CHAPTER - 2
A GLIMPSE OF THE HISTORY OF HUMAN
RIGHTS VIOLATIONS BY POLICE

Human rights violations in police custody can be evaluated only from the historical and social context. A discussion on the historical aspects of violations of human rights in police custody would be ineffective, without having a perusal of the history of human rights in India with regard to the persons in police custody. Human Rights denote the immutable, inalienable and enforceable rights, which a human being can claim against the state irrespective of the will of the national sovereign.

A. EVOLUTION OF THE CONCEPT OF HUMAN RIGHTS

The idea of ‘human rights’ is as old as the history of human civilization but the phrase ‘Human Rights’ as a subject of study is comparatively recent in origin. Human rights are fundamental to our very existence and they constitute what might be called ‘sacrosanct rights’ from which no derogation can be permitted in the civilized society.

Human Rights are those minimal rights, which every individual must have against the state or other public authority by virtue of his being a member of the human family, irrespective of any other consideration.

Human Rights can be broadly classified into political and civil rights and economic and social rights. The political and civil rights are also called classical rights, ideal rights or birthrights. Their distinctive feature is that they are available to man naturally by his birth even without any positive

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assertion on the part of the state or others. These rights are not acquired, nor can they be transferred, disposed of or extinguished by any act or event, because these rights inhere universally in all human beings. The primary correlation of duties in connection with human rights falls upon the states and their public authorities.⁴

Human rights are currently a matter of international interest and concern for a wide variety of reasons. Some of these are deeply rooted in the historical experience and are part of man's struggle for the realisation of all his human values⁵. The struggle for the rights of man started with the emergence of nation states and establishment of despotic regimes towards the close of middle Ages. As a reaction to the authoritarian and repressive regimes, history witnessed the great political revolutions of the late seventeenth and eighteenth centuries.⁶ The phases of human rights which had, at that time been abused were formulated into declarations and bills of rights⁷ and written subsequently in national constitutions.⁸

The truth is that the concept of rights of human beings is neither entirely western nor modern.⁹ There are numerous thinkers who opine that the history of human rights and fundamental freedoms did not begin with the Magna-Carta, signed by King John of England in 1215, nor did the world come to know of them for the first time through the endeavors of Locke, Rousseau and Jefferson or the proclamation of the Declaration of

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⁷ The English 'Bill of Rights', 1688; French 'Declaration of the Rights of Man and of the Citizen', 1789; and United States 'Bill of Rights', 1791. For text of these instruments, ibid.
⁸ The Constitutions framed in the present century contain invariably provisions on fundamental rights of man and citizen. For e.g. the English 'Bill of Rights', 1688; French 'Declaration of the Rights of Man and of the Citizen', 1789; and United States 'Bill of Rights', 1791.
Independence and the adoption of the declaration of the Rights of man and of
the citizen by the National Assembly of France in 1789.\textsuperscript{10} The concept of
human rights in modern times can be traced to Natural Law philosophers who
propounded these rights to protect individual against the excesses of the
State.\textsuperscript{11} The new phrase ‘Human Rights’ was adopted only in the present
century from the expressions previously known as ‘Natural Rights’ or ‘Rights
of men’. Introducing the concept of ‘Human Rights’ it can be said that human
rights is a twentieth century name for what has been traditionally known as
‘Natural Rights’ or, in a more exhilarating phrase, the ‘Rights of man’.\textsuperscript{12}

The origin of the concept of human rights is normally traced back
in the Greco-Roman Natural Law Doctrine of Stoicism according to which a
universal force pervades all human creation and that human conduct should
therefore be judged on the basis of the law of nature and in the jus gentium
(law of nations). Human rights generally refer to a wide continuum of values
that are universal in character and can be equally claimed for all human beings
to whatever nation they may belong.\textsuperscript{13}

The rights of man have been the concern of all civilizations from
time immemorial. The concept of ‘rights of man’ and other fundamental
human rights were not unknown to the peoples of earlier periods. These ‘rights
of man’ had a place in almost all the ancient civilizations of the world. In the
Middle East, the Babylonian laws, the Assyrian laws and the little laws
provided for the protection of the rights of man. In India, the Dharma of the
Vedic period and in China, the jurisprudence of Lao-Tze and Confucius
protected rights. In the West, a number of rights, bearing some semblance to
what we call civil and political rights today, were available to a section of

\textsuperscript{10} Yogesh K. Tyagi, “Third World Response to Human Rights”, \textit{Indian Journal of International Law}
Vol.21, No.1, Jan-March, 1981, pp. 120, 127.
people. Cicero, the great Roman jurist, tells us that the Greek Stoics, around 200-300 years B.C., developed, on the basis of what we now consider as basic human rights, an authentic 'natural-law' theory, prescribing inviolability of these rights.

The emergence of the idea of Human Rights led to the trend of guaranteeing basic Human Rights in the basic Laws i.e. the Constitutions all over the world as a result of democratic movements all over the world. The Constitution of US which was drafted in 1787 was first of such examples, the purpose of which was to withdraw certain subjects from vicissitudes of political controversy and to place them beyond the reach of political majorities. The UN charter, expressing faith in fundamental Human Rights in the dignity and worth of human person, in the equal rights of man and woman, proposing to encourage respect for Human Rights and for fundamental freedoms for all without distinctions as to race, caste, sex, language or religion represents a significant advancement so far as faith in and respect for Human Rights is concerned.

New vistas to Human Rights of the persons in custody were opened with the proclamation of Universal Declaration of Human Rights (UDHR) in 1948. Universal Declaration of Human Rights declaring that everyone has a right to life, liberty and security of person, freedom from slavery or servitude cruel or inhuman or degrading treatment and arbitrary arrest and ensuring equality before laws and equal protection of laws represents the most concrete and universal texture of human rights in human history.

14 Supra n. 1.
16 Supra n.11.
17 Universal Declaration of Human Rights, Article 3.
18 Id., Article 4.
19 Id., Article 5.
20 Id., Article 9.
21 Id., Article 7.
The endeavour for the protection of human rights of the persons in custody against the coercive powers of the state as part of human rights propaganda was initiated by the United Nations Organisation and expressed in International Covenant on Civil and Political Rights (ICCPR, 1966), which added teeth to the Universal Declaration. The above attempt was strengthened by Standard Minimum Rules for Treatment of Prisoners (1977), Code of Conduct for Law Enforcement Officials (1979), Principles of Medical Ethics of Doctors in the Protection of Prisoners and Detainees against Torture (1982) and Convention against Torture (1984). Frequently the General Assembly has emphasized that no state can claim to be allowed to disrespect basic and entrenched rights such as the right to life, freedom from torture and the right to fair trial on the ground that a departure from these standards might be permitted under national or religious laws. Yet 41st session of the U.N. Commission on Human Rights highlighted the mass violation of human rights of persons in the custody and they are held in conditions far worse than those of convicted criminals.

**Evolution of the Concept of Human Rights in India**

The Indian history is warranted by the fact that human rights jurisprudence has always occupied a place of prime importance in India's rich legacy of historical tradition and culture. The truth is that what the West has discovered about human rights now, India had embedded the same in its deep-rooted traditions since time immemorial.22

In India the concept of Human Rights dates back to the Vedic period or Sutra period which, according to modern historians, will bring us down to at least about the seventh or sixth century B.C. This is also borne out from Sanskrit Literature. In the ancient Indian literature no mention of the

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condemnation of the accused is found without providing him an opportunity of being heard. Though the philosophy of Human rights in India has come a long weary way, yet the progress through the historical path has always remained gradual and never lost its link with the past.  

Ancient Hindu civilization contributed a lot to the origin of what is now known as the human rights movement. The historical account of ancient India proves it beyond doubt that the human rights were as much visible in the ancient Hindu and Islamic Civilizations as in the European Christian Civilizations. Emperor Ashoka, Prophet Mohammed and Akbar cannot be excluded from the genealogy of human rights.  

The concept of Human Rights in India, may be seen to have existed in crystallization of values that are the common heritage of mankind. References, occur as early as in the Rig Veda to the three civil rights, that of Tana (body), Skridhi (dwelling place) and Jibhasi (life). Long before Hobbes, the Indian scriptures tell us about the importance of the freedoms of the individual in state. The concept of Dharma, the supreme law which governed the Sovereign and the Subjects alike covering the basic principles involved in the theory of rights, duties and freedoms. Long before second century B.C., we boast of elective kingship and the law of nature, which even kings had to obey. 

The Kautilya's Arthasastra asserts:

In the happiness of the subjects lies the happiness of the king and what is beneficial to the subjects is his own benefit. The king’s function was not conceived in terms of legislation but of protection and this involved the protection not only of his subjects from

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23 Id., p. 31.
24 Supra n. 10, p. 124.
26 S. Subramanian, op. cit., pp. 56&100.
invasion, but also of the order of society, the right way of life for all classes and ages (*Varnasrama Dharma*) as laid down in the sacred texts. The *Mahabharata* explicitly sanctions revolt against a King who is oppressive or fails in his function of protection, saying that such a ruler is no king at all, and should be killed like a mad dog.27

Kautilya also disapproved the theory of absolutism of king and subordinated him to the law of duties. Similarly, Shantiparva prescribes that king may be punished if he does not follow the path of *Dharma*.28 A man, however, was not convicted of theft simply on the ground of his being found in possession of stolen goods as it was possible that he might have found the article on the road dropped by a thief. So the whole matter was to be investigated properly. According to *Mitaksara* if a man was arrested on suspicion, his case should be properly investigated and he should be given a chance to clear himself either by proof or by an ordeal. This was akin to the recommendations of Narada and Brhaspati. Narada further suggested that culprits should be traced by secret spies. These secret agents should associate with them, make friendship and carefully watch their behaviour and finally catch them.29

Roughly speaking two methods were employed to detect a crime. First was by setting a thief to catch a thief and by resorting to the tracking system. Tracking system can be said to be the ancient form of dog squad. The second method of detection through spies was found very effective. In many cases selection of spies had to be made cautiously in order to avoid chances of double cross.30 Seeds of scientific investigation can also be discovered in Kautilya's treatise. The following extract from the *Arthashastra*, though recorded centuries ago, is as fresh as many modern discourse:

Any person whose body bears the signs of scaling heights; any person whose body appears to have been scratched or wounded with dress torn off; any one whose legs and hands bear the signs of rubbing or scratching, anyone whose hair and nails are either full of dirt or are freshly broken, anyone whose foot-prints can be identified with those made near the house during ingress; any person the smell of whose sweat can be ascertained from the house, all such persons should be interrogated and examined after commission of crime.31

It is evident from the above extract that footprints, smells, nails and hair have been identified as tools of investigation. Our scientific methods of investigation appear to have been born out of such observations. Kautilya dealt with a number of other problems of crimes, as embezzlement and corruption by government servants, detection of youths of criminal tendency, assault, defamation, adultery, sexual intercourse with immature girls, examination of sudden death, various methods of investigation, seizure of criminals on suspicion and trial and use of judicial torture to elicit confession. The chief executive officer of the State, the Collector General was responsible not only for the collection of revenue but also for nearly all other departments of administration. Under him were three Commissioners of Divisions, and under them again were the Nagarikas - in later days known as Kotwals – who were in charge of cities, while in the rural areas a regular hierarchy also existed. Masters of houses were to report the arrival or departure of strangers on pain of themselves being responsible for any thefts that were committed; wayfarers to catch hold of persons possessed of destructive weapons; watchman neglecting their duties, or stopping those whom they ought not to stop, were to be punished; suspicious persons were to be arrested and examined and persons throwing waste into the street were to be fined. All these matters, as well as the general maintenance of law and order, the administration of jails, the daily

31 Id., p. 8

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inspection of the defenses of the city and the custody of lost property were the responsibility of the Nagarika; in addition he had to enforce the elaborate regulations for the prevention of fire, under which every householder was required to maintain fire fighting equipment in readiness at all times.\textsuperscript{32}

There were other officials, too, who carried out what could be regarded as police duties. There was the Superintendent of Passports, the Superintendent of Liquor - since considerable control was exercised over the consumption of liquor - and the Superintendent of Gambling, who had a special responsibility for being on the look out for criminals. Even the Superintendent of Commerce was not free from police duties, for no second hand or old article could be sold without his consent. Espionage is treated in great detail in the \textit{Arthasastra}. Spies were indeed wicked and assumed many guises. The activities of spies were not restricted merely to common criminals.\textsuperscript{33} Even the King's ministers and army commanders were to be spied upon and plied with all manner of temptations. Along with espionage went the use of torture as a means of eliciting confessions.\textsuperscript{34}

The different forms and degrees of torture are described in some detail. Here and there, however, humane touches appear and we are told for example, that 'torture of women be half the prescribed standard', while the aged, lunatics, pregnant women and "persons suffering from hunger, thirst, or fatigue from journey" were not to be tortured. Kautilya was fully aware that even an innocent person might confess under torture and he insisted that corroborative evidence must be produced. He was perhaps well ahead of his time in proposing fines as an alternative to the mutilations and other savage punishments which were prescribed.\textsuperscript{35}

\textsuperscript{32} \textit{Kautilya Arthasastra}, Part III, University of Bombay (1965), Ch.XXXVI, p. 18.
\textsuperscript{33} \textit{Id}, p. 47.
\textsuperscript{35} \textit{Ibid}. 

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With a view to check corruption and misuse of power, the police officials were paid handsome salaries. Compensation and subsistence was granted to the families of those police officials who died on duty. Grants were given to the police officials on occasions of funerals, sickness and child birth. All these welfare measures ensured that police officials were honest and sincere in their duty and crime was very rare.36

In ancient India, generally, the basis of police administration was the separation of rural and urban wings, both of which, in any case, received fair justice, the one from village communes, and the other from urban-based police, and the judiciary which was also easily accessible. The absence of too many appeals made matters less complicated. The police enjoyed the goodwill of the public as they were not bracketed with military force or the intelligence organisation, which watched political suspects and spies from other countries and clines.37

In the sixteenth century in each village, town, city, and district, police officers from the humblest Kavilgar to the most powerful Poligar were appointed with gradations of rank. These Kavilgars having a concurrent jurisdiction were charged with the internal security and tranquility of the country. Being entrusted with the safety of the public property, armed with the means and paid for the purpose of protecting it, they were held responsible for all losses by theft, robbery, or depredation, for the detection and apprehension of all public offenders of this description and for the extinction of all offences committed by them. The formidable power thus delegated to these Kavilgars, organised by an able minister and controlled by a despotic government, was competent to every purpose of vigorous and energetic police. But it was counterbalanced by a concomitant evil. Under any relaxation of the controlling authority, the Poligars and higher officers of it attained and

36 Ibid., also see A.L. Basham, The Wonder that was India (1963), p. 115.
usupe a power which was employed in maintaining personal quarrels. Torture and inhuman treatment of persons in the custody of police were prohibited under Ashoka's administration.\(^{38}\)

The study of *Mudra-Rakshasa* shows that dispensation of justice was considered as one of the important duties of the rulers.\(^ {39}\) No leniency was shown to the criminal; and the whole system worked so efficiently that the Magasthenese says: "Kings employed spies not only to detect violators of human rights but gathered public opinion on various important matters." Vaisakha Dutta in his *Mudra-Rakshasa* has depicted Chandragupta as a deity coming right from heaven to save his countrymen. King Ashoka inscribes: "All men are my children, and, just as I desire for my children that they may enjoy every kind of prosperity and happiness both in this world and in the next, so also as I desire the same for all men."\(^ {40}\) Ashoka worked day and night for the protection of human rights. His chief concern was the happiness of his subjects.\(^ {41}\)

There was a downfall of Human rights jurisprudence in post-Vedic age. In the post-Vedic period, the rise of Buddhism and Jainism were certainly a reaction against the deterioration of the moral order as against the rights of privileged class. A close scrutiny of Buddhist period reveals that people were equal in all fields of their life. Life was more humane and liberal and repudiated caste distinctions. After Buddha, Ashoka protected and secured the most precious of human rights particularly right to equality, fraternity, liberty and happiness.\(^ {42}\)

It is however, unfortunate that human rights jurisprudence witnessed downfall with the decline of Mauryan Empire. The study discloses

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\(^{41}\) V. A. Smith, *Early History of India* (1 Edn), p. 171.

\(^{42}\) Supra, n. 15, p. 100.
that since the decline of the Mauryas, India had been frequently invaded by the foreigners like the Greeks, the Partians, the Sakas and the Yueh-Chis. It was only Chandra Gupta II (Vikramaditya) who defeated the foreigners and united India under one sovereignty. Harsha Vardhana was the last Emperor of Hindu India. His reign marks the culmination of Hindu culture. It is for his commitment towards his people that he is often compared with Akbar and Ashoka. After the break up of his empire the whole India was split up. The society, too, in general had degenerated. The philosophy of human right lost sight. The downfall of Rajput gave rise to the advent of Muslim rule in India. It was under Muizz-ud-Din that Muslim Empire was founded in India.  

**Period of 1200-1757 A.D**

The Muslim laws coupled with the inconsistent orders of the religious heads (Kazis) were the prime factors which controlled the policing and judicial system in the States under their subjugation or occupation. Under Muslim legal system the Quran may be described as the supreme legislative Code of Islam, which laid down basic rules of justice. During the reign of Aurangzeb, spies were employed to watch the conduct of law enforcing officials secretly and upon the least well-founded complaint, the officers were liable to be turned out of their public offices and were also made to appear in court like any other subjects. In Muslim system of Criminal Justice Administration there were limitations on the Power of Arrest and Custody. The Kotwal in charge of arrest had to report the arrest to the kazi and had to obtain his order whether the arrested person was to be released or prosecuted.

Aurangzeb laid emphasis on prima facie evidence before arrest and warned courts against keeping a man under trial for a term longer than that was necessary. The rights of the arrested in some form existed under the Muslim criminal jurisprudence. A brief survey of these rights is discussed herein:

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43 Supra, n. 40, p. 486.
In *Hadd* and *Tazir* (cognizable) cases on the production of *prima facie* evidence, arrest (*Hirasat*) of the accused was made. The right to be released on bail was discretionary and as a matter of policy bail and security were discouraged. Any subject could arrest and all criminal courts could order the arrest of a person accused of cognizable offence.45

A *Shiqahdar* (Police Officer) was once convicted of the offence of wrongful confinement and sentenced to a fine of Rs.200. Security for presence in the court was acceptable. The police had the power to investigate arrest and search the house on reasonable grounds. A *Qazi* could also himself search. Wrongful obstruction in search led to punishment, unless justified. A police officer could also enter the house by force for search provided he had reasonable grounds for suspicion.46

The first Muslim invaders of India were Arabs who entered Sind in the eighth century but they had little permanent influence. The invasions of Turks, Persians and Afghans beginning in the eleventh century were of much greater importance. The model of policing brought by the conquerors was of the pattern in vogue in their homeland *Haroon-ul-Rashid* was the ideal. At the same time, the conquerors, on their part, failed to appreciate the good points of the indigenous system. The village system of government continued as before though considerably de-generated as the conquerors would not move into the heart of the country. Only the spy system was strengthened to obtain information of the general happenings in the country-side. Punishments for violations of law were levied more heavily on the conquered populace, particularly, when the offence committed was against a group of the conquerors, punishments consisted mainly of fines and sometime of dismembering some organs of the body including decapitation. The law in

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45 Ibid.
46 Ibid.
fact remained the choice of the Kazi, on whose corrupt practices there was hardly any control.47

During the Mughal period, some progress was made in the organisation of police. The performance of magisterial function by the police Kotwal was an important feature, which was also later followed by the English East India Company. When the Emperor or the Subedar was not in residence, the capital was ruled by the Kotwal. All petty criminal cases were disposed of by him by a summary procedure. He had been vested with power to inflict torture. He was a royal favourite because he was the head of the official spy organisation in the city. The Mughal police system thus suffered from one basic defect. Moreover, the Mughal being essentially an urban people neglected the protection of villages.48

With the decline of Mughal Empire in India the police system suffered a severe blow. The police officials started exploiting the situation to their advantage and became notoriously corrupt and oppressive. They used this opportunity for their personal aggrandizement, mutual revenue or public plunder. It was the usual practice of these rulers to establish houses or chowkies in different strategic areas for the maintenance of internal order in the conquered territory. The Thanedars had under them garrison of troops and they were more in the nature of military command post of material law administrators than a civil post to look after the safety, security and well being of the people. Moreover, such centres of powers, having been manned by aliens, could never be expected to have rapport with the rural population.49 Being preoccupied with conquest and collection of revenue, the Mughals were only marginally involved in the detailed administration of the countryside.

48 Ibid.
Outside the urban areas, therefore, the maintenance of law and order and the administration of justice remained by and large, in the hands of Zamindars.  

After the disintegration of the Turks-Afghan rule, the Afghan ruler Sher Shah Suri (1530-1560) effectively organized different branches of administrative system including the police. He continued the traditional principle of local responsibility and held the village headman responsible for the safety of the area within their villages. An official organisation of police was also created, under a Foujdar, who was the principle police officer and also the commandant of the local army; and Kotwal was the head of the city police in urban areas. They together enforced public morals and the former was the head of the criminal court of the province. The police organization of the Mughals had shaped out of the vestiges of the police system of Sher Shah Suri. In the rural areas, the village watchmen continued to be responsible for police duties, but they were brought under the control of Zamindars, who were required to maintain their own police establishments. The Foujdar was the Chief Executive for ensuring peace and security in the province of his charge with the help of a contingent of military troops through which he could enforce the will of the Emperor. The province was subdivided into suitable districts for which he could set up Thanas (Police Stations) covering a group of villages, each such Thana was placed under a Thanedar for proper policing of the rural areas. In the cities Kotwal was put incharge of police functions. It was during the time of Akbar that the city administration was streamlined and all important cities and towns were placed under the direct charge of the Kotwal. The Maratha and Rajput rulers also followed this system. 

There was no custom in this country to keep a man accused of an offence in custody, immediately the accused was taken to the court, examined and sentenced. The right of a person in custody to be released on bail did exist.

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50 Ibid.  
51 Id. pp. 65-66.
during Mughal rule in India. The system of penalising police officials for the anti-social behaviour was in existence. The system was extended even to the *Prefect* who can be identified with the Police Commissioner in modern times. During Muslim rules in India quick disposal as a right of the person in custody was well recognized. With the disintegration of the imperial authority of the Mughals, there was a complete breakdown of the police system. By this time the East India Company had also strengthened its political power and stability in the country in the provinces of Madras and Bombay, and it took upon it to bring about improvement in the policing system of the provinces under their domain.\(^{52}\)

**British Period**

Not surprisingly the British conveniently ignored all the recommendations of reform in the system and brought about changes in a piecemeal manner in accordance with their convenience and political expediency. The company initially relied on the traditional system and managed policing through the *zamindars*, vesting revenue and magistral functions in the Collector, who was also given a firm control over the police administration. The policing was not taken away from the *zamindars* till 1792. When the weaknesses of this system were exposed to the Court of Directors of the Company, it sent Lord Cornwallis as a Governor General to bring about the reforms. He dissolved the police system under the *zamindars* and criticised the system of 'granting meager salaries to men employed in high trust. He introduced a number of reforms like separating judicial and revenue functions which were further strengthened by his successor Sir John Shore. The cardinal principle of the administration of criminal justice and the police set up by Lord Cornwallis in 1792-93 was a complete separation of judicial and executive from revenue functions.\(^{53}\)

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\(^{52}\) *Supra, n. 49, p. 67.*

Sir Thomas Munro, the governor of Madras Presidency in 1821 said "No police which is contrary to the feelings of a country can ever be successful, and it would be better to have no district police at all than one under the management of Darogha." Thus in spite of the reservations expressed by people like Cornwallis, the police and the criminal justice system remained interwoven with the revenue administration, the logic of which is not very difficult to understand. The shortcomings and inefficiency of this system was clearly visible to the enlightened British opinion. The police commission of 1838 observed that the inefficiency of that system is in a great measure attributable to the inadequate scale on which it has hitherto been carried on; no improvement without considerable expense will be practicable. Yet reform suggested by the Committee were not accepted by the government due to financial considerations.

The philosophy of human rights in the modern sense has taken shape in India during the course of British rule. The Indian National Congress, which was in the vanguard of freedom struggle, took the lead in this matter. The Indian Penal Code came into effect in 1860 comprising 511 sections dealing with all types of offences against State, all Armed Forces, the public tranquility, the public servants, the election, contempt of lawful authority of public servants, weights and measures, public health, safety, decency and morals, offences against human body, wrongful restraint and confinement, criminal force and assault, offences relating to property including theft, extortion, robbery, dacoity etc., misappropriation, cheating and breach of trust, fraudulent deeds and dispositions of property, mischief, trespass, documents and property frauds (forgery etc.), currency notes and bank notes, contract of service, marriage including adultery, defamation, intimidation, insult and annoyance and finally attempt to commit any offence

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54 Ibid.
55 Ibid.
56 S. Subramanian, op. cit., p. 28.
involving imprisonment. The precise definition of acts and omissions constituting an offence with the nature and quantum of the punishment to be awarded was elaborately indicated. Further the Indian Penal Code enacted in 1860 made torture a punishable offence.\(^\text{57}\)

The first Code of Criminal Procedure which was passed in 1861 was repealed and replaced by the Code of 1872. That too was repealed and replaced by the Code of 1882 which was replaced by the Code of Criminal Procedure (Act V of 1898) 1898 and was amended in 1973.\(^\text{58}\) The Code of Criminal Procedure, 1898 laid down many procedural rights and privileges of the arrested persons the salient amongst them are right of being produced before a magistrate\(^\text{59}\) right to know grounds\(^\text{60}\) right to counsel\(^\text{61}\) right against testimonial compulsion\(^\text{62}\), right of bail\(^\text{63}\) etc.

As a result of the report of the Torture Commission the Indian Evidence Act passed in 1872 made confessions to police officers inadmissible

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\(^\text{57}\) Indian Penal Code Section 330 reads: "Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine." Similarly Section 331 reads: "Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claims or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

\(^\text{58}\) A.N. Chaturvedi, op. cit. p. 47.


\(^\text{60}\) Sections 173(4) and 251-A (i), Cr. P.C.I. 1898; Now Sections 50, 173, Code of Criminal Procedure, 1973.


in evidence.\textsuperscript{64} It depicted the quality and quantum of the evidence required to prove or disprove facts comprising the ingredients of the offences. Both the criminal and civil proceedings were brought in its ambit.\textsuperscript{65} In this Act the procedure to be adopted by trial courts for dispensation of justice was minutely codified.

In addition, ‘Police Regulations’ were framed in each province throughout the country governing the conduct, training, discipline, dereliction of duty and the resultant punishment to be meted out to the delinquent police personnel. By the implementation of these regulations, a reasonably trained, disciplined and responsible body of police officers and men was provided to each province.

In spite of the Police Act of 1861 which was supposed to have set up an organised civil constabulary under the control and supervision of the Magistracy the Government were not satisfied with the role performance of the police. Accordingly the second Police Commission was appointed on July 9, 1902 by the Government of India.

\textit{Evolution of Constitutional Rights}

The demand for the recognition of civil rights by adopting several resolutions during 1917 and 1919 was revived by the Indian National Congress. Article 8 of the Commonwealth India Bill, 1925 was for the recognition of this and proposed many basic rights. The appointment of the Simon Commission on November 8th, 1927 impelled the Congress to set-up a committee for the drafting of a Swaraj Constitution. The Motilal Nehru

\textsuperscript{64} Section 25 reads: "No confession made to police officer, shall be proved as against a person accused of any offence", S. 26 reads: "No confession made by any person while he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person"; and Section 27 reads: "Provided that, when any fact is deposited to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved".

\textsuperscript{65} ibid.
Committee suggested for the inclusion of fundamental rights in the future Constitution of India. This demand was also repeated by several individuals, organisations and committees formed in the provinces.⁶⁶

The next stage in the evolution of custodial human rights was the publication of the Sapru Committee Report, 1945 which envisaged for justiciable and non-justiciable rights and recommended that the declaration of fundamental rights and norms of conduct for the legislature, government and the courts were absolutely necessary. However, the Sapru Committee Report left the task of enumerating the list of fundamental rights to be decided by the constitution-making body for inclusion in the future Constitution.⁶⁷

**B. HISTORY OF HUMAN RIGHTS VIOLATIONS IN POLICE CUSTODY**

Having understood the term 'Police' and the expression 'Human Rights', it is necessary to define the concept of 'Human Rights Violations in Police Custody'. This concept is known in many ways - 'police brutality', 'police torture', 'police excesses', 'custodial violence' and 'lock-up crimes'. The general meaning attributed to this concept is that people in police custody are not being treated with the complete dignity and rights, which the citizens in a model democratic state deserve. The practice of causing degradation to the status of an individual, any physical or mental harassment to him, or any deprivation of his personal liberty or fundamental rights of freedom in police custody...
custody can be treated as human rights violations in police custody. But ironically this is considered necessary for law enforcement by police.

Though India is playing a vital role in the United Nation's system and other world forums for the protection of human rights, the recent Supreme Court decisions reveal that the human rights of the persons in the custody of police continue to be violated, unabated even today.\textsuperscript{68} Most of the reports on human rights violations in police custody show that they have emanated from indigenous sources.\textsuperscript{69} Main focus of these reports is on torture, including rape and deaths in custody. The reports criticize practices that are blatantly unconstitutional. The country faces an embarrassing situation, because human rights abuses have become common and a sense of hopelessness intruded our thought and reaction. Justice Krishna Iyer describes our human rights record as 'teasing illusion and promise of unreality'.\textsuperscript{70}

As far as the protections of human rights of persons in police custody are concerned, the condition in India is not at all satisfactory. There is persistent increase of human rights violations in police custody including rape, custodial violence and death in India. Very often, the suspects and witnesses are picked up in custody illegally by the police and tortured for a long time even without recording it in the general diary. They are tortured for the purpose of extracting confessions or for recovery of case property or for securing information about the commission of the crimes irrespective of whether a crime has actually been committed or not. Usually they are not produced before the magistrate within 24 hours of their arrest. Thus the worst violations of human rights of person occur during the course of investigation and interrogation when the police resort to third degree methods on the person in custody.\textsuperscript{71}

\textsuperscript{68} Almost all Amnesty International's information about torture and death in custody comes from within India itself, Human Rights in India: The updated Amnesty International Report (1993), (p. 8).


\textsuperscript{70} Id., p. 6.

\textsuperscript{71} Some of the tortures methods employed by the police during investigations are discussed in chapter 3.
In his report to the United Nations Commission on Human Rights in April 2001, the Special Rapporteur on Torture, Sir Nigel Rodley made the following observations about the situation of torture in India:

While the size and diversity of the country make it difficult to characterize the intensity of the problems all over, it certainly appears that there is a tradition of police brutality and arbitrariness in much of the country, the degree of brutality frequently being sufficiently unrestrained to amount to torture, often with fatal consequences. The brutality is sometimes linked with corruption and extortion and is often deployed in the service of local vested interests, be they economic or official. The use of excessive and indeed unprovoked and unjustified force is common, especially in response to protests demanding rights. The persecution of those pursuing complaints against the police is a not infrequent phenomenon. In general, while not absolute, the level of impunity among police and security forces seems sufficiently substantial as to conduct a general sense among such officials that their excesses, especially those committed in the line of duty, will at least be tolerated, if not encouraged.

India has a record of flagrant violations of rights at every level. It is really unfortunate that, State, supposed to be the guardian and promoter of human rights becomes the prime violator. Both the central and state Govts are still being condemned by the human rights activists and civil liberty organizations for their negligent attitude towards safeguarding the fundamental freedoms and human dignity. But undermining all these efforts, human rights violations are increasing day by day and life and liberty of the citizens are still

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73 The Special Rapporteur on Torture Sir Nigel Rodley was appointed by the UN Commission on Human Rights in 1985 to look at issues of torture worldwide.
75 S.P. Srivastava, op. cit., p. 10.
being jeopardized by mounting incidents of State violence. Police in our context has a long history of law-breaking. Its record of too little regard for human rights is not a thing of the past; it is flourishing now as ever before.\textsuperscript{76}

The Mauryan states were autocratic police states and their functions were political, economic, social and at times religious, and it affected almost all the aspects of human life and allegedly infringed on the privacy of man from the time of conception to cremation.\textsuperscript{77} In the \textit{Arthashastra} Chanakya mentioned espionage for collecting intelligence and torture for obtaining confessions. But being aware that even innocent persons may also be forced to confess under threat or use of torture he insisted on corroborative evidence. He also prescribed mutilation of various parts of the body for various offences; chopping of fingers, hands, arms, legs and even blinding. Incidentally, shaving of the head, something our police occasionally do even today to goondas is also prescribed in the \textit{Arthashastra}.\textsuperscript{78}

From the works of Kalidasa it appears that the administration of urban police department was not always satisfactory and the integrity of officials was questionable. They were experts in accepting bribes and many of them were alcohol addicts. Watchmen usually wandered about the town either on their routine rounds or in search of thieves. They kept watch on roads and highways with truncheons (\textit{Danda}) in their hands. Even ladies of suspicious activities were seized by them while on duty. Kalidasa records the existence of a band of frontier guards who often oppressed simple and innocent travelers. Persons with suspicious movements were occasionally menaced with torture by policemen. The police exhibited enormous cruelty to extort confession which sometimes proved fatal.\textsuperscript{79}

\begin{footnotes}
\item[76] Id., pp. 7-8.
\item[77] Supra. n. 49.
\item[79] Sukla Das, \textit{op. cit.}, pp. 84-86.
\end{footnotes}
Police under the Islamic and British Rule

With the invasion of India by Muslims created new situation wherein the Muslim rulers or Sultans followed a policy of discrimination against the Hindus. So the significance of Muslim rule in India was counterproductive to harmony, justice and equality.80

The performance of magisterial function by the police Kotwal was an important feature, which was also later followed by the English East India Company. When the Emperor or the Subedar81 was not in residence, the capital was ruled by the Kotwal. All petty criminal cases were disposed of by him by a summary procedure. He had been vested with power to inflict torture.82 The Mughal being essentially an urban people, neglected the protection of villages.83 The police officials started exploiting the situation to their advantage and became notoriously corrupt and oppressive. They used this opportunity for their personal aggrandisement, mutual revenue or public plunder.84

When the English East India Company assumed political responsibilities, there was no stability or peace in the country. Even in the presidency cities of Calcutta, Bombay and Madras, where Europeans were settled in considerable numbers, the police were very inefficient, and the dissatisfaction of the residents was frequently expressed.85 Extortion and oppression was practiced by all ranks of police officials. The administration of police was hopelessly disorganized, mischievously corrupt and utterly inefficient. During the Company period the combination of revenue, judicial and magisterial functions in one person resulted in tyranny; the collection of revenue was made through torture. The complaints became so numerous that

80 Supra n. 27.
81 Subedar was in charge of the administration of the Province.
82 The Kotwal is usually pictured as being ruthless, cruel and arbitrary. Meadows Taylor, Confessions of a Thug Oxford University Press, (London), 1916.
on September 9, 1854 the Governor in Council of Fort St. George appointed a Commission “for the investigation of alleged cases of torture at Madras”.  

Charges were made in the British Parliament that revenue was being systematically raised with the use of torture by the native officers (Tahsildars). Fortunately in 1855 the Torture Commission was appointed to enquire into these complaints. During the period of 1861 – 1902 the British Government did not pay serious attention to the welfare of the police personnel, especially in the subordinate rank. As a result of low emoluments and absence of welfare amenities, they resorted to corrupt practices and misused their powers. The police force was ill equipped and had acquired a bad name. In order to remove these defects and to reform the policies in regard to personnel administration, a thorough probe became necessary.

Therefore when the Indian Evidence Act was drafted they included sections 25 and 26 and made the police untrustworthy. Confessions to police or in their presence were made inadmissible in evidence in courts. In a way, these two sections in the Evidence Act, 1872 made the police to use more and more torture on the suspects to elicit confessions and to make a recovery under section 27 of the Indian Evidence Act, 1872. The same Act is in use even today in India.

The British authorities became aware of the police atrocities and later on replaced the system by Darogas who were under no proper supervision. They also proved ineffective. The Darogas were ultimately replaced by the

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86 The Commissioners gave their report on April 16, 1855. As this report had repercussions on both the Indian Penal Code and the Indian Evidence Act its findings are important Report of the Commissioners for the Investigation of Alleged Cases of Torture in the Madras Presidency. Submitted to the Right Honourable the Governor in Council of Fort St. George, on the 16th April, 1855, Parliamentary Papers (Commons) 420 of 1855. National Archives, New Delhi.). Shailendra Misra, op. cit., p. 31.


Magistrates who were not interested in the village affairs in anyway nor did they listen to the common grievances of the rural population and consequently did nothing to remove the difficulties of the villagers. The Torture Commission was of the opinion that the main object of the British rulers was to collect revenue with the police help. The police was merely an instrument in the hands of the District officers to enforce the autocratic will of the officers.\(^90\)

Later on the administrative system was changed with one officer for each unit of administration who was approached by the people with all sorts of grievances. Thereupon a Collector Magistrate was taken as the sole Administrator of the District who was authorized to control all the administrative affairs including the police. The police was concerned to maintain law and order not for the good of the people or in public interest but to facilitate collection of revenues and keep the villagers under subjugation. The Superintendent of Police was made subordinate to the District Magistrate with the result that voices were raised against the dual system in the District. This discontentment against the revenue officers and the police officers continued for a pretty long time without much change more or less on the usual patterns.\(^91\)

The British bequeathed a concept of the rule of police. The people at large were put to almost inhuman atrocities and hardships at the hands of local administration principally through the agency of the British Police. Police continued to be an object of terror and abhorrence to the general public. The repression carried out during the Indian political movement for independence, mainly through the agency of the police further tainted the already tarnished image of the police in the public mind. In India the police became a monster machine with tentacles spreading in all the spheres of social and non-social, political and non-political work of the State.\(^92\)

\(^91\) Ibid.
During the period from 1914 to 1946\textsuperscript{93} some hurried increase in the force was sanctioned. Fractional Indianization of the superior police service had started, but still over 90\% of the officers were not of Indian origin.\textsuperscript{94} During this period\textsuperscript{95} there was no substantial improvement in prevention and detection of crime, and rendering satisfactory criminal justice to the people, for entire resources and energies of the police were channelised to safeguard the British Imperial interest in India in the last bid to perpetuate their regime. All sorts of atrocities, which the institution of \textit{Darogahs} had committed on the people in the past were allowed to be committed in innumerable places by the Europeans as well as native police officials in order to suppress the national uprising for freedom of India.\textsuperscript{96} In these nefarious acts, the British Government not only incited the police, but also actuated them to behave in this atrocious fashion for ensuring its own safety, stability and consolidation of regime in this sub-continent.\textsuperscript{97}

During the period of Indian independence struggle, the police force was considered a terror and was abhorrent to the people. During this period the repressive attitude of the British Imperialism was adopted through the police agency to crush serious political movements. This was to some extent

\textsuperscript{93} This was a time of great stress and strain for the police department on account of two World Wars of 1914-18 and 1939-46 and the major political movements that took place, in particular the Non-Cooperation Movement of 1920 and the Civil Disobedience Movement of 1930-31. The entire edifice of the British Administration was shaken to its foundation by the ‘Quit India Movement’ of 1942.

\textsuperscript{94} M.B. Chande, \textit{op. cit.}, p. 90.

\textsuperscript{95} During this period there were no fewer than three major struggles between the Congress and the Government – the non co-operation of 1921, the civil disobedience of 1931 and the Quit India Movement of 1942 – all of which were organized on a country-wide scale and were led by Gandhiji., Giriraj Shah, \textit{op.cit.}, p. 68.

\textsuperscript{96} The Congress agitation was primarily non-violent. Generally speaking, it took the form of demonstrations – hartals, processions and meetings. Occasionally, however, a campaign for non-payment of taxes was mounted and some laws were willfully violated by way of a non-violent offensive against the British. The police was charged with the responsibility for suppressing these movements; and occasions were not wanting when they indulged in acts of wanton cruelty; including lathi charges, and firing on unarmed peoples, \textit{id.}, p. 134.

\textsuperscript{97} M.B. Chande, \textit{op. cit.}, p. 90.
natural that the loyalty of the police to the Government of that time was unimpeachable due to restrictive regulations and disciplined organization.98

Pandit Jawaharlal Nehru has given a graphic description of what happened to him when he demonstrated against the Simon Commission at Lucknow:

I felt pain all over my body and great fatigue. Almost every part of me seemed to ache; and I was covered with confused wounds and marks of lathis. But, fortunately, I was not injured in any vital spot. Govind Ballabh Pant, who stood by me, offered a much bigger target, being six feet tall; and the injuries he received then have resulted in a painful and persistent malady which prevented him for a long time from straightening his back or leading an active life.99

The police had clashed not only with hosts of Congressmen and other patriots actively participating in non-violent anti-government activities; they also attacked innocent people who had no role in the struggle for freedom movement.100

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98 R.K. Bhardwaj, op. cit., p. 4.
100 Giriraj Shah, op.cit., p. 134. The Congress agitation was primarily non-violent. Generally speaking, it took the form of demonstrations - hartals, processions and meetings. Occasionally, however, a campaign for non-payment of taxes was mounted and some laws were willfully violated by way of a non-violent offensive against the British. There were no fewer than three major struggles between the Congress and the Government - the non-co-operation of 1921, the civil disobedience of 1931 and the Quit India Movement of 1942 - all of which were organized on a country-wide scale and were led by Gandhiji. The police was charged with the responsibility for suppressing these movements; and occasions were not wanting when they indulged in acts of wanton cruelty, including lathi charges, and firing on unarmed peoples. Giriraj Shah, The Indian Police-A Retrospect (1992), p. 68. Gandhi and Jinnah issued joint appeal on 15th April to curb the discontent among the masses: "We deeply deplore the recent acts of lawlessness and violence that have brought the utmost disgrace to the fair name of India and the greatest misery to innocent people, irrespective of who were the aggressors and who were the victims....we denounce for all times the use of force to achieve political ends and we call upon all the communities of India, not only to refrain from all acts of violence and disorder but also to avoid any word which might be construed as an incitement to such acts." id., p. 69.
Independence and after

The police culture that existed in the pre-independence period was allowed to continue even after India became independent. The Police Act of 1861 instituted the system of police which is still in force in India.\(^1\) There was no sincere or wholehearted attempt on the part of the governments to redefine the role and responsibilities of the police until the National Police Commission was appointed in 1977. Thus the police sub-culture that was in existence during the British regime continued to operate and in that culture torture of citizens and calling of bad names against them were permitted and tolerated by the authorities and the general public alike.\(^2\)

The police force was not conceived as a service organisation. It was designed as a force to be used against the community but at the same time, it was so constituted and controlled as not to overwhelm its creators.\(^3\) The British used the police to mercilessly violate all human rights and as a result, all police commissions hitherto appointed in India to study the police functioning have been unanimous in their views that the police in India have shown no regard to human rights.\(^4\)

Almost all the State Commissions\(^5\) have commented adversely on police behaviour. The conclusion part of Punjab Police Commission reads:

The Commission is of the opinion that most of the investigating officers have no training in the use of scientific methods of investigation, and the only method of investigation known to them is that of third degree. Third degree methods are used by them in

\(^1\) J.C. Curry, \textit{op. cit.}, p. 35.
\(^2\) \textit{Supra}, n. 92.
\(^4\) \textit{Supra}, n. 90.
\(^5\) The nine State Police Commissions appointed so far have been Assam (1971), Bihar (1961), Delhi (1966-68), Madhya Pradesh (1965-66), Maharashtra (1964), Punjab (1961-62), Tamil Nadu (1971), Uttar Pradesh (1960-61) and (1970-71) and West Bengal (1960-61). In addition, Kerala and Rajasthan had Police Reorganization Committees in 1920 and 1973 respectively. Shailendra Misra, \textit{op. cit.}, p. 36.
one form or the other to extract confessions or else such statements as make the use of section 27 of the Indian Evidence Act possible. The Central Investigation Agency, a special branch of this organization charged with the duty of investigation (of) heinous crime, has acquired notoriety in the public for third degree methods and is styled the “butcher-khana”. Instances of people dying as a result of torture by the police are not wanting and this is a big blot on the organization.106

Before the Maharashtra Police Commission a number of witnesses stated that the police use third degree methods and policemen - particularly in the lower ranks, are often rude and discourteous to the public, and that the police force is an instrument of oppression.107 The Tamil Nadu Police Commission further found that “when a person goes to a police station with a complaint no one listens to him willingly or patiently”, and if the complainant insists on being heard immediately he receives a shower of abuses in ‘vile language’ and is ‘threatened with some sort of action against himself. The Delhi Police Commission also stated: “Indeed, almost all the public witnesses who appeared before the Commission, have testified that the police have no public image at all. People do not trust them because they are unreliable and corrupt. People do not love them because they are vindictive and cruel”.108 The Third All India Police Commission109 in its Fourth Report110 discussed the use of third degree methods in the investigation of offences. It expressed regret that several police officers “under pressure of work and driven by a desire to achieve quick results”, use force on witnesses, suspects and accused. The Commission voiced concern at the inclination of some of the supervisory ranks to countenance this practice in a bid to achieve quick results by short-cut methods.111

106 Report of the Punjab Police Commission, pp. 64-65, See the chapters on police public relations.
107 Shailendra Misra, op. cit., p. 36.
108 Ibid.
109 also called the National Police Commission, which was appointed by the Government of India on November 15, 1977
110 June 1980.
111 See also Shailendra Misra, op. cit., p. 36.
Police brutality and torture during the last three decades show that the custodians of law have become lawbreakers. The lathi-wielding attitude, the brutal abuse, its brutality of power and the use of third degree methods by the police has become the order of the day. After the horrid experience of police brutality during emergency, police oppressions at present in many states have become very common. Major techniques of physical torture adopted by the police were stamping on the bare body with healed boots, beating with cane on the bare soles of feet, beating on the spine, beating with rifle butt, inserting live electric wires into the crevices of the body, burning with lighted cigarettes and candle flames, rubbing of chili powder in the nose and rectum.\footnote{G.S. Bajwa, Human Rights in India: Implementation and violation, 1995.}

Emergency Period

There is an inevitable link between States of Emergency and grave violations of human rights.\footnote{In 1982, the International Commission of Jurists undertook a study of fifteen selected countries which had experienced States of Emergency in the sixties and seventies - countries (literally from A to Z; Argentina to Zaire) that included India. In addition, detailed questionnaires, had been sent out to as many as 158 different Governments in the World, to which a few Governments had responded (with replies). In 1983, the study and an analysis of the data, were published by the ICJ in book-form under the title "States of Emergency; their impact on Human Rights": Appropriately, the cover of the publication was in black colour! P.H. Parekh, Human Rights Year-Book (1997), p. 79.} Article 4(2) of the International Covenant on Civil and Political Rights lays down that people should enjoy their human rights even during the time of emergency. Right to life, immunity from inhuman or cruel treatment, equality before law, freedom of thought, etc., should have to be protected by the police even during the period of emergency. Indian Constitution, under Article 359, provides that the right to life and liberty under Article 21 should not be suspended even when the rights under Part III of the Constitution are suspended during the period of emergency. This means that the Constitution preserves some basic rights of life and liberty even during emergency and the police are to enforce them. The right to life includes freedom from torture, police excesses, inhuman treatment, arbitrary arrest, etc.\footnote{James Vadackunchery, Crime Police and Correction (1998), p. 35.} But in India during the internal emergency the
highest authority in the land became the worst violator of democratic norms and the lawlessness of the police knew no bounds.\textsuperscript{115}

**The First Emergency and its Continuance**

On October 26, 1962 an Emergency was declared under Article 352\textsuperscript{116} in view of the sudden conflict with China in the Himalayan border regions. A few days later by Presidential Order the enforcement in any court of fundamental rights guaranteed by the Constitution under Article 14, 19, 21 and 22 were also suspended.\textsuperscript{117}

Though hostilities with China came to an end with the cease-fire declared on November 21, 1962 the proclamation of emergency\textsuperscript{118} continued - fundamental rights under Article 19, remained suspended\textsuperscript{119} and right to enforce in any court the fundamental rights guaranteed by Articles 14, 19, 21 and 22 also remained suspended.\textsuperscript{120}

**The Second Emergency\textsuperscript{121} and its Prolongation**

Following the second Proclamation of Emergency\textsuperscript{122}, all the Rights to Freedoms guaranteed by Article 19, stood automatically suspended.\textsuperscript{123} Parliament then passed in quick succession the Maintenance of Internal

\textsuperscript{115} For details see Appendix III
\textsuperscript{116} Better known as the First External Emergency.
\textsuperscript{117} Article 14 (Right to Equality); Article 19 (Right to Freedoms) - of speech and press, of association and assembly, of free movement, of property, and of business trade and profession; Articles 21 and 22 (Protection of life and Personal Liberty and constitutional protection and Personal Liberty and constitutional protection and procedural safeguards against arrest and preventive detention.
\textsuperscript{118} Of October 26, 1962.
\textsuperscript{119} Article 358.
\textsuperscript{120} Article 359. There were widespread allegations of abuse of executive power after 1963 - especially in the States, by frequent misuse of the harsh provisions of the Defence of India Act and Rules, 1962 (which was enacted after suspension of fundamental rights) and conferred arbitrary and sweeping powers on a vast array of officials (both Central and State) to transgress personal liberties of citizens and non-citizens alike: without recourse to legal redress. P.H. Parekh, op.cit., p. 86.
\textsuperscript{121} Of December 3, 1971.
\textsuperscript{122} Nearly four years later, on 3rd December 1971, following the outbreak of hostilities between India and Pakistan, an External Emergency under Article 352 was declared, for the second time.
\textsuperscript{123} Article 359.
Security Act\textsuperscript{124} and the Defence of India Act\textsuperscript{125}, and the Central Government promulgated the Defence of India Rules, 1971.

A rigid and unprecedented press censorship was imposed - there was a complete ban on reports of speeches in Parliament\textsuperscript{126} and of reports of all cases in courts other than the names of counsel and judge and the operative part of the decision. The President's satisfaction about the need to declare an Emergency\textsuperscript{127} was declared by Constitutional Amendment\textsuperscript{128} to be not only final and conclusive, but also non-justiciable. By a Presidential Ordinance amending MISA, the statutory requirement of the detainee's right to be informed of the grounds of arrest was deleted - it was sufficient for the authorities to declare that the arrest was made to 'safeguard the security of India'\textsuperscript{129}.

Widest powers of detention were thus vested in the Central Government and the State Government - which meant any person authorised to act for the Central Government or the State Government: theoretically, even a desk clerk! And the power to detain was not confined only to those in the secretariates in Delhi or the State capitals, it could also be exercised by every District Magistrate and every Commissioner of Police in every town and village in every State\textsuperscript{130}.

\textsuperscript{124} Act 26 of 1971 (MISA)
\textsuperscript{125} Act 42 of 1971.
\textsuperscript{126} other than Government Statements.
\textsuperscript{127} External or Internal
\textsuperscript{128} 38\textsuperscript{th} Constitution Amendment Act of August 1, 1975.
\textsuperscript{129} Further more, drastic amendments were made to MISA;
\vspace{3mm}
(a) the right of appeal to the Government in case of an illegal detention was abolished.
(b) the constitutional safeguard of a scrutiny of every detention order by an Advisory Board was rendered useless, since (with the suspension of Articles 21 and 22) provision was expressly made by ordinary law that the Advisory Board would have no right to reverse the detention order (for any reason) for one year.
(c) grounds of arrest were forbidden to be disclosed even to the Courts, and by enacting a statutory fiction - it was to be deemed that it was against public interest in all cases to disclose the grounds of arrest.
(d) provision was made that the expiry of a detention order was not a bar to the making of further detention order against the same person.

\textsuperscript{130} F.H. Parekh, \textit{op. cit.}, pp. 88-89.
The almost 19 months of National Emergency imposed by Indira Gandhi between 1975 and 1977 have been seen by many analysts as the turning point in the post-colonial history of India.\textsuperscript{131}

During emergency as many as 6851 detention of leaders of opposition parties, were made under preventive detention laws.\textsuperscript{132}

It was also the time of the crumbling of the police order. Emergency made the hierarchy topsy-turvy. The politicians encouraged subversion of the chain of command. The corrective mechanism available in the police force was neutralized. Torture and mayhem could not be effectively controlled.\textsuperscript{133} The current methodology of third degree does not show any remarkable refinement over the methods described by the Torture Commission.\textsuperscript{134}

The methods of torture were described by the Torture Commission:

Among the principal tortures in vogue in police cases we find the following: twisting a rope tightly round the entire arm or leg so as to impede circulation; lifting up by the moustache; suspending by arms while tied behind the back; searing with hot irons; placing

\begin{itemize}
\item Stamping on the bare body with heeled boots.
\item Beating with canes on the bare soles of feet.
\item Rolling a heavy stick on the shins with a policeman sitting on it.
\item Making the victim crouch for hours in 'Z' position.
\item Beating on the spine.
\item Slapping with the cupped hands on both ears until the victiim bleeds and loses consciousness.
\item Beating with rifle butt.
\item Inserting live electric wires into body crevices.
\item Forcibly laying nude on ice slabs.
\item Burning with lighted cigarettes and candle flame.
\item Denying food, water and sleep and then forcing the victim to drink his own urine.
\item Stripping the victim, blackening face and parading him in public.
\item Suspending the victim by his wrists.
\item Hauling him on 'Aeroplane'- Victim's hands tied behind the back with a long rope, the end hauled over a pulley, leaving the victim dangling in mid-air, swinging., Seminar, New Delhi, June, 1977 quoted in Shailendra Misra, Police Brutality (1986), pp. 32-33.
\end{itemize}

\begin{itemize}
\item G.S. Bajwa, op. cit, p. 381.
\item Ibid.
\end{itemize}
\textsuperscript{134} In the 1970s, according to a report, the following methods were in vogue:
\begin{itemize}
\item Stamping on the bare body with heeled boots.
\item Beating with canes on the bare soles of feet.
\item Rolling a heavy stick on the shins with a policeman sitting on it.
\item Making the victim crouch for hours in 'Z' position.
\item Beating on the spine.
\item Slapping with the cupped hands on both ears until the victim bleeds and loses consciousness.
\item Beating with rifle butt.
\item Inserting live electric wires into body crevices.
\item Forcibly laying nude on ice slabs.
\item Burning with lighted cigarettes and candle flame.
\item Denying food, water and sleep and then forcing the victim to drink his own urine.
\item Stripping the victim, blackening face and parading him in public.
\item Suspending the victim by his wrists.
\item Hauling him on 'Aeroplane'- Victim's hands tied behind the back with a long rope, the end hauled over a pulley, leaving the victim dangling in mid-air, swinging., Seminar, New Delhi, June, 1977 quoted in Shailendra Misra, Police Brutality (1986), pp. 32-33.
scratching insects, such as the carpenter beetle, on the navel, scrotum and other sensitive parts; dipping in wells and rivers, till the party is half suffocated; squeezing the testicles; beating with sticks; prevention of sleep; nipping the flesh with pincers; putting pepper or red chillies in the eyes or introducing them into the private parts of men or women; these cruelties occasionally persevered until death sooner or later ensues.\textsuperscript{135}

Emergency distorted police functioning considerably in Kerala as in most other States. Senior police officers were as much responsible for this as the politicians in power. Whereas a number of excesses did not receive any attention whatsoever, one case which shook the polity of Kerala once emergency was lifted in 1977, was the infamous Rajan case, where a student was tortured to death in a remote police camp, an act so brutal in nature that the entire populace of Kerala revolted in no uncertain measure.\textsuperscript{136}

During this period various types of police atrocities were committed upon the poorer people, students, teenagers and teachers.\textsuperscript{137} A retired professor, whose son was tortured to death by police, describes his feelings on hearing the experience of the victims in the Kakkayam police camp:

\begin{flushright}
\textsuperscript{135} Torture Commission Report, para 67. Minutes of Consultation in the Public Department, No.1027 of 3.10.1854 given in the Appendix to the Report of the Torture Commission., para 14. The date on which Sir Thomas Munro had recorded the minute was 30.1.1827
\textsuperscript{136} This case shook the confidence of the people in the police force. The people thought that the police force was a serious liability. The cover of emergency had an umbrella -effect producing a feeling that insured the police officers from accountability. Till that time it was the public belief that it was the subordinate police functionaries who indulged in individual barbaric acts. They had respect for the senior officers for their sense of justice and fair-play. Three senior IPS officers were involved in the Rajan case. This evoked sharp reaction and many wondered what motivated even educated people, coming from families with established middle-class values to behave in this manner. The IPS service received a fatal blow to its credibility. The police was viewed as an institution of torture. No more was justice a part of the police creed. The misbehaviour of a few in the senior ranks had an adverse impact on the entire police force. If senior officers could actively participate in torture of innocents in police custody, how can one blame the subordinate police personnel? That was the constant common refrain. Subramaniam, \textit{op.cit.}, pp. 294-295.
\textsuperscript{137} G.S. Bajwa, \textit{op. cit.}, p. 326.
\end{flushright}
Koru, Benhar and Chathamangalam Rajan told me about Kakkayam camp, shivering while narrating stories of blood clotting torture, as if trying hard to forget...When the victims of police torture showed me the never fading scars of torture on their bodies, saliva filled my mouth and darkness, my eyes. A whistle echoed in my ears.\textsuperscript{138}

The Professor describes the atmosphere in the camp:

Mr. J would sit on a chair and pass orders while police jeeps rushed in and out and youngsters were dragged forth. They were beaten, and then tied to a wooden bench with their hands and legs down. A heavy wooden roller would be rolled over their thighs; many could not stand the pain, and fell unconscious. To prevent them from crying out, the police pushed cloth into their mouths. Afterwards, they would be bought before Mr J. While questioning them, he would roll a sharpened pencil in his hands; suddenly he would stab the pencil in the muscles worked loose from the bones on the thighs of the tortured. Koru said that at that moment you thought it would be better to die. The cries from being stabbed with that pencil could be heard outside the camp.\textsuperscript{139}

He depicts the plight of his son in the camp:

My son Rajan was tortured first. They asked him where the rifle was that had been stolen during the attack on the Kayanna police station. He had never been beaten even once in his short life, so with the first round of torture he became weary. Then he was tied to the wooden bench and rolled. He cried out for his mother; they stuffed cloth into his mouth. At the end of the torture, to get

\textsuperscript{138} V. Eachara Varier, \textit{Memories of a Father} (2004), p. 68. 
\textsuperscript{139} \textit{Id.}, pp. 66-67.
away from it he told them that he would find the rifle. Then he was taken to Mr. J, who told the policemen to take Rajan to a jeep and go in search of the rifle. Then he cried again. He told them that he was not aware of the rifle at all, and had said that to escape further torture. Mr. P began kicking him in his stomach with his heavy police boots. With a loud cry he fell back and writhed on the floor, then became quiet and motionless...They packed Rajan's body into a sack and took it away in a jeep. They burned it in the midst of some forest with sugar, to ensure that not even the bones would be left behind.\textsuperscript{140}

\textit{During the Janata Regime}

Even after the defeat of Mrs. Gandhi at the polls in 1977 and the coming to power of a broad coalition, for almost two years there was a relatively low profile of the range and extent of civil rights activities.\textsuperscript{141} In the early days of its rule the Janatha Party took limited steps to restore the democratic rights of the people. But then came the halt. There was an attempt by the Janatha government even to perpetuate preventive detention, despite the electoral pledge that Maintenance of Internal Security Act would be repealed. No doubt this law was repealed at the center, but it remained prevailed very much in the states\textsuperscript{142}.

\textit{In the Eighties}

The alleged methods of torture this period include hanging people upside down severe beating (sometimes until the victims limbs are broken), burning and plying heavy rollers on the victims leg. In some cases, the use of electric stocks has been reported. Such methods were particularly common

\textsuperscript{10} Id., pp. 67-68.
\textsuperscript{142} Id., p. 326.
during the investigation of ordinary criminal offences such as theft, and are most widely used against the poorer sections of Indian society, notably the adivasis, tribal and harijans.\(^{143}\)

In the early 1981, the Indian press reported detailed account of people suspected of ordinary criminal offences whose legs had been broken and then twisted by the police in Varanasi and Gazipur in Utter Pradesh. Cases of torture and death in custody are widely reported in press, and in a number of instances, have been investigated by civil liberties organizations. When magisterial inquiries found that death in custody were due to police brutality the only punishment the guilty officials was given is that they were only suspended from duty or transferred. Sometimes police officials were later on reinstated.\(^{144}\)

**After Eighties**

After 1980, police has resorted to, more repressive techniques as not to leave any scar of police atrocities on the body of victims. Even minors were not spared at the hands of police. A newspaper published a report, according to which, young boys of 10 to 14 years were being supplied to detainees for their delectation and a boy name Munna was in agony because after the way he was used he was unable to sit.\(^{145}\) The helpless boys gives the description of police torture in a telling manner:

I was taken to Baz Mandi police station and beaten up. My feet were swollen. Then they put a bandage around my forehead and passed electric shocks through it.\(^{146}\)

After the late eighties the incidents of death through torture in police custody has been on the increase.\(^{147}\) In the 1980s and 1990s hundreds of

\(^{143}\) G.S. Bajwa *op.cit.*, p. 330.


\(^{147}\) G.S.Bajwa, *op.cit.*, p. 334.
people were tortured, extra judicially executed or disappeared. Despite calls by human rights organisations including Amnesty International for impartial investigations into these human rights violations, there has still been no comprehensive investigation into the pattern of human rights violations perpetrated by police. Amnesty International believes that this situation has facilitated the continuation of torture and other illegal activities by police. Methods of torture used in the past against political detainees by police including rolling wooden rollers over the legs of suspects thereby tearing muscles, stretching the legs apart and electric shock treatment - are now used against common criminal suspects or against individuals detained merely for the purpose of extortion.\textsuperscript{148}

Police have established several centres where inhuman and sadistic tortures are inflicted. Corruption has been rampant and the interrogation officers have been extorting money for the release of innocent persons. The persons killed due to torture were said to be disposed of in clandestine manner and most of them were thrown in the waterways or fields. These arrests were made by police without FIR and therefore, treated as deaths due to mutual rivalry of militant groups. In other cases, no doubt, FIR is registered but a concocted story is made that in course of recovery of arms, when detainee was being carried by the police party, he ran away or killed by militants when they tried to liberate him.\textsuperscript{149}


Common methods of torture employed by police in Punjab during interrogation were as follows:
- Rolling of log of wood on the legs to rupture the muscles;
- Spraying of chilly powder in eyes and secret parts of the victim;
- Stretching the legs open to the unbearable extent;
- Application of electric current on their bodies;
- Beating of feet by a stick;
- Hanging upside down from a roof;
- Keeping the detainee without food and water;
- Pulling of nails, etc.
The police were faced with a peculiar problem in Punjab during the days of militancy. Police were killing people by the thousands, many of them innocents. In the state of Punjab and Haryana torture has been institutionalized in the form of group of policemen who excel in method of interrogation called criminal interrogation agency headed by an official of inspector rank. The, 'cause of arrest' is not on the record and if the victim dies during interrogation the agency denies ever having seen him. If he confesses or helps the interrogators recovering anything connected with the crime, he is transferred to a proper police station and a case is registered against him. If he refuses to confess or looks innocent after inflicting torture, he is just let off, often at right, and told to be wise enough not to complain to anyone. People never complain to anyone due to fear of police torture.

The police was using several brutal methods to get forced confessions from innocent people. This inhuman torture starts with a through beating of the victim. And, if the victim refused to confess, he was taken outside where the victims stripped and then made to sit on the top of a sharp bamboo. After this, the police men start pressing hard on the victims shoulders in order to impale him. The torture is enough to make any victim admit to any crime. The police has destroyed the life of several people by using such third degree methods.

Another method of torture adopted by police in Madhya Pradesh was Laxman Jhula. This barbaric form of torture is used to terrorise the

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151 G.S. Bajwa, op.cit., p. 333.
152 Victim is made to be down on one side and the log of wood would be kept under his leg and would be rolled on one leg and then on the other leg; legs of the victims are torn apart other, men sit behind the back thereby backbone/spine can be fractured in this ....... and man becomes impotent; victim is made to stand in attention and his hands tied behind the neck on the back and he is made to stand for 3 to 4 hours to cause extraordinary pain, victim is made to stand upright, his hands tied behind and a rod is inserted in the tied hands and the man is hung in the door through the door, victim is made to sit on the grand and his both legs are pulled apart at ninety degree rupturing all the muscles and tissues, women victims are also tortured and even raped, passing of electric current through the genitals of the victim to make him impotent. Id., p. 383.
153 See torture into impotence “Sunday dated Nov.8, p.18 quoted by G.S. Bajwa op.cit., p. 367.
persons either to extract money or to get confession. The victim in stripped of all his cloths, and then hung upside down from the ring fixed in the roof of the room with the help of rope. The hands of the victim are tied. Then starts the thrashing of the victim on the sole of his feet-such a place of beating is used because it leaves no marks. If the victim is still reluctant to confess the torture is carried to a still vicious stage, the line wires are place against victim's genitals and electric shocks are repeatedly administered till the victim is helpless with pain. The torture leads to impotence.153

Various laws have been passed by the Union Government and the State Governments enabling the Government to detain any person so as to prevent him acting against the security or defence of the country.154 The Constitution (Fifty-ninth) Amendment Act, 1988, which was passed by Parliament and assented to by the President, raised serious implications not only for Punjab but also for the future of democracy in India. The introduction of Article 359-A seeking to amend Article 352 in relation to Punjab by providing that an emergency could be declared for an additional reason, namely when 'the integrity of India is threatened by internal disturbance in the whole or any part of the territory of Punjab' was considered denial of right to life in Punjab. The obvious object of the amendment was considered to bring the people of Punjab under emergency regulations forthwith. Article 358 was amended and the Government acquired the right to suspend Article 19 including the right to life.155 Much worse was the amendment in Art. 359 which enabled the Government to suspend Art. 21 as and when proclamation of emergency is made in respect of Punjab or in any part of its territory. The total effect of the suspension of this Article could be, that a person can be deprived of his life and liberty without any sanction of law; he could be harassed, detained, tortured and even killed, and he or his

153 See torture into impotence "Sunday dated Nov.8, p.18 quoted by G.S. Bajwa op.cit., p. 367.
family members would have not right to approach the court for relief.\textsuperscript{156} According to human right activist like Rajeev Dhavan, the existing laws -- Arms Act, Preventive Detention Act, Unlawful Association Act and the provisions in Indian Penal Code\textsuperscript{157} are sufficient to deal with terrorism.

The analysis shows that number of illegal detentions, police tortures and custodial deaths are rising day by day. Though the judiciary has been keen to award compensation in such cases, the Criminal Procedure Code is silent on the issue. So it is recommended that some specific provisions to ensure compensation to the persons illegally detained and to the members of the family of a person died in police custody should be included in the Code.

\textsuperscript{157} For sedition [section 153] and for conspiracy [section 120(B)]