CHAPTER - 8
COMBATING HUMAN RIGHTS VIOLATIONS: REMEDIAL MEASURES

Since India is following a democratic system and the police play a vital role in the maintenance of law and order, it is high time to think of curing the existing discrepancies in the police department and thereby ensure the protection of the basic human rights of the citizens.

We cannot expect the police to change when the society itself is chained to a set of deep-rooted beliefs and prejudices. They will reflect the culture and attitudes of the society from which they emerged. If the society is violent, the police will also be violent, if the society is corrupt, the police will also be so.

It is aptly remarked:

The Police reflect the State and the State the society. If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become law unto himself, it invites anarchy.¹

In democratic societies the police are empowered to enforce the criminal laws and many regulatory laws which are designed to make society orderly and safe. To achieve these ends, the police have been vested with additional authority and powers. The police are provided with the legal and physical means to enforce the law, including the use of state sanctioned force, if necessary. The power of the police is unrivaled in civil society. As a result the police get themselves prejudiced. Adequate training and discipline may suppress these prejudices. In all the investigational endeavours the cooperation and an impartial approach of the society may yield better results.

¹ Brandies of American Supreme Court in Olmstead v. US ⁷⁷, US 438.
Today it is an established fact that police function has expanded into much more than a mere law enforcement agency of the government. Moreover, role of the police is constantly changing with the change of time and as a result traditional police functions are not enough to cover all aspects of police performance. Today a police man is depicted as a patient mediator, a skilled family therapist, an effective admonisher and a daring crime fighter.2

In the opinion of many of the police officers, police is a misunderstood minority destined to undergo filthy and nasty work of the people for a meagre pay. Since the police have numerous powers, the people have a fear and respect, over them which compel them to keep up that status. Instead of keeping this respect, they are forced to indulge in corrupt activities only because of their inadequate income.

Hitherto payment of bonus was admissible only to industrial workers as an incentive for production. In recent years payment of bonus has been extended to the employees of railways, posts and telegraphs, banks, insurance corporations etc. There seems to be hardly any justification for non-payment of bonus to policemen.3

Adequate accommodation facilities for the policemen are of much concern. Policemen of and below the rank of sub-inspectors and equivalent rank in the armed police and technical cadres are entitled to free house, if there are no houses available, a free rent allowance in lieu. There is acute shortage of family quarters all over the country.4

It is high time to provide some curative measures so as to uplift the police from their deplorable conditions of work. Hence it is suggested that revision of the level of enoluments of various police categories, adequate

---

3 Ibid.
4 Ibid.
living conditions, better accommodation, proper medical care, normal workload, ample conveyance facility etc. should be provided. A Commission is to be appointed to enquire into the present working conditions, standard of living and domestic requirements of them. This would create an atmosphere of honesty among the police personnel.

In the hierarchical system of police it is necessary to examine the opportunities for promotion which would be an incentive for good conduct and efficiency. A screening is to be conducted amidst the police for finding out constables with good educational qualification and indepth interest in protecting human rights of the people and such constables should be provided with more promotion opportunities. Moreover the duty hours of the Policemen should be fixed as 8 hours per day. Over-time allowances may be given in case the workload exceeds.

Necessity for Elimination of Corruption in the Police System

Majority of the superior police officers are tempted to be corrupted. This trend should be avoided at any cost. Superior police officers should be trained to behave perfectly to avoid all sorts of criticism. Then only they can always keep their hands clean and bring the subordinates to their path. There are so many factors compelling a police person to become corrupt.

Many of the police stations do not have even stationery items like paper, carbon paper etc. and the police personnel are therefore compelled to ask the complainants to bring or pay for the same. To avoid all these, the Government should see that every police station has adequate financial backing from the State.

---

3 So far the government has taken no measures for providing fee concession, reservation or other educational facilities for the children of the police while the same are provided to the military personnel.
4 Permanent advance, provided to the police stations, for meeting the various contingencies like refreshment to the accused, moving of injured to hospital, conveying the dead body to the mortuary, is really inadequate.
Political Interference - a Hurdle on Police

Unnecessary interference by the politicians in the enforcement of law is really an obstacle to the police to act impartially and treat all men equal under the law. The functioning of the police can be improved only through protecting them from undue political pressures.

Policemen, in recent years, have been frequently transferred from one place to another on political grounds. Frequent transfers dislocate their entire life, education of children and economy in a manner, which cannot easily be envisaged. In addition, rapid transfers are reducing police work to an unsystematic make-shift arrangement in which nothing concrete can be achieved.

There is a view among the respondents that normally police officers should not be posted in a place for a prolonged period, as this would enable them to have frequent contacts with persons of disreputable practices and activities. At the same time it is to be kept in mind that unnecessary and frequent transfers without considering their sincerity and dedication lead them to frustration.

One of the ways to free the police from political pressure is to take away the power of transfer from the ministers. Statutory provisions should be made to the effect that police personnel ranking from DIG to the constable should be appointed in a particular place for a fixed tenure, unless and until he becomes corrupted. This will help the policemen to work independently and impartially because now, the sword of transfer will not be hanging over their heads all the time. They must develop their moral courage to face any kind of situations instead of bowing before the politicians for getting some good postings.

\(^7\) However many of the people and police personnel who responded in the survey are of the opinion that if a particular police officer who has proved himself to be sincere and honest, he should be allowed to continue in the same station itself.
There has been growing demand for police accountability in the democratic countries of Britain and Japan. But unlike that of Britain and Japan, in India political interference in the process of law enforcement is rapidly increasing resulting in the misuse and abuse of police power. Due to the political inability of a citizen to approach court of law against such type of malpracticing, the Government has to provide independent machinery for redressing his grievances.

It would be worth considerable whether it is possible to bring the representatives of police organisations into the picture when major legislation affecting the police and their work is under consideration.

---

8 Following are some of the inbuilt checks in the Japanese Police System to ensure the complete insulation of police against political pressures:
(a) Neither bureaucrats nor elected politicians can become members of either the National or Prefectural Safety Commission.
(b) To avoid police bias, persons who have served either in the police or in the Prosecutor's office within the preceding 5 years are not taken as members.
(c) The size of local forces and their pay scales are all laid down by the National Government to reduce dependence on local legislatures.
(d) Top administrative positions both in the National Police Agency and in the Prefecture Police are filled with officers recruited nationally paid by the Central Government and nominated by the National Public Safety Commission.
(e) Local control can be exercised only through the Prefectural Public Safety Commission which is a totally non-partisan composition.
(f) Prefectural forces are sufficiently large enough to manage rotation of officers from one force to another after two years. This is done to ensure that the police officers are not too intimately involved with the local community.
(g) All promotions are determined by the Prefecture Police Organizations or the National Public Safety Commission itself and these are all subject to the approval by the Prefectural/National Public Safety Commission. There is nothing which a local politician can do to either further his own interest or the interest of the police officer.
(h) Cultivation of the police by politician is viewed as inappropriate and totally undesirable. David H. Bayley has recently reported of a case where the Prime Minister Tanaka was strongly censured by the Press when he addressed a National meeting of Prefectural Chiefs of Police. His attendance was not regarded as gesture of public support, but as an attempt at compromising the political neutrality of the police.

The standard of discipline in the police forces is of a high order. In 1972 out of around two lakh of police officers only 45 were discharged for their mis-behaviour. Since the Japanese Police enjoy a considerable amount of functional independence, all complaints against police officers are looked into by the Human Rights Bureau of the Ministry of Justice. These complaints, of course, are rather rare. In the whole of Japan in 1972 in all 123 complaints were received. S.K. Ghosh, op. cit., pp. 50-52.

9 During the field survey, it is found that while 70% of the respondents were in favour of involving the members of police organization in the process of making law affecting the police, 30% were against it. (See also Questionnaire in Appendix X and Interview Schedule in Appendix XI).
Therefore it is suggested that whatever the police do they must do under the provisions of the law. Regarding the relation of politicians with police functioning, two different views are prevalent. One is that the politicians can interfere in the day-to-day functioning of the police and the other is against it. It is suggested that interference of the politicians in the functioning of the police can be allowed to a certain extent. In certain cases the politicians can do better than the police. It is suggested that but in no way the politicians should be allowed to interfere in the crime investigation function of the police.

Justice Lord Denning has rightly observed:

It is the duty of the Commissioner of Police and every chief constable to enforce the law of the land. He is answerable to the law of the land and to the law alone.

The Royal Commission on the Police in Great Britain held: "The police should hold allegiance to the law and judiciary and that there should be no interference by an authority in the performance of their legal duties."

It is apparent that the accountability of the police is a questionable one. It is evident that the investigating agency or the police force is absolutely under the control of the party in power rather than the laws of the land in India. Now the crucial question arises as to whether the investigation agency is to be allowed to continue to be attached with the law and order force under the direct control of the party in power.

10 During field study many respondents expressed their view that politicians can be helpful to the police in controlling some unlawful assemblies, mob violence and riots. The interference of the police will also be helpful in preventing the police from putting the arrested persons in prolonged unlawful custody.


The Law Commission in its 14th Report (1958) emphasized clearly that investigating staff should be separated from law and order staff, so that it may get individual attention of the investigating officer. The Delhi Police Commission 1968 also recommended separation of crime investigation work from law and order functions. Many of the police officers are either graduates or post graduates in arts or social science who cannot properly understand the science subjects related to investigation. As application of forensic science, knowledge of scientific means of collection of evidence, chemical examination etc. are involved in scientific investigation, those who are graduates in science subjects can easily and properly absorb it and they can make use of such knowledge more effectively. While bifurcating the police functions into investigation wing and law and order wing, the science graduates should be included in the former category and those in non-science field should be included in the law and order wing. Those who are having knowledge in non-science subjects can interfere more effectively in various problems in the society and deal with people while tackling law and order situations and find solution very easily.

Need for the Increase of Manpower

The huge work load that each policeman bears on his shoulders can be reduced only through increasing the man power in police. It does not mean that the police department should be widened with untrained, badly deployed and thoroughly discontented and disappointed policemen. Instead, those who have a precise understanding of the responsibility of their duty and

---

14 36.5% of the Sub-Inspectors cadets in the Police Academy are graduates and 63.5% are postgraduates. Among them 20.6% are either graduates and post graduates in Science subjects whereas 79.4% are either graduads and post graduates in non-Science subjects.

15 In Britain a lot of research work had been undertaken on "manpower strengths" to find a scientific way of measuring police needs but it could not provide a rationale for them. Between the Royal Commission on Police of 1962 and seventies no clear formula emerged. In 1962 a working party failed to find yardsticks for different establishments but produced some targets which were endorsed by the Public Accounts Committee at the time., Royal Commission on Police, 1962, Final Report, S.K. Ghosh, *op.cit.*, p. 55.
the methods by which better results can be achieved, especially in the case of protection of the human rights of the people may be recruited.

It is suggested that while recruiting police personnel, they should be divided into two wings namely, crime investigation wing and law and order wing. They should be subdivided and may be posted in different specialized branches.16

Modern Technology in Scientific Investigation

The investigating officers should give prime importance to scientific evidences like finger print clues at the scenes of crime. This would reduce the chances of innocent persons being booked by the police. The most important allegation against the police is the use of third degree methods. The use of third degree methods can be prevented if the police are equipped with the latest equipments to detect offences. Custodial violence is used by the police as a short-cut to complete the investigation successfully. But if the crime can be solved with the help of modern methods of investigation, custodial violence can be prevented up to a certain extent.

Modern scientific investigation requires both proper training and proper equipment. Scientific methods of investigation are used by the police in Scotland Yard and FBI. In Western countries, during the investigation, the fingerprints of a suspect are taken and fed into a computer which is connected to a computer network and in almost no time it can be ascertained whether the suspect has a criminal background. Similarly the DNA test of hairs, blood, semen, saliva etc. is of great help in criminal investigation and is widely used. There are modern methods of communication which are very helpful in the investigation. Hence in

---

16 There are many specialized branches like juvenile police units, tourism police, traffic police etc.
Western countries torture is not normally used during investigation and the correct facts can be usually ascertained without resorting to torture.  

There are different schools of thought which deals with the criminal behaviour of human beings. Amidst, the psychoanalytic school reflects that human behaviour is largely the product of unconscious psycho-biological forces called 'drives or instincts'. Criminal behaviour arises out of conflicts related to these basic drives.

Crimes are categorized into financial, political, biological, communal, psychological etc. The causes of each type may vary due to various reasons. Though there are numerous theories of crime, none of them can reveal the truth behind all sorts of crimes. It is suggested that different approaches are to be adopted to different types of crimes and criminals. It would be better to train certain police officers with regard to certain crimes, their causative factors and the criminal instinct implied in those criminals, so that such officers would be able enough to investigate into the respective types of crimes and identify the actual culprit. This will make him a professional investigator and the service of such investigators can be utilized for the investigation of cases in that series.

Electronic Recording of Interviews

'Principles on Detention' recognises the need for keeping records of interrogations to ensure the right of freedom from torture and ill-treatment. Paragraph 1 of the 'Principle' provides that a detained or

---

19 'Principles on Detention', stipulate in Principle 23 as follows: The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.
imprisoned person, or his counsel when provided by law, shall have access to
the information.

The European Committee for Prevention of Torture recommended
that the states shall look into the possibility of making electronic recordings of
interview with suspects. As per the recommendation of the Committee the
statement of the arrested person is to be recorded then and there and the
recorded tapes are to be sealed in the presence of him. The recommendation of
the Committee is not implemented in the Western European countries except
England and Wales.\textsuperscript{20} It is desirable to implement this recommendation of
CPT since it provides adequate safeguards to the victims of police
interrogation.

\textit{Polygraph Test}

In many countries polygraph test is used as a means of interrogation
of the suspect. This test is otherwise known as lie detector test. This is a
system that protects the police officer, the complainant and the suspected
person. Under this system if the story presented by a complainant against
another is incredible, the complainant may be asked to undergo this test to
establish his authenticity. If he comes out as a liar after the test there will not

\textsuperscript{20} This type of electronic recording of police interviews was suggested to be implemented in many
other countries. For example this was suggested to the Cypriot authorities in 1992 (on which
occasion the delegation found evidence of severe ill-treatment /torture allegations which were
subsequently the subject of a judicial inquiry). When the CPT returned to Cyprus in 1996 they
appear to informed that the Cypriot authorities either had considered, or were considering the
possibility of introducing electronic recording; the Committee asked to be informed of the outcome
of these deliberations. Likewise in Bulgaria in 1995, when the Committee also found evidence of
torture, the CPT delegation noted that the ‘Bulgarian Code of Criminal Procedure makes express
and detailed provision for the audio-video recording of interviews, at the request of person
concerned or on the initiative of the Magistrate responsible for the preliminary investigation’. The
CPT welcomed this provision, noted that it had not yet been implemented, and recommended that
the Bulgarian authorities should consider ways of doing so. In Northern Ireland in 1993, the
Committee could learn that though interviews with criminal suspects generally were recorded,
those with persons suspected of terrorism and detained under the Prevention of Terrorism Act were
not. The Northern Ireland authorities were asked to reconsider the issue and to employ audio
and/or video recording. Rod Morgan, “Protecting Prisoners Against Ill-Treatment in Police
be any further interrogation against the accused and matter will be disposed then and there.  

Need for Judicial Vigilance

Taking into consideration the curative measures, it is found that mere formulation of safeguards are not sufficient. Now it is up to the court to transfer the theories on prevention of custodial crimes by adopting the method of follow up action and thereby to ascertain that the offender is within the purview of law. Though we have certain specific laws to this effect, the problem lies in the implementation of those laws.

If criminal prosecution is launched for violation of human rights of persons in police custody it can have a wholesome effect in curbing the abuse of authority exercised by the police and in creating the necessary awareness among the police personnel that if they resort to unnecessary and excessive power and force against persons in their custody they will have to face disastrous consequences. In due course this process of orientation would lead to develop an inbuilt mechanism which might enable the police to distinguish between the lawful exercise of authority and the unlawful use of force resorted to by them.

21 Usually in certain western countries this system is still in practice. In this context it would be interesting to look into an experience of a prostitute who underwent a lie detector test. A black prostitute with a "rap sheet" containing 50 arrests alleged that a young black policeman had made a deal with her to engage in an act of prostitution for ten bucks. She said that after they had engaged in the act, he took his gun out of his coat pocket and held the gun on her while he took the ten dollars back. The police officers considered this as an incredible story. They were unwilling to believe a prostitute with the history of 50 arrests accusing a policeman who had been very thoroughly investigated before coming on the police department, and who had a perfect background. However the prostitute was asked to undergo the lie detector test which she agreed. She was a good subject on the polygraph. She came out as being absolutely truthful. The young officer was called and asked about going on the polygraph because of the prostitute's allegations and her truthfulness in the matter. But to their surprise the policeman refused to undergo this test and resigned his job. From this incident it becomes clear that the lie detector machine is helpful to identify the actual culprit. This will also be helpful for the police officers to keep away from applying the third degree methods in interrogation., Edward M. Davis, Staff One: A Perspective on Effective Police Management (1978), pp. 174-176
The conduct of the police personnel cannot be corrected only with high sounding phrases and quotations which are usually found in certain judgments. It is really unfortunate that though courts are rendering apt and just decisions they are least concerned about the implementation of such decisions.22

As far as the increasing number of custodial crimes are concerned, the courts instead of issuing reminders to the parliament or directions to the executive, should really try to establish the real content of their decisions.23

Since the majority of the victims of police atrocities belong to economically backward classes, they are not in a position to approach the superior courts for initiating contempt proceedings against the errant police officer. So it is suggested that even the lower courts should be empowered to hear the grievances of the aggrieved persons.

At present the power of awarding compensation to the tortured lies in the High Court and Supreme Court. It is suggested that the lower judiciary should also be given similar powers. As the lower judiciary is competent enough to ascertain that a person is wronged at the time of trial, it is the most competent authority to decide the quantum of compensation to be awarded. If the Sessions Courts are empowered to grant anticipatory bail as that of the High Court,24 why should not they be empowered to award the compensation too? For implementing such provisions at the grass root level, at least the Sessions Judges should be empowered to award compensation to the wronged.

23 This was done to some extent in D.K. Basu v. State of West Bengal, 1997 (1) S.C.C. 416 where after listing the requirements for protecting persons in custody the Court warned: "Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.", id., p. 436.
24 Section 439 (1) gives very wide discretion to the High Court and the court of session in the matter of granting bail.
In *State of Madya Pradesh v. Shyam Sunder Trivedi*\(^{25}\), Hon’ble Mr. Justice Anand, speaking for the Court went on to observe:

The trial Court and the High Court, if we may say so with respect, exhibited a total lack of sensitivity and a ‘could not careless’ attitude in appreciating the evidence on the record and thereby condoning the barbarous third degree methods which are still being used at, some police stations despite being illegal. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by prosecution, ignoring the ground realities, the fact situation, and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, received encouragement by this type of an unrealistic approach of the courts, because, it reinforces the belief in the mind of the police that no harm would come to them if an odd prisoner dies in the lock up because there would hardly be any evidence available on the prosecution to directly implicate them with the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crime in a civilized society, governed by the rule of law and poses a serious threat to an orderly civilised society.\(^{26}\)

This Court then suggested:

The courts are also required to have a change in their outlook and attitude particularly in cases involving custodial crime so that as far as possible within their powers the guilt should not escape so that

---


\(^{26}\) Id., p. 2801.
the victim of the crime has the satisfaction that ultimately the Majesty of law has prevailed. \(^ {27}\)

In order to establish liability of the police in cases of custodial death, the presumption of guilt should be raised against them. \(^ {28}\) It is imperative that those police personnel found guilty of custodial violence should be awarded severe punishment.

**Mobile Judicial Unit**

A new suggestion in this context is to introduce a system of ‘Mobile Judicial Unit’ (MJU). It is to be constituted in all the taluks and cities. At least there should be a Magistrate in each unit who should be provided with facilities for night shifts so that such places will be having a judicial watch for 24 hours. He should be vested with all powers to attend the judicial needs of the arrested persons like granting of bail, recording of confessions recording of dying declarations etc. Some officers should be appointed to assist such Magistrates and atleast one of them should always be available with him in the Unit. The officer should receive the untimely calls or information from the police and public and transmit them to the Magistrate. \(^ {29}\) It should be made mandatory that every arrest is to be reported to such officer of the Unit through wireless messages within a prescribed time limit. \(^ {30}\)

Through training programmes for subordinate judicial officers, the High Courts should make an endeavour to bring a change in the minds of such officers to have a new approach and attitude, particularly in cases involving custodial crimes. They should be made aware of the need of exhibiting more

---

\(^ {27}\) Ibid.


\(^ {29}\) This system will enable the Magistrate to avoid direct contact with both the police and public.

\(^ {30}\) This will be an effective step for fulfilling the objective contained in Article 22(3) of the Constitution. It will reduce the tendency of police to keep the arrested persons in custody unnecessarily even in night hours or when the courts are closed.
sensitivity and adopting a realistic approach rather than a narrow technical approach while dealing with the cases of custodial crimes, so that as far as possible within their powers, the guilty should not escape and as a result the victim of the crime gets the satisfaction that ultimately the law has prevailed.\(^{31}\)

The existing practice of remanding an arrested person in police custody and thereby putting him in fear of torture should be avoided. Instead, Magistrate should be empowered to order the investigating officer to make further examination of the accused in jail custody. This would be helpful to make a balance between the purpose of investigation and elimination of police torture. Prolonged detention of arrested persons in police custody should be abolished.\(^{32}\)

Considering the de-humanizing aspect of police behaviour and the blatant violation of the human rights of persons in police custody, the Government and the legislature should adopt the recommendations of the Law Commission and bring about appropriate changes in the system not only to curb the custodial crime but also to see that the custodial crime does not go unpunished.\(^{33}\)

It is suggested that the entire legal mechanism should be equipped with more congenial weapons to fight against torture. The Constitution is to be amended so as to incorporate the provisions prohibiting torture and other cruel, inhuman or degrading treatment or punishment.

**Joint Effort of Central and State Government**

The Central Government is trying to put the blame of police atrocities on the shoulders of the State Government and vice-versa. It is high time to change this attitude of both Central and State Governments.

\(^{31}\) *Infra n.33; see also Chandabai v. State of M.P., 1997 Cri. L.J. 3844.*


Instead of blaming each other they should go hand in hand while dealing with such issues and take steps for framing a policy for the prevention of human rights violations by the police through amending both the Criminal Procedure Code and the Police Act.\textsuperscript{34} It is obligatory for the Government of every State government and even the Central government to issue a White Paper setting out the humane policy of the State.\textsuperscript{35}

It is suggested that the first Optional Protocol to the International Covenant on Civil and Political Rights should be ratified by the Government of India which enables the individuals to complain to the Human Rights Committee for effective remedies against police atrocities, when all the domestic remedies are exhausted. The Government of India should take steps to take away the reservations it made while acceding to the Covenant, so as to enable the Indian citizens the right to claim compensation in case of wrongful arrest or detention.\textsuperscript{36}

The main reason for the failure of the Government to take steps for the protection of the life and property of its citizens is not the scarcity of funds. It may be either because of the lack of will or because the politicians want the police to be retained in the existing structure for misuse of police for their narrow partisan ends. Rule of law is being undermined and people's faith in police eroded. Implementation of recommendations for police reform such as those proposed by the National Police Commission, would have improved the police image in the eyes of the general public but unfortunately those

\textsuperscript{34} Incidentally, it may be stated that as per entries 1 and 2 in the State List in the Seventh Schedule of the Constitution ‘police’ is a state subject. Hence it is the sole responsibility of the State Government to pass appropriate laws governing the behaviour of police.
recommendations have been ignored by successive Central and State Governments. What the Government needs to do vis-à-vis the police if it wants to govern according to the Constitution, is spelt out in great detail in the National Police Commission Reports.

Under the Indian federal system the individual states have a concrete responsibility to promote and protect human rights and to redress grievances. The decentralization of the complaint disposal mechanism thus becomes a necessity so as to provide a redressal mechanism that is readily accessible and inexpensive in terms of time and cost. So the States should establish district-level committees for effective and speedy redressal of complaints of human rights violations. The Protection of Human Rights Act provides for the constitution of State Human Rights Commission and also for the establishment of Human Rights Courts. But so far only a few states have set up state-level Human Rights Commissions and Human Rights Courts. Scarcity of fund is often levelled as a justification for the non compliance of these provisions.

The Government should take steps for the prompt and effective investigation, of all reports of torture published by the media including newspapers and TV channels and by various voluntary organisations by an independent and impartial body. It should also initiate model prosecution proceedings against the perpetrators of police torture and thereby make the people convinced about the public commitment of the Government that it will not tolerate torture or ill treatment of arrested persons by police. Voluntary organizations and human rights activists who are giving information about

---

38 Section 21 of the Act.
39 Section 30 of the Act.
40 The Act has not specifically mentioned setting up of the Commission at the level of Union Territories. The justification may be that the Commission at the national level will function in the Union Territories also. However this is against the concept of decentralised grievance redressal machinery.
human rights abuses by police and working in the field of protection of rights of persons in police custody should be appreciated through awards and incentives.

The Government should comply with its international obligation to prevent torture which it affirmed through the U.N. Declaration against Torture in 1979. Accordingly the Government of India is obliged to implement its provisions through legal and other effective measures. The Government should accede to the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 41

The practice of subsequent examination of post-mortum reports by experts would be helpful for minimising the tendency of doctors to make false reports. It would be nice to implement the recommendation of National Human Rights Commission that all post-mortem examinations in respect of deaths in police custody should be video-filmed and sent to the Commission. 42

The post-mortum certificates issued by the doctors in custodial death cases cannot always be depended upon. In the absence of any credible independent evidence, the fate of custodial death cases depends entirely on the observations recorded and the opinions given by the doctor in post mortem reports. There can be a total miscarriage of justice if the reports are manipulated. 43 Proper training and orientation should be given to medical professionals so as to make them conscious of the need of maintaining their

43 The National Human Rights Commission accordingly recommended the video-filming of post-mortem examinations and the sending of tapes to the Commission for scrutiny, with a view to preventing such unacceptable and unethical acts. Twenty-two States and Union Territories have now accepted this recommendation while four others have stated that they are examining the matter. The Commission has recommended to the States of Arunachal Pradesh, Maharashtra, Manipur, Mizoram, Uttar Pradesh, the National Capital Territory of Delhi and the Union Territories of Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli and Lakshadweep that they accept this recommendation without any further delay ; National Human Right Commission Annual Report (1998 - 99), p. 53.
ethical standards. Model system of punishment should be applied to the medical practitioners who issue false and manipulated post-mortum reports.

There should be a separate provision for conducting the post-mortum examination within 24 hours in all cases of custodial death. The deceased’s relatives should be permitted to post an expert medical practitioner at the time and place of post-mortum. The copies of reports of inquiry, medical examination etc should be served as early as possible to the victim in the case of custodial torture. Similarly post-mortum reports should be made available to the relatives of the deceased.

Legislative steps are to be taken for providing mandatory judicial inquiries in all allegations of custodial death. The government should also take steps to ensure prompt and independent investigations into all allegations of custodial torture, rape and death in police custody. Investigations of allegations of torture or ill-treatment should be in accordance with the Istanbul Principles as endorsed by the UN Special Rapporteur on Torture. 45

The existing system of getting prior sanction from the Government for the purpose of conducting investigation against the police personnel who committed death or torture in police custody is to be removed. Similarly during the pendency of investigation of cases of custodial torture, the accused police personnel should be suspended from service till the final verdict from the court.

In the case of custodial death or torture both the officers who gave orders and those who have perpetrated it should be made liable. At the same

44 These are the principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In 1999 a Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (known as the Istanbul Protocol) was presented to the High Commissioner for Human Rights, Mary Robinson, by an international expert group which took three years drafting the document. For the text of the Istanbul Principles see appendix of Amnesty International, The impact of violence against women (2001), p. 45.

45 Supra n.32, p. 45.
time the authorities who are expected to react, but remain silent, should also be held liable.

The cases of custodial death and torture should be intimated not only to the National Human Rights Commission but to the State Human Rights Commission also. The recommendations of the NHRC for framing certain guidelines for videotaping of post-mortem should be implemented.46

Action against policemen who are complained against for brutality has never been satisfactory.47 Most of the policeman accused of torturing or killing suspects are invariably reinstated after a few months.48 Very few are dismissed. There should not be any leniency towards the police officers who are involved in cases of custodial torture. Special prosecutors should be appointed to prosecute cases of custodial violence. If the accused is acquitted, appeal should be preferred as a matter of policy.

It should be made mandatory on the part of the Government to sanction an amount as interim relief in deserving cases of custodial torture. Even if the case is acquitted, for want of evidence, compensation should be awarded if prima-facie case is made out.

The exclusive attention of the investigating officer is essential to the conduct of efficient investigation. Investigating agency should be distinct from the police staff assigned to the enforcement of law and order. The adoption of such a separation of the investigating machinery may involve some additional cost. However, and the additional cost involved in the implementation of our proposal is necessary. The adoption of such a separation will ensure undivided attention to the detection of crime. It will also provide additional strength to the police establishment which needs an increase in most

---

4 Times of India (Cochin), Nov.28, 1992.
of the States. Such a division will meet the needs of both the Government and the judiciary. No modern Government in a democratic setup can function without a police force at its aid. The law and order wing in implementing the policies and programmes of the government will satisfy this. The investigating police are to be made free from any sort of executive control; it should be put under judicial supervision. This will bring the investigatory procedure under the protection of the judiciary and greatly reduce the possibilities of political and any other type of interference with the police investigation.

Service of voluntary organisations should be made use of in the field of investigation of cases. Human rights organizations like Amnesty International, Peoples’ Union for Democratic Rights, Citizens for Democracy and Peoples’ Union for Civil Liberty should play a more constructive than a partisan role. The States should welcome the critical approach of these organisations and take measures to protect and preserve human rights.

**Precautions to be Taken in Recruitment and Training**

Appointments to the NHRC should be made from among the members of the State Units who are already in the field of human rights work and programmes. Thus their experience in State Commission can be utilized for the appellate body. Special prosecutors should be appointed to prosecute cases of custodial violences. The Government and the higher police officers to find out the real culprit without imposing unnecessary pressure should give the subordinate investigating police officers ample time and opportunity. If the accused is acquitted, appeal should be preferred as a matter of policy. Transporting the arrested persons in public vehicles and through public places

---


50 In fact, vigilance of the people’s voluntary organizations like Amnesty International, Association for Human Rights etc. is needed to make the Govt. and the police act with responsibility., Aparna Srivastava, op. cit., p. 82.
with handcuffs should be avoided. They should be taken to the police stations and to the court in the public vehicles itself. This will also reduce the possibility of escape of arrested persons from police custody.

Proper recruitment and training are very essential to inspire proper attitude formation in the police service so as to suit socio-economic transformations going on in the society. Appropriate aptitude tests for recruitment to police service must be devised so as to bring most suitable hands in the service. Policing being an essential public service of great importance should not be allowed to become the last refuge of the discarded elements. Recruitment procedures should comply with the important pre-requisites like emotional stability, sound character, political neutrality, above-average intelligence etc.

There must be precautions in the selection. There should not be any political interference and 'buying' of appointments and transfers. Considerable care has to be taken in enquiring into antecedent of the recruits. Only high quality officers properly trained should be involved in selection procedures.51

Human rights would prove illusory unless we have police officers of right caliber, to administer the police stations. The problems of human rights in police work may be removed to a considerable extent if we take care to ensure that the persons of right caliber are selected as police officers who must be a monitor, an investigator, an advisor and above all, a functional friend, philosopher and guide with free access and independence of action.52 In selecting and training of law enforcement personnel, the qualification of respect and sensitivity to human rights protection should be a prerequisite, kept under review and counted toward assessment of their performance and future prospects.

---

52 Supra n.50, p. 84.
Training of personal is the foundation on which the police force is built. The main objective of police training is to make lasting improvement in his role enactment capacities as a policeman and to develop his capacity for assuming higher levels of responsibility. Thus, police training is an effort to fit man for police life and to make him think, act and live like a police officer.

Skilful investigation is an art, which can be learnt only by training and experience. The training imparted to police personnel is not homogenous in character. The extensive training in investigation with recent scientific innovation could be imparted to create specialised wings for investigations.

Police training should be an earnest endeavour to impart and improve knowledge and skills and to bring a change of attitude in the police behaviour so as to inculcate in them a human rights culture on the basis of the international and national standards for the protection of human rights of persons in police custody. It is a process of developing a person's effectiveness through carefully selected methods by competent trainers in a suitable learning climate. The training imparted to police personnel is not homogeneous in character. It is ranging from performing the law and order functions in

---

53 While enthusiasm and initiative in investigation are cardinal virtues, no investigator should start an investigation with the thought that he must obtain only a certain type of solution. If he does so, he is too often inclined to bend and twist facts or adopt unlawful means to obtain the desired solution, Jacob Fisher, The Art of Detection (1948), p. 25.

54 The Ausbeton Committee (U.K., 1944) while dealing with the objectives and general principles of training gave following objectives:-

(i) To equip the civil servant with precision and clarity in the transaction of business.

(ii) To attune the civil servant to the new tasks which he will be called upon to perform in a changing world.

(iii) To develop resistance to the danger of becoming mechanised by visualising what he is doing in a wider setting and by preserving with his own educational development?

(iv) To develop his capacity for higher work and greater responsibilities.

(v) To develop and maintain staff morale particularly because large number of people have to deal with tasks of a routine nature.

(vi) To inculcate the right attitude towards the public never forgetting that the civil servant is a servant and not the master of the community.

(vii) To sustain the human touch not only in direct personal contacts with the public but also in handling correspondence which demands a proper sense of urgency and due consideration for the man at the other end, 'Training-Concepts and Objectives', Report of The Committee on Police Training (Ministry of Home Affairs, Government of India), p.11 quoted by Kamal Saini, op.cit., p. 56.
regulating the traffic, etc. The extensive training in investigations with recent scientific innovations could be imparted to create specialised wings for investigations.

To achieve the desired goal, police personnel should be provided with better initial institutional training and periodical in-service training in the field of human rights. The target of training should be the comprehensive development of the human rights oriented personality of the trainees.

Transparency of action and accountability perhaps are the possible safeguards which must insist upon. Attention is also required to be paid to properly develop a work culture. Training and orientation of the police should be consistent with basic human values.\(^5\)

**Human Rights Oriented Initial Police Training**

The legal instruments like the Indian Police Act should be restructured giving more importance to human rights of the persons in police custody. Training methodology of police needs restructuring. The training programme of the police personnel should focus on the abolition of torture and barbarious treatment of the victims in the police custody and thereby promote and protect their human rights.

The present syllabi of the police training colleges and academies need a drastic change so as to include human rights oriented subjects which can impart an apt training which will make the police personnel competent enough to protect the human rights of persons in their custody. In this context, it would be worth to suggest that the libraries of such training institutions should be well equipped with sufficient books and reading materials on

subjects like human rights, modern scientific methods of investigation, behavioural science, criminal psychology etc.

It is suggested that the State Government should introduce a new training curriculum for the police personnel involved in the arrest, detention and interrogation of suspects. Police should be made aware of the basic human values and made sensitive to the constitutional ethos. For the object of upholding the rights enshrined in various international human rights instruments like the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Code of Conduct for Law Enforcement Officials, police officers making arrests should undergo adequate training on human rights. Efforts must also be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation.

Without being harsh to the policemen, the best way and the need of the moment, is to sensitize them and inculcate in their minds that the victims of police torture too are human beings and deserve to be treated humanely and their rights too are respected and preserved. Instead of dismissing the torturer as a sadist, or a maniac, he must be humanised by giving training in human rights and also punished promptly. Atrocities committed against individuals can be tackled in this way.

Inservice Training on Human Rights for Police Personnel

Linking in-service training courses with the channels of promotion to various levels of higher responsibility would ensure better motivation and

---

56 The existing training is to be reformed by giving more importance to human rights, criminology, victimology, penology, science of investigation, law, psychology etc. The concept and philosophy of police is to be restructured so as to make it the first and best instrument to save and protect the community. The training methodology and curriculum is to be re-shaped in the light of this new concept. Every effort is to be made to re-structure the training pattern to change the existing inhuman face of the police and to convert it into a protector of human dignity in their ends and means.
greater effectiveness in the field of protection of human rights by police. The questions of promotion procedures and channels of advancement have to be considered and then linked with in-service training and competence tests. The in-service training has to be so fashioned as to keep professionally trained men abreast of new development in various fields of activity.57

Psychological orientation is absolutely necessary for police personnel. This would not only improve their behaviour but also help in dealing with traumatized victims. Though an ultimate change cannot be achieved within one day, the new systematic training can definitely bring an immense change in the existing human rights awareness of police, and there will be a day that everyone will say that police is our friend, philosopher and guide.

Remedial Measures against the Arbitrary Use of Police Powers

The vast discretionary powers enjoyed by the police invite arbitrariness, favouritism, corruption and injustice. So the areas of vast police discretion should be identified and necessary checks should be provided. This can be initiated by reviewing the past instances of corruption.

The police should be allowed to interrogate the accused only when an impartial third person is present. During interview, many respondents stressed the need for appointing more staff for supervising the activities of police personnel from constable to sub inspector.

With the enactment of a plethora of social, fiscal and other laws, the powers of the police to arrest have widened beyond imagination. This gives scope for misbehaviour and unnecessary detention. A review of these powers of arrest is called for and suitable corrective steps are to be taken.

Public Co-operation

Normally a country can be well judged by the quality of its police force. The 'litmus test' of police reputation is the goodwill and public trust. Police is an instrument of service to community and as a luminous social service organization, they should become creative for the betterment of the fellowmen and the society.

Jawaharlal Nehru in his address to the Andrapradesh Police Officers remarked: "The basic test of a police officer should be whether he can gain the co-operation of the people. If the official who is in charge cannot do that, it does not matter how clever or able he is; he is just not suitable for the task."

Police is a social service organization, committed to community welfare orientation. Helpful advice and immediately responding attitude of police to the needs of one in trouble will win regard and respect of the community. The programmes that are introduced by police in this path to interact with the public have a long way to go. The police should be taught that the root causes of political violence are political in nature and the cures should also be political. The police should confine themselves in fighting against the criminality involved in the actions of the 'rebels' and through better tactical and professional skills and methods attempt should be made to neutralize them. To fight against the 'rebels,' one needs information and cooperation from the public. Custodial violence takes the people away from the police and weakens their efforts to get information.

Instead of blaming the police, they should be supported by the people with all kinds of help for the enforcement of law and the protection of

---

life and property of the people. Now the people are even afraid to be witnesses of cases in the court. This attitude of the public is to be changed and they should be made aware that it is a duty of every citizen for the purpose of safeguarding the values of human rights.

Without public participation, no police howsoever equipped and trained can fight against crime in any society. As such, police has to take the initiative to build bridges with all sections of society and solicit their cooperation. It is possible for the Inspector General to appoint Honorary Police Officers from amongst respectable members of the public in different areas who can supplement police efforts in crime prevention and detection.

The public should come forward to assist the police in detection of crimes by giving useful information, and the police within the existing limitations should try to perform their duties honestly and sincerely. The senior police officers should envisage novel programmes like ‘Police-Community Relations’ and thereby establish constant contact and a healthy relationship with the general public. The senior officers and the retired hands from the police department who are having sufficient foresight and determination should provide proper guidance to such programmes. If these measures can be achieved, the police can keep away from depending third-degree methods and thereby put some constraints against custodial violence.

Custodial violence should be abjured at all levels by creating a consensus among the public against all forms of custodial violence. Complaints against police actions should be treated seriously because only through the complaint, the pulse of the public can be ascertained. Public Opinion and Public will to eradicate custodial torture and custodial violence is urgently required to be built up. This will be the biggest and the surest penacea.
The subordinate investigating police officers should be given ample
time and opportunity by the higher police officers to find out the real culprit
without imposing unnecessary pressure.

_re-structuring the Police Station_

Police station is designed and equipped for putting the arrested
persons for a short period. This does not necessarily mean that it is only used
for such purposes. 59 So there should be a thorough modification as far as the
lock-ups are concerned. The existing pattern of putting the arrested persons in
dark cells without sufficient air circulation is absolutely a violation of the
human rights of the arrestees who are also human beings.

In this context it is suggested that all lock-ups should be
constructed with sufficient ventilation and adequate space 60 with sufficient
furniture. 61 The maximum number of inmates in a lock-up should not exceed
five. Each person should be provided with clean mattress and blankets.
Persons in custody should be allowed to comply with the needs of nature with
adequate washing facilities.

Women custody officers should be appointed in all the stations and
they should be given absolute control over the women in police custody. It is
suggested in this context that even the remote possibility of interference by
the superior police officers upon the female custody officer should be avoided.

59 Field study discloses that most of the police stations are often used for prolonged custody of the
arrestees and there are certain cases in which it went upto a period of 20 days.
60 In early 1992 the CPT suggested that the size of the lock-up should be of the 'order of 7 square
metres, 2 metres or more between walls, 2.5 metres between floor and ceiling'. This standard has
proved difficult to apply in conditions of long-term penal custody. So the Committee has
subsequently accepted that cells substantially smaller than these are acceptable. In the past, the
CPT's threshold of acceptability has appeared to lie between 4 and 4.5 square metres for overnight
stays with Cells with smaller than 4 square metres area was acceptable only for detainees waiting
for a 'few' hours. However, it has recently said that cells of 4.5 square metres area are not
acceptable for overnight stays. Waiting cells of 2 square metres or less have been judged totally
unacceptable for even the shortest of periods Rod Morgan, "Protecting Prisoners Against Ill-
61 If there is any apprehension on the part of the police about violent attacks between the arrested
persons using movable furniture, it can be substituted by fixed ones.
Pregnant women should be given ample medical care with facility for periodical check up and nutritious food.

Juvenile justice is the need of the day. Welfare of the children should also be considered by the police personnel. While dealing with the children the police should always keep in mind that they are the citizens of tomorrow. They should not be treated like grown ups. The trivial errors committed by the children can be ignored and if possible such matters should be settled in the presence of their parents at home.

**Custody Records**

The single comprehensive custody record system was introduced in England and Wales. From CPT reports it appears that although almost all countries record the principal aspects of custody, such as the time of arrest, time of arrival at the police station, starting time and finishing time of formal interviews, these accounts are generally recorded in different documents. This makes them relatively difficult to collate and many potentially important aspects, such as the provision for clothing, food, medical care etc. generally go unrecorded.

It is suggested that the fundamental safeguards guaranteed to persons in custody should be ensured and there should be a single and comprehensive custody record for each detained person. Such custody record should contain the details of his arrest, the subsequent action taken, legal consultation, his physical health, mental condition, the details of those who visited him in custody, the kind of food offered to him, details of personnel who interrogated him, duration of interrogation etc. The custody record should contain all the whereabouts of the interrogation such as the duration, beginning and end, the presence of others.

---

62 Where this is required by the Police and Criminal Evidence Act 1984.
at that time the request, if any, made by a detainee during the interrogation etc.\textsuperscript{64}

This record is to be kept systematically in the police custody. The police should get the record signed by the detainee and thereby defend themselves against unwarranted allegations.

As police stations are established for maintaining law and order, the public should be given free access there. The present system of placing an armed police constable in front of police station will definitely cause fear in the mind of the public in approaching the police station. Contrary to the existing system, all police stations should be provided with reception-cum-waiting rooms with adequate seating facilities.

Today it is the usual practice of the police personnel to make discrimination among the suspects. In many of the police stations, they are very much reluctant to offer a chair to the interrogated and at the same time they do offer this to the prominent persons like politicians and bureaucrats. Application of this double standard in their approach to people should be thoroughly eliminated. Method of treatment should be almost uniform to all suspects, irrespective of the fact that whether he is an influenced politician or an illiterate layman. Another suggestion in this context is that there should be ample facilities for free communication between the interrogated and the interrogator.

\textit{Central Reception Facility for Arrestees}

A Reception Centre headed by a senior police officer consisting of a physician and a psychiatrist should be constituted in all sub-divisions. This would help to conduct medical examination of the arrested persons. It is suggested that arrested persons should be assisted by the psychiatrist at the reception centre even before interrogation so that they will be mentally

\textsuperscript{64} Id., p. 222.
prepared to face any sort of questions put to them. The Reception Centres should be attached with an interrogation room equipped with essential scientific arrangements for the purpose of interrogation. In setting up such interrogation rooms, the suggestions and recommendations of the psychiatrist in the centre or other psychiatrists may also be considered.

Need for Decent Clothing

Regarding the dress of the arrested persons it is suggested that the present pattern is to be changed. As far as possible he should be allowed to wear his own cloth, if not possible, he should be provided with better decent and hygiene dress. They should not be forced to wear humiliating dress.

Professionalism in Police

The welfare of the people can be ensured by the sincere efforts and judicious action by police with a professional orientation. The root cause of the problem of custodial violence can be eliminated by resorting to professionalism in police and ensuring greater independence of their functioning with accountability and transparency.

Of course every profession has the primary responsibility to impose discipline upon its members and maintain a code of ethical behaviour by internal mechanisms and supervision by the seniors in the organization. But as far as police is concerned already there is an effective system of superior command and control over the subordinates. This power of control is to be put to good use by making the superior police officers more transparent in their dealing with the subordinates. Transparency brings efficiency and popular support. Reformation of the organization should start from above and clear signals of good behaviour should be sent down to all ranks.

The survey results reveal that 8% of the arrested persons have lost their mental balance. (See also the Interview Schedule in Appendix XI)
The interpersonal relationship and the management in the police system should be re-shaped in a democratic manner based on human rights concept. The style of leadership has a very important role in shaping the qualities of subordinates in the service and their attitude towards human rights.\(^{66}\) The concept of leadership qualities of police officers, especially the SHOs should be modified according to the modern human rights concepts and the need of time.

**Need of a Code of Conduct:**

In England there is a Code of Practice for the police for treatment of persons in the custody of police which contains several guidelines for the protection of rights of persons in police custody. Part V of the Police and Criminal Evidence Act (PACE), 1984 and the Code of Practice for the Detention, Treatment and Questioning of persons by the Police (Code C)\(^ {67}\), contain elaborate provisions regarding detention, treatment and interrogation of persons in the police custody. They provide clear-cut guidelines for the police as well as strong safeguards for the persons in custody.

In Code of 'C'\(^ {68}\) there are detailed provision for protecting the rights of persons in police custody. One of the striking features of the Code is the

---

\(^{66}\) This leader is to be characterized by the interest for the protection of human rights of persons, a strong drive for responsibility venture in problem solving, drive to exercise initiative in social situations, self-confidence, and a sense of personal identity, willingness to accept consequences of decision and action, readiness to absorb inter-personal stress, willingness to tolerate frustration and delay, ability to influence other person's behaviour, and capacity to structure social interaction systems to the purpose at hand. M.Ponnaian, "Human Rights and Police Friend, Philosopher and Guide", *Glimpses of Human Rights*, M.ponnaian, Panch Ramalingam and Rani Ponnaian (Ed.) (1999), pp. 69-70.

\(^{67}\) The Code of Practice for the Detention, Treatment and Questioning of Persons by the Police (Code C) is one of the four codes formulated in accordance with section 64 of the Police and Criminal Evidence Act (PACE) of 1984. The other three codes are the Code of Practice for the Exercise of Powers of stop and Search by the Polico Officers (Code A), the Code of Practice for the Searching of Premises by Police Officers and the Seizure of Property Found by Police Officers on Persons or Premises (Code B) and the Code of Practice for the Identification of Persons by Police Officers (Code D). These Codes were issued by the Home Secretary and approved by the Parliament. The Codes originally came into existence with effect from 1st January 1986 and these Codes have been revised and the revised Codes came into existence on 1st April, 1991 superceding the 1986 Codes., see Michael Zander, *The Police And Criminal Evidence Act 1984* (1985), pp. 261-364.

\(^{68}\) Code of Practice for the Detention, Treatment and Questioning of Persons by the Police.
division of functions between the 'custody officer' and the investigating officer. Accordingly one or more custody officers are appointed for each police station. A variety of duties are being assigned to the officers when a person is taken into custody. The custody officer must make a record of everything the person detailed has with him.69 A person taken into custody is normally entitled to have someone informed of his arrest and to have legal advice.

'Code C' contains elaborate requirements as to the physical conditions in which persons are to be kept by the police70 and lodging of any complaints71 about treatment in custody and medical treatment.72 There are elaborate provisions enshrined in the Code to govern the procedure for the interrogation of persons in custody. They have replaced the non-statutory Judges Rules and Administrative Directions to the Police, which once guided and regulated the police in the conduct of interrogation.73 Breach of a particular Rule or Direction might, but in practice normally did not render the confession inadmissible. Generally speaking, the police can ask any person such questions as they think appropriate. However, 'Code C' requires that the interrogated should be cautioned before questioning in the following terms: "You do not have to say anything unless you wish to do so, but what you say may be given in evidence", or other words to the same effect.74 The Code 'C' makes it mandatory that an accurate record should be made for each interview with a

69 Police and Criminal Evidence Act 1984, S.54(1) reads: "The custody officer at a police station shall ascertain and record or cause to be recorded everything which a person has with him when he is-(a) brought to the station after being arrested elsewhere or after being committed to custody by an order or sentence of a court; or (b) arrested at the station after having attended voluntarily there or having accompanied a constable there without having been arrested.


71 Id., C.9.1, see id. p.271.

72 Id., C.9.2-9.6., ibid.

73 The Judges Rules originated in 1906, with revised versions issued in 1964 and 1978 together with related Administrative Directions from the Home Office. Compliance with the Rules would tend to ensure that a confession was admissible.


303
Interrogating must normally take place at a police station and the record must normally be made during the course of the interrogation. This means that the interrogation should be either tape-recorded or contemporaneous notes should be made. To avoid prolonged interrogation the code makes it mandatory that sufficient breaks should also be provided during the course of interrogation.


\textbf{Relevant Amendments to be Made}

The structural and legislative changes can also make police more accountable to human rights issues. The various rulings of the Supreme Court, various High Courts, the National Police Commission, the reports of the Law Commission, and the reports of independent observers have made clear that there is immediate need for amending relevant sections of the Code of Criminal Procedure and the Indian Penal Code.

Specific provision should be incorporated in the Protection of Human Rights Act enabling the transfer of cases relating to police atrocities from NHRC to State Commission and vice-versa. Section 50(1) Code of Criminal Procedure is to be amended so that the discretion given to the police in resorting to Arrest should be subjected to closer and continuous supervision by higher echelons.

\footnote{id.,C.11, id.,p. 273..}
To reduce the burden of police and to enable them to concentrate in the investigation of more serious offences, section 173 of the Code of Criminal Procedure, 1973 can be amended so as to include a provision by which police can allow the parties to compound offences under section 320 of IPC at the stage of investigation itself but subject to judicial supervision. Section 167 of the Code of Criminal Procedure, 1973 is to be amended so as to include a provision to give a copy of the First Information Report to the accused before the arrest so as to ensure that the duty imposed on the police to inform the accused of the ground of arrest has been complied with.

Section 54 of Code of Criminal Procedure, provides that at the time of arrest the accused is to be examined medically only on his request. Thus the section exonerates the police from the liability to provide medical examination to the accused. So this section is to be amended so that if the circumstances so warrant, at the time of arrest and thereafter the accused should necessarily be examined medically at the instance of the police and he should be given adequate medical aid, even if not expressly required by the arrested person. Arrested person should also be legally entitled to request a Magistrate or other independent body for an order to a second medical examination. It should also be made mandatory that the written result of such medical examination should be made available to the arrested person.

Necessary amendments are to be made in the Indian Police Act imposing a duty upon subordinate police officers to disobey the illegal orders of their superiors to inflict torture. Through such an amendment Article 5 of U.N. Code of Conduct for Law Enforcement Officials can be incorporated in our legal system.

Section 155(4) of the Evidence Act should be repealed to redress the unfair balance between the accused and the prosecutrix and to prevent abuse of legal process in the trial of the case of custodial rape. To keep the
balance it should be provided that the bad character of a prosecutrix in a rape case is also irrelevant unless evidence is given that she bears a good character. Thus sections 53 and 54 of the Evidence Act must be amended to apply to the character of both the prosecutrix and also the accused in a case of custodial rape. Sections 101 to 103 of the Evidence Act, imposes a duty on the prosecution to prove the offence beyond the shadow of doubt. The 'presumption and proof of consent' in Section 114-A of the Evidence Act on the rape crime in the custody of police introduced by Act 43 of 1983 cannot be so effective. The burden of proof has to be shifted to the accused police officer to disprove that he has not committed such a rape crime on the victim in the police custody. In other words, the principle of burden of proof has to be made an exception to grave crimes like custodial torture and custodial rape under the Sections 101 to 103 of the Evidence Act.

There should be statutory right to compensation to victims of human rights violations in police custody. The liability to pay such compensation should not be just of the State Government, but of the offending police officials themselves.

There is a limitation on the powers of the court to interfere in investigation conducted by the police and the same should not overlap the other. The Evidence Act must be amended whereby the injuries sustained by a person in police custody may presumed to have been caused by police officer in-charge of his custody and this would shift the burden of proof on police officer

The discretion is mainly with the police officer and unless there is clear evidence that it is a fraudulent exercise of the power vested in the officer, his discretion cannot be questioned in proceedings under Section 491 of the

---

77 Excepting for limited purposes, amongst others of bail or writs of habeas corpus under section 491, Cr.P.C. (now repealed) or a writ of mandamus if the investigation be malafide.
Criminal Procedure Code (now repealed). So necessary amendments are to be made in the Code of Criminal Procedure to give more power to the judiciary in this regard.

Many human rights activists are saying that Human Rights Commission is a dog which can only bark and cannot bite. So Human Rights Commissions should be given more teeth by amending section 30 of the Protection of Human Rights Act and prescribing powers and procedure of Human Rights Courts. Similarly orders passed by State Human Rights Commission should be given binding effect of the orders of court subject to appeal before NHRC. Also necessary amendment of the Protection of Human Rights Act is to be effected so as to make NHRC as an appellate body to oversee the functioning of the State Human Rights Commission judicially and administratively.

There should be provisions for judicial supervision in exercise of power to arrest without warrant. This will require amendment of Section 58 Cr. P.C. Section 176 Cr. P.C. should be amended so as to provide for judicial enquiries into all allegations of custodial deaths within a specific time frame.

**Redressal Mechanism.**

In its first report the National Police Commission stressed the importance of the need for having an institutionalised mechanism for curbing the abuses as well as for effectively redressing the grievances of the public against the police. The Commission observed:

One of the fundamental requisites of good governance in a democracy is an institutionalised arrangement for guarding against excesses or omissions by the executive in their exercise of their powers or discharge of

---

their mandatory duties which cause injury, harm, annoyance or undue hardship to any individual citizen. The arrangements has not only to include internal checks and balances to minimise the scope for such misconduct, but also to ensure an effective inquiry into any specific complaint of an alleged excess or omission and expose it promptly for corrective as well as penal action.\(^79\)

Though police accountability is an accepted reality today, it remains in theory only. The concept of police accountability is not brought into actual practice. Though there are a few external institutional arrangements for the purpose that are meant to hold police accountable, in reality these do not function. For instance, the office of the District Magistrate which has been given the powers to exercise 'general control and supervision' over police\(^80\) is apparently meant to check the police atrocities. However, the experience of the last 144 years of the commencement of the Indian Police Act shows that this civilian overview is lonely cosmetic in nature and actually it is only a shield to police from further proceedings.

International law vehemently condemns and prohibits torture and ill-treatment of the detainees. It casts an obligation on the State Parties to adopt effective legislative, administrative, judicial or other measures against acts of torture and ill treatment.\(^81\) In order to accomplish this objective, the Government should adopt a comprehensive custodial justice programme emphasizing the official condemnation of torture and eliminating incommunicado and secret detention. Emphasis should also be given to independent investigations of allegations of torture, exclusion of evidence found to have been procured by torture and compensation and rehabilitation.

\(^80\) Under section 4 of Police Act 1861.
for victims of tortures. The Government should also take necessary steps to train the police officers accordingly.

In this context it is suggested that a redressal mechanism is to be introduced consisting a three-tier system – Grievance Cell in every police circles, Complaint Board in all the districts and a State Security Commission in the state level. For the smooth functioning of the Mechanism and for a popular representation, a civilian control mechanism is to be included in the form of Custodial Justice Committee at the cutting edge level.

**Public Grievance Cells**

In some of the metropolitan cities like Madras, Bombay, Poona etc. there are police advisory committees for the active participative contribution by the public in maintaining public order. The citizens' voluntary force is another terminology attributed to the good citizens who volunteer themselves in extending public cooperation. The purpose of all these organizations is to create the mutual trust between police and public and to infuse confidence and faith in the police functioning.

It is through the method of public relations that the public can be kept informed of all the activities of the police. Recommendations have earlier been made to create a Public Relations Wing in the police department.

---

84 Fourth Police Science Congress Conference of the Inspector-General of Police held in 1964, U.P. Police Commission 1961 : 160-61, M.P. Police Commission 1966 : 275-81, Bihar Police Commission 1961. The Bihar Government was the first to appoint a Public Relations Officer, but the experiment was not very successful. A post of Public Relations Officer was created by the U.P. Government in 1969 in the office of the IGP, an officer of the rank of Dy. S.P. was appointed as P.R.O. There is, however, no separate staff of the P.R.O. In the performance of his duties he is assisted by the subordinates of clerical rank and a photographer. The main task of the P.R.O. is to publicise the achievements of the police in the state. His duties are at present mainly confined to contact with press. There is no arrangement for this post at the district level: Aparna Srivastava, *Role of Police in a Changing Society* (1999), pp. 249, 250.
The already existing grievance cells in the office of the superintendent of police are defective due to many reasons like lack of adequate procedures, lack of proper evaluation of the complaints etc. It functions just like a post office, just for receiving complaints from the public and sending them to different sections. Some unexperienced head constables are placed in these cells who are quite unaware of the relevance, nature and gravity of the grievances. They are actually expected to categorise the complaints according to their merit, places from where more complaints are lodged, the repeated nature of complaints etc. Above all they are expected to see whether prompt and proper action is taken against errant police personnel. It is quite unfortunate that so far no such powers are conferred on them.

Each police circle should have a Public Relation Wing consisting of a Public Grievance Cell. It is the duty of this Cell to register all the grievances against police by the public and solve them. This can be done by conducting seminars, adalats and public interaction programmes.\(^{85}\)

**District Complaints Boards**

Ultimately, the police are responsible to the public and not to the Chief of the Police. Some civilian review of police conduct in whatever form is essential. The NHRC has suggested setting up District Complaints Authority to examine grievances of the public in matters of misuse of power and custodial violence by the police and to introduce the system of a ‘Lay Visitors Scheme’.\(^{86}\)

\(^{85}\) This will be helpful to maintain a mutual respect between the police and the public and to impart boldness among the public to come forward as witnesses in criminal cases.

State Security Commission /

Recommendations for police reforms such as those proposed by the Second Report of the National Police Commission 1979 and other expert bodies should be implemented to free the police from political influence and patronage and also constitute a statutory body such as State Security Commission in each State to help the State Government "to discharge its superintending responsibility in an open manner, under the frameworks of law". 87

While constituting State Security Commission, it would be better to exclude the interference of both the State and Central governments. 88 Instead, it would be nice to have a statutory provision regarding this. A retired High Court judge should chair such Commission. He is to be appointed through a unanimous consensus among the judges of the High Court. The Commission should also consist of a retired Director General of Police, an eminent human rights activist and a known social reformer as its members. The chairperson may appoint the members after consultation with the Chief Justice of the High Court.

Civilian Control (Custodial Justice Committee for the Supervision of Places of Detention)

The systematic endeavour to include the welfare bodies of voluntary character in the redressal mechanism is a suggestive approach. The

87 'State Security Commission' apart from other functions would also hear representations from any senior police officer regarding his being subjected to illegal or irregular order in respect of his duties. It will be open to a senior police officer to challenge the order received from his DGP and Government as illegal or irregular and put the DGP and Government on the defense before the Security Commission. The Security Commission could pass strictures against the Government, in this regard, and the opposition could utilize it in the Floor of the House to give pressure on the Government. So this would have a psychological effect on the Government and the political patrons to act fairly and the police also could act independently, in the interest of the people and the society without fear or favour., National Human Rights Commission, Annual Report (1995-96), p. 16, See also, Abhinandan Jha v. Dinesh Mishra, A.I.R. 1968 S.C. 117.

88 There is enough chance that State interference may create unnecessary bias in the matter of appointments. Since police is a state subject, the interference of Central Government may invite unwarranted criticism.
Social welfare department can and must set up institutions conducive to protect the victims of custodial torture.

The conditions of the persons in police custody can be safeguarded through involvement of the community in the invigilation operation. For the effective supervision of places of detention, it must be carried out by trained persons who are interested in protecting the human rights of the detinues and having adequate knowledge of the custodial rights of arrested persons.

There should be a custodial justice programme in all the police sub-divisions or in the panchayaths. A Custodial Justice Committee should be constituted as a part of the programme. Reputed human rights activists and social workers preferably from the locality, media men, nominees from the bar preferably from the locality and nominees from the police department should be made the members of the Committee to ensure the custodial justice of arrested persons. The Committee should elect a Custodial Justice Officer to look after the welfare of persons who have been taken into custody by police. It should be made obligatory on the part of the arresting police officer to intimate the matter of arrest as well as all other details such as the ground of arrest, time of arrest, persons who have been intimated and the health condition of the person in police custody. This system will enable any interested person or relatives or mediamen to gather prompt and proper information regarding the person arrested by police.

District Level Human Right Cells should also be constituted in all the district headquarters similar to the state level Human Rights Commission. Members of the District Human Rights Cells, and the Custodial Justice Committee and Custodial Justice Officer should be statutorily empowered to have immediate and unhindered access without prior notice or permission to all places where people may be suspected to be detained by the police; to hear them and to take appropriate actions against the delinquent officials. The
officer in charge of the police station should be made obliged to provide ample assistance for the purpose.

The release of a person from police custody should be done only in the presence of his relative or friend or his advocate or a respectable person of the locality or a member of the Custodial Justice Committee. There should be proper records showing the release of the detainee, his name, the date and time of his release, the details and signature of those receiving the released, their relationship to him and the signature of at least two witnesses. It would be beneficial to both the police and the person in the custody.\textsuperscript{89}

It is also suggested that the existing inhouse mechanism functioning in the office of D.G.P should be detached therefrom to ensure the independent, effective and successful functioning of it.

\textit{Withholding the Legal Standards in Extra-ordinary Circumstances of Arrest and Transparency in Police Functions:}

Some police personnel are of the view that it is not always possible or practicable to strictly adhere to the legal norms regarding arrest especially when the person to be arrested is a notorious criminal or goonda\textsuperscript{90}. When the police decide to arrest a person, refuse bail, refuse to grant permission to consult a legal practitioner or when they decide to withhold any legal provision from a suspect- they must demonstrate the reason for their action\textsuperscript{91} and the behaviour pattern of the arrested person. In such situations the police officer effecting the arrest should bring the reason and extra ordinary circumstances prevailing to withhold the legal standards to the notice of the Costodial Justice

\textsuperscript{89} Many of the custodial deaths are pictured by the police as suicide after release from police custody.  
\textsuperscript{90} Royal Commission on Criminal Procedure also considered such situations of withholding the legal standards of arrest. See Simon Holdaway, \textit{Inside the British Police-A Force at Work} (1983), p. 169-170.  
\textsuperscript{91} Royal Commission on Criminal Procedure (1981), (pp. 44-46) also derived a similar principle which it calls 'the necessity principle'. See Simon Holdaway, id., p. 169.
Committee through the Costodial Justice Officer or the District Level Human Rights Committee instantly.

While accepting the goodwill of the general public, the police should be determined in discharging their duties. If the duty conscience of the police is adorned with the eradication of human rights violations, they can achieve success in extending their selfless service to community.