In India, the administration of Criminal Justice System follows the Anglo-Saxon-adversarial pattern. It has four vital units, namely, the Police, Prosecution, Judiciary and the correctional institutions. These components are supposed to work in a harmonious and cohesive manner with close co-ordination and cooperation in order to produce desired results more effectively, fairly and quickly. Moreover, the success or failure of the administration of criminal justice depends upon the efficacy of these allied units.

3.1 An Overview of the Indian Criminal Justice System:

The Criminal law in India is contained in a number of sources. The Indian Penal Code of 1860, together with other Local and Special Laws such as the Protection of Civil Rights Act, 1955, Dowry Prohibition Act, 1961 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 outline what constitute Criminal offences under Indian law. The Indian Evidence Act sets forth the rules under which the evidence is admissible in the Indian Courts. Moreover the Code of Criminal Procedure, 1973, (Cr.P.C.) outlines the Procedural Mechanisms for prosecuting the criminal acts, providing for the constitution of criminal courts, the procedure for conducting police investigations and arrests, and the procedure for holding criminal trials and inquiries. Generally speaking, the Cr.P.C. and other Statutes are exhaustive enough to cover most situations. However, the Criminal Justice system in India is based on a complex web of legislations and common laws. The common law system allows judges the freedom to interpret legislation applicable to a particular case in a way that will bring about the most just and legal outcome. The Common Law is shaped through successive judicial interpretations of legislation and the legal Principles of *Stare decisis* (judicial adherence to prior case). Thus when a particular piece of
legislation fails to adequately protect or outline a certain topic, judges are free to rely on common law to ascertain the most just and applicable rules. Yet, it should be noted that the common law applies only in those areas where the legislature has not spoken and it can therefore never be employed in direct contradiction of a particular piece of legislation.

3.1.1 Police Organisation

The Police Act, 1861 largely governs Indian police forces aiming to make them a more ‘efficient instrument for the prevention and detection of crime.’ The Police Act gives each State government the power to establish its own police force. In addition to the Police Act, other legislation such as the Cr.P.C. also regulates police operations.

In each State, the Inspector General of Police, presently designed as the Director General of Police, is responsible for the overall administration of the police in the State. Below the State level, the administration of police and policing activity in each district is carried out by the District Superintendent of Police, under the supervision of the District Magistrate. In cities with a Police Commissioner, the Police District is headed by a Deputy Commissioner of Police.

Each police station is managed by a senior police officer called the Station House Officer (SHO). The SHO is in charge of the administration of the police station, the operation of their staff, and other duties relating to detection, investigation, and prevention of offences. Under the Police Act, 1861, other officers of a higher rank than the SHO may exercise the same powers as an SHO within their local area of appointment.

Finally, although police officer has fewer powers than the SHO, they still have a number of powers under the Cr. P.C. such as the ability to make arrests and to conduct searches.

It must be remembered that each State has its own hierarchy and nomenclature. Some States employ the Police Commissioner System, while others use the traditional Directorate System described above.
It is also important to note that the police are not above the law. Police officers are not allowed to behave as they like or to violate the law just because they wear a badge. A person should fiercely defend his or her rights in relation to the police. Under the Police Act of 1861, a police officer in violation of his duties may be subject to a fine of up to three months of pay, or imprisonment of up to three months or both.6

3.1.2 The Prosecution

In a criminal trial, the Public Prosecutor or Assistant Public Prosecutor conducts the prosecution of the accused on behalf of the State. Prosecutors play a crucial role in the administration of justice. The role of the prosecutor was described by the Law Commission of India, in its 14th Report in the following terms:

“The purpose of a criminal trial being to determine the guilt or innocence of the accused person, the duty of the Public Prosecutor is not to represent any particular party, but the State. The prosecution of accused persons has to be conducted with the utmost fairness. A Public Prosecutor should be personally indifferent to the result of the case. His duty should consist only in placing all the available evidence irrespective of the fact whether it goes against the accused or helps him, before the court, in order to aid the court in discovering the real truth. It would thus be seen, that in the machinery of justice a Public Prosecutor has to play a very responsible role: the impartiality of his conduct is as vital as the impartiality of the court itself.”7 Thus it is the duty of the prosecutor not to merely seek convictions, but to act impartially and place before the court the evidence to enable the court to decide on the accused person’s innocence.

3.1.3 The Courts

The court system in India is based on the British model. Enforcement of the criminal law is a State function, meaning that each State has its own facilities, in the form of State Courts, for dealing with criminal offenders. Within each State there are lower courts at a district level called Magistrates Courts, middle courts at
a session level called Courts of Sessions and High Courts at a State level. The highest national court in India is the Supreme Court.

Most people have dealings with the lower and middle courts. A person will go to the higher courts only if he or she appeals a case, or a case against him or her is appealed. If a person is accused of a crime, the first court he or she will have contact with will be the Magistrates Court. Magistrates are classified as either Judicial Magistrates or Executive Magistrates. However, if a person is accused of a criminal offence he or she will only come into contact with Judicial Magistrates, since Executive Magistrates, appointed by the State government, are only empowered to issue certain orders to prevent breaches of public peace, and deal mainly with the civil law. In rural areas the Executive Magistrates may be known as Munsifs. Those Judicial Magistrates who operate in major cities are known as Metropolitan Magistrates, and have the same powers as other Judicial Magistrates.

Judicial Magistrates are divided into a hierarchy of Chief Judicial Magistrates, Additional Chief Judicial Magistrates, and Sub-Divisional Magistrates, all of whom are appointed by High Court. The Chief Judicial Magistrate has powers to guide, supervise, and control all other Judicial Magistrates in the District. In each district the State Government in conjunction with the High Court decides on the establishment of Courts of Judicial Magistrates where Magistrates of the first and second class have jurisdiction to try certain cases.

Chief Judicial Magistrates and Chief Metropolitan Magistrates can pass sentences for imprisonment for terms not exceeding seven years. Judicial Magistrates of the first class and Metropolitan Magistrates can pass sentences of imprisonment for terms not exceeding three years, and/or of fines not exceeding five thousand rupees. Judicial Magistrates of the second class can only pass sentences of imprisonment not exceeding one year, and/or of fines not exceeding one thousand rupees.

Depending upon the crime a person is accused of, he or she could alternatively be tried in a Court of Sessions. Each State of India is divided into at
least one session’s division, for which the State must establish a Court of Sessions, to be presided over by a judge appointed by the High Court.\textsuperscript{14} The High Court also appoints Additional Sessions Judges, and Assistant Sessions Judges.\textsuperscript{15} Court of Sessions can convict and sentence people for most crimes. However, any sentence of death passed by a Session Judge or Additional Sessions Judge is subject to confirmation by the High Court, and an Assistant Sessions Judge cannot pass a sentence of death, life imprisonment, or imprisonment for a term exceeding ten years.\textsuperscript{16}

The highest State courts in India are the High Courts. Most States of India have a High Court, which hears cases on appeal from lower courts and on rare occasions also deals directly with cases under its original jurisdiction.\textsuperscript{17} The Supreme Court is the highest court in India and is the final arbiter of all legal matters. Most people never have any contact with the Supreme Court of India, although it affects our lives by the decisions it makes.

Decisions of the Supreme Court of India are binding on State High Courts, which must follow the Supreme Court’s interpretations of the law.\textsuperscript{18} Subordinates courts will look first to the judgments of the High Courts in their State and be bound by it. However, if there is no decision on the issue in question, the subordinate courts will also follow the decision of the Supreme Court on the issue. Decisions of the High Courts are binding on lower courts within their jurisdiction, but are not binding on the Supreme Court, or on courts in other States. However, all courts in India are ultimately bound by the decisions of the Supreme Court.

Criminal law entails two elements Substantive and Procedural. Substantive Criminal Law outlines what conduct and state of mind constitute an offence and lays out the penalty for the offence. Procedural Criminal law, on the hand, concerns the functions of courts, the Prosecutors, and the Police, and the procedure to be followed while dealing with an accused person or a suspect, conducting investigations, and during a trial.

A crime is commonly defined to mean an ‘act or an omission that is prohibited by law’. Criminal Statutes often require a certain state of mind, such as
‘intent’ in order for an act or omission to be criminal. Crimes may or may not have easily identifiable individual victims, but certain acts and omissions are criminalized because it is the State’s judgment that they negatively affect society as a whole. Consequently it is the State that undertakes the task of prosecuting the persons accused of committing crimes.

The primary object of Procedural Criminal Law is to ensure a fair trial for the accused. A fair trial entails striking a balance between the rights of the accused along with that of the victim and public interest. In India, the system of trial as envisaged in the Code of Criminal Procedure 1973 (Cr. P.C.) is the adversarial or accusatorial model of criminal justice. In the adversarial system, emphasis is placed of the trial where the defence and prosecution confront each other at a public or oral hearing in front of an impartial judge. The accused is presumed to be innocent and the burden of proving the guilt of the accused lies on the prosecution. The accused also has the right against self-incrimination.

The premise of the adversarial system is that the truth will emerge from a confrontation between the prosecution and the defence because both the side have an incentive to present their best possible arguments. In this conception of adversarial system, the judge plays a relatively passive and neutral role, ensuring that the parties abide by the rules, deciding what evidence presented by the prosecution and the defence is relevant and admissible and eventually deciding whether or not the accused is guilty. However, in Ram Chander v. State of Haryana Justice Chinnappa Reddy argued that judges in an adversarial system need not be completely passive and should assume a more proactive role:

The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive element entering the trial procedure. 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 by putting questions to witnesses in order to ascertain the truth.\(^\text{21}\)

The Committee on Criminal Justice Reforms observed that judges in India are too passive, even by the standards of the adversarial system, and that the judge in his anxiety to maintain his position of neutrality never takes any initiative to discover the truth.\(^\text{22}\)

The foundations of criminal justice are that the accused is presumed innocent until proven guilty beyond a reasonable doubt after a fair trial. In 1973, the legislature revised the Cr. P.C. based in part on the following principles:

1. An accused person should get a fair trial in accordance with the accepted principles of natural justice;
2. Every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to the society; and
3. The procedure should not be complicated and should to the utmost extent possible, ensure fair deal to the poorer sections of the community.\(^\text{23}\)

3.2 Investigatory Methodology of Police: Plight of Accused

The Criminal Justice System in India mainly affects the rights of three classes of persons, namely the accused, victims and witnesses. The two Principal functions of the Police are the maintenance of law and order and investigation of offences. The Police are essentially the investigating agency in the Indian Criminal Justice system and work in cooperation with the prosecution to collect evidence against the accused for the purpose of trial. In the accusatorial / adversarial mode, the accused is privileged in the sense that the onus of proving the crime against him is always with the police and the Prosecutor. In a way, the system has been compelling the police to resort to all methods to bring evidence against the accused to prove the crime. A person becomes an accused only when a confession is received from the suspect. The system and the law, in a way, aided the police to torture the suspect even before he became an accused in the case. It may be remembered here that several courts in India including the Supreme Court have
been reminding the Police time and again, that they cannot and should not resort to third degree methods during the investigation of case. Yet, the police machinery has been accused of employing torture in many of their operational field including crime investigation.

Police, being a front-line segment of criminal justice system, have a very vital role to play in providing justice to needy persons. They are the ones who arrest culprits and assist the courts in discharging their judicial functions effectively. The police have to facilitate the courts for conviction of the real culprits in order to maintain and enhance the faith of the people in the administration of criminal justice.

Arrest and interrogation involves interference with the liberties of citizens, therefore, they have to be justified only in the interest of larger social good reflected in clearly formulated rules of law. However, when it comes to laws authorising deprivation of liberty of the citizen, Articles 22 (1), 22 (2) and Sections 56 and 57 of the Cr. P.C. read alongwith Article 21 of the Constitution constitute a complete code. The essence of the Code is contained in Article 21 which lays down that only a just and fair procedure can justify the deprivation of liberty of any citizen. By virtue of being suspects, accused and undertrial prisoners they do not cease to be human beings. Hence, the rights of these human beings are to be respected. They are entitled to enjoy the rights which are provided to them under Indian Constitution as well as the existing laws of the land. Rights of the Accused, suspects and undertrial prisoners whether they are in police custody or prison are so fundamental that no one can violate them.

It is a rule of natural law which has been codified in many countries that a person is innocent unless proved otherwise by a competent court which is unbiased and impartial. Yet, once a person is suspected to have been involved in any crime or anti-social act, the arms of law tend to fall heavily on him. He is arrested immediately and interrogated while in police custody. The police often starts with a presumption that the suspect is the culprit. In the absence of sophisticated modern techniques of investigations, third degree methods are
adopted to force a confession of guilt. To the suspect, often false confession of
guilt appears to be a lesser evil merely to avoid further torture. Suspects are
subjected to interrogation during the initial stages of their arrest. It has been
noticed that in the process of interrogation, suspects or accused person are
subjected to the acts of torture and inhumane, cruel and degrading treatment. Some
are permanently disabled and in extreme cases the detenues succumb to their
injuries.

The power to arrest the accused person is vested in the police under chapter
V of the Code of Criminal Procedure but the power to arrest are abused by the
police defeating the object of the administration of criminal justice system.
Investigation of the case is the important function after the arrest of accused is
made, which starts right from the filing of the FIR (First Information Report) to
the submission of the case in the court of law and involves important steps such as
the detention of the accused, collection of the evidence, interrogation etc. The
power of investigation affords the police the occasion to perpetrate the third
degree torture of suspects to detect the crime as a matter of routine. It is hard to
believe that innocent persons are not subjected to torture in police stations in India.
While dealing with the torture during police investigation, the National Police
Commission had observed: 25

“We note with concern the inclination of even some of the supervisory ranks
to countenance this practice in a bid to achieve quick results by short cut
methods. Even well meaning officers are sometimes drawn towards third
degree methods.”

Indeed nothing have tarnished the image of the police more than brutality
directed against persons in police custody. Third degree torture and custodial
deaths has become an intrinsic part of police administration. Among all species of
human rights, right to life receives precedence and is a sine qua non for the
enjoyment of the other rights-which only supplement and extend complete
meaning and content to right to life. Therefore, right to life has been given
paramount importance by our Constitution and courts. 26 For in the event of any
invasion to right to life, other rights- which are subsidiary to this rights-became
meaningless, since the entire edifice of human rights jurisprudence is raised on the bedrock of right to life. Right to life and personal liberty is most precious, sacrosanct, inalienable and fundamental of all the fundamental rights of citizens. Rights to life includes protection against torture or cruel, inhuman and degrading treatment in any form.

3.2.1 Police and Extent of Torture

It is more desirous to understand the terms ‘Police’ and ‘Torture’ before discussing the custodial torture. One of the essential functions of the State is to maintain law and order and ensure dignity of its citizen and this function is entrusted to an agency known as ‘Police’. According to the Cambridge International Dictionary of English the term ‘Police’ means the official organisation that is responsible for protecting people and property, making the people obey the law, finding out about and solving crime, and catching people who have committed a crime. The word ‘police’ has been derived from the Latin word ‘politia’ which stand for State or administration. Thus, the word ‘police’ in the contemporary world is generally used to indicate ‘the executive civil force of a State to which is entrusted the duty of maintaining public order and of enforcing regulations for the prevention and detection of crime. Statutorily police force has been defined as “any force charged with the maintenance of public order.” Thus in the light of above definitions, maintenance of law and order, prevention and detection of crime are the primary duties of the police

The word ‘torture’ usually denotes intense suffering, physical, mental and psychological, aimed at forcing someone to do or say something against his or her will. It means breaking down under severe physical pain and extreme psychological pressure. As early as in 1850 the Torture Commission of India attempted to define ‘torture’ and quoted Dr. Johnson who said that, “torture was fair by which guilt is punished or confession extorted”. The World Medical Association in it was Tokyo Declaration (1975) gave a clearly stated definition of torture stating that “torture is deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders
of any authority, to force another person to yield information, to make a confession, or for any other reason.” The Cambridge International Dictionary of English defines the term as “an act of causing great physical pain in order to persuade someone to do something or to give information or an act of cruelty”. It may be concluded from the analysis of the definitions of torture that torture signifies the intention of the authorities who practise torture and it connotes the physical and mental pain to extract any informational confession of any crime. However, the complete definition of torture has been delineated by the General Assembly of the United Nations in its Resolution on “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”. Article 1 of the Convention defines ‘torture’ as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person or for any reason based of discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent of acquiescence of a public official or other person in an official capacity. It does not include pain or suffering arising from, inherent in or incidental to lawful sanctions.” The definition of torture given by the U.N. Convention has been practically seen in our country. Egregious violations of human rights, especially tortuous instincts of police personnel, have become the matter of daily routine. It is difficult to think of any police station in India where the police have not used brutal and barbaric methods while treating the persons in their custody. Custodial violence including torture and death in the lock-ups strike a blow at the rule of law. Torture in custody flouts the basic rights of the citizens recognized by the Constitution and is an affront to human dignity. Torture involves not only physical suffering but the mental agony which a person undergoes within the four walls of police lock-ups. Custodial torture is practised in varied forms, the vicissitude of which begins with abusive epithets and culminates in severe injuries, rape, death, disappearance and fake encounters of the arrestees, who fall in the seclude jurisdiction of police. Arrestees are subjected to brutal and barbarous treatments, since torture has become a part of investigatory methodology of police.
However, for the purpose of this study, custodial torture may be classified in the following categories:

Physical torture in varied forms is inflicted on the arrestees to extract confession, extort money, and settle scores and to teach a lesson. This includes abusive language accompanied by the threat of use of force intended to cause bodily harm, loss of faculty, disfiguration of face, fracture of dislocation of any bone, tattooing ignominious word on the forehead,emasculating, handcuffing, stripping and parading in public places.

The following methods of physical torture are commonly resorted to by the police:

1. Beating with rifle butts.
2. Punching on face, head and abdomen.
3. Beating with canes on the soles of feet.
4. Hanging a person from the ceiling beams, by hands.
5. Rolling a heavy stick on the sine with a policemen sitting of it.
6. Hanging in upside down Position.
7. Electric shocks and inserting live electric wires into body crevices.
8. Beating of spines.
9. Immersing the head of the person in bucket of water till he is nearly drowned.
10. Kicking with boots on chest, abdomen and back.
11. Making to lay nude on ice slabs.
12. Hitting on genitalia.
13. Denial of food, water and sleep.
14. Hauling in the mid air with the hands tied with a rope behind the back.
15. Stretching the leg apart causing the rupture of the anus.
16. Inserting sticks and other objects in the private parts of woman.
17. Stripping the victim and blackening his face and parading him in public.
18. Burning with cigarette buds and candle flame etc.
20. Electric shock
21. Acupuncture in private parts of the body.

Apart from the above brute methods of torture, the Indian police have perpetrated certain other heart-rending atrocious acts which shocked the entire nation. Among them the famous Bhagalpur blinding in Bihar depicts the extent to which the police can go in torturing the persons in its custody, when 30 suspected criminals were deliberately blinded by Bihar Police by having their eyes pierced and soaked in acid. In 1981 the legs of people suspected of ordinary criminal offences had been broken and then twisted by the police in Varanasi and Ghazipur in Uttar Pradesh. While in a small town of Madhya Pradesh the police tortured many young boys into impotence by passing electric shocks through their genitals rendering them sexually defunct. The high headedness of police came into light when the Inspector of Nadiad Police Station arrested, assaulted and handcuffed the Chief Judicial Magistrate undermining the dignity and independence of judiciary and paraded him in public with the object to humiliate him. Despite the landmark judgment against handcuffing, the police resorted to handcuffing in subsequent cases. Thus, when the police can torture a judicial officer, then the plight and susceptibility of the common man to police torture becomes all the more deplorable.

Custodial death is one of the most worst kinds of crimes in a civilized society governed by the rule of law. Death in police custody has become the symbol of the growing brutishness and unchecked power of police. Torture, practiced with an almost sadistic malevolence, is used to extort information, to settle scores of to teach a lesson to the person concerned. In many cases lock-up deaths are the result of third degree methods adopted by the police during interrogation of suspects. Most of the victims are criminal suspects, political extremists and social pariahs and sometimes even human rights activities are converted in tortured cadavers,
activist Dr. Binayak Sen a CPI(M) leader was arrested by police on a sedition charge.  

There have been reports from all over India that arrested people have so severely tortured during interrogation that they have died. The case of Shakila Aabdul Gafar may be cited where the accused died during the interrogation by the police and the Supreme Court expressed great concern for the defect in present criminal laws due to which police atrocities and custodial crimes go unpunished and suggested amendment to Evidence Act as recommended by Law Commission. The custodial deaths are regrettably increasing in alarming proportions.

Custodial rape is an aggravated form of torture. Custodial rape means rape committed by a police officer or a public servant, or an officer who is in the management of a jail, remand home or hospital on a woman in his custody. It is a crime committed by the custodians of law upon whom the law vests the cherished duty to protect dignity, integrity and modesty of a woman. Rape is an inhuman, violent and heinous act of sexual aggression against the dignity and modesty of a woman. Denouncing the crime, the apex court observed that ‘rape is not only a crime against the person of a woman; it is a crime against the entire society. It is a crime against basic human rights and is also violative of the victims most cherished of all the fundamental rights, namely the right to life contained in Article 21.’

Mathura, Suman Rani, Nehar Bano, kalpana Samathi Vidya etc are the glaring examples of custodial rape, which has sent ripples of shock in the society. The rape and death of Salwinder Kaur and Sarabjit Kaur by the Punjab police is an extreme example of police atrocities against woman.

Fake Encounter is yet another methodology adopted by police to liquidate the innocent persons Subordinate police officers indulge in these illegal killing either to appease their senior officers or to get quick promotions. Moreover, the judicial trials terminate in the acquittal of the accused due to the paucity or absence of substantial evidence, therefore, the police believes in the dispensation of on the spot justice by killing the accused in the garb of encounter without the sanction of law. ‘Police encounter deaths are rampant in Andhra Pradesh, Punjab,
Chattisgarh and Gujarat, where words such as ‘naxalities’ and ‘terrorists’ have become blanket permits to rob the citizen of his basic fundamental right, the right to life.’ In Punjab, police has eliminated youths systematically, where some are shown to have been killed in encounters, a few in ‘inter-gang warfare’, some as ‘intruders from Pakistan’ and some in ‘escape bids’ while the Andhra Police had taken the plea of ‘naxalites opened fire and threw bombs’ and ‘police had to act in self-defence’ to justify illegal killings. During the period of 1979 to 1981, 3007 deaths occurred as a result of encounters in U.P., where petty criminals and innocent people were killed by the police in the name of extermination of dacoits and 10 Sikh pilgrims were killed by UP police in fake encounter on July 13, 1991 in Pilibhit district.\(^{46}\)

In the **People’s Union for Civil Liberties v. Union of India\(^{47}\)** case, the Supreme Court held that killing of two persons by the Imphal Police in fake encounter was clear violation of the right to life guaranteed in Article 21 of the Constitution and the defence of sovereign immunity does not apply in such case. The Court awarded Rs.1, 00, 000/- as compensation for each deceased.

Forced disappearance is a savage practice adopted by police whereby the persons ‘wanted’ by police are tortured to death and the dead bodies of the victims are disposed of in a clandestine manner so that the whereabouts of the victims could not be traced and the police accomplishes the desired object with impunity. According to Amnesty International ‘deprivation of liberty by government agents of with their consent; followed by an absence of information or refusal to disclose the fate or whereabouts of the persons; thereby placing such person outside the protection of law; constitute a forced disappearance. In cases of disappearance, the victim is presumed to be dead and the perpetrators of crime destroy or conceal evidence of the crime. In **Harbans Kaur v. Union of India\(^{48}\)**, one person was called to the police station through a constable, thereafter, his whereabouts were not known, therefore, the Supreme Court directed the inquiry whether the petitioner was mercilessly beaten to death in police custody. In **Afzal v. State of Haryana\(^{49}\)** habeas corpus petition was filed for the release of two
children alleged to have been taken away by the police. The police had denied the arrest and detention of the children. The Supreme Court directed an inquiry to ascertain the whereabouts of the children.

In India, we follow the British system of criminal justice, which postulates that every accused is a human being, innocent in all respects and every charge against him should be proved beyond all reasonable doubts. However in many cases police overreacts and arrests an accused informally, detains him illegally and humiliates, torture and harasses unnecessarily. Moreover, officers and men meant to abide by law and committed to enforce him, often violate the basic and fundamental laws insuring human dignity and individual freedom. And if fences start to swallow the crops, no scope will be left for survival of the legal system, truth and justice. To conclude, the custodial atrocity means and includes any act which affects human dignity in any respect. All forms of police atrocity and brutality directed against persons in their custody fall within the ambit of custodial crimes. It tarnishes the face of humanity as well as civil society governed by the rule of law. It is a naked violation of human dignity and strikes a severe blow at the face of rule of law which necessitates that executive powers should not only flow from the law but it should also be limited by law.

Crime is a result of various socio-economic factors over which police has no control. But, because of this prevalent notion that efficiency and inefficiency of police is responsible factor for increasing or decreasing rate of crime, they are singled out for blame, whenever crime increases. However, the functioning of police entails various legal impediments. Besides, they are over-loaded with duties and ill-equipped in terms of resources to work. Inspite of these constraints, they are expected to detect criminals and thereby solve the cases quickly.

Police can legally detain a person in custody only for 24 hours. Beyond that, custody requires permission of the court. But, the court often shows its reluctance in granting any further police remand. Besides, because of procedural flaws in the criminal justice system, sometimes, hardened criminals are bailed out quickly and thereafter they escape and ultimately get away scot free and
unpunished. Tracing them again becomes a very difficult task. To counter such a situation, police adopts a new unwritten procedure, not sanctioned by law, whereby a crime suspect is picked up and detained many days without informing his relatives and without seeking permission of the court. Even if the detenu dies, police declines to own responsibility as there is no evidence to show that he died in police custody.

Besides, there are several other reasons of custodial brutality:

1. Police feel themselves to be immune and they cannot be held accountable for whatever they do;
2. Use of third –degree method is considered to their service right and accepted part of their profession;
3. Political and bureaucratic pressure/influences and interference in their work;
4. It is a short-cut to get quick result;
5. Ambition to be classed as good and tough investigators;
6. Lack of time for proper investigation;
7. Collusion with rich, influential and dancing to their tune;
8. Erring police officials go unpunished because of lack of evidence;
9. Inadequate training, lack of knowledge and experience in the field of scientific interrogation of accused;
10. Lack of effective supervision/inspection of police stations by the superior officers; and
11. Poor pay scale poor service condition and lack of better promotional avenues etc.

Custodial atrocity and brutality is flourishing not only because of official negligence but because of incompatible demand and expectations of the society to take tough action (including encounters), not sanctioned by law. Even a large section of the society feels that despite their excesses, police carries out a necessary and unpleasant task of preserving and protecting the state and the
society. However, national and international instruments strictly prohibit such type of brutal action.

Besides the above, there are few causes for popular dissatisfaction against police. 53

1. Rude in behaviour, abusive in language and contemptuous towards courts and human rights, they indulge in all forms of corruption.

2. Depending on socio-cultural status, economic power and political influence of the people who approach them, police adopt differential behaviour violating equality and dignity.

3. Police are either ignorant of the discipline of human rights or they deliberately disregard it in the matter of arrest, interrogation, search, detention and in preventive policing.

4. At least a section of policemen think that human rights are antithetical to effective law enforcement. They blame the law, lawyer and the courts for their own inefficiency.

3.2.2 Protective Laws Against Torture at International and National Level and Judicial Response

Protection of human rights is a global as well as national concern. Therefore, the UN Charter in its Preamble reaffirms its “faith in fundamental human rights, in the dignity and worth of the human person, in equal rights, of men and women” and the Charter further spells out the achievement of international co-operation “in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,” Along with these basic objects set forth by the UN Charter, the world opinion is mobilized against torture. Subsequently, the Universal Declaration of Human Rights, 1948 and other international instruments of rights conceptualized the contents of human rights exhaustively. Article 5 of the Declaration prohibits subjection to torture or to cruel, inhuman or degrading treatment or punishment of anyone. The Declaration is not a treaty and therefore, it is weak as an instrument of protection but its moral force and persuasive character have never been in doubt and it is universally regarded as expounding generally accepted norms. The two
sister Covenants of 1966 were adopted by General Assembly to give life and content to the Universal Declaration of Human Rights by imposing binding obligations upon State parties for observance and protection of human rights. Article 7 of the Covenant on Civil and Political Rights, 1966 mandates that none shall be subjected to torture or cruel treatment and in particular no one shall be subjected to involuntary medical and scientific experimentation and Article 4 (2) declares freedom from torture a non-derogable rights even in time of emergency.

To realise freedom from torture to every individual the UN General Assembly has adopted a “Code of Conduct for law Enforcement Officials” on 17th December, 1979 and a “Convention against torture and other cruel, inhuman and degrading treatment or punishment” on 10th December, 1984. The former instrument prescribes code of conduct for the officials who exercise police powers stating that they shall respect and protect human dignity, uphold the human rights of all persons, avoid use of force, prohibit use of torture and no enforcement such as war, political instability or public emergency as a justification for torture. The later instrument requires each State party to the Convention to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction, not to expel or extradite a person to another State where he would be in danger of being a subject to torture, and to outlaw torture in their criminal legislation. The Convention further clarifies that no order from superior officer or exceptional circumstance may be invoked as a justification for torture. Subsequent to the adoption of the Convention, a Committee against Torture was established to ensure the implementation of the Convention. Article 22 of the Convention authorises the Committee to receive communication by or on behalf of individuals that he is victim of torture committed by State party in violation of its obligation under the Convention, only when the State has recognised the competence of the committee to receive such communication by making declaration and till 1991, 29 State Parties made such declarations. The Delhi Declaration-a plan of action to counter the widespread menace of torture was adopted by the VIII International Symposium on torture as a challenge to the health, legal and other profession was held in New Delhi.
between 22-25 September, 1999. The Declaration reveals the firm determination of the world community to secure the human rights to all and to fight against torture.

In India, there are two distinct categories of legislative measures that accord recognition to human rights principles, namely measures enshrined in the Constitution and the measures enshrined in other general or special human rights legislations. The Constitution of India, the Indian Penal Code, 1860 (IPC); the Criminal Procedure Code, 1973 (CrPC); the Indian Evidence Act, 1872 (IEA); the Indian Police Act, 1861, (IPA) and (State) Police Manuals, with a view to providing adequate safeguards to citizens against police excesses, accord a set of safeguards to, and confer a bundle of rights on, the accused. These Statutes also put some restrictions on the exercise of police powers. Articles 20, 21 and 22 of the Constitution, figuring in its part III, have a direct bearing on, and nexus with, the criminal law system and criminal process in India. Provisions of Articles 20 and 22 accords a set of Constitutional safeguards to a person accused of a crime, while Article 21 assures to every person the right to ‘life and personal liberty’.

Article 20 incorporates a prohibition against ‘ex post facto law’ penal law and against ‘double jeopardy’. It also assures an accused protection against ‘self incrimination’. Clause (1) of Article 20, which accords a Constitutional recognition and significance to the principle of non-retroactivity of penal laws and to the well-known maxim nullum crimen sine lege, nullum poene sine lege, one of the fundamental principles of criminal liability, in ultimate analysis, puts a limitation on the Legislature. It lays down that a person can only by convicted of an offence it the act charged against him was an offence under the law in force at the time of its commission. It is ostensibly premised on the Constitutional perception that a law, which retrospectively creates an offence and punishes it, is not only bad in law but also inequitable and unjust in reality. While the second part of the same clause prohibits retrospective increase of punishment for an offence in vogue, Article 20 (2), which is premised on the common law maxim nemo debet proeadem causa bis vexari (a man shall not be brought into danger for
one and the same offence more than once) and the consequential doctrine of *autrefois acquit* and *autrefois convict*, bars prosecution and punishment after an earlier punishment for the same offence. And the protection against forced self-incrimination, which is one of the fundamental principles of criminal jurisprudence, is guaranteed in clause (3) of Article 20.

Article 22, by virtue of its clauses (1) and (2), confers four (fundamental) rights upon a person who has been arrested. They are: *First*, he cannot be detained in custody without informing him, as soon as may be, the grounds for his arrest. *Secondly*, he has the right to consult and to be represented by a lawyer of his choice. *Thirdly*, he has the right to be produced before the nearest Magistrate within 24 hours of his arrest, excluding the time spent on the journey from the place of his arrest to the court of the Magistrate. *Fourthly*, he cannot be detained in custody beyond the said period 24 hours without the authority of the Court.

Right to remedies before the Supreme Court and High Courts (Articles 32 and 226-227) are provided for the effective enforcement of these fundamental rights.

The post-Independence criminal procedure regime, in policy and practice, was influenced by human rights philosophy. The first significant shift was reflected in the new Code of Criminal Procedure, 1973, which was inspired by the following three considerations:

1. Speedy disposal consideration.
2. Due process consideration.
3. Fair deal to poor consideration.

As a consequence the Code of Criminal Procedure specifically accorded recognition to (1) new rights of the accused under Sections 50, 54 & 56-57, 303-304, and (2) speedy disposal measures such as Sections 167, 309, 320 & 321, etc. The thrust of all the new measures is to evolve a humane and efficient criminal procedure that is receptive to the constitutional guarantees and human rights directives. The most significant legislative recognition to human rights philosophy came about in the form of the enactment of a comprehensive Protection of Human
Rights Act, 1993 by Parliament. The POHRA that comprises eight chapters and forty-three sections provides for the constitution of National Human Rights Commission (NHRC), the State Human Rights Commissions and the Human Rights Courts. It also provides an elaborate procedure for reporting of human rights violations, their investigations, enquiry and action in respect of such rights violations.57

Section 330 and 331 of the Indian Penal Code deal with causing hurt and grievous hurt respectively for the purpose of extorting confession or to compel restoration of property. The main object underlying the provisions is to prevent torture by the police during interrogation. The offence under these Sections is complete when hurt or grievous hurt is caused to the suspects by the police officer to extort a confession or information leading the detection of the stolen property.58 The police officer by causing hurt or grievous hurt becomes a party to the offense punishable under the Indian Penal Code. Section 220 of IPC stipulates an imprisonment for a term up to 7 years to an officer who detains or keeps a person in his custody with a corrupt or malicious motive. Similarly, Section 348 stipulates an imprisonment for a term up to 3 years for wrongfully confining a person for extorting a confession or information leading to detection of a crime. It is equally important to note that confinement of an individual in violation of these statutory provisions constitutes a ‘wrongful confinement’ contrary to Section 340, IPC, warranting, by virtue of Section 342, an imprisonment for a term up to 1 year or fine up to one thousand rupees.

These provisions are ostensibly designed to deter a police officer, who is empowered to arrest a person and to interrogate him during investigation of an offence, from resorting to third-degree methods, causing torture (hurt or grievous hurt in technical term), or ‘wrongful confinement’ to extract confessions. These statutory provisions also make the police officer criminally responsible for using such unlawful force.

The statutory power of the police to investigate is found under Sections 154-176 of chapter XII of the Criminal Procedure Code. Section 164 of the Code
provides that any Metropolitan Magistrate may record any confession or statement made to him in the course of investigation. The proviso to Section 164 (1) provides that no confession shall be recorded by a police officer on whom any power of Magistrate has been conferred under any law. Section 164 (3) provides that a person who expresses his unwillingness to make a confession shall not be remanded to police custody, which guarantees that police pressure is not brought on the person who is unwilling to make a confession. Section 50 of the Code mandates a police officer to forthwith communicate to an arrestee full particulars of the offence and the grounds for his arrest. In other words, it confers a statutory right on an arrestee to know the grounds of his arrest. Section 303 and 304 of the Code allows an accused, as a matter of right, to consult a lawyer of his choice and to seek legal assistance in order to defend himself. Whereas under Sections 309 & 54 he is bestowed with the right to a fair and speedy investigation and trial as well as the right to medical examination.

Section 57 of the Code provides that no police officer shall detain a person in custody for more than 24 hours and shall be produced before the court of the nearest Magistrate. It is the duty of Magistrate under Section 54 to inform the arrested person that he has a right to get himself medically examined if he was subjected to physical torture in police custody. Section 176 of the Code makes it obligatory on the nearest Magistrate to hold an inquest as to the cause of the death of a person when such a person dies in police custody.

Sections 25 and 26 of the Indian Evidence Act, 1872 provides that confession made to the police officer while in police custody is inadmissible. Section 27 of the Act provides as to how much of the information received from an accused may be proved. The main object of these sections is to protect the person charged with an offence from being subjected to torture by the police. The Act makes it a substantial rule of law that confession made to a police officer in the absence of a Magistrate is inadmissible in the court of law.

Section 29 of the Police Act, 1861 stipulates that every police officer who inflicts personal violence to any person in his custody shall be liable to a
punishment of fine in the form of salary of three months and imprisonment of three months or both. These statutory provisions in their entirety insulate the accused persons against police torture.

It is realised by perusing various judicial decisions that the worst kind of human rights violations take place in the course of investigation and police remand, when the police under pressure to secure the most clinching evidence often resort to third-degree methods and torture. Cases of police torture and custodial deaths are increasingly coming to light nowadays. Courts have not only exposed the seamy side of police investigation process but have in several cases dished out exemplary punishments to ensure humane conditions of investigation. In *Gauri Shankar Sharma v. State*\(^{59}\) three member of the police force were charged with custodial death in the course of a dacoity investigation. It was revealed that the deceased was taken into custody without recording arrest in the general diary, on the actual day of arrest, and this way the injuries given in the course of investigation were shown to have been incurred in the pre-arrest period.

The Supreme Court not only restored the conviction under Section 304 but in the words of Justice Ahmadi (as he then was) observed:

> “The offence is of a serious nature aggravated by the fact that a person who is supposed to protect the citizens and not to misuse his uniform and authority committed it to brutally assault them while in his custody. Death in police custody must be seriously viewed for otherwise we will help take a stride in the direction of Police Raj. It must be curbed with a heavy hand. The punishment be such as would deter others from indulging in such behaviour.”\(^{60}\)

Realising that the worst kinds of human rights violations take place in the course of police remand courts have been unduly sensitive to police request for remand. In *CBI v. Anupam J Kulkarni*\(^{61}\) the Supreme Court refused to hand over the accused to the police on remand after his initial custody in judicial remand. Giving reasons for such a view Justice K. Jayachand Reddy [A.M. Ahmadi, J.(as he then was) concurring] laid down:
“There cannot be any detention in police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to the light at a later stage.”

Giving the reasons for such a rule the court observed:

The proviso to Section 167 is explicit on this aspect. The detention in police custody is generally disfavoured by law. The provisions of law lay down that such detention can be allowed only in special circumstances and that can be only by a remand granted by a Magistrate for reasons judicially scrutinized and for such limited purposes as the necessities of the case may require. The scheme of the Section is obvious and is intended to protect the accused from the methods that may be adopted by some over-zealous and unscrupulous police officers.

A punitive strategy for dealing with cases of gross abuse of investigation power may be an effective way of dealing with offending officials, but that alone does not provide adequate relief to one who has himself been a victim of torture or abuse of power or has suffered the loss of life of a bread-earner or a near relative. The Supreme Court has responded to this felt need by creating a constitutional right of compensation in all such situations where abuse of power violates any of the fundamental rights of the accused.\textsuperscript{62} In India there is neither a comprehensive legislation nor a statutory scheme providing for compensation by State or offender to the victims of crime. The State generally makes to the innocent victims of violence and major accident, ex gratia payment, which is not only ad hoc and discretionary, but may also be inadequate. While justice demands the loss or injury must be fully compensated, since it is universally recognized principle that enforceable right to compensate is not alien to the concept of guaranteed human rights. The legislative vacuum of a legal right to monetary compensation for violation of human rights has been supplemented by the higher judiciary by developing a parallel constitutional remedy. Payment of monetary compensation for deprivation of fundamental rights a person through writ jurisdiction was recognised by the Supreme Court for the first time in \textit{Rudul Shah v. State of Bihar}.\textsuperscript{63} Rudul Shah being the first decision of its nature made it categorically for
violation of fundamental rights through the exercise of writ jurisdiction and
evolved the principle of compensatory justice in the annals of human rights
jurisprudence.

In *Sebastian M Hongry v. Union of India*\(^6^4\) on account of the failure of the
Govt. to produce two persons in a habeas corpus petition filed by their wives, the
apex Court awarded exemplary costs of Rs. 1 lakhs to be given to the wife of the
each of the detenues on the assumption that they had met their unnatural deaths at
the hands of security forces. Carrying *Rudul Shah* and *Hongry* rule further in
*Bhim Singh v. State of J &k*\(^6^5\) the Supreme “Court strengthened the citadel of
compensatory justice by directing the State to pay monetary compensation of Rs.
50,000/- for the illegal detention of the petitioner. In *People’s Union for
Democratic Rights v. Police Commissioner, Delhi police Hq.*\(^6^6\) The Supreme
Court directed the State to pay Rs.75,000/- as compensation to the family of the
deceased labour who was taken to the police station for doing some work and on
demanding wages he was severely beaten and subsequently succumbed to the
injuries.

In *Nilabati Behera v. State of Orissa*,\(^6^7\) one Suman Behera was taken into
police custody and the next day his body was found on the railway track with
multiple injuries. The letter of Nilabati Behera was treated as writ petition under
Article 32 of the Constitution, wherein monetary compensation was claimed for
the death of her son. While granting compensation the Supreme Court made it
clear that the defence of sovereign immunity is not available in case of
constitutional remedy. Spelling out the rationale for monetary compensation and
rejection of the defence of sovereign immunity, the court observed that:

“a claim in public law for compensation for contravention of human rights
and fundamental freedoms, the protection of which is guaranteed in the
Constitution, is an acknowledged remedy for enforcement and protection of
such rights, and such a claim based on strict liability made by resorting by a
Constitutional remedy provided for the enforcement of a fundamental right is
distinct from, and in addition to, the remedy in private law for damages for the
tort resulting from the contravention of the fundamental right. The defence of
the sovereign immunity being inapplicable, and alien to the concept of
guarantee of fundamental rights, there can be no question of such a defence available in the Constitutional remedy. It is the principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution.”

In *State of Maharashtra v. Ravikant S Patil*[^68] an under-trial prisoner was handcuffed and paraded on streets. He was suspected to be involved in a murder case. A local newspaper carried a news item that he would be taken in a procession from Police station through the main streets of the city for the purpose of investigation. The Bombay High Court held that handcuffing and parading of the petitioner was unwarranted and violative of Article 21 and directed the Inspector of Police who was responsible for this, to pay Rs. 10,000/- by way of compensation. It was also directed that this act of violation of Article 21 should also be entered in his service record.

The National Human Rights Commission in the exercise of it powers under Section 18 (3) of the Protection of Human Rights Act, 1993 has also advanced the cause of compensatory justice to the victims of torture when the sanctity and dignity of a person is outraged by the law enforcers and armed forces. In one case, the Commission had directed the State of Maharashtra to pay Rs. 2 lakhs as compensation to the widow of one Pinya Hari Kale, who died in police custody as a result of severe beating[^69]. Viewing seriously the custodial death of one Parmai of Urai District, the Commission directed the State of U.P. to pay Rs. 1 lac as compensation to the next of kin of the deceased, who was arrested by the Tehsildar on 23rd May, 1998 for non-payment of land revenue and died on 2nd June, 1998 as a result of denial of food and water[^70].

In India, the Supreme Court and the National Human Rights Commission, the apex human rights observant have played a vital role in combating the custodial torture. The Supreme Court while dispensing justice to torture victims expressed its serious concern towards torture and custodial deaths[^71]. In *Kishore Singh v. State of Rajasthan*,[^72] the apex Court held that the recourse to third degree methods by the police is violative of Article 21 of the Constitution and directed the Government to take appropriate steps to educate the police so as to inculcate the
sense of respect for human person. It is further observed that the police which relies on fists than on wits, on torture more than on culture cannot control crime and nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional culture than a State official running berserk regardless of human rights.

There is a strong feeling in society that the tendency of the police to act in a casual manner in matters of arrest of suspects and accused persons is growing. Undesirable detention, torture and harassment of the accused is still continuing in spite of the landmark judgment delivered by Bhagwati, J. in Sheela Barse case. Police has a duty to give fair treatment to the accused in police custody. No accused should be put to unnecessary harassment in matters of investigation of a criminal case unless there are good and substantial reasons for holding a criminal liable for committing offences. Third-degree methods, fabrication of evidence and inflicting torture on the accused have been condemned.

In D.K. Basu v. State of West Bengal, The Supreme Court has dealt with the issue of custodial death, custodial violence and protection of fundamental rights and human rights of the criminal vis-a-vis duties of the police. The Court held that ‘any form of torture or cruelty, inhuman or degrading treatment given to detenu, convicts, undertrials and other prisoners would fall within the inhibition of Article 21 of the Constitution whether it occurs during investigation or interrogation or otherwise. Using any form of torture for extracting any kind of information would neither be right nor just nor fair and therefore the court declared that it would be offensive to the fundamental right to the life and personal liberty. The Court further stated that ‘the precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by laws.’

Commenting upon custodial deaths, the Apex Court had stated:

“Custodial torture is a naked violation of human dignity and degradation, which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded,
civilisation takes a step backward—flag of humanity must on each occasion fly half-mast."

Undoubtedly, it is a sacred duty of the police to be fair and honest in matters of investigation of a criminal case Mack and Somasundaran, JJ. Rightly stated:

“The investigating police are primarily the guardians of the liberty of the innocent persons. A heavy responsibility devolves on them of seeing that innocent’s persons are not charged on irresponsible or false implications. There is, we consider, a duty cast on the investigating police to scrutinise and to refrain from building up a case on its basis, unless satisfied of its truth.”

The Supreme Court has observed that the object of Section 161, CrPC is to secure a fair investigation into the facts of the criminal case. No accused should be harassed in a criminal trial unless there are substantial grounds for upholding it. Police officers have to be trained for giving fair treatment to accused persons. The practice of third-degree methods and fabrication of evidence has also been condemned in India. Y.V. Chandrachud, former Chief Justice of India, has condemned custodial deaths and adoption of third degree methods by the police. He has observed:

“We would like to impress upon the Government the need to amend the law appropriately so that policemen who commit atrocities on persons who are in their custody are not allowed to escape by reason of paucity or absence of evidence. Police officers alone and none else can give evidence, as regards the circumstance in which person in their custody comes to receive injuries while in their custody. Bound by the ties of a kind of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth. The result is that persons, on whom atrocities are perpetrated by the police in the sanctum sanctorum of the police station, are left without any evidence to prove who the offenders are. The law as to burden of proof in such cases may be re-examined by the legislature so that handmaids of law and others do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection.”
Custodial torture is an invasion on the civilised fabric of the society. In India, the police carry the image of terror and torture and violence appears to be institutionalised in its functional methodology and the epithets like “khaki drones” or “Khaki mercenaries” are used to describe the police. Therefore, drastic correctional measures are required to be introduced to set the society free from the menace of custodial torture. The police have to take initiative to come out of its tarnished image and this is only possible when there is an attitudinal change in the functional approach of the police. The police must think that it is not above the law as a custodian as it derives its authority not only for the efficient enforcement of laws but for the humane law enforcement. Moreover, the police should conduct the interrogations according to the cannons of humane process of law, since torture and third degree methods are not only the means to solve a crime. Protection of human rights and individual dignity should be the clarion call of the service ethics. Police must develop a professional orientation that will go a long way in resorting the credibility of the police, which has considerably eroded in the estimation of the common man. The following remedial measures are suggested to eliminate the custodial torture from the torture-ridden society-

1. The recruitment process must focus on the strict screening and objective assessment of the personality traits before a candidate is inducted in the service.

2. The emphasis of the training must be to inculcate the spirit of service among all cadres. The training academics should include courses on human rights.

3. The media should highlight the achievements of the police vis-a-vis portrayal of their dismal performances.

4. The Police Act, 1861 should be amended suitably and the duties of the police in respect of the human rights should be incorporated in the Act.

5. The Evidence Act should be amended in consonance with the 113th Report of the Law Commission of India by inserting a new section in the Act providing for a rebuttable presumption against the police officer as to how the person in his custody received injuries or met with his death.
6. Human rights programmes should be taken out by the print and electronic media. People should be well informed of their rights and remedies available under the law.

7. High powered vigilance squads comprising judges, medics, lawyers, journalists and representatives of the human rights observants should be constituted at the district and State levels to make surprise visits of the police stations so that early detection of unauthorised detention and custodial torture becomes possible.

8. The policeman who commits custodial violence should be adequately punished and punishment awarded should be given wide publicity. And to discourage the custodial violence promotion should be denied to the delinquent policemen.

9. Police power of arrest in bailable and cognizable offences should be curtailed and arrest on the ground of suspicion should be banned.

10. Section 54 of the Criminal Procedure Code should be amended making medical examination of the accused mandatory before and after the police remand.

11. An independent investigative staff should be provided to the NHRC in pursuance of the Protection of the Human Rights Act, 1993, since the NHRC cannot rely upon the State Constabulary for detection and investigation of the crime, as the professional fraternity prompts the policemen to conceal and destroy the evidence of the crime committed by their brethren.

If these suggestions are implemented in their true spirit it would not only contain the growing menace of custodial violence but also revive and strengthen the confidence of the people in the rule of law. To eliminate custodial torture the judges, administrators, police, media, NGOs and medics should join hands and discourage torture. The ethical values expected of a policeman should be revealed through his functional attitude, where he gives utmost importance to the protection and promotion of the human rights so that a social order emerges where the custodial torture becomes a thing of the past.
3.3 Impediments in the Effecting Functioning of Criminal Justice System: An Appraisal

Indian Criminal Justice system is infested with multiple problems; some of them are being mentioned here. Today, the Indian Criminal Justice System is suffering from several maladies; some of these could be diagnosed as under:

1. Huge pendency / Arrears of Court Cases;
2. Lengthy Procedure;
3. Time Consuming and Expensive Legal Process;
4. Abnormal Delays in Litigation;
5. Non-Accountable Bar;
6. Lack of Coordination between Police and Prosecution;
7. Faulty and Slipshod Investigation;
8. Unnecessary Detentions Causing Overcrowding of Jails;
9. Enormous Workload on Courts;
10. Alien Model;
11. Lack of a Speedy Dispute Resolution Mechanism;
12. Lack of Judges with respect to population ratio;
13. Delayed Trial;
14. Low Rate of conviction;
15. Prolonged Incarceration of undertrial prisoners;
16. Judge Neutrality Principle they never takes any initiatives to discover the truth.
17. Judicial Corruption; and
18. Absence of checks and balances.

The Criminal Justice System which adopted by India is based on the British System partially. When Britishers prescribed the procedure, they did not consider the needs of the society nor did they consider the practicality of the procedure. Thus, what we have is a system which is drawn from different sources, without having any bearing on the ground realities.
3.3.1 Time Consuming and Expensive Legal Process

There is no denying the fact that our existing legal process is too time-consuming. This helps defendants, who have money power to get the justice delayed in their favour, to emerge as ultimate beneficiaries, while the victims and the poor and ignorant defendants become the worst sufferers. The Law Commission of India, headed by Justice H.R. Khanna, as far back as 1978 observed as follows:

“The problem of delay in the disposal of cases pending in law courts is not a recent phenomenon. It has been with us since a long time.... Of late, it has assumed gigantic proportions. This has subjected our judicial system, as it must, to severe strain. It has also shaken in some measure the confidence of the people in the capacity of the courts to redress their grievances and to grant adequate and timely relief.”

This situation, instead of improving, continues to deteriorate since then. It is true that the ratio of judges to population is the lowest in India. Ten and half judges per million people against the highest 107 in England. Appointment of more judges may, however, provide only a partial remedy since the more menacing threat lies in protected procedures of our criminal justice system we are never tried of telling that justice delayed is justice denied. But the fact remains that the disposal of the case of Indira Gandhi’s assassination in broad daylight by her surety personnel took nearly four years, while the implementation of the final judgment took a few more months. One may argue that it was an extraordinary case in which justice had not only to be done, but must appear to have been done. On the other hand, the common man for whom the elaborate justice process is designed is puzzled that is a matter of such importance could be so delayed and protracted, what would be the fate of thousands of cases pending in courts for years together... May be, in quest for justice, we are unwittingly defeating the very purpose of administration of justice and lessening it impact.
3.3.2 Abnormal delays in Litigation

Essentially, the failure of the criminal justice system is manifesting in abnormal delays in litigation and huge pendency in courts. While accurate statistics are not available, it is estimated that approximately 3 Crores cases are pending in various law courts all over the country.\(^7\) While 20 million cases are pending in district courts, High courts and Supreme Court, about 18 million cases are said to be pending in lower courts. There are harrowing tales of innocent citizens accused of petty offences languishing in jails as undertrial prisoners for decades. Most often, the time spent in prison during trial exceeds the maximum punishment permissible under law, even if the person is proved guilty.

The delays, the habitual use of English as language of discourse even in trial courts and the extreme complexity and the tortuous nature of our legal process made justice highly inaccessible to a vast majority of the people. It is estimated that India has only about 11 judges per million population, which is among the lowest ratios in the world. The cases pending exceed about 30 thousand per million population, obviously, it is unrealistic to expect the law courts to deal with this abnormal case load or to accessible to people. The delays, the complexity and unending appeals make litigation inordinately expensive in India. While astronomical fees are charged for legal consultation by high-priced lawyers practising in the higher courts, even in the lower courts cost of litigation is prohibitive and beyond the reach of most of the citizens.

3.3.3 Faulty and slipshod Investigation

One of the major reasons for the decreasing rate of convictions is faulty or slipshod investigation by the police which, in turn, is largely due inadequate staff for investigational work and inability of the concerned police officers to pursue investigation on day-to-day basis with a sense of commitment and determination. A sample survey conducted under the auspices of the National Police Commission is six States covering different parts of the country revealed that an average investigation officer was able to devote only 37 per cent of his time to investigational work while the rest of his time was taken up by other duties
connected with maintenance of public order., VIP bandobast, petition enquiries, preventive patrol and surveillance, court attendance, etc.

The National Police Commission emphasised the urgent need for increasing the strength of the cadre of Investigating Officers and also for earmarking some staff for exclusively attending to investigational work. Sadly, this important recommendation of the commission is yet to be implemented. Slipshod investigation by the police is also due to lack of their professional ability and competence in crime investigation. There is no denying the fact that crime investigation is a highly specialised job which requires professional aptitude, skill, patience and scientific temperament. Unfortunately most of the police officials involved in investigational work do not have these qualities in adequate measures. They are not sufficiently exposed to rigorous training and refresher courses to acquire necessary knowledge, skill and aptitude for crime investigation.

3.3.4 Delayed Investigation

Many prisoners are constrained to languish in prisons because the police do not finish investigation and file charge-sheet in time. This is a very serious matter because such people remain in prisons without any inkling of a police case against them. Proper and prompt enforcement of Section 167 of Cr.P.C. can however obviate this difficulty. Section 167 of the Code lays down the maximum period within which the police investigation must be completed and a charge-sheet filed before the court. This period is 90 days for offences punishable with death, life imprisonment or imprisonment for a term of not less than ten years and 60 days for all other offences. Where the investigation has not been completed with the stipulated time-frame, it is mandatory upon the Magistrate to release the accused on bail, provided he is ready to furnish bail. This provision shields the accused from suffering incarceration on account of the inability of investigating agency to wind up its investigation.

3.3.5 Delayed Trial

It is also noticed that many prisoners are charged with a non-bailble offence which is not very serious and is triable by a Magistrate. They remain in prisons for
long period because of the delay in trial. Section 437(6) was enacted to prevent this and makes it mandatory for a person to be released on bail where the trial has not concluded within the 60 days from the first date fixed for taking evidence. The Magistrate may however refuse such release, but only after recording the reasons in writing. Many undertrial prisoners are detained in prisons for long periods, which in some cases extend beyond the maximum period of imprisonment prescribed for the offence with which they are charged. The system responded to this situation by enacting Section 436-A\textsuperscript{80} which spells out the right of an undertrial prisoner to apply for bail once she/he has served one half of the maximum term of sentence she/he would have served had she/he been convicted. On a bail application filed under this section, the Court shall hear the public prosecutor and may order the release of such person on a personal bond with or without surety.

### 3.3.6 Lack of Coordination between Police and Prosecution

Police alone should not be blamed for the increasing rate of acquittals. This ultimate success of police investigations depends on the competence of the prosecuting agency in collecting the evidence and presenting it in court in a convincing and effective manner. This calls for a good measure of coordination between the investigating and the prosecuting agencies on a regular basis from the filing of chargesheets to the end of the trial in court.

The actual problem started with the coming into force of the Cr P C, 1973 when a feeling appears to have grown among the prosecuting staff in states that they form an independent wing of criminal justice system and do not come under the administrative purview of the police set-up. This, according to the National Police Commission, has led to the lack of coordination between the subordinate officers of these two wings at the district level and ultimately resulted in the poor rate of conviction.\textsuperscript{81}

### 3.3.7 Alien Model

Anyone who has had an occasion to deal with the court’s legal matters once thinks million times before going to the court of law again for another purpose. If
an alternative remedy is available, he prefers that. If he has to undergo minor inconvenience or suffer some affordable financial loss, he would suffer prefer that one. Earlier, people would go to the courts of law, when reputation was at stake. People today prefer to make amends or keeps quiet, rather than go to the court of law. The system adopted by India is based on the British system partially. When Britishers prescribed the procedure they did not consider the needs of the society nor did they consider the practicality of the procedure Thus, what we have is a system which is drawn from different sources, without having any bearing on the ground realities.

3.3.8 Non-Accountable Bar

The accountability of the Bar is another important matter for consideration. Today, the Bar appears to be autonomous and this even appears to be becoming non-accountable, and the effect thereof has started telling upon the working of the entire judiciary. The Bar Council has not been successful in bringing in the accountability and discipline in the fraternity of advocates. An ordinary man suffers on account of high cost of advocates and their arrogance. The Bar Association has become playground of political parties and other pressure groups. The Supreme Court and the Bar Council of India, who could have played a decisive and major role, remained mute spectators.

3.3.9 Unnecessary Detentions Causing Overcrowding of Jails

As in many other countries, the principal causes of overcrowding in Indian prisons are *inter alia*, unnecessary detention of undertrials and the heavy influx of short-term convicts. As a consequence of unnecessary detention, undertrial prisoners constitute bulk of India’s prison population. The main reason of prison overcrowding is that over 67% inmates are undertrials. The large number of undertrials are a composite outcome of powers of arrest and remand under Indian law, delay in investigation and trial and unequal administration of right to bail. According to the Report of NCRB, the highest of undertrials inmate are found in Uttar Pradesh followed by Bihar State. The reality of overcrowding may be a serious cause for many other prison problems such as greater risk of disease,
higher noise levels, denial of conservancy facilities, difficulties in surveillance, consequent danger levels, etc. The conditions of overcrowding in certain sub-jails in Bihar and Uttar Pradesh are so acute that, at times, only one dry latrine may have to be shared by as many as 200 prisoners. The shortage of sleeping space and bedding may require the prisoners to sleep in shifts in some of these prisons. The highest overcrowding of prisoners are found in the Chattisgarh State about (215.2%) followed by Uttar Pradesh (191.6%). In view of the deteriorating state of our justice delivery system, we may reasonably assume that the conditions in our prisons have not been improved but rather suffered from further deterioration during the past 15 years. For instance, the latest report on India’s largest prison, Tihar Jail, reveals that it has at present anywhere between 9,000-10,000 inmates as against its total capacity to accommodate around 3,300 prisoners. This problem of overcrowding in Tihar Jail, as this report indicates further, has drawn the attention of the Delhi High Court which has directed the authorities to initiate immediate measures to decongest this Central Jail.

In this context, it needs to be emphasised that with a whooping number of over 67% of the total inmates being undertrials. Creating more space alone will not resolve this problem unless our judicial process is expedited.

The police are essentially the investigating agency in the Indian Criminal Justice System and work in cooperation with the prosecution to collect evidence against the accused for the purpose of trial. With the time, it is being realised that the police cannot discharge both these functions simultaneously and that there is a need to separate the two. In the words of the Law Commission, ‘the faculties of the mind which must be brought into play at the time of investigation are different from those which are to be exercised when dealing with an urgent situation of breach of public order’. In its 154th Report, the Law Commission highlighted the following benefits rising from separation of the two functions: (1) reduction of executive control over police investigation as the latter would enjoy protection of the judiciary, (2) better investigation owing to scrutiny of courts which will lead to successful prosecutions, (3) reduction in the possibility of unjustified and
unwarranted prosecutions, (4) speedy investigation leading to speedy disposal of cases, (5) enhancement of expertise of investigating police and (6) increased public cooperation and confidence. This key recommendations has also been echoed in the Prakash Sing case.

The Supreme Court has repeatedly suggested measures to prevent occurrences of custodial violence. In Sube Singh v. State of Haryana, the Court recommended the reorientation of police training ‘to bring a change in the mindset and attitude of the police personnel in regard to investigations, so that they will recognise and respect human rights, and adopt thorough and scientific investigation methods.’ Other preventive measures include continuous monitoring of lower-level police officers, compliance with the D. K. Basu case guidelines, evolving fool-proof methods for ‘prompt registration’ of first information reports, computerisation and technological methods to avoid manipulation of police records, and assigning investigations related to custodial violence to an independent agency such as the NHRC or the CBI, rather than the Police.

In order to be successful in the mission of the judiciary to enforce Constitutional guarantees and protect and preserve basic human rights of the people and reach social justice to the common man, it is absolutely necessary and essential that the two wings of the administration of justice, namely Bench and the Bar, must coordinate and co-operate with each other. Unless the Bar extends its helping hand, the Bench cannot achieve anything single handed but together they can meet every challenge, including threat to its independence from within. By and large, the Indian Judiciary has enjoyed immense public confidence. The common man considers the judiciary as ‘the ultimate guardian of his rights and liberties’. The judiciary must follow the standards of morality and behaviour which it sets for others. And as a matter of fact, before laying down standards of behaviour for others, the judiciary must demonstrate that the same standards apply to it and are being followed by it. Constant evaluation of the functioning of the institution needs, therefore, to be encouraged. The greatest threat to the independence of judiciary is the erosion of credibility of the judiciary in the mind
of public, for whatever reason. Eternal vigilance by the judges is, therefore, necessary. There must be proper balancing of judicial independence on the one hand and the behaviour and conduct of judges who operate the justice delivery system, on the other.\textsuperscript{88}

The basic problem regarding the police today is how to motivate them to achieve the objective of public of public service of upholding the human rights and liberties of the people. Thus what is urgently required is a change to be brought in the attitude of police and prison officials whose duty is to take care of human rights of the accused / undertrial / suspects prisoners during the period of investigation of the crime and supervision of jails. The requisite attitudinal change and humane orientations to policing can be ensured only when policemen at all levels are made aware of their duties, commitments and responsibilities in upholding human rights.

The first and foremost thing is that education in human rights be given to policemen and prison officials. Special training should also be given to the police force for adopting scientific aids and techniques in the matter of investigation of crimes. Monetary compensation will have to be provided in cases of custodial deaths or torture inflicted upon the accused. Unlimited powers conferred upon the police under the Cr. P.C. have to be curtailed. The arrest of an accused without a warrant in the case of a cognizable offence on the mere ground of suspicion will have to be restricted by amending Criminal Procedure Code. It has to be made obligatory for the police to obtain permission from a Magistrate before making such an arrest. Failure by the accused to make a request for medical examination should not be a ground for exonerating the police from liability for causing injuries to the accused. An amendment is to be urgently made in Section 54 of the Criminal Procedure Code. Section 50 CrPC has also to be modified in order to confer the power upon a Judicial Magistrate for giving an order to the person concerned for medical examination.

Outdated provisions of the Police Act, 1861, and Rules of Prison Manuals which are detrimental to the legitimate rights of accused/suspect/undertrial
prisoners will have to be reviewed and suitably amended for a better administration of criminal justice on scientific grounds. A model Code of Conduct based upon the philosophy of the Indian Constitution and on human rights culture and taking into consideration the relevant provisions of the International Covenants will have to be formulated and adopted to ensure safety, security and protection of human rights of the accused, suspects and undertrial prisoners. It is suggested that the police should honour the culture of human rights rather than the technique of torture for their investigation. The Central Government should give directions to those States which have not yet established Human Rights Commissions. It should also provide additional powers to the National Human Rights Commission for creating a conducive atmosphere for the protection of human rights of the accused, suspects and undertrial prisoners.

Judges, like any other professionals, need continuing education and training to improve professional competence to deal with new challenges thrown up by changes in society, economy, polity and technology. Taking this into account the Supreme Court had set up the National Judicial Academy this is now offering regular courses for training. Simultaneously, each High Court has set up judicial academies to train judges newly inducted in the subordinate courts and to provide continuing education to judges in service. Simultaneously an E-Committee directly under the Supreme Court was set up to devise and implement a national policy on computerization of judicial administration in order to expedite delivery of justice in civil and criminal cases. It is to be noted that our judges, overworked as they are, have been making every effort to steadily improve productivity even in adverse circumstances. Judges are conscious of the problem of arrears and are making every effort to contain the rise of pendency of cases at all levels of the judicial system. Timely justice is the right of every litigant and speedy justice is the obligation of every functionary of the judicial system.89

In a country with a vast population of poor people, justice has to be necessarily cheap and expeditious. Litigation is time consuming and relatively expensive. For this, alternatives to litigation must be produced by the justice
system. Parliament has provided the statutory basis for it by the recent amendments to the Code of Civil Procedure, 1908 and Criminal Procedure Code, 1973. Taking advantage of these the judiciary has prepared a national plan for mediated settlement of disputes which included training of mediators, development of mediation manuals, setting up of mediation centres in court complexes and spreading awareness about it among litigants through the legal aid services. Other modes of settlement are also being encouraged and judicial officers are instructed to promote ADR as a movement especially at the first level of courts where the bulk of poor litigants seeks justice.

On the issue of arrears what needs greater emphasis is that we are on the right track with a multi-dimensional, well-planned national programme, which has started giving rich dividends. With support from the Central and State governments and co-operation from the bar and litigant public, in the next couple of years substantial reduction in number of cases pending in courts and in the time taken for disposal of cases are expected to take a downward spiral even if fresh filings are going to increase continuously.
NOTES & REFERENCES:

1. Preamble, Police Act, 1861.
2. Section 2 Police Act, 1861.
3. Section 4 Police Act, 1861.
5. Sections 41-51 of the Code.
6. Section 29 Police Act, 1861.
8. Section 12 of the Code.
10. Section 11 of the Code.
11. Section 29 (1) (4) of Cr P C.
12. Section 29 (2) (4) of Cr P C.
13. Section 29 (3) (4) of the Code.
15. Section 9 (3) of the Code.
16. Section 28 (2) (3) of the Code.
17. Article 214, Constitution of India.
18. Article 141, Constitution of India.


27. Section 2 (b) of the Police Forces (Restriction of Rights) Act, 1966.


35. *Supra* note 29.


38. *The Hindu*, 10 (December 30, 2010)


41. Sobha Saxena, Crimes against woman and Protective Laws, p. 89.


44. Suman Rani AIR 1989 SC 937.

45. Supra note 31.

46. Ibid.

47. AIR 1997 S C 1203.


49. (1994) 1 S C C 425.


52. Ibid.


56. Articles 2 (1), 10(1) and 14 (91) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.


59. 1991 SCC (Cri.) 67.

60. Ibid.


62. Ibid.

63. AIR 1983 SC 1086.

64. AIR 1984 SC 1826.

65. AIR 1986 SC 494.


72. Ibid.

73. (1983) 2 SCC 96.

74. (1997) 1 SCC 416

75. Ibid.


80. This Section was inserted in Cr P C by the Code of Criminal Procedure (Amendment) Act, 2005 vide Act 25 of 2005,

81. *Supra* note 78.


84. Law Commission of India, 152nd Report


