RIGHTS OF PRISONERS

SL.NO	CASE WITH CITATION	RELEVANT PARAGRAPHS	excerpts /REMARKS
1.	**Hussainara Khatoon and others-** **- VS -** **Home Secretary, State of Bihar, Patna** **(AIR 1979 SC 1360)** ***"Courts must abandon the antiquated concept 'under which pretrial release is ordered only against bail with sureties. it can safely release the accused on his personal bond in appropriate cases"*** ***(Guidelines are given in the judgment as to what kind of cases may be appropriate cases where the accused on his personal bond)***	4, 5, 7, 12	4. .....But even under the law as it stands today the courts must abandon the antiquated concept 'under which pretrial release is ordered only against bail with sureties. That concept is outdated and experience has shown that it has done more harm than good. The new insight into the subject of pretrial release which has been developed in socially advanced countries and particularly the United States should now inform the decisions of our Courts in regard to pretrial release. ***If the Court is satisfied, after taking into account, on the basis of information placed before it, that the accused has his roots in the community and is not likely to abscond it can safely release the accused on his personal bond.*** To determine whether the accused has his roots in the community which would deter him from fleeing, the Court should take into account the following factors concerning the accused: 1. the length of His residence in the community, 2. his employment status, history and his financial condition, 3. his family ties and relationships, 4. his reputation, character and monetary condition, 5. His prior criminal record including any record or prior release on recognizance or on bail, 6. The identity of responsible members of the community who would vouch for his reliability. 7. the nature of the offence charged and the apparent probability of conviction and the likely sentence in so far as these factors are relevant to the risk at non-appearance, and 8. any other factors indicating the ties of the accused to the community or bearing on the risk of wilful failure to appear. If the court is satisfied on a consideration of the relevant factors that the accused has his ties in the community and there is

	"Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice."		no substantial risk of non-appearance, the accused may, as far as possible, be released on his personal bond, Of course, if ***facts are brought to the notice of the court which go to show that having regard to the condition and background of the accused his previous record and the nature and circuhistances of the offence, there may be a substantial risk of his non-appearance at the trial, as for example, where the accused is a notorious bad character or a confirmed criminal or the offence is serious (these examples are only by way of illustration), the court may not release the accused on His personal bond and may insist on bail with sureties. But in the majority of cases, considerations like family ties and relationship, roots in the community, employment status etc. may prevail with the court in releasing the accused on His personal - bond and particularly in cases where the offence is not grave and the accused is poor or belongs to a weaker section of the community, release on personal bond could, as far as possible, be preferred, But even while releasing the accused on personal bond it is necessary to caution the court that the amount of the bond which it fixes should not be based merely on the nature of the charge. The decision as regards the amount of the bond should be an individualized decision depending on the individual financial circumstances of the accused and the probability of his absconding. The amount of the bond should be determined having regard to these relevant factors and should not be fixed mechanically according to a schedule keyed to the nature of the charge. Otherwise, it would be difficult for the accused to secure his release even by executing a personal bond.*** Moreover, when the accused is re-leased on his personal bond, it would be very harsh and oppressive if he is required to satisfy the court--and what we have said here in regard to the court must apply equally in relation to the police while granting bail--***that he is solvent enough to pay the amount of the bond if he fails to appear at the trial and in consequence the bond is forfeited.*** The inquiry into the solvency of the accused can become a source of great harassment to him and often result in denial of bail and deprivation of liberty and should not, therefore, be insisted upon as a condition of acceptance of the personal bond. We have no doubt that if the system of bail, even under the existing law, is administered in the manner we have indicated in this judgment, it would go a long way towards relieving hardship of the poor and help them to secure pretrial release from incarceration. It is for this reason we have directed the under-trial prisoner whose names are given in the two issues of the Indian Express should be released forthwith on their personal bond. We should have ordinarily said that personal bond to be executed by them should be with monetary obligation, but we directed as an exceptional measure that there need be no monetary obligation in the personal bond because we found that all these persons have been in jail without trial for several years, and in some cases for offences for which the punishment would in all probability be less than the period of their detention and moreover, the order we were making was merely an interim order. The peculiar facts and circumstances of the case dictated such an unusual course. 5. ..... **Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice.** .....

	"Reasonable time limit should be fixed for submission of final report"		12. .....We fail to see how any police investigation can take so long as two years and if police investigation cannot be completed within two years, then there must be something radically wrong with the police force in the State of Bihar. It appears that there are a number of cases where police investigation has not been completed for over two years and persons have been in jail as under-trial prisoners for long periods. This is a shocking state of affairs so far as the administration of law and order is concerned. We would, therefore, suggest that in those cases where police investigation has been delayed by over two years, the final report or charge-sheet must be submitted by the police within a further period of three months and if that is not done, the State Government might well withdraw such cases, because if after a period of over two years plus an additional period of three months, the police is not able to file a charge-sheet, one can reasonably assume that there is no case against the arrested persons.
2.	Hussainara Khatoon - VS- Home Secretary, State of Bihar, Patna **(AIR 1979, SC – 1369)** ***"Free legal services to the poor and the needy is an essential element of any 'reasonable, fair and just' procedure."***	6 , 8 , 10	6. ..... This Court point-ed out in M.H. Hoskot v. State of Maharashtra, MANU/SC/0119/1978 : 1978CriLJ1678 : ***"Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional experties, and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side, Our judicature, moulded by Anglo-American models and our judicial process, engineered by kindred legal technology, compel the collaboration of lawyer--power for steering the wheels of equal justice under the law".*** Free legal services to the poor and the needy is an essential element of any 'reasonable, fair and just' procedure. It is not necessary to quote authoritative pronouncements by judges and jurists in support of the view that without the service of a lawyer an accused person would be denied 'reasonable, fair and just' procedure. Black, J., observed in Gideon v. Wainwright, (1963) 372 US 335: 9 L Ed 799: .... ***We would, therefore, direct that on the next remand dates, when the under-trial prisoners, charged with bailable offences, are produced before the Magistrates, the State Government should provide them a lawyer at its own cost for the purpose of making an application for bail, provided that no objection is raised to such lawyer on behalf of such under-trial prisoners and if any application for bail is made, the Magistrates should dispose of the same in accordance with the broad outlines set out by us in our judgment dated 12th February, 1979.*** The State Government will report to the High Court of Patna its compliance with this direction within a period of six weeks from today. 8. There are also various under-trial prisoners who have been in jail for periods exceeding one-half of the maximum punishment that could be awarded to them if convicted, for the offences with which they are charged. ..... There is no reason why these under-trial prisoners should be allowed to continue to languish in jail, merely because the State is not in a position to try them within a reasonable period of time. It is possible that some of them, on trial, may be acquitted of the offence charged against them and in that event, they would have spent several years in jail for offences which they are ultimately found not to have committed. What faith would these people have in our system of administration of justice? Would they not carry a sense of frustration and bitterness against a society which keeps them in jail for so many years for offences which they did not commit? It is, therefore, absolutely essential

	"The law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty".		that persons accused of offences should be speedily tried, so that in cases where bail, in proper exercise of discretion, is refused, the accused persons have not to remain in jail longer than is absolutely necessary. ***Since there are several under-trial prisoners who have been in jail for periods longer than half the maximum term of imprisonment for which they could, if convicted, be sentenced, we would direct that on the next remand dates when they are produced before the Magistrates or the Sessions Courts, the State Government should provide them a lawyer at its own cost for the purpose of making an application for bail and opposing remand provided that no objection is raised to such lawyer on their behalf and if any application for. bail is made, the Magistrates or the Sessions Courts, as the case may be, should dispose of the same in accordance with the broad guidelines indicated by us in our judgment dated 12th February, 1979.*** .... The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources, to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial, The State may have its financial constraints and its priorities in expenditure, but, as pointed out by the Court in Rhem v. Malclm, 377 F Supp 995: 'The law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty". The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. ***It is also the constitutional obligation of this Court, as the guardian of the fundamental rights of the people, as sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment' of additional Judges and other measures calculated to ensure speedy trial.*** We find that in fact the courts in the United States have adopted this dynamic and constructive role so far as the prison reform is concerned by utilising the activist magnitude of the Eighth Amendment. The courts have ordered substantial improvements to be made in a variety of archaic prisons and jails through decisions such as Holt v. Sarver (supra), Jones v. Wittenberg, 330 F Supp 707; Newman v. Alabama, 349 F Supp 278 and Gates v. Collier, 349 F Supp 881. The Court in the last mentioned case asserted that it 'has the duty of fashioning a decree that will require defendants to eliminate the conditions and practices at Parchman hereinabove found to be violative of the United States's constitution' and in discharge of this duty gave various directions for improvement of the conditions of those confined in the State Penitentiary. ***The powers of this Court in protection of the constitutional rights are of the widest amplitude and we do not see why this Court should not adopt a similar activist approach and issue to the State directions which may involve taking of positive action with a view to securing enforcement of the fundamental right to speedy trial.*** But in order to enable the Court to discharge this constitutional obligation, it is necessary that the Court should have the requisite information bearing on the problem. ..... .

3.	Hussainara Khatoon -VS- Home Secretary, State of Bihar, Patna **(AIR 1979 SC 1377)** ***"When an under-trial prisoner is produced before a Magistrate and he has been in detention for 90 days or 60 days, as the ease may, the Magistrate must, before making an order of further remand to judicial custody, point out to the under-trial prisoner that he is entitled to be released on bail"*** ***"If free legal services are not provided to such an accused, the trial itself may run the risk of being vitiated as contravening Article 21 and we have no doubt that every State Government would try to avoid such a possible eventuality"***	3,6	3. ....."When an under-trial prisoner is produced before a Magistrate and he has been in detention for 90 days or 60 days, as the ease may, the Magistrate must, before making an order of further remand to judicial custody, point out to the under-trial prisoner that he is entitled to be released on bail. The State Government must also provide at its own cost a lawyer to the under-trial prisoner with a view to enable him to apply for bail in exercise of his right under proviso (a) to Sub-section (2) of Section 167 and the Magistrate must take care to see that the right of the under-trial prisoner to the assistance of a lawyer provided at State cost is secured to him and he must deal with the application for bail in accordance with the guidelines laid down by us in our Order dated 12th February, 1979. ***We hope and trust that every Magistrate in the country and every State Government will act in accordance with this mandate of the Court***. This is the constitutional obligation of the State Government and the Magistrate and we have no doubt that if this is strictly carried out, there will be considerable improvement in the situation in regard to under-trial prisoners and there will be proper observance of the rule of law." 6. We may point out that according to the law as laid down by us in our judgment dated 9th March, 1979, it is the constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the State and the State is under a constitutional mandate to provide a lawyer to such accused person if the needs of justice so require. We do not know whether the State Government has set up any machinery for the purpose of providing free legal services to persons who are accused of offences involving possible deprivation of liberty and who are unable to engage a lawyer on account of poverty or indigence. This constitutional obligation cannot wait any longer for its fulfilment, since more than 30 years have passed from the date of enactment of the Constitution and no State Government can possibly have any alibi for not carrying out this command of the Constitution. We are repeating this observation once again in the present judgment because we find that barring a few, many of the State Governments do not seem to be alive to their constitutional responsibility in the matter of provision of free legal services in the field of administration of criminal justice. Let it not be forgotten that if law is not only to speak justice but also deliver justice, legal aid is an absolute imperative. Legal aid is really nothing else but equal justice in action. Legal aid is in fact the delivery system of social justice. It is intended to reach justice to the common man who, as the poet sang: Bowed by the weight of centuries he leans Upon his hoe and gazes on the ground, The emptiness of ages on his face,

			And on his back the burden of the World. We hope and trust that every State Government will take prompt steps to carry out its constitutional obligation to provide free legal services to every accused person who is in peril of losing his liberty and who is unable to defend himself through a lawyer by reason of his poverty or indigence in cases where the needs of justice so require. If free legal services are not provided to such an accused, the trial itself may run the risk of being vitiated as contravening Article 21 and we have no doubt that every State Government would try to avoid such a possible eventuality.
4.	Khatri -VS- State of Bihar **(AIR 1981 SC 928)** ***"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 the Magistrates should try to enforce this requirement and where it is found to be disobeyed, come down heavily upon the police."***	4,6	6. That takes us to one other important issue which arises in this case. It is clear from the particulars supplied by the State from the records of the various judicial magistrates dealing with the blinded prisoners from time to time that, neither at the time when the blinded prisoners were produced for the first lime before the judicial magistrate nor at the tune when the remand orders were passed, was any legal representation available to most of the blinded prisoners. The records of the judicial magistrates show that no legal representation was provided to the blinded prisoners, because none of them asked for it nor did the judicial magistrates enquire from the blinded prisoners produced before them either initially or at the time of remand whether they wanted any legal representation at State cost. The only excuse for not providing legal representation to the blinded prisoners at the cost of the State was that none of the blinded prisoners asked for it. The result was that barring two or three blinded prisoners who managed to get a lawyer to represent them at the later stages of remand, most of the blinded prisoners were not represented by any lawyers and save a. few who were released on bail, and that too after being in jail for quite some time, the rest of them continued to languish in jail. It is difficult to understand how this state of affairs could be permitted to continue despite the decision of this Court in Hussainara Khatonn's case MANU/SC/0121/1979 : 1979CriLJ1045 . This Court has pointed out in Hussainara Khatoon's case (supra) which was decided as far back as 9th March, 1979 that the right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 and the State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer. It is unfortunate that though this Court declared the right to legal aid as a Fundamental Right of an accused person by a process of judicial construction of Article 21, most of the States in the country have not taken note of this decision and provided free legal services to a person accused of an offence. We regret this disregard of the decision of the highest court in the land by many of the States

			despite the constitutional declaration in Article 141 that the law declared by this Court shall be binding through-out the territory of India. Mr. K.G. Bhagat on behalf of the State agreed that in view of the decision of this Court the State was bound to provide free legal services to (sic) indigent accused but he suggested that the State might find it difficult to do so owing to financial constraints. We may point out to the State of Bihar that it cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigenous and whatever is necessary for his purpose has to be done by the State. The State may have its financial constraints and its priorities in expenditure but, as pointed out by the court in Rhem v. Malcolm. 377 F. Supp. 995 the law does not per(sic) any Government to deprive its citizens of constitutional rights on a plea of poverty" and to quote the words of Justice Blackmum in Jackson v. Bishop 404. F. Supp. 2d 571: "humane considerations and constitutional requirements are not in this day to be measured by dollar considerations." Moreover, this constitutional obligation to provide free legal services to an indigent accused docs 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. That is the stage at which an accused person needs competent legal advice and representation and no procedure can be said to be reasonable, fair and just which denies legal advice and representation to him at this stage. We must, therefore, hold that the State is under a constitutional obligation to provide free legal services to an indigent accused not only at the stage of trial but also at the stage when he is first produced before the magistrate as also when he is remanded from time to time. 7. There are two other irregularities appearing from the record to which we think it is necessary to refer. In the first place in a few cases the accused persons do not appear to have been produced before the Judicial Magistrates within 24 hours of their arrest as required by Article 22 of the Constitution. We do not wish to express any definite opinion in regard to this irregularity which prima facie appears to have occurred in a few cases, but we would strongly urge upon the State and its police authorities to see that this constitutional and legal requirement to produce an arrested person before a Judicial Magistrate within 24 hours of the arrest must be scrupulously observed. It is also clear from the particulars furnished to us from the records of the Judicial Magistrates that in some cases particularly those relating to Patel Sahu, Raman Bind, Shaligram Singh and a few others the accused persons were not produced before the judicial Magistrates subsequent to their first production and they continued to remain in jail without any remand orders being passed by the judicial Magistrates. This was plainly contrary to law. It is difficult to understand how the State continued to detain

			these accused persons in jail without any remand orders. We hope and trust that the State Government will inquire as to why (sic) this irregularity was allowed to be perpetrated and will see to com that in future no such violations of the law are permitted to be committed by the administrators of the law. 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 the Magistrates should try to enforce this requirement and where it is found to be disobeyed, come down heavily upon the police. 8. We also cannot help expressing our unhappiness at the lack of concern shown by the judicial magistrates in not enquiring from the blinded prisoners, when they were first produced before the judicial magistrates and thereafter from time to time for the purpose of remand to how they had received injuries in the eyes. It is true that most of the blinded prisoners have said in their statements before the Registrar that they were not actually produced before the judicial magistrates at any time, but we cannot, without further inquiry in that behalf, accept the ex parte statement of the blinded prisoners. Their statements may be true or may not be true; it is a matter which may require investigation. But one thing * is clear that in the case of almost all the blinded prisoners, the for-warding report sent by the Police Officer In Charge stated that the accused had sustained injuries and yet the judicial magistrates did not care to enquire as to how injuries had been caused. This can give rise only to two inferences; either the blinded prisoners were not physically produced before the judicial magistrates and the judicial magistrates mechanically signed the orders of remand or they did not bother to enquire even if they found that the prisoners before them had received injuries in the eyes. It is also regrettable that no inspection of the Central Jail, Bhagalpur was carried out by the District & Sessions Judge at any time during the year 1980. We would request the High Court to look into these matters closely and ensure that such remissness on the part of the judicial officers does not occur in the future.
5.	Mantoo Majumdar -VS- State of Bihar **AIR 1980 SC 847**	6, 8	6. The frightful facts frankly furnished in the return filed are that the two petitioners have been enduring incarceration for over seven years in various prisons in Bihar on the basis that they are implicated in several cases of 1971 and 1972. A long list has been annexed to the counter-affidavit. But what scandalises us is that apart from mentioning the sections in the Penal Code by way of a passport into the prison house, there is no mention of any investigation of the case, nor a single charge sheet laid before the court against either accused. What flabbergasts us is that even the magistracy have bidden farewell to their primary obligation,

	".....most grievous of all, the judicial officers concerned have routinely signed away orders of detention for years by periodically appending their incarceratory authorisations. We know not how many others are languishing in prison like the petitioners before us. ***'If the salt hath lost its savour, wherewith shall it be salted?' If the law officers charged with the obligation to protect the liberty of persons are mindless of constitutional mandates and the code's dictates, how can freedom survive for the ordinary citizen?"***		perhaps, fatigued by over-work and interested in the freedom of others. If we see the chart produced by the Superintendent of the Jail we find that a large number of dates are given on which the prisoners have been produced before the magistrates concerned from 1973 to 1980 without so much as the court checking up whether the investigations have been completed, charge-sheets have been laid and there is justification for keeping the petitioners in custody. 7. Section 167(2) which we have extracted above, empowers the magistrate to authorise the detention of an accused in such custody as he thinks fit for a term not exceeding 15 days in the whole. More importantly, there is a precious interdict protective of personal freedom which states that no magistrate shall authorise the detention of the accused person exceeding 90 days in grave cases and 60 days in lesser cases. "On the expiry of the said period... the accused person shall be released on bail if he is prepared to and does furnish bail...." Not 60 days but six years have passed in the present case: not 90 days but 1900 days or more have passed; and yet, ***the magistrates concerned have been mechanically authorising repeated detentions unconscious of the provisions which obligated them to monitor the proceedings which warrant such detention.*** In short, the police have abdicated their function of prompt investigation. The prison staff have not bothered to know how long these internees should be continued in their custody and, most grievous of all, the judicial officers concerned have routinely signed away orders of detention for years by periodically appending their incarceratory authorisations. We know not how many others are languishing in prison like the petitioners before us. ***'If the salt hath lost its savour, wherewith shall it be salted?' If the law officers charged with the obligation to protect the liberty of persons are mindless of constitutional mandates and the code's dictates, how can freedom survive for the ordinary citizen?***

6.	Sandip Kumar Dey -VS- Officer – in – charge, Sakchi P.S, Jamshedpur **(AIR 1974 SC 871)** ***"Orders of remand ought not to be passed mechanically and even though this Court has ruled that the non-production of the accused will not vitiate an order of remand, the Magistrate passing an order of remand ought, as far as possible, to see that the accused is produced in the court when the order of remand is passed."***	4	3. Mr. Garg who appears on behalf of the petitioner has raised several interesting questions arising out of the provisions of the CrPC relating to the jurisdiction of a court to remand an accused person to custody but all of these points ultimately converge on the issue whether an order of remand can be passed without the physical production of the accused before the court. This issue is no longer res integra. *In Raj Narain v. Supdt. Central Jail, New Delhi, this Court held by a majority of five to two that even if it be desirable for the Magistrates to have the prisoner produced before them when the prisoners are remitted to further custody, an order of remand made without producing the accused in court is not invalid as it may on occasions be necessary to order remand in the absence of an accused.* This decision was followed in Gouri Shankar Jha v. The State of Bihar and Ors. MANU/SC/0128/1972 : 1972CriLJ505 . and in Sanbasiva Rao v. The Union of India and Ors. MANU/SC/0025/1972 : AIR1973SC851 . 4. The counter affidavit filed on behalf of the respondents is not clear on the question whether the petitioner was produced before the Magistrate when the various orders of remand were passed and therefore we asked the respondent's counsel to furnish to us a copy of the proceedings of the Magistrates court at Jamshedpur. Those proceedings also do not indicate clearly whether the petitioner was produced before the Magistrate when the remand orders were passed. This is a highly unsatisfactory state of affairs and must be deprecated. Orders of remand ought not to be passed mechanically and even though this Court has ruled that the non-production of the accused will not vitiate an order of remand, the Magistrate passing an order of remand ought, as far as possible, to see that the accused is produced in the court when the order of remand is passed. It appears from the proceedings that the accused was transferred to Gaya jail partly for reasons of security and that is why he could not be produced in the Jamshedpur court which passed the various orders of remand.
7.	Nimeon Sangma and others -Vs- Home Secretary , Govt. of Meghalaya and others **(AIR 1979 SC 1518)** ***"It is unfortunate, indeed pathetic, that***	5	5. This Court in its earlier order dated March 5, 1979 has directed the State to file a statement containing particulars of the under-trial prisoners who have been confined in Jail for a period of over six months without their trials having commenced. Further details as to the ages of such under-trials, the dates from which they were confined and the offences with which they were charged were also called for. In the reply statement put in by the respondent, we find a large number of cases where detention for considerable periods, without the

	there should have been such considerable delay in investigations by the police in utter disregard of the fact that a citizen has been deprived of his freedom on the ground that he is accused of an offence. We do not approve of this course and breach of the rule of law and express our strong displeasure at this chaotic state of affairs verging on wholesale breach of human rights guaranteed under the Constitution especially under Article 21 as interpreted by this Court."		trial having even commenced, is being suffered by various persons. Criminal justice breaks down, at a point when expeditious trial is not attempted while the affected parties are languishing in jail. ***The Criminal Procedure Code in Sections 167, 209 and 309 has emphasised the importance of expeditious disposal of cases including investigations and trials.*** It is unfortunate, indeed pathetic, that there should have been such considerable delay in investigations by the police in utter disregard of the fact that a citizen has been deprived of his freedom on the ground that he is accused of an offence. We do not approve of this course and breach of the rule of law and express our strong displeasure at this chaotic state of affairs verging on wholesale breach of human rights guaranteed under the Constitution especially under Article 21 as interpreted by this Court.
8.	Hussainara Khatoon and others -VS- Home Secretary, Bihar and others **(1995 (5) SCC 326)** ***"Guidelines have been laid down in these orders in regard to the release of under-trials who are found to be languishing in jails for want of expeditious disposal of pending cases."*** ***"The role of the High Court is to ensure that the guidelines issued by this Court are implemented in letter and spirit. We think it would suffice if we request the***	2	1. A large number of criminal writ petitions, many of them based on letters, were grouped together as petitions by under-trial prisoners and certain orders were passed from time to time for the release of certain prisoners on bail on their executing personal bonds for appearance without any monetary obligations. A detailed order was passed on February 12, 1979 by a Division Bench of this Court on a habeas corpus petition filed in regard to the state of affairs in Bihar. This was followed by orders passed from time to time which have been reported as "Re: Hussainara Khatoon and Ors." ***Guidelines have been laid down in these orders in regard to the release of under-trials who are found to be languishing in jails for want of expeditious disposal of pending cases.*** Now Criminal Miscellaneous Petition No. 5660 of 1993 has been filed seeking certain general orders on the basis of guidelines culled out from the said orders, namely, for undertaking an inquiry in regard to the question of setting up of additional courts in every State, providing investigating agencies with more experts, simplifying the procedure for sanction of prosecution, strict compliance with the provision of Section 167 of the Code of Criminal procedure, circulation of guidelines to the Courts in State and revision of categories of under-trials in various jails in the state of Bihar. 2. Since this Court has already laid down the guidelines by orders passed from time to time in this writ petition and in subsequent orders passed in different cases since then, we do not consider it necessary to restate the guidelines periodically because ***the enforcement of the guidelines by the subordinate courts functioning in different State should now be the responsibility of the different High Court to which they are subordinate***. General Orders for release of under-trials without reference to specific fact-situations in different cases may prove to be hazardous. While there can be no doubt that under-trial prisoners should not

	Chief Justices of the High Courts to undertake a review of such cases in their States and give appropriate directions where needed to ensure proper and effective implementation of the guidelines."		languish in jails on account of refusal to enlarge them on bail for want of their capacity to furnish bail with monetary obligations, these are matters which have to be dealt with on case to case basis keeping in mind the guidelines laid down by this Court in the orders passed in this writ petition and in subsequent cases from time to time: Sympathy for the under-trials who are in jail for long terms on account of the pendency of cases has to be balanced haying regard to the impact of crime, more particularly, serious crime, on society and these considerations have to be weighed having regard to the fact-situations in pending cases. While there can be no doubt that trials of those accused of crimes should be disposed of as early as possible, general orders in regard to judge-strength of subordinate judiciary in each state must be attend to, and its functioning overseen, by the High Court of the concerned State. ***We share the sympathetic concern of the learned Counsel for the petitioners that under-trials should not languish in jails for long spells merely on account of their inability to meet monetary obligations. We are, however, of the view that such monitoring can be done more effectively by the High Courts since it would be easy for the Court to collect and collate the statistical information in that behalf, apply the broad guidelines already issued and deal with the situation as it emerges from the status reports presented to it. The role of the High Court is to ensure that the guidelines issued by this Court are implemented in letter and spirit. We think it would suffice if we request the Chief Justices of the High Courts to undertake a review of such cases in their States and give appropriate directions where needed to ensure proper and effective implementation of the guidelines.*** Instead of repeating the general directions already issued, it would be sufficient to remind the High Courts to ensure expeditious disposal of cases. Withdrawal of cases from time to time may not always be an appropriate and acceptable remedy, but what is required is to evolve a mechanism which would enable early disposal of cases. The High Court being on the spot would be able to diagnose the ailment rather than merely deal with the symptoms. We are, therefore, of the view that these petitions have served their purposes and should stand disposed of leaving the further implementation to the High Courts.
9.	P.Ramachandra Rao - VS- State of Karnataka **[AIR 2002 SC 1856 (Seven Judges]**	19, 20	30. ***Prescribing periods of limitation at the end of which the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, in our opinion, cannot be done by judicial directives and within the arena of the judicial law-making power available to constitutional courts, howsoever liberally we may interpret Articles 32 21 141 and 142 of the Constitution.*** The dividing line

			in fine but perceptible. Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated,in a given case or set of cases, depending on facts brought to the notice of Court. This is permissible for judiciary to do. But it may not, like legislature, enact a provision akin to or on the liens of Chapter XXXVI of the Code of Criminal Procedure, 1973.
10.	**Sheela Barse** **Vs.** **Union of India (UOI) and Ors.** **(1993) 4 SCC 204** It is a shocking state of affairs that there is no understanding of the judgment of this Court dated 17th August, 1993, ***which strictly prohibited confining non-criminal mentally ill patients to jail.***		3. The report, in effect, is in three parts. The first part pertains to the provisions for rehabilitation of non-criminal mentally ill patients in the State of Assam. It is a shocking state of affairs that there is no understanding of the judgment of this Court dated 17th August, 1993, which strictly prohibited confining non-criminal mentally ill patients to jail. The State of Assam has a splendid record of having confined 387 persons to jail only on the ground that they were mentally ill. In many of the cases the Commissioner has found that they were, in fact, no mentally ill. In one case a person was confined to jail for merely being "talkative. At present, no steps are being taken by the State of Assam to have rehabilitation homes for non-criminal mentally ill persons. A part of the report deals with the need in this behalf and has also offered suggestions. 4. The second part of the report is as to the need to compensate those who in violation of their constitutional rights and in the teeth of pronouncement of this Court were confined to jail and even after the judgment of this Court was pronounced. There are large number of such persons. The report indicates utter callous attitude of the administration of the State of Assam towards such persons. Indeed, the attitude of the Chief Secretary, State of Assam, is typical on this indifference and that of the Inspector General of Prisons is no better. We are afraid we have to appropriately assess and award compensation to those persons whose constitutional rights have been so violated. The law laid down by this Court indicates that in area where constitutional rights have been violated, the compensatory jurisdiction would require to be exercised. This matter shall be dealt with separately.

11.	**Rama Murthy** **Vs.** **State of Karnataka** **(1997) 2 SCC 642** **(Apex court issued Several directions with regard to jail administration. New jail inspection forms are based on this judgment.)**		**Delay in Trial** 25. It is apparent that delay in trial finds an undertrial prisoner (UTP) in jail for a longer period while awaiting the decision of the case. In the present proceeding, we are really not concerned regarding the causes of delay and how to remedy this problem. Much has been said in this regard elsewhere and we do not propose to burden this judgment with this aspect. We would rather confine ourselves as to how to take care of the hardship which is caused to a UTP because of the delay in disposal of this case. The recent judgments of this Court (noted above) requiring release of UTP on bail where the trial gets protracted would hopefully take care to a great extent the hardship caused in this regard. We desire to see full implementation of the directions given in the aforesaid cases. 26. Another aspect to which we propose to advert is the grievance very often made about non-production of (UTP) in courts on remand dates. The District Judge in his report has also found this as a fact. The reason generally advanced for such non-production is want of police escorts. It has to be remembered that production before the court on remand dates is a statutory obligation and the same has a meaning also inasmuch as that the production gives an opportunity to the prisoner to bring to the notice of the Court, who had ordered for his custody, if he has faced any ill-treatment or difficulty during the period of remand. It is for this reason that actual production of the prisoner is required to be insured by the trial court before ordering for further remand, as pointed out in a number of decisions by this Court. 27. we are also conscious of the fact that police force in the country is rather overworked. It has manifold duties to perform. In such a situation it is a matter for consideration whether the duty of producing UTP on remand dates should not be entrusted to the prison staff. To enable the prison staff to do so, it would, however, need escorts vehicles. 28. We could require the concerned authorities to take appropriate decision in this regard within a period of six months from today.