CHAPTER - 7
ENDEAVOURS TO PREVENT
HUMAN RIGHTS VIOLATIONS

It is found that though Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Indian Constitution and other criminal legislations contain several provisions for the protection of human rights in police custody, there are rare occasions that these provisions are put into reality. It is really pathetic that the benefit of most of these rights is not even reached to well-educated urban people. Socially and educationally backward classes of people are the most affected victims of police excesses. An analysis of the endeavours made from different dais including judiciary, National Human Rights Commission, State Human Rights Commission, various voluntary organizations, media etc. is essential to arrive at the remedial measures to be adopted to ensure the custodial rights of those in the custody of police.

A. JUDICIAL RESPONSE

A perusal of the landmark decisions of the Supreme Court and various High Courts reveals that Indian judiciary has made a tremendous achievement in protecting custodial human rights and in facilitating effective reliefs being granted to the victims of custodial violence and their relatives.

Remedial measures are provided in the Constitution through writs issued by the Supreme Court and High Courts on violations of rights of persons in police custody. Similarly there is inherent power of the High Court to quash the proceedings even at the initial stage of lodging an FIR. Under Article 51 of the Constitution there is an obligation to foster respect for

1 Under Article 32 and 226 of the Constitution.
2 Under Section 482 of the Code of Criminal Procedure.
International Law. The judiciary also upholds the sanctity of human rights and acknowledges the reliance of international covenants which ensures the basic human rights.

The operations of the police are subjected to effective judicial review and control especially when the police are called upon to carry out judicial mandates in areas in which police are left with discretion to develop their own policies within broad legislative or judiciary fixed limits. It is a relief that while criminal justice system comprising of police very often violates the custodial rights, the judiciary tries to protect and promote human rights. This human rights-oriented trend of the judiciary is often criticized by the police people especially those who are inclined to commit torture. They blame the Apex Court and some of its judges as bleeding heart liberals, as impractical idealists, as arm-chair theoreticians etc. The court, on the contrary, churns out judgements which fret and frown on the delinquencies and the derelictions of police. The result is that our system of criminal justice has a double-face; one hurts and the other tries to heal.

The judiciary especially, the Supreme Court of India, through successive decisions developed many valuable rights of arrested person through human rights jurisprudence. The people, especially the intelligentsia who stand for the protection of human rights very often knock the doors of judiciary seeking relief and redressal to the violations of these rights. These rights are discussed below.

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5 The Supreme Court has gone to the extent of treating letters, telegrams and press reports complaining of illegal arrests as writs of Habeas Corpus. There have been rulings of highest court which often appear to many as too radical to be relevant under the given circumstances, S.P. Srivastava, "Human Rights and the Administration of Criminal Justice in India", Human Rights and Victimology, V.V Devasia and Leelamma Devasia (Ed.), p. 5.

6 Id., p. 6.

Article 22 was initially taken to be the only safeguard against the legislature in respect of laws relating to deprivation of life and liberty protected by Article 21. But the position of Article 21 underwent a sea change since Maneka Gandhi v. Union of India. Now Article 21 itself has become an almost inexhaustible source of restraint upon the legislature. Consequently, the relationship between Articles 21 and 22 has drastically changed, rather reversed. Earlier 'the procedure established by law’ for depriving a person of his life or liberty under Article 21 drew its minimum contents from Article 22 and Article 21 had nothing to offer to Article 22. But now, the matters on which Article 22 is silent draw their contents from Article 21. This is particularly true in respect of laws relating to preventive detention which in addition to Article 22 have also to conform to the requirements of Article 21 at least to the extent to which such requirements are not inconsistent with the express provisions of Article 21. Thus Constitution has given vital right to an individual that the Supreme Court observed:

It may be pointed out that our Constitution is a unique document. It is not a mere pedantic legal text but it embodies certain human values, cherished principles and spiritual norms and recognizes and upholds the dignity of man. It accepts the individual as the focal point of all development and regards his material, moral and spiritual development as the chief concern of its various provisions. It does not treat the individual as a cog in the mighty all-powerful machine of the State but places him at the centre of the constitutional scheme and focuses on the fullest development of his personality...But all

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1 A.K. Gopalan V. State of Madras, A.I.R. 1950 S.C. 27; Also in the Constituent Assembly Dr. Ambedkar claimed Article 22 is compensatory for loss of 'due process' from Article 21: IX CAD 35.
these provisions enacted for the purpose of ensuring the dignity of the individual and providing for his material, moral and spiritual development, would be meaningless and ineffectual, unless there is rule of law to invest them with life and force.\textsuperscript{12}

\textit{In Joginder Kumar v. State},\textsuperscript{13} the Supreme Court opined that the doctrine of personal liberty guaranteed by the Constitution would in effect expect that no arrest should be made merely because it is lawful for the police of do so. The Apex Court observed:

No arrest can be made because it is lawful for the police officer to do so. The existence of the power of arrest is one thing. The justification for the exercise of it is quite another... No arrest should be made without a reasonable satisfaction reached after some investigation about the genuineness and bonafides of a complaint and reasonable belief as to the person's complicity and even so as to the need to effect his arrest... A person is not liable to be arrested merely on the suspicion of complicity in an offence... Except in heinous offences, an arrest must be avoided....\textsuperscript{14}

Right to be Informed of the Ground of Arrest

In \textit{Ajaib Singh v. State of Punjab},\textsuperscript{15} Supreme Court considered the arrest aspect of Article 22(1) and (2) in arrest made under section 50(1) and (2) of the Code of Criminal Procedure, in detail and it was concluded that Article 22(1) and (2) were applicable to cases of arrest made without warrant and it was unnecessary to apply them to arrests made under warrant. It was necessary to apply the provision of Article 22(1) of the Constitution in the case of arrest made without warrant because the immediate application of the

\textsuperscript{12} A.I.R. 1982 S.C. 1325.
\textsuperscript{13} A.I.R. 1994 S.C.W. 1886.
\textsuperscript{14} Id., pp. 1349, 1353.
\textsuperscript{15} 1953 Cr.L.J. 180.
judicial mind to the legal authority of the person making arrest and the regularity of the procedure adopted by him can be ensured.

The reason advanced by the Supreme Court in Ajaib Singh was reiterated in Raj Bahadur and in Erimmal Ebrahim Hajee. In Hajee it was held that the arrest made for the recovery of arrears of income tax under section 48 of the Madras Revenue Recovery Act, 1864 was not an arrest within the meaning of Article 22 (1) and 22(2) of the Constitution, because such arrest was not for any offence or punishment but it was no more than a mode of recovery of the amount due. Article 22(1) and (2) were held to have been designed to give protection against the executive act or other non-judicial authority. But in State of U.P. v. Abdul Samad, Justice Subba Rao observed that arrest and detention of a foreigner for the purpose of deportation was not outside the scope of Article 22(1) and (2). To bring in transparency and

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18 Article 22(2) of the Constitution provides that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to court of the Magistrate and no such person be detained in custody beyond the said period without the authority of a Magistrate.
19 Id., p. 691; See also Digambar Aruk v. Nanda Aruk, A.I.R. 1957 Ori. 281.
21 Also in State of Madhya Pradesh v. Shobharam [A.I.R. 1966 S.C. 1910], Justice Hidayatullah observed: "Arrest is arrest whatever the reason. In so far as the first part of Article 22(1) is concerned it enacts a very simple safeguard for persons arrested. It merely says that an arrested person must be told the grounds of his arrest. In other words, a person's personal liberty cannot be curtailed by arrest without informing him, as soon as is possible, why he is arrested. Where the arrest is by warrant, the warrant itself must tell him, where it is by an order, the order must tell him and where there is no warrant or order the person making the arrest must give him that information. However, the arrest is made this must be done and that is all that the first part of Article 22(1) lays down. I find nothing in Article 22(1) to limit this requirement to arrests of any particular kind. A warrant of a court and an order of any authority must show on their face the reason for arrest. Where there is no such warrant or order, the person making the arrest must inform the person the reason for his arrest. In other words, Article 22(1) means what it says in its first part.", id., pp. 1916 and 1917.

In this case Justice Bachawat and Justice Shelat observed: "Every person is prima facie entitled to his personal liberty. If any person is arrested, he is entitled to know forthwith why he is being deprived of his liberty, so that he may take immediate steps to regain his freedom." id., p. 1920.

In order to make provision for informing the person to be arrested, the ground of his arrest, Supreme Court in Sheela Barse v. State of Maharashtra [A.I.R. 1983 S.C. 378], issued the following direction: "Whenever a person is arrested by the police without warrant he must be immediately informed of the ground of his arrest and in case of every arrest it must immediately be made known to the person arrested that he is entitled to apply for bail ... As soon as a person is arrested the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform about his arrest.", id., p. 382.
accountability in arrest and detention the Supreme Court has made a useful and effective method to structure appropriate machinery for contemporary recording and notification of all cases of arrest. The court said:

In addition to the statutory and constitutional requirements...it would be useful and effective to structure appropriate machinery for contemporaneous recording and notification of all cases of arrest and detention to bring in transparency and accountability. It is desirable that the officer arresting a person should prepare a memo of his arrest at the time of arrest in the presence of at least one witness who may be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. The date and time of arrest shall be recorded in the memo which must also be countersigned by the arrestee.

Right to Counsel at the Time of Police Interrogation

In re Llewelyn Evans, the Bombay High Court held that accused should be "not only at liberty to be defended at the time of judicial proceedings but also that he should have reasonable opportunity, if in custody, of getting into communication with his lawyer". This view was reiterated by the Lahore High Court in the case of Sunder Singh v. Emperor. In Amolak Ram, the court held that "the person who is arrested merely on suspicion" is also entitled to have legal access when in police custody. Thus the right to consult and to be defended by a legal practitioner consists of two parts viz; the right to consultation when the accused is in custody and defense at the time of trial.

23 Article 22(1) of the Constitution and Section 340 of the Code of Criminal Procedure, 1898 confer this right to the arrested person.
25 Id., p. 554.
26 A.I.R. 1930 Lah 945.
In *Moti Bai v. State*, the applicant was arrested and detained by the police, the Rajasthan High Court considered it as an infringement of the constitutional rights under Article 22(1) and right conferred by section 340 (1) of the Code of Criminal Procedure, 1973. It was found that "ever since his arrest the accused has a right to be consulted by a legal advisor of his choice and to be defended by him". It was further observed that the Indian Evidence Act, 1872 by a specific provision under section 126 prescribes that all communications are to be treated as privileged "between a client and his counsel". So it is evident that communication between client and counsel will not be confidential if the police officials are within the earshot of such consultation. Further, such a consultation must be not only between the accused and his lawyers but also with his friends and relations out of the hearings of the police officer.

However it was held by the Supreme Court that the choice of consulting and being represented by a legal practitioner of one's choice, though a right constitutionally guaranteed, is really not an absolute right in terms of practice. Article 22 does not guarantee any absolute right to be supplied a lawyer by the State. Nor does the clause confer any right to engage a lawyer who is disabled under the law. The right guaranteed is only to have the 'opportunity' to engage a competent legal practitioner of his choice. It has been further held that this right to counsel is not limited only to the persons arrested but can be availed of by any person who is in danger of losing his personal liberty. Similarly in *State of Punjab v. Surinder*
Singh, court held that there is no hard and universal application that no questioning or interrogation can ever be made by police of an accused unless his counsel is called. The court was of the opinion that in such a case the police would be at the mercy of lawyers who may adopt dilatory tactics by taking adjournments and may not permit any questioning at all.

Right against Capricious and Unnecessary Handcuffing

In Sunil Batra (II) v. Delhi Administration, the Supreme Court observed:

The routine resort to handcuffs and iron bespeaks a barbarity hostile to our goal of human dignity and social justice.
In *Prem Shankar Sukla v. Delhi Administration*, the Court reacted against handcuffing that handcuffs should not be used in routine. They are to be used only when the person is ‘desperate’, ‘rowdy’, or is involved in non-bailable offence.

The high handedness of the police authorities was brought to the light in *Delhi Judicial Service Asson, Tis Hazari Court v. State of Gujara* (popularly known as Nadiad case). The case exhibited the berserk behaviour of police undermining the dignity and independence of judiciary. The Supreme Court took serious note of the whole incident and laid down detailed guidelines which are to be followed in case of arrest and detention of a judicial officer. For handcuffing and parading of undertrial prisoner, the State and not the policeman, is directed to pay compensation in *State of Maharashtra v. Ravikant S. Patil*.


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41 p.1541. In this case Justice Krishna Iyer also observed: "Handcuffing is prima-facie inhuman and, therefore, unreasonable, is over-harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring, to inflict 'irons' is to resort to zoological strategies repugnant to Article 21." *ibid*.
43 In this case the inspector of police of Nadiad police station arrested, assaulted and handcuffed the Chief Judicial Magistrate of Nadiad town and tied him with a thick rope like an animal with the object of humiliating him as he had been policing the police by his judicial orders. The guilty police inspector was given the simple imprisonment for a period of six months and was also directed to pay a fine of Rs.2000. The court also sent other guilty police officials to jail and imposed fine and further directed the State Government to take disciplinary action against them.,*ibid.* pp. 2211-13.
44 (1991) 2 S.C.C. 373. In this case, an undertrial prisoner was handcuffed and taken through the streets in a procession by police during investigation. The prisoner filed a writ petition before the High Court of Bombay. The High Court held the police officer guilty of violation of fundamental right under Article 21 of the Constitution of India and directed the Police officer to pay Rs.10,000/- as compensation to the respondent. Against the order the State filed an appeal. The Supreme Court held that the police officer cannot be made personally liable and directed the State to pay Rs.10,000/- as compensation to the person illegally detained.
Right against Torture and Custodial Death

The Supreme Court is of the view that any form of torture or degrading treatment is offensive to human dignity and violative of Article 21 of the Constitution. In *Kishor Singh v. State of Rajasthan*, severe strictures were passed by the Court against the police force for its gruesome act of torture. Denouncing third degree methods of the police, Krishna Iyer, J. has observed:

Nothing is more cowardly and unconscionable than 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.

The Supreme Court of India and various High Courts have condemned custodial violence and spoken strongly against it. They have proposed stringent punishment for custodial violence.

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49 *Francis Mullin v. Union Territory of Delhi*, A.I.R. 1979 S.C. 746. Hoping that the roots of third degree would be plucked out, he said: “Art. 21 with its profound concern for life and will become dysfunctional unless the agencies of the law in the police and prison establishments have sympathy for the humanist creed of that Article.”, Ibid.


51 The Court has observed: “The Police, with their wide powers are apt to overstep their zeal to detect crimes and are tempted to use the strong arm against those who happen to fall under their secluded jurisdiction. That tendency and that temptation must in the larger interest of justice, be nipped in the bud”. *ibid.*, p. 628.

52 In *Raghbir Singh v. State of Haryana* [A.I.R. 1980 S.C. 1087] the court hoped that, “the State, at the highest administrative and political levels will organize special strategies to prevent and punish brutality by police methodology. Otherwise the credibility of the rule of law in our republic vis-á-vis the people of the country will deteriorate.”, *ibid.*, p. 1088.

The court suggested: “No police life-style which relies more on fists than on wifs, on torture more than on culture can control crime because means boom rang on ends and re-fuel the vice which it seeks to extinguish ... The state must re-educate its constabulary out of their sadistic arts and inculcate a respect for human person”. A.I.R. 1981 S.C. 625 p. 628.

In *D.K. Basu v. State of W.B.* [(1997)1 S.C.C. 416.] the Supreme Court observed: “Custodial torture is 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, civilization takes a step backward-flag of humanity must on each such occasion fly half-mast”, p. 424. In this case the Supreme Court has rightly condemned the use of torture by the police. The Supreme Court observed: “Custodial violence, including torture and death in the lock-ups, strikes a blow at the rule of law...”, *ibid.*
v. State of U.P.\textsuperscript{53} is a typical case of a police officer trying to rescue his colleague by giving evidence favourable to the accused policeman.\textsuperscript{54} Restoring the conviction and sentence of 7 years by the trial court and rejecting the plea for substitution of imprisonment by fine, the Supreme Court rightly observed:

The offence is of a serious nature aggravated by the fact that it was committed by a person who is supposed to protect the citizens and not misuse his uniform and authority 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 should be such as would deter others from indulging in such behaviour. There can be no room for leniency.\textsuperscript{55}

In January 1985 the then Chief Justice of India noted that only rarely was eye-witness's testimony of torture leading to death available, other than from police officers who tend to be more concerned to conceal than to acknowledge what has occurred. The Supreme Court said that it wished to "impress upon the government the need to amend the law so that the burden of proof in cases of custodial death will be shifted to the police".\textsuperscript{56}

\textsuperscript{53} A.I.R. 1990 S.C. 709. In this case the Supreme Court expressing their deep concern on custodial deaths observed: "Deaths in police custody must be seriously viewed for otherwise we will help take a stride in the direction of Police Raj". See also Lalit Babu v. State of Rajasthan, 1997 Cri. L.J. 19.

\textsuperscript{54} The High Court persuaded itself to believe that the police officer did not give false evidence since by doing so he would have risked losing his job. Consequently, the High Court set aside the conviction, under Section 304 Part II and some other provisions of the Indian Penal Code and Prevention of Corruption Act, of the Officer-in-Charge of the police station for fatal injuries inflicted to a person suspected of decoity.

\textsuperscript{55} The Chief Justice made this observations after the Allahabad High Court had acquitted certain police officers of torturing to death a suspect in Uttar Pradesh on the grounds that there was insufficient evidence to prove the case beyond reasonable doubt. Prompted by the Allahabad High Court's decision, the Supreme Court proposed amending the evidence Act to ensure that police officers who commit human rights violations against people in their custody should not evade punishment due to a "paucity of evidence"; State v. Ram Sagar Yadav, A.I.R. 1985 S.C. 416.
Custodial Rights of Women

In *Nandini Satpathy v. P.L. Dani,* the court held that the right not to make self-incriminatory statements should be widely interpreted to cover the pre-trial stage of police investigations. It also criticized the police for calling women to police stations for investigation saying this constituted a violation of Section 160(1) of the Cr.P.C., which requires the police to interview males under 15 and women in the place where they reside.

In *Sheela Barse v. State of Maharashtra,* the Supreme Court made several directions and suggestions to the State Government to prevent the recurrence of police torture. However, these sensible directives have not been implemented by the vast majority of officials, police and Magistrates. No wonder cases like that of *State of U.P. v. Ram Sagar Yadav,* continue to take place.

When the Court's attention was drawn to horrible conditions in custodial institutions for women and girls in cases like Dr. Upendra Baxi and

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59 First, the State Government should prepare pamphlets in local languages describing the rights of arrested persons which should be placed in each police cell so as to enable all detainees in police custody to know their rights. Secondly, the police should inform the nearest Legal Aid Committee immediately of an arrest so that the committee might provide assistance at once at Government expense. Thirdly, the relatives of the arrested person should be immediately informed by the police. Fourthly, male detainees should be kept separate from female detainees and a female officer should be present during the interrogation of women detainees. Fifthly City and Sessions Judges should make unannounced visits to police stations to check on the treatment of inmates. And finally, Magistrates before whom detainees appear must enquire whether they had complaints of police torture, and to inform all detainees that they have a right to medical examination under Section 54 of Cr. P.C. *id.*, pp. 378-380.
61 In this case the Court observed: "Before we close, we would like to impress upon the Government the need to amend the law appropriately so those 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 circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by 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 legislature so that hand-maids of law and other do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection.", *id.*, p. 421

The High Court also issued certain guideline to the State Government to improve the custodial justice system. However it is quite

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63 1995 Cri. L.J. 4223 (Bom).
64 In order to protect the rights of arrested women the Bombay High Court issued the following directions: "Not only taking away a lady forcibly in the mid-night by male police officials was deplorable but gross and blatant abuse of power shows that such police officials have no regard for public morality and decency. It is, therefore, imperative that the State Government immediately looks into this aspect of the matter and issues directions to all the police stations in the State providing guidelines relating to arrest of female persons in the State. The State should ensure that no lady or female person is arrested without presence of lady constable and in no case, after sun-set and before sun-rise and if there are already rules or guidelines to that effect, these are to be strictly followed and complied with. We direct that the State Government should make proper provision for female detainees separately throughout the State in separate lock-ups and all other safeguards preventing police torture. This aspect too should be examined by the Committee constituted for the aforesaid purpose and proper recommendations be made by the Committee to the State Government to curb this menace and the State Government is directed to implement the said recommendations of the Committee relating female detainees as well", id., p. 4232.
65 The directions were the following:
(i) The State of Maharashtra is directed to constitute a Committee consisting of its Home Secretary, Law Secretary and Director General of Police within 15 days from today for going into all the aspects of custodial violence by the police in the State and suggest comprehensive measures and guidelines to prevent and check custodial violence and death and also suggest for that purpose suitable amendments in the Police Manual of the State and also submit comprehensive scheme for police accountability of human rights abuse; (ii) The said Committee is directed to submit its report to the State Government within three months of its constitution; (iii) The State Government is directed to take effective steps in implementing the measures and guidelines suggested by the Committee in preventing and checking the custodial violence immediately after submission of report by the said Committee; (iv) The State Government is directed to issue immediately necessary instructions to all concerned police officials of the State that in every case after arrest and before detainee is taken to the Magistrate, he should be medically examined and the details of his medical report should be noted in the Station House Diary of police station and should be forwarded to the Magistrate at the time of production of detainee; (v) The State Government should also issue instructions to all concerned police officials in the State that even after the police remand is ordered by the concerned Magistrate for any period, every third day, the detainee should be medically examined and such medical reports should be entered in the Station House Diary; (vi) The State Government is further directed to provide a complaint box duly locked in every police lock-up and the keys of the complaint box should be kept by the officer in-charge of the police station. The officer in charge of the concerned police station should provide paper and pen to the detainee if so demanded for writing complaint and the officer in-charge of the concerned police station should open the complaint box every day in the morning and if any complaint is found in the complaint box, the officer in charge of the police station should produce such complaining detainee to the Magistrate immediately along with his complaint and the concerned Magistrate would pass appropriate orders in the light of the complaint made or medical examination, treatment, aid or assistance, as the case may warrant; (vii) The State Government should issue instructions immediately in unequivocal and unambiguous terms to all concerned that no female person shall be detained or arrested without the presence of lady constable and in no case, after sunset and before sunrise; (viii) The State Government should make proper provision for female detainees in separate lock-ups throughout the State of Maharashtra., 1995 Cri. L.J. 4223 (Bom), p. 4234.
unfortunate that the Apex Court disagreed with the proposition when it made the following observations:

While we do agree with the object behind the direction issued by the High Court in Cl. (vii) of operative part of its judgement, we think a strict compliance of the said direction, in a given circumstance, would cause practical difficulties to the investigating agency and might even give room for evading the process of law by unscrupulous accused. While it is necessary to protect the female sought to be arrested by the police from police misdeeds, it may not be always possible and practical to have the presence of a lady constable when the necessity for such arrest arises, therefore, we think this direction issued requires some modification without disturbing the object behind the same. We think the object will be served if a direction is issued to the Arresting Authority that while arresting a female person, all efforts should be made to keep a lady constable present but in circumstances where the Arresting Officers reasonably satisfied that such presence of a lady constable is not available or possible and/or the delay in arresting caused by securing the presence of a lady constable would impede the course of investigation such Arresting Officer for reasons to be recorded either before the arrest or immediately after the arrest be permitted to arrest a female person for lawful reasons at any time of the day or night depending on the circumstances of the case even without the presence of a lady constable.66

This judgement invited protests from various corners of the society. The apprehension expressed by many of the human rights activists during field

study is that as at present, there are no substantive laws dealing with the arrest of women, this decision may be misused by the police to arrest women without having a lady constable in the arresting police party. Some directions issued by the Human Rights Commission and subsequent changes in the police manual are only leading principles in this regard.

Right to Compensation

Para 5 of Article 9 of the International Covenant on Civil and Political Rights 1966 provides that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.\(^67\) The question of granting monetary compensation to the arrested persons was considered by the Supreme Court for the first time in \textit{Khatri v. State of Bihar},\(^68\) wherein Justice Bhagawati observed:

Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious Fundamental Right to Life and Personal Liberty.\(^69\)

In \textit{Rajastan Kisan Sangathan v. State},\(^70\) the Court held:

It is now well settled that a person even during lawful detention is entitled to be treated with dignity befitting any human being and the mere fact that he has been detained lawfully does not mean that he can be subjected to ill-treatment, much less any torturous beating. The right to be treated even during lawful detention in a manner commensurate with human dignity is a well recognized right under Article 21 of the Constitution, and if it is found that the police has maltreated any person in police custody which is not

\(^{67}\) A somewhat similar approach is provided for under the Federal Civil Rights Act. Alvin W. Cohn & Emilio C. Viano, \textit{Police Community Relations: Images, Roles, Realities} (1976), pp. 413 & 414.

\(^{68}\) \textit{A.I.R.} 1981 S.C. 928.

\(^{69}\) Id., p. 930.

\(^{70}\) \textit{A.I.R.} 1989 Raj. 10.
commensurate with human dignity, he is at least entitled to
monetary compensation for the torturous act by the police.\textsuperscript{71}

In \textit{Challa Ramkonda Reddy v. State},\textsuperscript{72} it was held that where a
citizen has been deprived of his life or liberty, otherwise than in accordance
with the procedure prescribed by law, it is no answer to say that the said
deprivation was brought about while the officials of the State are acting in
discharge of the 'Sovereign function of the State'. The Court pointed out
that indeed this is the only mode in which right to life guaranteed by Article
21 can be enforced.\textsuperscript{73}

From the perusal of the above cases from Rudul Shah\textsuperscript{74} to Bhim
Singh,\textsuperscript{75} it is clear that there was no clear basis in the approach of the judiciary
towards the quantification of the amount of exemplary costs and the discretion
to award monetary compensation for the violation of Article 21 was left to the
individual judge. For sufficient compensation they have to again approach the
civil court.

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\footnotesize{\textsuperscript{71}Id., p. 16. \\
\textsuperscript{72}A.I.R. 1989 A.P. 235. \\
\textsuperscript{73}Id., p. 247. \\
\textsuperscript{74}Supreme Court brought about revolutionary break through in the Human Rights Jurisprudence
through \textit{Rudul Shah v. Union of India}, [A.I.R. 1983 S.C. 1086.] wherein the Court granted
monetary compensation of rupees 35,000 to the petitioner against the lawless act of Bihar
government. In this case the court found that one of the effective ways of preventing violation of
Article 21 is to make the violators to pay compensation. A very significant question which came
up for consideration before the Supreme Court was whether it could grant same compensation or
exemplary costs against the state under Article 32 of the Constitution for illegal detention in jail.
The Court observed: "The refusal of this Court to pass an order of compensation in favour of the
petitioner will be doing mere lip-service to his fundamental right to liberty which the State
government has grossly violated... One of the telling ways in which the violation of that right can
re-assemble be prevented and due compliance with the mandate of Article 21 seemed, is to mulct
its violators in the payment of monetary compensation.... The right to compensation is some
palliative for the unlawful acts of instrumentalities which act in the name of public interest and
which present for their protection of power of the state as a shield... Therefore the state must repair
the damage done by its officers to the petitioner's right. It may have recourse against those
officers.", \textit{Id.}, p. 1089. \\
\textsuperscript{75}In \textit{Bhim Singh v. State of J&K}, [A.I.R. 1986 S.C. 494.] the Court awarded rupees 50,000 as
compensation to Bhim Singh, who had been illegally detained for delivering an inflammatory
speech. The Court observed: "When a person comes to us with the complaint that he was arrested
and imprisonment with mischievous and malicious intent and that his constitutional and legal right
were invaded, the mischief or malice and the invasion may not be washed away or wished away
by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by
awarding suitable monetary compensation. We consider this as an appropriate case". \textit{Id.}, p. 499.}
\end{flushright}
A working principle, though not a good principle, for awarding compensation evolved through *Peoples Union for Democratic Rights v. State of Bihar*,\(^7\) wherein the Supreme Court observed:

We may not be taken to suggest that in the case of death of liability of the wrongdoer is absolved when compensation of rupees twenty thousand is paid. But as a working principle and for convenience and with a view to re-habilitate the dependents of the deceased such compensation is being paid... Without prejudice to any just claim for compensation that may be advanced by the relations of the victims who had died or by the injured persons themselves, for every case of death, compensation of rupees twenty thousand and for every injured person compensation rupees five thousand shall be paid.\(^7\)

Supreme Court in *Nilabati Behra v. State of Orissa*,\(^7\) made a distinction between remedy of compensation available under the Constitution and the private law, Law of Torts and non applicability of the principle of sovereign immunity in the Constitutional remedy. The Court observed:

(A) ward of compensation in a proceeding under Article 32 by this court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply even though it may be available as a defense in private law in an action based on tort.\(^7\)

In *Saheli v. Commissioner of Police*,\(^8\) compensation under Law of Torts was allowed in the writ petition by the Supreme Court. In *State of

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\(^2\) Id., p. 356.
\(^4\) Id., p. 1996.
Rajasthan v. Vidyawati, \(^8\) reference regarding State immunity was made and State liability was fixed. But in Kasthuri Lal v. State of U.P., \(^2\) it was held that sovereign immunity was applicable.\(^3\)

In Nilabati Behra v. State of Orissa,\(^4\) the Supreme Court directed the State to pay Rs. 1,50,000/- as compensation to the mother of the deceased.\(^5\) In this case the Supreme Court relied on Article 9(5)\(^6\) of the International Covenant on Civil and Political Rights, 1966 and observed that the self provision indicates that the enforceable right to compensation is not alien to the concept of the guaranteed right.\(^7\)

Thus the doctrine of 'sovereign immunity' which was an absolute principle earlier has been modified by the Supreme Court. Such judicial activism by the Court to meet the changing situation of the society with avowed object of rendering justice is awe inspiring.

In a decision of the Supreme Court in which was a case from Manipur, a disturbed area, in which case there was a fake encounter and two persons alleged to be terrorists were seized by police, taken to a distant place and shot at causing their death it was held that such administrative liquidation

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\(^1\) A.I.R. 1962 S.C. 933.
\(^2\) A.I.R. 1965 S.C. 1039.
\(^3\) In Nilabati’s case Supreme Court made reference to its earlier decision in Saheli as: “In Saheli v. Commissioner of Police, the state was held liable to pay compensation payable to the mother of the deceased who died as a result of beating and assault by the police. However, the principle indicated therein was that the State is responsible for tortious acts of its employees... In Saheli, no reference has been made to the decision of Kasthuri Lal’s case wherein sovereign immunity was upheld in the case of vicarious liability of the State for tort of its employees. The decision in Saheli is, therefore more in accord with the principles indicated in Rudul Shah’s case.” Id., p. 1967.
\(^5\) In this case the Court held: “The real threat of rule of law came from the growing lawlessness of the state functionaries particularly the police and wherever there was contravention of human rights and fundamental rights, there was an enforceable right to compensation.” The Court further held: “The court is not helpless and the wide powers given to the Supreme Court by Article 32, which itself is a fundamental right imposes a constitutional obligation on the court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution which enable the award of monetary compensation; in appropriate cases...” Id. pp. 763-764
\(^6\) International Covenant on Civil and Political Rights, Art. 9(5) reads: “Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”.

\(^8\) Supra n. 85., p. 764.
cannot be permitted and interference of the Court is called for. The Apex Court awarded a compensation of Rs. 1 lakh to families of each of the deceased.

Applying the above principle, compensation has been awarded to the family members of persons who disappeared or were found dead after being taken for interrogation by police or died in police custody due to torture. In addition, compensation has been awarded to those persons who suffered due to patently illegal detention, rape, torture, forced labour in detention and ill-treatment. Thus in a series of cases like State of Punjab v. Ajaib Singh, Charanjit Kaur v. Union of India, Pratul Kumar Singh v. State of Bihar, Arvinder Singh Bagga v. State of U.P., Afzal v. State of Haryana, Inder Singh v. State of Punjab, and Dhananjay Sharma v. State of Haryana, People's Union for Civil Liberties v. Union of India, (Smt) Chanchala Swain v. State of Orissa, State of Maharashtra v. Ravi Kanth S. Patil, the Supreme Court again held that the state must be held responsible for the unlawful acts of its officers and it must repair the damage done to the citizens by its officers for violating their indefeasible fundamental right of personal liberty without any authority of law.

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- (1995) 3 S.C.C. 757. In the present case the detenues were disentitled from receiving any compensation as monetary amount for the wrong done by the state officials because detenues had misinterpreted and exaggerated the facts by filing false affidavits in the Court., id., pp. 782-783.
- 1997 (1) Ori. L.R. 384.
- 1991 (2) S.C.C. 373.
Thus the latest judicial trend is in consonance with Article 9(5) of the International Covenant on Civil and Political Rights. Though the concept of "personal liability" of the erring police official is a welcoming feature of Indian judiciary in the area of compensatory jurisprudence, it would have been better if in *Pratul Kumar Sinha* and *Aravinder Sinha Bagga* the Apex Court had not left it open for the State government to recover the amount from the guilty officials but instead directed to recover from them.

The above decision shows that the chief object of awarding compensation by the Supreme Court was rehabilitating the victims or their dependents. Sometimes due to the police atrocities the victim might not die but might lose his limb or eyes or the incident might make him unable to find his bread. In such cases the amount suggested by the court would not be sufficient to rehabilitate the victim.

However there are allegations that the Supreme Court, the sentinel of human rights, has been able to bring out only cosmetic changes since its directives to police, are more honoured in the breach than the observance. It is true that the threat of civil liability is having a very great effect upon the police policy. But plaintiffs are not able to sustain a successful lawsuit because of the expense. Experience has proved that most of the complaints against police come not from the ghetto areas where there may be most questions about abuse of power by police, but rather from middle income areas where an articulate citizen becomes irate over the actions of a police officer.

For indigent and illiterate victims of human rights abuses, the writ courts are too remote and too expensive to be of any avail. The rights now granted by the courts are of illusory in absence of implementation and enforcement. Justice Krishna Iyer wrote in anger and anguish:

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Rights, however, solemnly proclaimed and entrenched in great instruments are but printed futility, unless a puissant judiciary armed with legal authority, remedial process and jurisdiction, operational and pragmatic, transforms the jurisprudence of human rights into public law of enforceable justice...Human rights regime leaves a wide gap between normative claims and implementation capabilities. The result is that large-scale breaches of civil and political rights as well as economic, social and cultural rights was the scenario.\(^{107}\)

The higher police officials, even though they may be privately be critical of the actions of the lower officials, are having tendency to protect their fellowmen or the government from civil liability. Even the public prosecutors may instruct the police administration to suspend departmental disciplinary proceedings that might prejudice the litigation. Overcoming all these difficulties even if an unusual decision comes where an individual succeeds in gaining a money judgement in an action against a police officer, or government, it is apparent that, it does not cause a re-evaluation of departmental policy or practice on the part of the police. Thus civil litigation does not appear to be a perfect method of stimulating proper law enforcement policy.

\section*{B. HUMAN RIGHTS COMMISSIONS}

India is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Though the human rights embodied in the aforesaid covenants stands substantially protected by the Constitution, there has been a growing concern in the country and abroad over the issues relating to human rights. Having regard to this changing social realities and the emerging trends in the nature of


**National Human Rights Commission**

In a crisis that characterises our criminal justice system, we have with all good intentions created an *Ombudsman* - The National Human Rights Commission to remedy the situation and attend to pressing problems of the country's human rights front. The Government established the Commission in October 1993 to address issues of widespread violation of human rights and devise steps to be taken to redress grievances.

The National Human Rights Commission is also taking action and suggesting remedial measures in cases brought to its notice. Like the Apex Court, the Commission too has a crowded agenda, and hence any sense of euphoria is quite misplaced. The NHRC suo moto or otherwise, is taking cognizance of custodial crime and awarding immediate interim compensation. Similarly, on custodial rape or molestation of women, the N.H.R.C. is ever vigilant.

**Important function of the Commission is to spread human rights literacy amongst various sections of the society and promote awareness of the safeguards available for the protection of these rights.** The National Human

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9 It is a five member body appointed by the Government, headed by former Chief Justice of India. Other Members are former Judge of the Supreme Court, former Chief Justice of High Court and persons having knowledge or experience in matters relating to human rights.
Rights Commission has formed a core group to train police personnel on human rights besides introducing it in the school curriculum. The Commission wants Universities to have Human Rights faculties. After the institution of the National Human Rights Commission a number of complaints of human rights violations are received by them. Most of the complaints received by the Commission relate to those against the police. The Commission is not merely a post office box, it interacts at the complaints of individuals or groups. The National Human Rights Commission is also taking action and suggesting remedial measures in cases brought to its notice. In June 1999 the NHRC constituted a panel presided over by justice Sadashiva to investigate the allegations of human rights violations.

On the 14th December 1993 the Commission issued instructions to all States asking them to direct all District Magistrates and Superintendents of Police to report directly to the Commission any instance of death or rape in police custody within 24 hours of its occurrence, failing which there would be a presumption that efforts were being made to suppress the facts. Although the Commission has not published information on the compliance of States

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117 B.P. Singh Sehgal, op. cit., p. 23.
119 Noorjahan Bava, op. cit., p. 117.
120 This panel held its first sitting in January 2000 in Gobichettipalayam and its second the following month in Kolathur. The Panel initially refused to hear complaints involving the Tamil Nadu police or the Tamil Nadu STF, any cases in which complaints had already been made to the Tamil Nadu Human Rights Commission, any cases of 'disappearance' where police claimed that the victim had been killed in an 'encounter' or cases where there were pending criminal cases against the victims. Following protests by human rights organizations who pointed out that if these limitations were in place the majority of allegations of human rights violations would not be heard, the panel reportedly agreed to record all evidence brought before it. The testimony of scores of alleged victims of illegal detention and torture including rape, as well as relatives of victims of "disappearance" has reportedly been recorded by the panel despite a large police presence at the hearings and threats by police against witnesses not to depose.
On 28 March 2000, as the third hearing was about to commence, the proceedings were stayed on the orders of the Karnataka High Court acting on a petition filed by a police official on the grounds that the inquiry had "deminorlized the police" and that statements made by the victims were exaggerated. The High Court held that the NHRC had no jurisdiction for constituting a panel for conducting an inquiry into alleged incidents of human rights violations. As of late November 2000 an appeal against this stay order was pending in the High Court, infra n. 134, p. 10.
with this directive, it intervened in several cases of custodial death. The Commission has put forward several recommendations in its reports on the issue of custodial violence and these are still relevant and are yet to be implemented.

National Police Commission suggested that there should be a mandatory inquiry by a Sessions Judge in each case of custodial death, rape or grievous hurt. But the recommendations has not been carried out.

The Commission (NHRC) had also evolved, and circulated for adoption, a Model Autopsy Form that took into account the work done by the United Nations on this subject and also the special circumstances prevailing in our country. Seventeen States and Union Territories have now accepted the Commission's recommendation to adopt the Model Autopsy Form.

The Commission has set up a Group of Forensic Experts to prepare a set of instructions to guide the doctors conducting post-mortem examinations. The panel of forensic experts has prepared the guidelines for video-filming of post-mortem examinations titled 'Instructions for Doctors Conducting the Post-Mortem' and a format for scrutiny of the video cassettes of custodial deaths.

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121 In an interview, the Chairman of the NHRC, Justice Ranganath Mishra, said that the Commission was "informed regularly" of custodial deaths and commented that "It is just a case of habit formation on the part of the authorities", infra n.174, p. 10.

122 In October 1994 the Chairman of the NHRC stated at a commemoration ceremony organized by Delhi police that "police should not torture delinquents in the name of investigation". id., p. 11.


125 These are being circulated. During the course of the year 1998-99, the Chairperson, Members of the Commission and officers of the Investigation Division, led by the Director General (Investigation), continued their efforts to sensitize all levels of the police to human rights issues. In particular, during their visits to the various States, discussions were held with the Directors General of Police as also the Heads of Police Training Institutions to encourage them to adopt and effectively use the human rights training materials prepared by the Commission for police personnel at the basic and refresher course level. The Commission is convinced that training programmes, when properly structured and conducted, can have a most valuable effect on police personnel and improve their responses even in provocative situations.Id., p. 18 & 45.
Often, police commit the custodial crime in secrecy and direct evidence scarcely comes forth. The NHRC issued guidelines for post-mortem of custodial deaths, including videography and all the States have adopted the guidelines laid down by the NHRC. Of late, the Police have adopted the strategy of explication as a mode for custodial deaths. They allege that the accused removed his wearing apparel, tied to the window grill and died by hanging, as an alibi. In many a case, the Commission has come across this phenomenon. The Commission deprecated this tendency of falsification of the custodial crime which has also required to be dealt with an iron hand by the courts.126

However the Annual Report of the National Human Rights Commission itself it is felt that the provisions in the Act are not adequate for the better protection of human rights. Going through the provisions of the Protection of Human Rights Act, 1993, one may see that the Commission—both National and State—is only fact-finding machinery. Formerly, whenever a complaint against custodial violence or custody-death had to be made, the individuals had to approach a court of law with a suit or to the government with a petition to make inquiries. The complaint may be inquired into by an officer of the department, of another department or by a judicial commission as the Government may decide. After the institution of the Commission at the National or State levels, there is no need for the affected citizens to go from pillar to post with complaints of human rights violations. They can approach the Commission and in that way, this a permanent forum for the citizens to make complaints about human right violations.127

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127 The Commission is given powers to recommend further action or compensation and nothing is said in the Act about the acceptance or rejection of the recommendations made by the Commission by the Government. Of course, even when the recommendations are rejected, the Commission's observation receives wide propaganda through the media or otherwise so much so that a public opinion on the alleged violation of human rights is created.
Many States have not appointed their Commissions and Human Right Courts\textsuperscript{128} and as such the National Human Rights Commission is heavily burdened with a lot of complaints for inquiry. Similarly there is no direction as to the type of offences that may be sent to these courts for speedy trials. Any offence against human body, liberty, and security can be a human right violation. The Act is not clear about this point.

In order to effectively implement human rights norms, an impartial, politically independent, persistent and organised concern is required. The National Human Rights Commission is no doubt an independent and autonomous body and is not subservient to any official or agency. But as far as the functioning of a Governmental institution is concerned the concept of independence/autonomy can never mean a total lack of connection with the State. As the executive is itself the worst violator of human rights, this mode of appointment does not inspire confidence. According to human rights activists structure of the Commission itself is to be changed and the members should be equipped to hear human rights cases. Another criticism is that the Commission is ineffective as its decisions or orders have no binding effect. One of the main failings of NHRC is that it is designated as a recommendatory body that acts as a placebo. Though the Act has recognised the importance and necessity of a Human Rights Commission and had given a vast and extensive power to it in conducting the inquiry or investigation, the Commission cannot enforce its own decision. The Act has deprived the Commission this vital power. According to the provisions of the Act\textsuperscript{129} where after the inquiry the Commission finds any violation of human rights by a public servant, it can only recommend to the concerned Government or authority to prosecute such servant or it has to approach the Supreme Court or the High Court concerned for such directions orders or writs.

\textsuperscript{128} Section 30 of the Protection of Human Rights Act, 1993 empowers the governments to establish Human Rights Courts. They are intended for the speedy trial of offences arising out of human rights violations.

\textsuperscript{129} Protection of Human Rights Act, 1993, section 18.
To protect the human rights of persons in police custody, the Commission had made two important recommendations: Firstly that the Government should implement the recommendations of National Police Commission of 1977, secondly the Government should accede to the 1984 Convention against Torture and Other forms of Cruel Inhuman and Degrading Treatment or Punishment. Human rights and civil liberties groups and activists welcomed these recommendations but the Government decided not to adopt them on the ground that some Chief Ministers were opposed to it. Here Commission stood helpless, watching its valuable recommendations being flown into the air.

A criticism against NHRC is that data of NHRC is mostly based on the facts coming from Government sources which cannot be relied upon. To illustrate, during April 1994 to March 1995 the Commission came across only 172 custodial deaths and 9 custodial rapes, though their actual numbers are found to be more than this. Amnesty International, though to some extent exaggerated, reported 415 cases of death in police custody way back in 1992. NGO representatives continue to furnish most useful information and help to the officers of the Investigation Division in examining victims, particularly those who were from vulnerable or disadvantaged sections of society. However the Commission is accused of not co-operating with and or even neglecting the civil liberties group, though the Act provides for interaction with activists and non-governmental organization.

The composition of the Commission is always at the centre of criticism as it is now consists of judges only. A judge tends to rely more on an academic approach. He cannot approach the case with sentiments. What is needed is a mix of people who are capable of identifying the different facets of a case to arrive at the right conclusion.

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130 Supra n.123, p. 27.
131 Id., p. 60.

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Credibility of the Commission is suspected mainly because it is appointed by Central Government. To counter this criticism, the Chairman and the members of the Commission should preferably be appointed by a multi member body, comprising among others, the Chief Justice of India the Speaker of Lok-Sabha, the leader of the opposition etc.

The Protection of Human Rights Act provides for the constitution of State Human Rights Commission and also for the establishment of Human Rights Courts. The Commission had emphasized the need for human rights mechanisms at the State level and at levels even below the State, in order to ensure quick redressal of complaints. But only a few states had set up state-level human rights commissions. Similarly state are not willing to establish human rights courts. Non availability of the resources is given as one of the reason for the non compliance of the Act. The Act has not specifically mentioned setting up of the Commission at the level of Union Territories. The presumptions could be that the Commission at the national level will serve in the Union Territories as well. However this will militate against the concept of decentralised grievance redressal machinery through State Commission.

Lack of infrastructure for the working of the Commission, inadequacy of skilled persons to conduct investigation, lack of resources, adverse attitude of Government, presence of loop holes and ambiguities in the Act etc makes both the Act and the Commission established under the Act mere farce.

The powers of this Commission are limited by the very lacking of its own independent investigative machinery. They have to rely on investigative staff provided by the Central or State Government who operate under the supervision of the Director General of Police. The Commission's

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\(^{132}\) Section 21 of the Act.
\(^{133}\) Section 30 of the Act.
powers to investigate alleged human rights violations are also limited. The Commission's mandate is limited to asking for a report from the Central Government on the allegations and there is no obligation on the part of the Government to proceed with or publish any recommendations which the Commission may make.  

State Human Rights Commission

From the Annual Reports of the Kerala State Human Rights Commission it can be discerned that the Commission has emerged as an effective guardian of the human rights of the masses. The Commission made a number of recommendations to the Government.

The full fledged investigation team of the Commission started functioning by November 2000. The absence of vehicle hampers the work of the investigation team. The Commission has endeavoured to perform a dual role, namely as an organ to remedy violations of human rights as envisaged under its statute and as an agency to create awareness of human rights among the public at large. In the area of educating public on human rights, the Commission has a very constructive role to play.

However the Commission by the very nature of its functions and powers which are circumscribed by the parameters laid down by the statute is

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2 Districtwise list of number of cases filed before the Kerala State Human Rights Commission on violations of human rights in police custody from various districts in Kerala is included in Appendix V1

3 A few of the recommendations made by the commission are highlighted in the Annual Reports of the Commission. One such recommendation is that when the police use third-degree methods to extract confession at least a few in medical profession collide with the police to transform homicides into suicides. It stressed the need to adopt modern scientific investigation and techniques of intelligent interrogation to eliminate this malady., Welcome speech of Dr. S. Balaraman, former member of Kerala State Human Rights Commission in the two day workshop on combating torture and custodial violence organised by the Commission on 22nd and 23rd October 2001 at Kanakakunnu palace, Thiruvananthapuram., Kerala State Human Rights Commission, Annual Report 2000-2002, pp. 114-115.
primarily performing a recommendatory role. The inadequacy of staff is causing in disposal of cases.\textsuperscript{136}

\textbf{C. WOMEN'S COMMISSION}

National Womens Commission and State Womens Commissions are remaining as two important instruments for the protection of human rights of women. Though the State Commission in Kerala has initiated many steps for the redressal of grievances of women victims of police atrocities, it could not yield much result so far. From 1996-2000 the total number of petitions received by the State Commission against police was 431. In 1998 it was 121. In subsequent year it began to diminish. In 2000 it was 98.\textsuperscript{137}

More over in Wayanad district within 5 years only 3 petitions were received against police.\textsuperscript{138} Womens Commission finds that, this tendency may be due to the good approach of police towards women in those districts or the fear of women to complaint against police. More investigation is needed in this variation. Generally the women folk are reluctant and frightened to approach either the courts or the commissions. There are also difference of opinion among the human rights activists themselves regarding the credibility and functional performance of the commission, especially with reference to custodial justice of women. A general awareness is to be inculcated among the women community about the existence of Women Commission for safeguarding their interest and preventing the atrocities against women.


\textsuperscript{137}From Kollam district from 1996 onwards petition were raised against police. In 96 it was 5 petitions and began to increase as 21 in 98, 22 in 99 and as 17 in 2000., Kerala State Womens Commission, \textit{Annual Report, 2000} (unpublished), Appendix., See Appendix VII

\textsuperscript{138}In Kozhikkode district more than 2 petitions were not received against police brutality in any year. Within 5 years only 8 petitions were received against police. In Kannore district there were no petitions against police during 96&98. In 97 one, in 99, three thus and in 2000, six petition were received against police. In Kasargode district only one petition was received against police. But in the years1996, 1997 and 1998 no petition was received against police. Similarly the total number of petitions received on various issues amounted to only 551 and the percentage of complaints on police atrocities against women was 1.27\%, \textit{ibid.}
D. COMMISSIONS OF INQUIRY

A Code of conduct for law enforcement officials stating that all those who exercise police powers should respect and protect human dignity and uphold the human rights of all persons was adopted by the United Nations on 17, December 1979. If the eighth report of the National Police Commission a draft Police Act appeared.\(^{139}\)

The 1952 Commission of Inquiry Act allows the establishment of Commissions of Inquiry; state governments occasionally set up such commissions to investigate cases of deaths in custody.\(^{140}\) Government of India appointed in 1977 National Police Commission for studying the police system in India. The Commission made several recommendations for upgrading the service. It was for the first time, a commission was appointed at national level after the Indian Police Commission \(-1902-03-\) and it was done with a lot of hopes and expectations. The Commission submitted eight reports and the last one was submitted in 1981. Nevertheless, many governments which came into power afterwards did not implement the recommendations in the report. Some State Governments implemented a few recommendations here and there. Many human rights activists and organizations brought to the notice of the government the need of implementing these recommendations. Eventhough in 1997, the Government of India decided to implement some of the recommendations of the NPC, that decision could not go a long way.\(^{141}\)

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\(^{a}\) It was released in May, 1981. But it is quite unfortunate that the Commission has not considered the internationally accepted Code when it prepared the draft Police Act. Any way, the articles in the Code ought to have been incorporated in to the proposed Police Act, R.K. Bhardwaj, op. cit. p. 5-12.

\(^{b}\) Such a commission is not a court of law but a fact-finding body often headed by a judge. Its composition does not offer the same guarantees of impartiality as a judicial inquiry as commission members are appointed by the state government. Whilst such commissions do have investigative powers, they can only produce a report with recommendations as a result of their work. In the past many of these commissions have taken years to complete their investigations and produce a report. Three Indian states regularly appoint commissions of inquiry: Andhra Pradesh, Tamil Nadu and West Bengal., supra n. 134, p. 11.

\(^{c}\) Supra n. 116, p. 35.

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In the State of Tamil Nadu, there have been several commissions of inquiry appointed to inquire into deaths in police custody. In addition to making inquiry and finding fault with the police function, these commissions made several recommendations to improve the police system. However, these recommendations have not yet been implemented and without a commitment from the Central and State Governments to incorporate those recommendations in the provisions of law, the problem of custodial violence will persist.\(^\text{142}\)

Commissions of Inquiry have also been set up in several other states like West Bengal.\(^\text{143}\) Civil liberties groups claim that of the 20 commissions which have investigated cases of police excesses including custodial deaths, the findings have been published only in some cases. Despite police officers having been identified in the reports as responsible for violations, the government has reportedly taken no further action.\(^\text{144}\)

**E. VOLUNTARY ORGANISATIONS**

The Protection of Human Rights Act 1993 requires the Human Rights Commission to encourage the efforts of non-governmental organisations working in the field of human rights.\(^\text{145}\) It is in this broad overview that the role of some non-governmental organizations (NGO's) and

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\(^{142}\) One such commission investigated the case of one death in custody which had attracted widespread attention in many local and national papers and was listed by Amnesty International in its March 1992 report. The Commission reported on 3 June 1994, finding that the victim, Nandagopal, had died as a result of aggravated suicide in police custody on 3 June 1992. In its report which was made public, it recommended that five police officers be brought to trial for wrongful confinement and voluntarily causing hurt and granted Rs.1,00,000 compensation to the widow. However, Amnesty International remains concerned that even after over three years since the death of Nandagopal, a fully independent and impartial judicial investigation into the allegations has not been carried out. *Supra* n. 134, pp. 11-12.

\(^{143}\) The commissions which have been established in Tamil Nadu have made a number of suggestions in their reports to the state government intended to protect people detained in police custody. These recommendations include many of the measures listed in Amnesty International's 10-point program for the prevention of torture in India. Published in March 1992. *Supra* n. 134, p. 12.


\(^{145}\) Protection of Human Rights Act, 1993, Section 12 (i).
civil rights groups and their contributions to the field of human rights of persons in police custody is to be evaluated.

In the initial stages the international human rights organizations were founded by League of Nations and United Nations.\textsuperscript{146} In India the civil rights groups had emerged earlier in the sixties in the wake of State oppression and repression in West Bengal, Andhra Pradesh and Punjab.\textsuperscript{147} Most of these civil and democratic rights movements – national and international – have made notable contributions to the safeguarding of human rights.\textsuperscript{148} These organisations have established their expert activity by investigating and undertaking on the spot studies and by publishing their observations.

More often than not, we hear strident cries of flagrant human rights violations from both, inside and outside sources.\textsuperscript{149} When the criticism comes from our own human rights activists, scholars, writers, media persons, the

\textsuperscript{146} Some of such organisations are the London-based Anti-Slavery Society for Human Rights founded in 1938, the International Committee for Red Cross in 1963, the French League for Human Rights in 1898.

\textsuperscript{147} Some of the significant NGOs are People's Union for Civil Liberties (PUCL), the People's Union for Democratic Rights (PUDR), Citizens for Democracy (CFD) Delhi, the Association for the Protection of Democratic Rights (APDR) in West Bengal, the Andhra Pradesh Civil Liberties Committee (APCLC) and the Association for Democratic Rights (AFDR) in Punjab. Civil Liberties and Human Rights Organization (CLAHRRO) in Manipur, the Committee for the Protection of Democratic Rights (CPDR) Bombay, the Free Legal Aid Committee (FLAC) in Bihar, the Jammu and Kashmir Peoples Basic Rights (Protection) Committee, the Naga Peoples Movement for Human Rights (NPMHR) etc. Some International Civil Rights Group – Amnesty International (AI), the Human Rights Watch Asia (HRWA) and the International Commission of Jurists (ICJ) – have also actively engaged in monitoring violations. Amnesty's contribution lies in its examination of specific issues of human rights concern, such as detentions without trial, systematic use of torture, disappearances and extra-judicial executions of political activities in the Punjab, Jammu and Kashmir and West Bengal. It has also, along with the International Commission of Jurists, played a prominent role in highlighting the state of human rights violations during the Emergency., Amnesty International, Human Rights in India: The Updated Amnesty International Report (1993), p. 8.


\textsuperscript{149} Over the past several years, India has been severely criticized by Amnesty International, Asia Watch and International Red Cross for alleged violations of human rights by the police. These violations include custodial deaths, illegal confinement, police brutalities, rape and other heinous crimes. Denial of permission to these reputed international bodies to study and assess our human rights record has created suspicion in the minds of such organizations about the sincerity of our commitment to uphold human rights., Arun Kumar Palai, op. cit., pp. 49-50.
chieftains of criminal justice system maintain discreet silence, but when the criticism comes from international (alien) sources, like Amnesty International, World Watch etc., there are strong rebuttals bordering on contemptuous disregard of allegations. The fact of the situation is that both silence and rebuttals are often unfortunate and uncalled for.  

Even though the role of voluntary organisation in the prevention of human rights violations in police custody was earlier limited, there is growing tendency to make inquiries and report the findings. In an open letter written to the Chief Minister of Andhra Pradesh by the Andhra Pradesh Civil Liberties Committee, the Committee enumerated the brutalities committed by the police machinery. It was pointed out that the police force of the state had become a law unto itself.  

It was only after Jayaprakash Narayan launched a major agitation against the growing authian policy of Mrs. Gandhi that a large number of prominent liberals and humanists came together with radicals to form the first (and only) national human rights initiative—the formation of the peoples Union

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151 Report of Andhra Pradesh Civil Liberties Committee (1990), p. 2; It had come to believe that it can indulge in any amount of brutality and commit all crimes with impunity in the name of maintaining law and order and detecting crimes. The total absence of accountability has converted the police establishment into a private army of the ruling party. In the process the pursuit of private fortunes through abuse of authority has been legitimized. The Committee pointed out that about 20 to 25 persons die in police custody every year as a consequence of 'third' degree treatment. There have been public protests against custodial torture and lock-up deaths in the state. As a result the state, in certain cases, orders judicial enquiries but no action is taken after the reports are submitted. There is yet another form of extra-legal killing which is widely resorted to by the Andhra police. On an average during the last 20 years, 33 persons every year are killed in encounters making a total of 660 deaths by the end of 1989. The present tally is far higher: more than 200 killings took place in the last couple of years. There have been cases of people missing while in police custody—a infamous and brutal method of dealing with the political dissidents. This is a Latin American Syndrome: there have been 26 cases of disappearance. id., pp. 2-7. The Government under tremendous pressure appointed one-member Commission. The Commission in the process of eliciting evidence discovered that this number was almost double to what was reported. G. Haragopal, Political Economy of Human Rights (1997), p. 166.
for Civil Liberties and Democratic Rights (PUCLDR) in 1975. There was widespread apprehension in the country that the vast powers acquired by the State could be used against dissenters and for narrow political ends by the ruling party. PUCL exposed the state the use of draconian legislation by the police to violate democratic rights of the people. Wherever there is violation of human rights of the people, the individual members of the team visit that place, interview the victims, the police officers and public in general. Then it draws its conclusions based on facts and publish its reports to awaken the people and authorities concerned about the violations of the rights of the Indian people.

F. WORK OF INTERNATIONAL ORGANISATIONS

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in 1984, has established the Committee against Torture, to monitor the State’s compliance with its provisions. Besides, the

[35] G.S.Bajwa, op.cit, p. 96. In response to the wide spread apprehension that 77 person were murdered by police in cold blood in Andhra Pradesh, Jaya Prakash Narayanan, as president of citizens for Democracy, set up a committee in April 1977 headed by V.M. Tarkund to investigate the death. After extensive investigation two interim reports were published. The first report (Released on May 12, 1977) revealed that eight deaths in two encounters were in fact cold-blooded liquidation by the police. In the second report (Released on May 12, 1977) the Committee concluded that the ten deaths were murders in cold blood that no inquest was held and that there was direct evidence of a brutal almost unspeakable torture (“The Tarkunde Commission Report”, The Citizens for Democracy Report to the Nation (1997) quoted by G.S. Bajwa, op. cit., pp.357-358 ). The Organization dispatched an investigation team to find out the nature of activities that are being perpetrated on the people of Punjab and Published the report “Oppression in Punjab” Part II of this report under the title “Operation Blue Star the untold story”, gives a non-official version of what happened at the Golden Temple before and coming the Blue Star Operation i.e. From the 1st to the 7th of June 1984. Part III of the report under the title “The Black Laws Charter of Slavery” gives an account of the Russian Black Laws prevailing in Punjab and shows that innocent people are constantly being harassed and oppressed by their operation. It was in October 1980, after the fall of Janata Government and the return of Mrs. Gandhi to power, that a major National Convention took place in Delhi which led to the formation of two organization out of the earlier PUCLDR- A Delhi – based people’s Union for Democratic Rights (PUDR) and a national (the only one so far) Peoples Union for Civil Liberties (PUCL). The reports of PUC & PUDR bring to the limelight the tragic and horrible pictures of deaths in police custody. As a result of the efforts of these organizations, the people have become conscious about the violations of their human rights., Citizen for Democracy, Oppression in Punjab (1985), p. xx.

[35] In a report it has dealt with the National Security (Second Amendment) Ordinance 1984 by which wide powers have been given to the centre. The report says that by Ordinance No. 5 and Ordinance No. 6 more draconian steps have been taken for the detention of people. V.M. Tarkunde, a member of the Organization described TADA as a draconian legislation calculated to confer on the police administrative authorities vast and arbitrary powers to interfere with the legitimate activities of citizens., Peoples Union For Civil Liberties, The Black Laws 1984 – 85 (1985), p. 9.
Commission on Human Rights has appointed a Special Rapporteur on Torture, who acts in individual case and sends reports to the Commission on the actions taken by him on the cases of torture in particular countries.\textsuperscript{154} Another important development with regard to evolution of standards on torture and ill-treatment was the adoption in 1985 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.\textsuperscript{155}

Mention should also be made of the relevant provisions of the Vienna Declaration on Human Rights, 1993. The Declaration welcomed the ratification by many Member States of the Torture Convention and urged other Member States to ratify the same as early as possible. It also urged all States to put an immediate end to the practice of torture and eradicate this evil for ever through full implementation of the Universal Declaration of Human Rights. In addition the World Conference on Human Rights called upon States to co-operate fully with the Special Rapporteur on the Question of Torture in the fulfillment of his mandate.\textsuperscript{156}

Apart from action by domestic and regional courts, the United Nations as a body can do much for the promotion of human rights by other methods.\textsuperscript{157} But for the positive role played by the non-governmental organisations to alleviate the suffering of the individual human being since the early decades of nineteenth century, the concern for human rights could never have become a living reality on international plane. There are hundreds of

\textsuperscript{9} Adopted by General Assembly- resolution 40/34 of 29 Nov. 1985; Compilation Vol. 1, p. 382. The Declaration called upon Member States to provide remedies, including compensation, and necessary material, medical, psychological and social assistance to victims of official abuse. See Appendix III.
\textsuperscript{10} Vienna Declaration and Programme of Action, Part II, serial 57; Published in International Commission of Jurists, No.50/1993, p. 130.
\textsuperscript{11} The first one would be a verbal condemnation of the concerned State for any large-scale violation; secondly, there may be suspension of assistance; thirdly partial and total ban of commerce. The latter was resorted to in respect of South Africa though all the States did not participate in it. It proved, in the long term, useful to put an end to the apartheid policy., David Anoussamy, \textit{Internationalisation of Human Rights}, \textit{Studies in Human Rights}, V.T. Patil, T.S.N. Sastry (Ed.) (2000), p. 36.

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organisations active in the field of human rights throughout the world today, quite a few having world-wide operations.\footnote{158}

Amnesty International, a London based human rights organisation has been showing great concern about custodial the human right notation in India since 1985. It has been publishing since 1972 – 73 reports containing human rights violations all over the world entitled Annual Report every year.\footnote{159} Amnesty International has come to believe that in India like other countries, several thousand cases are reported to the police every year but hardly any guilty police official had been punished.\footnote{160} The organization has been denied access to India for research purposes by successive governments since 1948. However it has obtained first-hand information from a variety of sources and evidence contained in medical and judicial records as well as sworn affidavits by the victims and witnesses to torture.\footnote{161}

There are several organizations like Human Rights Watch/Asia.\footnote{162} N.G.Os in Kerala are also playing an important role in preventing human rights violations. Torture Prevention Centre India (Top Centre India), Cochin is an organisation working with the theme, ‘Prevent Torture, Resist Torture and Help Victims of Torture’. The chief objective of the organisation is to

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\text{S.L. Bhalla, Human Rights (1991), p. 98.}
\text{It prepared a report in 1993 entitled 'Torture, Rape and Deaths in Custody in India' by compiling and analysing the information obtained from media and civil liberties groups like Association for Protection of Democratic Rights (APDR) in Calcutta, Andhra Pradesh Civil Liberties Committee (APCLC) in Andhra Pradesh, Organization for Protection of Democratic Rights (OPDR) in Andhra Pradesh, Committee for protection of Democratic Rights (CPDR) in Bombay, Peoples Union for Democratic Rights (PUDR) in Delhi and Peoples Union for Civil Liberties (PUCL). The image of India as the greatest democratic country in the world with due respect to human rights was tarnished by the report of the Amnesty International.}
\text{"Alleged Human Rights Violations", The Hindu, (Madras) May 10, 1988.}
\text{Asia Watch brought out a report entitled 'Police killing and Rural Violence, in September 1992. The report exemplifies much that is wrong with the way human rights are being reported out of India. In conclusion it says that the Indian people are living under a reign of terror. The police are killing and imprisoning thousands of people every year without trial.}
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identify and examine the victims of torture and provide free treatment, guidance and help to the victims of torture. The Centre initiated a unique venture titled, "Police-Public Interaction Programme" to bring about interaction between the police and the public. It is also arranging training programmes for medical professionals on torture medicine.

Jananeethi is another organization established in 1992 in Thrissur with the objective of offering free and fast services including legal assistance to the victims of police atrocities. Legal professionals, human rights activists, law students, religious practitioners and politicians are volunteering assistance to the Organisation. Confederation of Human Rights Organisation, Thiruvananthapuram, Peoples Council For Social Justice, Kochi, Forum for Human Rights Protection, Palakkad, Anweshi, Kozhikode, and Human Rights Protection Vedi, Kozhikode are the other major organizations.

G. ROLE OF MEDIA AND CINEMA

The press brings out atrocities of police, custodial violence, custodial rapes, illegal arrests, corruption and criminal nexus with notorious criminals so much so that the people seldom read something good written about the policemen. Numerous cases of torture have been reported in the Indian news media but these represent only a fraction of the real total. Torture frequently goes unreported unless there is an investigation by independent human rights or civil liberties body, some form of public protest, or a political dimension.
In early 1980 Indian Express has conducted a survey on custodial deaths in seven states in North India. Investigative journalism, sensational journalism, creative journalism etc. are developing/developed branches so much so that the police is always a fascinating topic for the press. Crime, criminals, police, police aberrations, corruption, miscarriage of justice, police misbehaviour etc. are topics of great interest for the people and the press and cinema. However, the cinema presents violence of the police as counter violence and that of the movements as violence.  

The media’s role in a democracy can hardly be emphasized but the policemen complain that the press has developed an adversary relationship. This creates a gulf between the police and press since the press shows the policemen in poor sight. While media focuses on police high-handedness or atrocities, the police needlessly tend to be secretive. It is also true that a very few unscrupulous mediamen indulge in yellow journalism and sensationalise their reports. A balanced relationship between the press and the police is required and the initiative for bringing that about depends on the latter.

H. OFFICIAL CONDEMNATION OF CUSTODIAL VIOLENCE

Various government officials, including the Prime Minister condemned torture repeatedly throughout 1993. Government of India

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167 G. Haragopal, op. cit., 169.
169 In February 1993, the Prime Minister urged the Delhi police to "ensure that excesses are not committed, especially in custody. Human Rights are of paramount importance in a democracy like ours." This demonstrates the government's stated commitment not to tolerate torture. More recently at state level, it has been reported that several states including Bihar and Sikkim are to establish cells in the Home Ministries for checking cases related with violations of human rights, especially custodial deaths. The government has also announced various programs to train police and security forces in protecting human rights., supra n. 134, p. 2. On 12 May 1993, Minister of Home Affairs, Mr. S. B. Chavan told heads of police and intelligence forces that "the death of a person in custody is a very serious matter" and urged "all the investigation officers to avoid [the] use of third degree methods in investigation of crime", adding "that this must be enforced ... there is increased realisation that recognition of human rights and enforcement of human rights leads to stability in society and makes for upward mobility of the weaker sections". These statements mark a distinct improvement on previous official policy which, as described in Amnesty International's March 1992 report India Torture, rape and deaths in custody ignored the existence of custodial violence altogether. Amnesty International, India, Rising reports of custodial deaths in Delhi, June 1990, p. 7-8.
appointed in 1977 National Police Commission for upgrading the service. The Commission made several recommendations for upgrading the service.\textsuperscript{170} It was for the first time, a Commission was appointed at a national level-after the Indian Police Commission -1902-03- and it was done with a lot of hopes and expectations.\textsuperscript{171} The National Police Commission, 1977 (NPC) through its recommendations took a major step to recast the obsolete Police system. Unfortunately, reports of increased custodial violence in the capital came in the wake of clear condemnation of such practices by the Prime Minister himself.

The Ministry of Home Affairs appointed a Committee under the Chairmanship of Mr. J.F.Ribeiro, a distinguished former member of the Indian Police Service, to review and suggest ways and means for the implementation of the recommendations of the National Police Commission and the National Human Rights Commission. This Committee has submitted its report to the Apex Court.\textsuperscript{172} It is ironical that whereas the Supreme Court of India took cognizance of some of the recommendations of the NPC – as for instance in procedure relating to arrest – but the executive wing of the State is yet to adopt the same in its working manuals that are mandatory for the policemen to follow. In the late eighties, State Governments made ‘special cells under fairly senior officers of the rank of IGs or DIGs.\textsuperscript{173}

\textsuperscript{1}\footnotesize{The Commission submitted eight reports and the last one was submitted in 1981.}

\footnotesize{\textsuperscript{2}There are two aspects of police reforms which have been discussed by the National Police Commission in its report. The first aspect is the ugly face of the police image in our country and the second is our treatment of the police, both by Government and by the public. There can hardly be two opinions on the issue that the public image of the police in this country is ugly., Speech by Justice D.N. Mehta, National Police Commission : Its Relevance Today, Papers and discussions at Seminar organized by Nehru Centre and Hindustan Andolan on April 19, 1997, p. Supra n. 123, pp.18&19.}

\footnotesize{\textsuperscript{3}The primary aim of these cells was to monitor and coordinate police work with regard to weaker sections of society. They looked into the complaints against police officers about their commission or the omission with regard to cases under the Civil Rights Act. They monitored investigation and prosecution of such cases and collected relevant statistical data. One of the aims of such cells was to collect intelligence and identify pockets in which civil rights are being abused or are likely to be abused. They were supposed to suggest ways and means to State Government to bring about visible improvement in the implementation of these Acts. These cells have certainly given momentum to the departmental thinking and the working but they have not succeeded in the implementation of the ‘will of Constitution in its letter and spirit’. For want of resources, the manpower and proper motivation these cells could not come up to the expectation. They became and other Government agency-working in a mechanical manner churning out statistics and statements. Since there was no public involvement or scrutiny at any level, they could not get mass acceptance and failed to instill confidence in the minds of the needy. The other factor which adversely affected its ‘total impact’ was its functional limitation. It looked into only the crime part but not the other aspect of ‘atrocity’.\textsuperscript{267} Y.P. Singh, “Role of Police in Prevention of Atrocities on the Weaker Sections of Society”, The Indian Police Journal, Sant Bahadur(Ed.) Vol. XLI, No.1 (January-June 1994), p. 59.}
In January 1995, the Government of India responded to Amnesty International's June 1994 report, *Deaths in custody in 1993* by sending fact sheets relating to 28 of the 36 deaths in custody listed in that report. The government also responded in some detail to Amnesty International's 10-point program for the prevention of torture published in 1992.\(^\text{174}\) However, successive governments have persistently refused to investigate the abuses reported in news papers and in some cases the civil liberties activists were beaten up, threatened and even arrested and detained for reporting cases to press.\(^\text{175}\)

Independent and impartial inquiries into deaths in custody are rarely carried out. As a result prosecutions of those found to be responsible for deaths in custody are even rarer. Where prosecutions do occur they often take place many years after the event. Frequently the sentences fail to adequately reflect the seriousness of the crime committed, despite the orders given by the Central Government in November 1994 that policemen found guilty of torturing suspects in custody should receive exemplary punishment.\(^\text{176}\)

\textbf{I. HUMAN RIGHTS ACTIVISTS}

NGO representatives are furnishing most useful information and help to the officers of the investigation Division of various national and international organizations working in the field of human rights in examining victims, particularly those who were from vulnerable or disadvantaged sections of society.

Similarly they are reacting against police excesses. Such reactions to crimes committed by police take different forms. Some kinds of crimes - calling filthy names to people - are rarely reacted against. Some other kinds of crime - beating a person in public or police custody without causing visible


\(^{175}\) Supra n. 161, p. 9.

\(^{176}\) Supra n. 174, p. 3.
injury - are sparingly reacted against. A few crimes - custodial violence, torture etc. - are reacted against with fear and reluctance. All crimes - murder in police custody, custodial rape etc. - are invariably reacted against by public agitations.177 This means that it is only very serious and heinous crimes committed by the police are resented and reacted against. An act is interpreted as a crime by the law enforcement officers.

Even though civil liberties groups, national and international organizations, commissions of inquiries, press and above all judicial decisions and findings of National Human Rights Commissions have studied and published information regarding human rights violations in police custody no systematic detailed and deep empirical study has been conducted so far.

**Summing-up**

Police violations of human rights and stories of police brutality are the syndrome to cure which are needed deeper diagnosis and daring remedies. At present, the police system and policing processes are iatrogenic and breed added injustice. Reforms in police carried out so far are only cosmetics not therapeutics.178 Reforms are the need of the time. Each and every institution in our criminal justice system requires reform. Indian police need upgrading and it must be in many spheres. Similarly most of our criminal laws, which are passed more than hundred years ago are required to be amended according to the changes in our society.

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177 Death in police custody at any time evoked suspicion in the minds of the people. Conditioned as they are to think that for the police torture is a normal instrument, the people react violently to death in police custody. This is especially so in the case of Kerala where there is a strong body of public opinion against torture or death of people in custody. More than torture, death produces strong feelings in the public mind. This is unlike in the other States in the country where public opinion is not so well formed or is capable of articulation., C. Subramaniam, Indian Police—A DGP Remembers, (2000), pp. 295-296.