present when

[75] *Hussalnara Khatoon* v. *State of Bihar,* AIR 1979 SC 1360: 1979 CrLJ 1036.
[76] *Gopalanchari v. State of Kerala, AIR 1981 SC 674.*
[77] *State through Supdtt. Central Jail, New Delhi* v. *Charulata Joshi,* AIR 1999 SC 1373.

[78] *AIR 1934 All 314.*

the deposition of a previous witness is being taken and a breach of the rule may well be termed an abuse of the process of the Court and, therefore, under Section 151 of CPC the Court has inherent power to prevent that abuse and the Court can order that such witness should not be heard as a witness.

21. Right of the Accused to claim Identification

A mere look at chapter XII of the Code of Criminal Procedure (Act No. 2 of 1474) and Section 9 of the Indian Evidence Act shall go to disclose that there is no provision in the Code which entitles an accused to demand that an Identification parade should he held at or before equiry or the trial, identification parade belongs to the stage of investigation by the police. Identification parades are held not for the purpose of giving defence advocates material to work on, but in order to satisfy the investigating officer of the bona fide of the prosecution witnesses in identification.[79]

22. Test Identification Parade - Relevance in Investigation Process

Under the Indian Evidence Act, admissibility of facts which are the occasion, cause or effect of relevant facts or facts in issue is dealt with in Section 7. Showing motive, preparation for any fact in issue or relevant fact is made admissible under Section 8. Facts which are necessary to explain or introduce a fact in issue are admissible under Section 9. Sections 7 and 8 provide generally for the admission of facts that caused the fact in issue or relevant fact whereas Section 9 generally provides for facts explanatory of any such fact.[80]

In ***Harinath and Am.*** **v.** ***State of Uttar Pradesh***,[81] the Court held that even on the premise that there was no such prior acquaintance the evidence establishing the identity of the culprits assumes particular materiality in a case, as here, of a dacoity occurring in the darkness of the night. The evidence of the test identification would call for a careful scrutiny. In a case of this kind where the eye witnesses, on their own admission, did not know the appellants before the occurrence, their identification of the accused persons for the time in the dock after a long lapse of time would have been improper. It has been stated in Halsbury's Law of England:

23. Right of Accused to sit during Trial Proceedings

The Apex Court of India in ***Avtar Singh*** **v.** ***The State of M.P.***,[82] observed that Court cannot insist that the co-accused shall keep on standing during the trial particularly when the trial is long and arduous. All the High Courts In India will take appropriate steps, If they have not already done so, to provide in their respective Criminal Manuals prepared under Section 477(1) of the Code that the accused shall be permitted to sit down during the trial unless it becomes necessary for the accused to stand up for any specific purpose, as for example, for the purpose of identification. However, the facility to be accorded to the accused for sitting down during the trial should not be construed as in derogation of the established convention of our courts that every one concerned should stand when Presiding Officer enters the Court.

24. Procedure to be followed by the Court when the Accused surrenders in that Court

The practice of some of the subordinate Magistrates not to permit an accused to surrender when they make such request and simply ask the Public Prosecutor to report is not proper. When an accused surrenders in Court and makes an application stating that he is wanted in the crime, his prayer should be accepted. The practice of postponing surrender application is not fair and it must be strongly disapproved. Things may, however, stand differently if the surrender application does not state specifically that the person surrendering is wanted in a case or that the police may be asked to report If he is wanted at all.[83]

25. Rights of a Foreign Citizen when he is tried for an offence in India

[79] *In Re. Sanglah, 49 CrLJ 89.*
[80] *C.D. Field, Law of Evidence, (2004), p. 677.*
[81] *AIR 1988 SC 345.*
[82] AIR 1982 SC 1260.
[83] Devendra Singh Negi v. State ofU.P., 1993 (2) Crimes 728.

When a foreign citizen is tried for an offence in India, he cannot be compelled to be in India till culmination of legal process to ensure his attendance in the Court when trial begins, we may make a provision. We agree that it would be difficult for the appellant to be present on all posting dates in the trial Court. Therefore, we permit him to appear through counsel except on days when his presence is imperatively needed. He must file an application before the trial Court through counsel and seek dispensation of his personal presence and ensure that his counsel would be present on his behalf on days except when his presence is indispensable. If he makes such an application the trial Court shall dispense with his physical presence in Court.[84]

26. Right which an Accused cannot claim in a Criminal Trial

On the basis of various decisions an accused cannot claim rights enumerated below:-

1. To be tried by a particular Court.[85]
2. Commitment of cross case to the Court of Sessions when the cross or connected case is not triable by the Court of Sessions.[86]
3. To claim identification during investigation.
4. To claim joint trial with co-accused.[87]
5. It is the right of the prosecution and not of the accused to decline to array a person as a co accused and instead examine him as a witness tor the prosecution.[88]

27. The convict should not be kept in isolation in Jail after his conviction

The Punjab & Haryana High Court in State of Punjab V. Kala Ram[89] No Scientific reason why convict sentence to death should be kept in isolation for indefinite period till he exhaust all his constitutional and legal remedies. Its causes immense pain, agony and anxiety to condemned convict. A man even sentence to death, has certain rights and privileges which can not be denied to him due to colonial mindset. The provisions of Punjab Jail manual are anarchic, cruel and insensitive. The law should be human and reformative.

28. Witness Protection Law vis-a-vis Hostile Witness

The role of a witness is very important in a trial. He is an indispensable part of the justice delivery system of any country. According to Bentham, witnesses are the eyes and ears of justice. Their each and every statement is very important as it has a magic force to change the course of the whole case.[90] The criminal justice system has become inefficient and does not function in a fluent fashion. The most overwhelming reason of this weakness is the prosecution witnesses retract from statements made earlier before the police and turn hostile. Witnesses are turning hostile with predictable regularity in cases involving heinous crimes or high profile personalities due to external pressures, thereby leading to the failures of the criminal justice system. The whole issue of hostile witness came under sharp public scrutiny after the judgment in the landmark *Jessica Lai*[91] and *Best Bakery case.*[92] These cases came as an eye-opener showing glaring defects in the judicial system.

29. Hostile Witness: When does a witness become hostile?

The role of a witness is paramount in the criminal justice system of any country. To understand the meaning of hostile witness, we have to understand the process by which a witness becomes 'hostile'. The Code of Criminal Procedure, 1973, Chapter XII[93] deals with the police powers to investigate. The Code of Criminal Procedure, 1973, Section 161(3) vests in police officers the power to record statement of witnesses. However, these statements are not admissible in Court by virtue of Section 162(1). The aim of Section 162 is to protect accused persons from being prejudiced by statements made to police officers who may coerce the witnesses. Therefore,

[84] Gian Singh v. State of Rajasthan, 2000(1) Crimes 25 (SC).
[85] Ram Beyas v. The State of Bihar, 1977 CrLJ 28
[86] Hari Har Sharma v. Narain Panda, 1986 (1) Crimes 71.
[87] A.R. Antuley v. R.S. Nayak, 1988 CrLJ 1661.
[88] Ibid.
[89] 2019(1) RCR Cr. (P&H), p.350
[90] V. Krishnamachari, Law of Evidence, (1998).
[91] Gopal S. Chaturvedi, Law relating to Witnesses with Examination of Witnesses along with Law relating to Accomplices and Approvers, (2006); Zahira Habibullah Sheikh v. State of Gujarat, 2004 IndLaw 408 (SC).
[92] M.C. Sarkar, Sarkar on Evidence, Vol. II, (2004).
[93] Ratanlal Ranchhoddas and Dhirajlal Keshavlal Thakore, The Law of Evidence, (2004).

the witness has to restate in the Court the statements that he made to the police. Here the statements recorded by the police constitute a reference to which the veracity of the witness may be tested.[94] The Hon'ble Supreme Court in Swarn Singh V. State of Punjab[95] held that

30. Witnesses turn hostile in Parkash Singh Badal corruption case

The case was registered by the Vigilance Bureau (VB) during Congress chief minister Amarinder Singh's term in 2003. During the initial investigations the Badals were reported to have amassed properties worth Rs 2,300 crore, disproportionate to their sources of income. However, in the challan it was bought down to Rs. 73.69 crore. With almost 137 witnesses turning hostile in the corruption case against CM Parkash Singh Badal, his wife Surinder Kaur and son deputy CM Sukhbir Singh Badal is likely to fall flat. In the last round, four witnesses have appeared in the special Court in Mohali on April 20, 2010 after which the much-hyped case is expected to see a quiet burial. The case started wilting after Badal took over as chief minister in 2007. Making a turn-around in his stance that he had taken during the Congress rule investigating officer (IO) Surinder Pal Singh told the Court that he had filed the challan at the bidding of his senior officer BK Uppal, the then DIG (VB). Uppal, while deposing in the Court, said that the entire case was prepared by the IO and that he just had a supervisory role. Earlier, eight engineers (six of them have retired) said in the Court that the investigating officer and the then DIG (Vigilance) BK Uppal got their signatures under duress. They said the evaluation of the Badal's properties was conducted by a privately-engaged agency and the government engineers were asked to sign on the dotted lines without seeing the contents of the reports.
The VB officials who worked so assiduously for 5 years in the case say there was nothing they could do if the witnesses decided to back out of their commitments.[96]

31. Reasons for Witness turning Hostile

There are various reasons why a witness may turn hostile.[97] Witnesses are extremely vulnerable to intimidation in the form of threats by the accused. The People's Union for Civil Liberties (PUCL) made a press release on 02 July 2003 pertaining to the Best Bakery case saying there were two ways to explain why witnesses turn hostile. The first is that the police had recorded the statements incorrectly. The second and more plausible was that the police had recorded the statements correctly but were retracted by the witnesses because of 'intimidation and other methods of manipulation'.[98] Another major reason of this growing menace is protracted trials. The working of judicial process is very slow. Several dates are fixed for cross examination of witnesses, who becomes frustrated over because of being summoned again and again only to find that the date is adjourned. This frustration takes its toll, and the witness decides to turn hostile to get rid of the harassment.[99]

32. Need of the Hour: A Witness Protection Law

It is imperative that we come up with a better justice system, one that provides adequate safeguards to the witness. There is no law for the protection of witness in India barring few provisions of Indian Evidence Act, 1872. Sections 151 and 152 protect the witnesses from being asked indecent, scandalous, offensive questions, and questions which intend to annoy or insult them. Apart from these provisions, there is no provision for the protection of witnesses in India. It is high time that India introduced a witness protection program in fact the Law Commission recognised the need for the same and came up with a consultation project on witness protection on 13 August 2004." " It first must be understood that a witness protection program has two aspects:

1. To ensure that the evidence of witnesses is protected from the danger of them turning hostile; and The Supreme Court said That there comes the need for protecting the witness.
2. To relieve the physical and mental vulnerability of the witnesses. Therefore, any law for witness protection must take into account both the points. The first aspect has received attention in the form of

[94] Dr. Avtar Singh, The Principles of the Law of Evidence, (1990).
[95] AIR 2000 SCC 2017
[96] The Times of India, Saturday, April 10, 2010.
[97] Satish Mrinal, "The Problem of Hostile Witnesses", The Hindu, 02 September 2003 at http://www.hinduonnet.eom/thehindu/oD/2003/09/02/stories/20Q3090200130300.htm.

[98] http://www.pucl.org/Topics/Religion-communalism/2003/best-bakery.htm
[99] Thakur P.R., Why do Prosecution Witnesses Fall Flat So Often, available at http://www.lawyerscollective.org/lcmag/free downloads/magazine2001/august%2001/crime, htm.

proposed amendment to the Code of Criminal Procedure, 1973, s. 164. In its 178th Report (2001), the Law Commission recommended the insertion of s. 164A to provide for recording of the statement of material witnesses in the presence of magistrates on oath where the offences were punishable with imprisonment of 10 years and more. On the basis of this recommendation, the Criminal Law (Amendment) Bill, 2003 was introduced in the Rajya Sabha[100] and is still pending.

The Hon'ble Supreme Court in Case of **Mahender Chawla and Othrs. v/s Union of India and Othrs**.[101] In this case the importance of protection of witnesses raised as the witnesses become important tool to arrive at right conclusions, thereby advancing justice in a matter. This principle applies with more vigor and strength in criminal cases in as much as most of the witnesses, particularly, eye-witnesses, who may have seen actual occurrence/crime. It is for this reason that Bentham state more than 150 years ago that "witnesses are eyes and ears of justice.

The Union Govt. has framed a scheme known as witness protection scheme 2018 and this court approved the scheme issued by the Union of India and directed as under :

(i) This court has given its imprimatur to the Scheme prepared by respondent No. 1 which is approved hereby. It comes into effect forthwith.

(ii) The Union of India as well as States and Union Territories shall enforce the Witness protection Scheme, 2018 in letter and spirit.

(iii) It shall be the 'law' under Article 141/142 of the Constitution, till the enactment of suitable Parliamentary and/or State Legislations on the subject.

(iv) In line with the aforesaid provisions contained in the Scheme, in all the district courts in India, vulnerable witness deposition complexes shall be set up by the States and Union Territories. This should be achieved within a period of one year, i.e. by the end of the year 2019. The Central Government should also support this endeavour of the States/Union Territories by helping them financially and otherwise.

The scheme also provides that for usage of specially designed court room having special arrangements like live links, one way mirrors, and screens apart from separate passages for witnesses and accused with option to modify image of face of witness and to modify audio feed of witness's voice, so that he/she is not identified.

General Responsibility

It talked of creating *"necessary confidence"*[102] in the minds of the witnesses that they would be protected from the overview of the accused in any eventuality.

1. Responsibility on the High Courts

It stated that listing of cases should be done in such a manner that witnesses are able to give their testimony on the said day, and adjournments are suitably thus avoided, Also, it would be the responsibility of the High Courts to provide guidelines to the lower courts to create a schedule that would allow proceedings with trial on a day-to-day basis and the listing of the cases would be on those lines. Finally, what came in to force as concrete step towards implementation of protection of witness, to a certain extent, was the amendment of the Code of Criminal Procedure, leading to the creation of Section 164 A. This Section had two characteristics and helped to create a link between the Magistrate and the Witness to ensure speedier disposal of justice:

2. Responsibility of the Police Officer

Every Police Officer investigating into an offence punishable with imprisonment with not less than ten years was supposed to forward all statements to the Magistrate for the consideration of the recording of statements.[103]

[100] Reform of Judicial Administration, Chapter 36, Volume II, (1958).
[101] 2019(1) RCR (Cr.) SC p. 268
[102] Section 6, 154th Law Commission Report, 1996.
[103] 178th Law Commission Report, 2001.

3. Responsibility of the Magistrate

The statement of any witness would be recorded only when he is produced and examined before the Magistrate. Such recording would be taken in as evidence subject to the principles in Evidence Act, 1872.[104]

4. Secrecy of Witness' Identity

Section 13 of TADA, the Terrorist and Disruptive Activities (Prevention) Act, 1987 and Section 30 of POTA, the Prevention of Terrorism Act, 2002 (now repealed) provides that the Court may take such measures as it deems fit to keep the identity and address of witnesses secret.

5. Provision for trial of sexual offences

Section 13 of TADA and Section 30 of POTA provide that proceedings of this nature shall be held in camera, so that there is adequate protection of the witnesses who are giving their testimony.

6. Public Trial and Cross-Examination of Witnesses in Open Court

Section 327 Criminal Procedure Code provides for trial in the open Court and Section 327(2) provides for in-eamera trials for offences involving rape under Section 376 Indian Penal Code and under Section 376A to 376D of the Indian Penal Code. Section 273 requires the evidence to be taken in the presence of the accused. Section 299 indicates that in certain exceptional circumstances an accused may be denied his right to cross-examine a prosecution witness in open Court. Further, under Section 173(6) the police officer can form an opinion that any part of the statement recorded under Section 161 of a person the prosecution proposes to examine as its witness need not be disclosed to the accused if it is not essential in the interests of justice or is inexpedient in the public interest. Section 228A IPC prescribes punishment if the identity of the victim of rape is published. Likewise, Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000 prohibits publication of the name, address and other particulars which may lead to the identification of the juvenile.

7. Restraint of Publication of Evidence

The earliest judgment that comes to mind is that in the case of ***Naresh Shridhar Mirajkar*** **v.** ***State of Maharashtra,***[105] wherein protection of publication of evidence of the witness was allowed by the High Court and later re-affirmed by the Supreme Court as otherwise the business interests of the witness would have been hampered.[106]

8. Specific Guidelines for victims of Trafficking

The Supreme Court of India in ***Gaurav Jain*** **v.** ***Union of India***[107] gave various directions for the rehabilitation and welfare of victims crimes related to trafficking. It was an essential judgement in the sense that it sought to provide protection for the victims or the witnesses who would be required to give their statements before the Court in the future. Various steps like that of counseling etc. were sought to be rendered to such victims so as to effectively protect them from further exploitation.

9. Anonymity of Victims

This was provided in the case of *Delhi Domestic Working Women's Forum* v. *Union of India,*[108] in cases dealing with specific instances of rape. It was stated that:
Anonymity of the victims must be maintained as far as necessary so that the name is shielded from the media and public. The experience of giving evidence in Court has been negative and destructive and the victims often

[104] Section 164(A), sub-Section 5.
[105] AIR 1967 SC 1.
[106] Justice Madan B. Lokur, Access to Justice: Witness Protection and Judicial Admnistration, http://www.humanrightsinitiative.org/ic/papers/ic 2003/judges papers/lokur.pdf visited on 09.12.2007.
[107] AIR 1997 SC 3021. 212.1995(1) SCC 14.213 Ibid.
[108] 1995(1) SCC 14.213

expressed that they considered theordeal of facing cross-examination in the criminal trial to be even worse than the rape itself.[109]

The importance of holding rape trials in camera as mandated by s.327 (2) and (3) Criminal Procedure Code was reiterated in *State of* ***Punjab*** **v.** ***Gnrmit Singh***.[110] In ***Sakshi*** **v.** ***Union of India***,[111] the Supreme Court referred to the 172 Report of the Law Commission and lay down that certain procedural safeguards had to be followed to protect the victim of child sexual abuse during the conduct of the trial.

10. Video-Conferencing for recording of Statements

This was laid down and allowed in the case of ***State of Maharashtra*** **v.** ***Dr Praful B. Desai*** It was stated that when a statement is recorded through this method, the victim would feel more comfortable and will give answers without any fear or pressure.The most historic and relevant case that brought witness protection back into focus was the ***Zahira Habibulla Sheikh*** **v.** ***State of Gujarat***[112] The main points with respect to witness protection within the said case were as follows:

11. Evolution of a Balance of Competing Interests

It was stated by the Supreme Court that a delicate judicial balancing of competing interests in a criminal trial, the interests of the accused and the public and to a great extent that of (the) victim have to be consider not losing sight of the public interest involved in the prosecution of persons who commit offences.

12. Change in Place of Trial

In the present case, the Supreme Court decided to shift the venue of the case from Gujarat to Maharashtra since the Court felt that the witnesses would not be able to bring down their statements freely in the said state. It was a landmark step taken by the Court as it provided another direction for the witness protection. Thus, it has been provided that the venue of the trial may be shifted if the witnesses or victims are not in a position to depose freely due to various reasons.

Protection of identity of witnesses **v.** ***Rights of accused***[113] - Principles of law developed by the Supreme Court and the High Courts in the pre-*Maneka Gandhi*[114] phase the Supreme Court, in ***Gurbachan Singh*** **v.** ***State of Bombay***,[115] upheld a provision of the Bombay Police Act, 1951 that denied permission to a detenue to cross-examine the witnesses who had deposed against him. It was held that the law was only to deal with exceptional cases where witnesses, for fear of violence to their person or property, were unwilling to depose publicly against bad character. At his stage, the issue was not examined whether the procedure was 'fair'. The decisions in ***G.X. Francis*** **v.** ***Banke Bihari Singh***,[116] and ***Maneka Sanjay Gandhi*** **v.** ***Ram Jethmalani***,[117] stressed the need for a congenial atmosphere for the conduct of a fair trial and this included the protection of witnesses.

In ***Kartar Singh*** **v.** ***State of Punjab***,[118] the Supreme Court upheld the validity of Sections 16 (2) and (3) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) which gave the discretion to the Designated Court to keep the identity and address of a witness secret upon certain contingencies; to hold the proceedings at a place to be decided by the Court and to withhold the names and addresses of witnesses in its orders.

The Court held that the right of the accused to cross-examine the prosecution witnesses was not absolute but was subject to exceptions. The same reasoning was applied to uphold the validity of Section 30 of the Prevention of Terrorism Act, 2002 (POTA) in ***People's Union of Civil Liberties*** **v.** ***Union of India***.[119] In the ***Best Bakery Case***[120] in the context of the collapse of the trial on account of witnesses turning hostile as a result of

[109] 1995(1) SCC 14.213.
[110] (1996) 2 SCC 384.
[111] (2004) 6 SCALE 15 (SC).
[112] MANU/SC/1344/2006
[113]2003(4) SCC 601.
[114]2004(4) SCC 158.
[115] AIR 1952 SC 221.
[116] AIR 1958 SC 209.
[117] (1979) 4 SCC 167.
[118] (1994) 3 SCC 569.
[119](2003) 10 SCALE 967.

[120] (2004) 4 SCC 158.

intimidation, the Supreme Court reiterated that "legislative measures to emphasise prohibition against tampering with witness, victim or informant, have become the imminent and inevitable need of the day". Although, the guidelines for witness protection laid down by the Delhi High Court in ***Neelam Katara* v. *Union of India***,[121] require to be commended, they do not deal with the manner in which the identity of the witness can be kept confidential either before or during the trial.

[121] Judgment dated 14.10.2003. AIR 1988 P&H 95.