PART 2

PATTERN OF HUMAN RIGHTS VIOLATIONS
CHAPTER- 3
CUSTODIAL VIOLENCE AND PERSECUTION IN LOCK-UPS

In the accusatorial system of criminal justice, as a person is considered to be a criminal only if and when he is convicted by a court of law, the police should also presume that a person in custody may be innocent, till his guilt is proved. The principle of presumption of innocence is specifically provided in Article 11(1) of the Universal Declaration of Human Rights, Article 14(2) of the International Covenant on Civil and Political Rights and Rule 84(2) of the Standard Minimum Rules. Since arrested persons are presumed innocent, police may impose only those conditions and restrictions on them as will ensure their appearance at trial, prevent their interference with evidence and further commission of offences.

A police station is the most important base-line unit of the police organisation. It is at this cutting edge level of police administration, the people often get in close touch with the police. The lock-up is the first place of detention of arrested persons, regardless of whether they are later acquitted, convicted, fined or placed on probation.

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1 Article 11(1) : "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense."

2 Article 14(2) : "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."


4 The protection of human rights and fundamental rights of personal liberty has become the primary concern of the justice system of modern India where presumption of innocence till guilt is proved beyond a reasonable doubt is ingrained in the Constitutional guarantee under Article 21 which calls for withstanding the test of justness, fairness and reasonableness of procedure relating to deprivation of liberty., infra n. 13, pp. 251-252.


The concept of a police station — i.e., the holy of holies for administration of justice — must exert influence upon the nicety of behaviour. But the police in India could not understand it so far, and it continues to be so in spite of appeals from many quarters to do away with the oft-resorted evil practices in police stations.⁷

Allegations are plenty to show that the police misbehave with the suspects, in many ways including employing third degree methods, detaining illegally, detaining beyond the permitted period, not permitting to wear proper clothes, not providing food etc. These acts show that there is no presumption in favour of the suspects during the course of investigation.⁸ Therefore we have to conclude that in our present system, the presumption of innocence is available only in favour of the accused and not at all in favour of the arrested or remanded. When a crime is committed or reported, the people alleged to have committed the offence are arrested. A lot of publicity is given about the arrest and people look at them as real culprits.⁹

There exist a number of violations of human rights in police lock-ups and surely there is the public dissatisfaction with the police functioning. Police officers know well what is going on in police stations and yet they allow them. Among the violations the most common forms are illegal detention, prolonged detention, manipulation of records of detention, custodial

⁷ The Torture Commission, as early as in 1855, said that the police stations were torture cells and various Police Commissions later reiterated this view in stronger terms. Research studies further confirmed it and the courts of law, over and again, endorsed the views, Supra n. 5, p. 39.

⁸ The suspects who are dealt by the police as 'guilty' during the investigation of crime become 'innocent' all on a sudden when they are accused of the crime before a court of law. People, who are acquitted by courts, speak out the truth that they were subjected to third degree methods of interrogation by police during investigation. The acquittals do not mean much to them so long as the hardships and the pains they suffered are not compensated by the legal system. James Vaidhunchery, The Police, the People, and Criminal Justice (1997), p. 155.

⁹ In some cases involving sex scandal/rape etc., the name of reputed bureaucrats or businessmen or politicians appear in the press as they are arrested and questioned by police. After a long time, they may be set free as a result of acquittal verdicts in favour of them. But the news may not appear in the press when they are released as found not guilty. They are damaged and the damage caused to them cannot be recuperated by presumption of innocence followed by acquittal verdicts unless the suffered are suitably compensated by the system responsible for damaging them, infra n. 48, pp. 77-78.
torture\textsuperscript{10}, custodial death, custodial suicide, custodial rape\textsuperscript{11}, denial of food, medical care and clothing, and denial of access to counsel and denial of interaction with dear and near ones.\textsuperscript{12}

\textit{Illegal Detention and Manipulation of Records of Detention}

Detention means deprivation of personal liberty except as a result of conviction for an offence whereas imprisonment means deprivation of personal liberty as a result of conviction for an offence.\textsuperscript{13}

An arrest or detention which is lawful under national law may nonetheless be arbitrary under international standards, if the law under which the person is detained is vague, or is in violation of other fundamental standards such as the right to freedom of expression.\textsuperscript{14} International law requires States to take measures for the avoidance of pre-trial detention. The most relevant international human rights instruments relating to persons in police custody are Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,\textsuperscript{15} the Convention on the Rights of the

\textsuperscript{10}Arrest involves the deprivation of the liberty of an individual by the legal authorities. From the time a person is arrested, and if not released on bail, he or she is under custody. Any use of force, threat, psychological pressure etc., against the person in custody by the authorities is termed as custodial torture. We have seen the basic legal philosophy of the Constitution, the international instruments and the procedural law, which presume the innocence of the accused till the contrary is proved in a court of law. Keeping this in view, the legal procedures are weighed in favour of the accused and his innocence, S. Subramanian, \textit{Human Rights: International Challenges} Vol. I (1997), p. 235.

\textsuperscript{11}Discussed in Chapter 5.

\textsuperscript{12}The field study discloses that the condition of lock-ups in almost all the police stations is dreadful. Even the basic furniture does not exist. None of the police stations has a visitor's room. The only things on display are pairs of handcuffs. About 80\% of the respondents believe that the atmosphere prevailing in a police station is causing fear in the minds of ordinary citizens especially the weaker sections of the society.


\textsuperscript{15}Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 Dec. 1984; \textit{Compilation}, Vol. I, p. 293 (hereinafter referred to as the 'Convention against Torture). Even though the Permanent Representative of India to the United Nations signed the Convention on 14 October 1997, the formalities for ratification are yet to be completed.
Child, the Declaration against Torture and the Code of Conduct for Law Enforcement Officials.

The relevant standards are laid down in Article 9(3) of the International Covenant on Civil and Political Rights. Art.24 of the Draft Principles on Freedom from Arbitrary Arrest and Detention prohibits all kinds of torture. It also provides that any statement or evidence obtained through any of such prohibited methods shall not be admissible.
In a free society like ours, law is very zealous of the liberty of its subjects and does not permit detention unless there is legal sanction for it. Section 50, 56 and 57 of the Code of Criminal Procedure mandate that no person can be detained in custody without informing the grounds for arrest and that a detainee must be presented before a Magistrate within twenty-four hours of arrest. Section 160 of the Code prohibits the detention of males under the age of fifteen or females of any age for the purposes of investigation or questioning by the police. It is only on a formal arrest that a person can avail of different statutory protections promised under the Code of Criminal Procedure. Besides the protections under the Code, there are constitutional protections available under Articles 21 and 22. Articles 226 and 32 entitle a person to seek judicial intervention through the writ of *habeas corpus* for his release from unlawful detention. Judicial intervention can also be sought against arrest on insufficient grounds through the writ of *mandamus* under the said Articles and also through inherent jurisdiction of the High Court under section 482 of the Code. However, these legal protections can be made use of only if someone is aware of the unlawful detention of the person concerned and the information of arrest and its grounds are duly notified. This further calls for giving of information to some other legal aid agency where no one comes to the rescue of the detained person. The situation is more demanding in India where half of its population is living below the poverty line and over 95% of the persons wrongfully confined belong to this category.

**Prolonged and Uncomfortable Detention**

Current practices permit the police to keep the suspect 'for a reasonable time' in the police station. The police feel justified in keeping the suspect in custody until they succeed in breaking down his resistance by rigid questioning.
Every person who has been arrested has the right to be produced before the Magistrate within 24 hours of his arrest, and the failure of which is a very serious matter. It becomes to wrongful confinement.

Paragraph 3 of Article 9 of the International Covenant on Civil and Political Rights requires that in criminal cases, any person arrested or detained should be brought promptly before a judicial authority, whose function is to determine the lawfulness of a person’s arrest or detention in a given case.

The Principles on Detention also contains elaborate provisions on the judicial oversight of detention. Paragraph 1 of Article 10 of the Declaration on
Disappearance also guarantees to persons arrested on a criminal charge the right to be brought before a judicial authority promptly after detention.

The fundamental right guaranteed under Article 22(2) of the Constitution of India also protects the right of the arrested person to be produced before the Magistrate within 24 hours of arrest. Provisions similar to Article 22(2) are contained in Section 57 of the Code of Criminal Procedure. Sections 56 and 76 of the Code of Criminal Procedure 1973 reiterate the same. Section 57 of the Code provides that person arrested should not be detained in police custody for more than twenty-four hours. It is certainly not an authorisation for police to detain him for twenty-four hours in their custody. Twenty-four hours prescribed in the Code is only an outermost limit beyond which arrested person cannot be detained in police custody.


Article 22(2) of the Constitution of India reads: "Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person be detained in custody beyond the said period without the authority of a magistrate".

Code Criminal Procedure, Section 57 reads: "No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under Section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court."

According to Section 56 a police officer making an arrest without warrant must take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station. This duty of the police officer is subject to the provisions contained in the Code as to bail. While the time given in Article 22(2) is twenty four hours, Section 56 requires taking or sending of the arrested person without unnecessary delay.

Section 76 provides a similar rule in substance in case of arrest under warrant. Code Criminal Procedure, Section 76 reads: "The police officer or other person executing a warrant of arrest shall (subject to the provision of Section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person: Provided that such delay shall not be in any case, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court."

Article 22(2) on the face of it appears to apply to both kinds of arrests; arrests without warrant as well as arrests under a warrant. But in State of Punjab v. Ajit Singh [A.I.R. 1953 S.C. 10], it was held by the Supreme Court that the Article relates to arrests without warrant only. The reason is that in a case of an arrest on a warrant the judicial mind had already been applied to the need for arrest and hence there was no use to provide any safeguard in absolute terms. This view appears to be unreasonable and wrong. The proviso to Section 76, however, affords similar safeguards to a person arrested under a warrant.

A police officer is not justified in detaining a person for one single hour except upon some reasonable ground justified by circumstances of the case. Therefore, if the police officer considers that the investigation cannot be completed within twenty-four hours he must produce the accused forthwith before Magistrate and not wait for twenty-four hours. A.I.R. 1955 All. 138, p. 150.
Section 167 of the Code also requires the police to produce the accused person before the nearest Magistrate within twenty-four hours of his arrest. This right is also directly related to other rights like right to presumption of innocence and right against self-incrimination.

For this obvious reason, the Supreme Court and various High Courts also have strongly urged upon the State and its police authorities to ensure the enforcement of this requirement. Where it is found disobeyed they should come down heavily upon the erring police personnel. The Supreme Court in Sheela Barse's case has imposed a duty on the Magistrate before whom the arrested person is produced to enquire from the arrested person whether he has any complaint of torture or maltreatment in police custody and inform him that he has a right under Section 54 of the Code of criminal procedure to be medically examined. Earlier the Supreme Court in Khatri v. State of Bihar, opined that the provisions prohibiting detention without

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3 A delay in bringing the accused before the Magistrate is clearly a violation of the Human Rights of an accused. The precautions laid down in Sections 56, 57 and 167 of the Code are designed to secure that within not more than twenty-four hours some Magistrate shall have been seized of what is going on with the accused and have knowledge of the nature of the charge against the accused. The Indian legislature, after having provided for an arrested person being placed under orders of remand, has at the same time taken care to ensure that the interests of the arrested person are not endangered by his being placed under police custody beyond a total period of fifteen days under any circumstances, irrespective of the gravity of the offence or the serious nature of the case., Chaganti Satyanarayana v. State of A.P., (1986) 3 S.C.C. 141, p. 148.

In Central Bureau of Investigation, Special Investigation Cell v. Anupam J. Kulkarni [ (1992) 3 S.C.C. 141] the Supreme Court has unequivocally found that the police custody should not exceed 15 days after the arrest.

4 See International Covenant on Civil and Political Rights, Article 14(2). The concept of presumption of innocence is whittled down in the wake of police custody of the accused, his interrogation by the police, publicity of his arrest and detention, refusal of his enlargement on bail and the like. There are so many steps and strokes to blacken the accused before he is permitted to open his lips; and this can be checked to a certain extent by strict observance of procedure conferring beneficial right to an accused under the law and policing the police in their enforcement. D.C. Pande, Limits of Police Coercion in U.S.A. and India (1966), p. 170.

5 See International Covenant on Civil and Political Rights, Article 24(3) (g); the Constitution of India, Article 27 and The Code of Criminal Procedure, Sections 315 and 342 (a).


7 It is also held that if a police officer fails to produce an arrested person before a Magistrate within twenty four hours of arrest, he shall be guilty of wrongful detention. Sharifbai v. Abdul Razak, A.I.R. 1961 Bom.42; Poovan v. The S.I. of Police, Aroor, 1993 Cr. L.J. 2183 (Ker.), p. 2186.


9 Id., p. 382.


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remand is a very healthy provision which enables the Magistrates to keep
check over the police investigation and it is necessary that the Magistrate
should try to enforce this requirement and where it is found to be disobeyed,
should come down heavily upon the police. 42

In Joginder Kumar’s 43 case the Supreme Court, with the object of
enforcing the directions issued by it to the police regarding information to a
friend or relative of an arrested person and making of an entry in the Diary to
this effect, imposed a duty upon the Magistrate also, before whom the arrested
person is to be produced, to satisfy himself that these requirements are
complied with. 44

The above discussions related to the provisions of the Code of
Criminal Procedure and the case laws make it clear that production of the
accused by the police before the Magistrate is not only for obtaining an order
of detention of the accused but also to ensure that the Magistrate has an
implied duty to apply his judicial mind while remanding the accused.

An accused is not required to be detained in custody, if the
investigation can be carried out without making arrest. 45 However, allegations
are there that the police detain people in their custody for more than 24 hours
and it is more so in the case of the less privileged in society. 46 As the people
are unaware of the rights of the arrested persons and the procedural formalities
which are to be followed by the police while keeping a person in police
custody, they do not question the police even if a person is kept in police

42 Id., 928, p. 932.
44 Id., pp. 1984-85.
45 There is no power with the police to keep an accused person in custody for 24 hours in a case in
which investigation is not likely to be completed within the stipulated period of 24 hours. The
remedial measures are also provided in the constitutional scheme and the Code itself. The use of
inherent powers of High Court under Section 482 of the Code for meeting the ends of justice by
preventing the abuse of the process of law., M. Ponnaian Panch Ramalingam and Rani Ponnaian,
op cit., pp. 251-252.
46 Field Study shows that people, especially those who are alleged with offences like theft have been
detained for period ranging from 3 to 7 days. In some cases it went even up to 20 days.

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custody for many days for the purpose of prolonged interrogation. If the arrestee is not produced before the Magistrate within the statutorily permitted time, he becomes a victim of police action. No doubt he suffers the effects of police ill-doings.

Illegal detention beyond the period permitted by law is extremely common. It may be frequently coupled with physical assault. An illegal procedure has come to be adopted by the police whereby a suspect is picked up and detained for many days unrecorded. The requirement of section 57 of the Code of Criminal Procedure is usually tactfully evaded by the police by indicating that there was no arrest but only informal detention. No remand is sought from the Court and no information is given to relatives regarding the whereabouts of the detainee. Sometimes this leads to police torture or even to custodial death of the arrested person. But no action can be taken against the police since there is no evidence to prove that the person was arrested or that he died in police custody.

As a means of covering up illegal detention, police have become adept at manipulating records. Very often the police resort to the malicious practice of recording the time of arrest in such a manner that the production of the arrested person before the Magistrate is well within 24 hours of the arrest. The Indian judiciary while taking cognizance of such practices has expressed

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47 In the survey 80% experienced police officers opined that prolonged interrogation brings out truth and it is more so in the cases of property offenders like thieves and so on. They are of the view that prolonged interrogation enables police to get confessions and to make recoveries. Since the end has been found to be good, police try to justify prolonged detention and interrogation. 70% police officers opine that the society tolerates of prolonged detention and interrogation.


49 Actually informal detention or restraint of any kind by the police is not authorised by law, *Queen Empress v. Gobardhan*, (I.L.R.) 9 All. 528.

50 As soon as a person is arrested/is taken into custody, a lot of his friends, relatives and dear and near ones rush to police stations to sort out matters with police authorities. If the people are not arrested for violation of law, they are released after a warning. Anyway, everything - arrest, taking into custody, removal to police stations - is alike for the ordinary man on the street. They do not know the distinctions among them. Judging from the treatment the people get, all of them are almost treated alike and therefore they experience the difficulty.
its disapproval of the same. It is almost a regular practice to leave blank space in the register to be filled up later. The General Diary has fallen into disuse ensuring that there is no record of what happens at a police station.

Police officers usually consider as a fashion to spend more time for interrogation. Prolonged interrogation by employing third degree methods is a routine process in almost all the police stations. But it is suggested that more importance should be given to the manner of investigation than the duration of investigation.

**Torture**

The term ‘torture’ has neither been defined in the Constitution nor in any penal law. The Convention against Torture considers it as the infliction of severe pain or suffering on a human being by another human being who is acting in an official capacity. The word torture today has become synonymous with the darker side of human civilization.

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51 Ashok Hussain Allah Dehta alias Siddique v. Asst. Collector of Customs, 1990 Cr. L.J. 2201 (Bom.).
52 The General Diary is provided for in section 44 of the Police Act 1861 and sections 154 and 155 of the Code of Criminal Procedure. It should record every occurrence brought to the knowledge of police, all complaints and charges, names of detainees, offences, weapons or property seized, details of arrests etc.
53 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of the 10 Dec. 1984, Compilation, Vol. 1, p. 293.
54 Article 1 of the Convention defines torture as follows:
> “For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in the official capacity. It does not include pain or suffering arising only from inherent in or incidental to lawful sanctions”.

The Torture Commission of India, 1884 defines torture as pain by means of which guilty is punished or confession is extorted. To define it further torture as Third Degree would clearly include any and every type of physical violence and further it would also cover cases of psychological, mental and other forms of harassment or perversion meted on the person in custody or under the authority of the person inflicting it. M. Ponnaian Panch Ramalingam and Rani Ponnaian, op.cit., p. 57.
There are express prohibitions of torture in a number of international instruments. The Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights, 1966 and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

Article 15 of the Convention against Torture provides greater protection to persons in police custody by requiring each State Party to ensure that any statement procured by ill-treatment shall not be invoked as evidence in a proceeding. However statement made by the detainee shall be admissible as evidence against a person accused of torture. Body of Principles for the

* Article 3 of the Declaration provides:
  "Everyone has the right to life, liberty and security of person."

* Article 5 of the Declaration provides:
  "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."

* Article 9 of the Declaration provides:
  "No one shall be subjected to arbitrary arrest, detention or exile."

* Article 6(1) of the Covenant provides:
  "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

* Article 7 of the Covenant provides:
  "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

* Hereinafter called Convention against Torture. The Convention in Article 2(1) provides: "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." Again it states categorically under Article 2(3): "An order from a superior officer or a public authority may not be invoked as a justification of torture."

* In some instances, it has come to notice that police officers use torture on people under the open or silent approval of the superior officers. Police Commissions and Law Courts have repeatedly reminded the police administration that this sort of despicable approach and lame excuses for torturing the people under the protective umbrella of the superior authority should be done away with.

* In Article 4(2), the Convention reads: "Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to commit an act by any person which constitutes complicity or participation in torture."

* For the details of other provisions see Appendix-II.

* Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 15 states: "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." In India, there exist laws in this regard. The allegation is that many accused persons are afraid to speak openly that they were subjected to torture by the police, for, they are afraid of the evil consequences if such a statement is made even to the court. Of late, the media brings out such matters to the attention of the public and as such there is an increased thinking that the policemen/officers are not as courageous as they were earlier to use torture indiscriminately on people under their custody.
Protection of All Persons under Any Form of Detention or Imprisonment is complementary to the standards embodied in the Convention against Torture.60

India has not so far acceded to the Convention against Torture but the Indian laws provide certain measures of protection to persons from police torture. Apart from protections provided in Articles 20(3)61, 2162, 22, 32 and 226 of the Constitution63, safeguards against police torture are provided in the criminal law and procedure of the land.64

Torture is essentially a problem of criminal law.65 Many countries have enacted laws against custodial violence and the use of third degree methods. In India, though there is no specific legislation to curtail or control the police torture or atrocity, some procedural safeguards against police violence or torture are provided in the Code of Criminal Procedure, Indian Penal Code, Indian Evidence Act and various Police Acts of different states.

* Principle 21 sets forth the following safeguards:
  1. Taking undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, or to incriminate himself otherwise or to testify against any other person shall be prohibited.
  2. A detained person while being interrogated shall not be subject to violence, threats or methods of interrogation so as to impair his capacity of decision or his judgment.

* Article 20(3) of the Constitution is on the lines of the Fifth Amendment to the US Constitution, which prohibits self-incrimination. An interesting question arises as to why confession to the police was made inadmissible in evidence by the British rulers who made the Indian Evidence Act in 1872. The answer is obvious. In India there is no proper training given to police inspectors for conducting scientific investigation nor are they provided with proper equipment for this purpose. On the other hand the police inspector has to show that he has solved the crimes in an area, and since that can truthfully be done only by scientific investigations for which he is neither given training nor the equipment, the only way for him is to secure a conviction by using torture in police custody. infra n. 65, pp. 40-41. Section 162 seeks to protect persons suspected of crimes from police brutalities by imposing a general bar against the use of a statement made before the police except for the limited purpose set out in the proviso. It is however permissible to use the statement for the limited purpose of contradicting a witness if there is an inconsistency between his statements made before the police and the subsequent testimony.

* Constitution of India, Article 21 reads: "No person shall be deprived of his life and personal liberty except according to procedure established by law."

* These provisions are included in Appendix III. Though there is no specific and separate provision in the Indian Constitution against torture, the combined effect of rights against self-incrimination and right to life and liberty is too evident. For in Sunil Batra (1979) S.C.C. (Cri) 155, the Supreme Court did not find itself handicapped by the absence of a specific provision against torture in the Constitution and gathered support from Articles 14 and 19 holding against the permissibility of torture of persons suspected and accused of crimes.

* ibid.

The Indian Penal Code makes it an offence to wrongfully confine a person to extract confession or compel restoration of property. Similarly, the Code of Criminal Procedure prohibits offering of threats, promises or inducements to extract information. Sections 24, 25 and 26 and 27 of the Evidence Act are also meant to protect persons suspected of crimes from police atrocities and high-handedness.

In addition, various Police Acts at the State level as well as the guidelines issued by the National Human Rights Commission prohibit custodial torture and direct the Station House Officer (SHO) of police to keep the suspects safe from any physical assault while in the police custody. More over Section 29 of the Police Act, 1861 lays down that torture in custody is a punishable offence.

The Kerala Police Act provides checks against vexatious entry, search, arrest etc. for extortion by police. Penalty is also prescribed for

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66 Sections 220 provide for punishment to an officer or authority who detains or keep a person in confinement with a corrupt or malicious motive. Voluntarily causing hurt to extort confession or information is an offence under Section 330 punishable with seven years imprisonment and fine and 10 years imprisonment for causing grievous hurt under Section 331. These provisions are included in Appendix III.

67 Code of Criminal Procedure, Sections 163(1) & (2). See Appendix III.

68 For the details of these provisions see Appendix III. The effect of these provisions is inadmissibility of a confession, made by an accused person to a police officer while in police custody, in judicial proceedings.

69 But whatever protection is afforded by these provisions to an accused person from police coercion is nullified by Section 27 of the Act. Section 27, a very potent source of police brutality, provides that the information furnished by an accused after his arrest to the investigating officer which leads to the discovery of articles is admissible in evidence. It does not in any way offend Article 20(3) of the Constitution. Explaining the rationale of Section 27 the Supreme Court, in *State of U.P. v. Deoman Upadhyaya*, (A.I.R. 1960 S.C. 1125) observed: “Section 27 is founded on the principle that even though the evidence relating to confessional or other statements made by a person, whilst he is in the custody of a police officer, is tainted and therefore inadmissible, if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be untainted and is therefore declared provable in so far as it distinctly relates to the fact thereby discovered.”

70 See, e.g., Bombay Police Act 1951, S. 66 (b) and (c); Calcutta Police Act 1866, S.10A (b), (i); Mysore Police Act 1908, S.49 (b) and (c); and Travancore-Cochin Police Act 1951, S. 22(i) and (k). NHRC guidelines also provide that the methods of interrogation must be consistent with the law and must uphold the rights to life, dignity and liberty and right against torture and degrading treatment. (See Appendix III). But field study discloses that the police do not follow this direction.

71 Kerala Police Act, 1960, See Appendix III.
policeman who is guilty of any breach or neglect of any provision of law or any rule or order which is to be observed by the officer.73

Even though law provides these safeguards, torture and degrading treatment of suspect by the police continues. The charges of violations of human rights in India are being raised primarily with the incidents of torture, rape and deaths in police custody.74 Third-degree methods, otherwise known as physical torture, have been notoriously resorted to in police functioning- is perhaps the oft-alleged accusation against the police force in our country.75

It is a common belief that in police station, people are not treated courteously and are met with ungentlemanly behaviour.76 Often the police employ unlawful methods including third-degree methods, prolonged and brutal interviews and making false arrests.77

The increasing tendency of police to resort to torturous means to get confession is evident from some of the cases decided by the apex court. Thus in Niranjan Singh,78 the court lamented that “the police instead of being the protector of law have become the engineer of terror and panic the people into fear.” The highest court was again deeply disturbed in Raghubir Singh v. State of Haryana,79 where the violence employed by the police to extract a confession resulted in the death of a person suspected of death. The Supreme Court held:

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73 See Appendix III.
75 Supra n. 5, p. 63.
77 With the Collapse of probity in public life the police inevitably gets an upper hand. They seem to take it for granted that they will not be touched since those in authority are often inclined to cover their misdeeds.
78 Many police sectors believe that they “have to break the law to secure justice”. Where police are corrupt, the situation is much worse since justice becomes a mockery and the police are literally ‘aiders and abettors’ of crime., V.K.Mohanan, Crime Community and Police (1987), p. 11.

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We are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death. The vulnerability of human rights assumes a traumatic, torturesome poignancy (when) the violent violation is perpetrated by the police arm of the State whose function is to protect the citizen and not to commit gruesome offences against them as has happened in this case. Police lock-up, if reports in newspapers have a streak of credence, are becoming more and more awesome cells. This development is disastrous to our human rights awareness and humanist constitutional order. 80

In *D.K. Basu* case the Supreme Court laid down several guidelines to prevent third-degree methods which are still being used in many police stations, despite being declared illegal. The Supreme Court referred to the historical decision of the US Supreme Court in *Miranda v. Arizona* 81 in which several safeguards have been laid down by the US Supreme Court.

The Supreme Court in *D.K. Basu* further Quoting Adriana P. Bartow stated:

Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is nor way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself. 82

Thus law makes it clear that custodial violence cannot be recognised and policemen, who are to uphold the law, should not indulge in

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80 Id., p. 1088.
illegal acts. It undermines human dignity; brutalizes the police system; forfeits the trust of the people and the judiciary and also affects the images of police organization as a whole. Finally, it also exposes the police officer to the risk of criminal liability and punishment. Nevertheless, one wonders whether or not the law remains dormant in the Statute. The manifestations of torture in police lock-ups are beyond comprehension and even human imagination. In spite of these clear legal prohibitions and negative aspects and even when law punishes the practice of third degree with imprisonment up to 7 or 10 years, police indulge in custodial violence due to the erroneous belief that it is a short cut to success.

Police generally employ third degree methods during the investigation of criminal cases. Torture is used by police to extract a self-incriminating statement or a confession from the suspected offender. The infringement of the principles of basic human dignity occurs not only on account of the desire in our mind for quick results but also under the pressure for 'effective' remedies demanded by the people.

From time to time we read and hear of police excesses like custodial deaths, lock-up brutalities, confessions obtained by third degree methods and the like. The number of complaints against police received by the authorities is only a part of the actual torture inflicted by police on citizens. Though custodial violence and death are brought to light by the media and there is condemnation against this obnoxious practice by the public and various organizations working in the field of Human Rights, the police are still continuing the practice in varying degrees. However the victim or his relative

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While law recognizes the need for use of force by the police in the discharge of their duties on some specified occasions like the dispersal of a violent mob or the arrest of a violent criminal who resists, etc. the use of force against an individual in their custody in his loneliness and helplessness is a grossly unlawful and most degrading and despicable practice that requires to be condemned in the strongest of terms., supra n. 6, p. 163.

\[b\]

88% persons who were interviewed supported this view. (See Appendices X & XI).
is not willing to come forward to fight against this menace because they know well that police will rough them up in case they are interrogated.

Use of torture or third degree methods at any stage of the interrogation is unethical, inhuman, barbarous and illegal. There is no substitute for evidence collected against the suspect and any attempt to substitute evidence by the use of muscle power is degrading to the police department. The use of torture is a feudal practice. It is a human rights violation as well.\textsuperscript{85}

There are several notorious methods of torture by the police. Old head-constables take pride in their knowledge of such methods. The choice of the method depends on several factors. The criterion for the selection of the method is the category of people who are living in a particular area and the quantum of protest that can be expected from them, the status of the victim, and so on.

Third degree methods used during the interrogation of accused persons means and includes resorting to harassment, wrongful confinement, beating, applying electric shocks, roller treatment,\textsuperscript{86} ingenious (and unprintable) misuse of sex and use of ice slabs and many other unimaginable brutalities which cause humiliation, physical injury and even death in extreme

\textsuperscript{85} Field Study shows that 40% of the arrested person and 90% of the police personnel are in favour of the use of third degree methods and that too only in absolutely necessary cases. At the same time 60% of the arrested persons do not approve to the tendency of the police to resort to third degree methods. 70% police officers are of the view that infliction of torture is very effective in crime detection, especially in the case of offences against property, wherein confession from the suspect is difficult to be obtained. Such police officers opine that third degree method is necessary to handle cases like sex offences, where conviction from the court is not easily possible. They also say that people are supporting the tendency of police to inflict torture on thieves and sex offenders. They argue that torturous means of interrogation works as a deterrent to potential criminals. According to them morality is one thing and legality is quite another thing in many instances.

\textsuperscript{86} Roller treatment is not popular now. Here the victims are forced to lie on their backs and a thick pole is rolled over their thighs with great force. Usually two person stand on the pole to press it down. It causes severe pain to the victim, but leaves no marks, and causes permanent damage to the kidneys due to the toxins released in the system as a result of damage to the muscles called rhabdomyolysis. The total phenomenon is called physical torture nephropathy.
cases. Since many of these cruelties happen within the four walls of the police stations, the gravity and intensity of the torture and its extent are not fully taken note of by the public. Frankly, there are no effective laws also, to stop these cruelties or curtail their extent particularly when the supervisory officers too connive with the acts of inhuman treatment.

Denials of sleep, food, water, etc, uses of strong lights etc are considered moderate methods. They are used more in films than in practice. These activities of most of the police personnel show that they have a predisposition for meting out inhuman and dehumanizing treatment. There are many instances when the victims were not only thoroughly abused on account of their caste or religion or social status but made to eat things like excreta or drink urine as well. Many have been forced to perform oral sex on the cops. There are several ways of degrading a man or woman. In one instance an adolescent boy was asked to perform intercourse on his own mother. Studies prove that custodial violence is counter-productive and does not add in any significant way to the achievement of the goals and objectives of the police organization. Further, investigation of crime is a battle of wits with the criminal and calls for sustained and prolonged efforts on the part of police.

The most common torture method is severe beating. All of us are familiar with the instances of physical assault by police. The police unjustly beat up all sorts of people. Beating on the inner soles of the feet with cane,

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Field study discloses that several other methods and their physical and medical impact mentioned in Appendix VIII are also employed by the police for getting confession. Some other methods are: punching with cane, metal roads, weight, butts of the gun, tender coconut after covering in towel, handcuff etc; beating the victim with the hands of the victim tied behind or manacled; hanging by the wrists; hanging with arms stretched out on a bar; hanging by using a pulley after his arms are tied behind with a rope; hanging a person upside-down; forced immersion of head in often contaminated water; covering the face with shopping bags stuffed with chilly powder; custodial rape; prolonged standing; unnatural movement of joints like spreading of the thighs beyond the normal stretch; forcing to eat chilly and then force to drink hot water; application of chilly powder, chilly essence, pepper essence etc. in the eyes or penises; placing a goli between the finger bones in the palm and inserting the same between the bones by applying hammer or by placing heavy articles like table chair etc. over the palm.

S. Subramanyan, op. cit, pp. 238-239.
thread, electric cable, optical fiber, rubber hose etc.; simultaneous beating on both ear with both palms; beating on the back, usually by fist or lathi; beating with elbow on either side of vertebra after bending the person or after placing his heads in between the legs of the constable; close fisted blows in the lower abdomen; hitting on the head; hitting on the chest etc. are a few among the common forms of torturous methods resorted by the police to extract confession or information from persons in their custody.

The victims include suspects, detenues, defaulters and quite often even the complainants. There are several shades of this assault. Petty thieves may receive just a few slaps and kicks. A little beating by the police is considered to be ritualistic by many police personnel. They think that 'police custody' is not complete unless one has been beaten or ill-treated. Field study shows that severe beating is rarely out of the heat of the moment. In almost all cases it is cold blooded and deliberate. Many of the police personnel are holding the view that they are getting respect from the public only because of the fear which the public is having towards the police. They honestly believe that this fear has crept into the minds of general public only because of the notorious torturous activities practices by many of them on persons in their custody.

Sometimes the victim is hung upside down and given electric shock. We have also reports of crushing of suspected offenders, their burning, their stabbing with sharp instruments and forcing of objects like chilly or thick sticks into their rectum by the police. Sexual mutilation has also been reported. Rape is a common form of torture, which is very often used by the police to deter the opposition and also as a means of indirectly punishing the men from a particular village or area.\(^9\)

Torturing people in public by the police may be a lesser evil as it has been done in public's visibility. But, torturing people in police lock-ups,

\(^9\) The notorious Thankamani incidents in Kerala wherein the police raped the women of a village area brutally in the guise of maintenance of law and order has not been forgotten by the people.
police vehicles, away from public's visibility cannot be justified. The police are accountable for their actions.

The helpless victims, who undergo torturous treatments in the hands of the police continues to suffer mentally, financially, socially and even physically. The financial loss and the mental agony, trauma and tension which they suffer are neglected by the police and prosecutors. Experience has compelled them to think only from their angles and they cannot understand the pangs to which an accused is compelled and condemned to suffer. Custodial death, custodial violence, corruption etc. are the offsprings of such permissiveness in carrying on enforcement criminality by the people and administration. Many of them who are having direct knowledge about the ill-doings of the police are also not responding properly against it because of the belief in their mind that the victims are having some 'bad fate'. Some of the respondents are supporting the use of third degree methods to an extend. Their justification is that people should have fear of police and that in the larger interest of the society such isolated events of custodial excesses should be condoned. However human rights activists, courts of law and civic-minded people are against the use of enforcement criminality in society.

Custodial violence is anathema in any civilized society. The police should make a conscious effort to banish this evil practice from their organizations. Till this is done, police will neither earn the respect and cooperation of the public nor find an honourable place for themselves in society.

Custodial Death

Right to life is the most important, human, fundamental, natural, unalienable and transcendental right. Hence it requires the highest protection from all quarters. After life true liberty is very important for every individual. But, the death in police custody is a crucial violation of this right of citizens. Custodial death is perhaps one of the worst crimes in a civilised society
governed by the rule of law.\textsuperscript{90} Death due to torture is murder as defined in section 302 of the Indian Penal Code for which the maximum punishment is death.\textsuperscript{91}

Despite positive statements made by the Central Government, the Judiciary and the National Human Rights Commission, custodial violence, sometimes resulting in death, continues to be a widespread phenomenon throughout India. The United Nations Special Rapporteurs on torture and on extra judicial, summary and arbitrary executions have both expressed concern at the number of victims of torture and deaths in custody reported from India and the lack of an effective system to prevent such violations and bring those responsible to justice.\textsuperscript{92}

The ultimate form of torture is that which results in the victim's death. There is evidence of a pattern of this form of gross human rights violation throughout India, regardless of which party is in power at the center or in the states. Incidents of custodial deaths due to torture are increasing even when the police continue to paint a human face of their actions.

There are continuing reports that people die in police custody as a result of torture.\textsuperscript{93} Reports of torture by the Indian police, sometimes leading to death, continue to be brought to Amnesty International's attention from all over India.\textsuperscript{94}

\textsuperscript{90} In the important case of \textit{D.K. Basu v. State of W.B.}, A.I.R. 1997 S.C. 610 Supreme Court speaking through Justice Kuldip Singh & Justice A.S. Anand has termed the death in police custody as the worst and most heinous crime. The Court has stressed time & again that police torture is disastrous to our Human Rights awareness and humanist Court order.


\textsuperscript{93} The victims like those of Rajan, Mathura, Bhuvanachandran, Christudas, Isaac, are living examples of the violation of human rights by the police. Amnesty International documented 415 cases of custodial deaths in India during 1991. The death in police custody is viewed with greater seriousness in these days and the courts award heavy compensations to the dependants of the deceased in such cases. Now, it is a settled law that compensation should be paid in all cases of custodial deaths which are considered to be the result of violation of fundamental right by the police. \textit{Infra} n. 112.

\textsuperscript{94} This report does not include the hundreds of reports of deaths in custody which Amnesty International has received from Jammu and Kashmir.
Amnesty international has received reports of 36 deaths in custody in 1993 from sources within India. In 1994, Amnesty International recorded 68 deaths in police custody as a result of torture or medical neglect throughout India, excluding the state of Jammu and Kashmir. This brings the total number of such deaths reported to Amnesty International since 1 January 1985 to 517. In the year 1998-99, the figures reported to the Commission were 183 deaths in police custody compared with the 193 deaths in police custody reported in 1997-98. These figures on custodial deaths indicate the steep rise of such cases.

Most of those who die in police custody are criminal suspects who are tortured in order to extract confessions or information. Some appear to be innocent of any crime. Cover-ups involve senior police and state officials and even some members of the medical profession and magistrates. Amnesty International provided the government with details of over 450 people who reportedly died in custody as a result of torture and the government has...

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"According to statistics for 1991-94 at least 285 deaths have been reported from various jails and police lock-ups in the country. In 1994 at least 80 people were killed in custody. There were 76 custody deaths in 1993, 70 in 1992 and 59 in 1991. However these statistics are only a representative sample: the number of deaths in custody each year as a result of torture is believed to be 100 of more.

Indian Express reported in 1980 that on an average one man died each month in each police lockup. At several places, including rural Delhi, angry mobs attacked police stations and policemen protesting death of persons during "interrogation". The Saturday Statesman, June 4, 1988 reported that there were over 500 deaths of prisoners in police custody in Tamil Nadu, during the preceding 10 years. In many cases crushing the testicles of their victims has been the modus operandi of Tamil Nadu police.

In May 1991 the Association for the Protection of Democratic Rights listed 108 deaths in custody as a result of torture which had occurred since the Left Front government came to power in West Bengal in 1977. In Andhra Pradesh at least 104 people died in custody between 1984 and 1988. In July 1986 the Telegraph reported that there had been 20 deaths in custody in Uttar Pradesh during the first half of the year. Source within India have been forced to conclude that custodial deaths are a routine and regular occurrence. The Sunday Statesman recognized this in a report which it published in August 1989. Deaths in custody as a result of torture seem to take place with sickening regularity in the lesser known police stations all over the country.

Statistics of police torture and death in police custody are not available because they are mostly suppressed. Journalists are not willing to report cases of torture and custodial deaths because in several cases they have been attacked, manhandled and even kidnapped by the policeman. So it is better to concentrate here on some of the particularly cruel and inhuman torture inflicted on persons in police custody from different parts of the State."
provided information on only 230 of the cases. Many of such cases were not
dealt by state properly. These responses show the lack of determination of the
Government to bring perpetrators of custodial crime to justice and grant
compensation to the victims or their relatives.98

In addition to custodial death, suicidal deaths in lock-ups are also
on the increase and one reason for it is the influence of the environments in
police lock-ups and outside on the detainees. There are allegations that almost
all the custodial deaths are pictured by the police as suicide. Suicidal deaths
should be eliminated by changing environments and circumstances in police
lock-ups.

The averment of the police that the arrestee was having suicide
tendency cannot be believed. Police station is not the suitable place for such a
person to commit suicide as the people have many other better places to do it
conveniently. Without the minimum facility to commit suicide and while the
sentry is watching him he may not engage in such highhandedness. Even if the
superior officers are convinced that the detainee has committed suicide, it is
not fair or just on their part to wipe off the police accountability just by taking
an attitude of 'a suicide after all' in police lock-ups.

Every police station has lock-ups constructed on the basis of
eighteenth century concepts on the structural aspects of police custody. Some
lock-ups are sub-human in their construction and are not fit for human dwelling.
The detained have opportunities to see and get afraid of the police strategy of
interrogating other people during their short stay and therefore they know what
will be their fate when they are interrogated. They see, hear, and overhear the
conversation in police stations, human cries during interrogations, calling of
filthy expressions, speaking of foul/incidental languages, lathies, canes, handcuffs, rifles, food etc. and surely such an atmosphere is the worst set for

* Amnesty International India, "Rising reports of custodial deaths in Delhi", June 1993, p. 8.

116
interrogating suspects in crimes. In police stations one may see many more things that constitute antipathy/hatred in any human being.

During field study some respondents said that police used to pour water into the lock-up. So the detainees who are usually in underwear or in naked condition may not be able to sit or sleep on the floor. Some people say that police also keep rotten egg, fish, or meat with the suspects to force them to make confession. In some cases the detainees said that they were not allowed to go to latrine or to urinate. They were also not allowed to have bath or to clean teeth. Along with this, they have to bear the beating and other torturous activities of those in khaki and sometimes that of other detainees in the same lock-up. So it is quite natural that people who are condemned to be there for days and nights together might think of committing suicide.

There is a school of thought which argues that every suicide in police lock-up should be treated as a death due to police misbehaviour to the detained. The compelling and precipitating causes created on the deceased by police should be brought out during inquiries conducted in such custodial deaths. Some Psychologists and Criminologists are of the view that every suicide in police lock-up is an escape-mechanism to police maltreatment in police stations. The school further advocates that the policemen should be made accountable for every suicidal death that takes place in police lock-ups. Police are primarily meant to safeguard the life and property of the citizens and a loss of life in police station even by suicide cannot be and should not be treated as ‘just a suicide’. The police should be made accountable to for creating the precipitating causes for the detainees to have recourse to this undesirable pattern to commit suicide.

* In one case the detainee was forced to eat his own excreta. In another case the victim cried when he was narrating his experience in lock-up. He said that he was severely beaten and was forced to drink urine during interrogation. See the case of a Joy in Appendix IV.
* This view has been derived through the interview with psychologists like Dr S.P. Ramesh, Dr. S.D. Singh, Director of Torture Prevention Centre India, Ernakulam.
Field study conducted by the researcher reveals that in almost all the police stations there is only one lock-up. So women are also to be kept with men in that lock up. Similarly children or some innocent persons who are arrested on mere suspicion for the purpose of interrogation may have to be kept with even hard-core criminals in the same lock-up.

**Accommodation, Food, Medical Care and Clothing**

A person in police custody is entitled to a minimum level of physical conditions as regards accommodations, food and medical care. Poor conditions of confinement are incompatible with State's obligations under Article 10(1).101

Similarly all accommodation provided for the use of persons in custody and in particular all sleeping accommodation must meet all requirements of health, due regard being paid to climate conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.102 But this requirement is not satisfactorily followed in any of the stations.

Every person under police custody is entitled to be fed sufficiently.103 But in the police stations many of the arrested persons are not provided food.104 During the field study the police officers alleged that it is

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101 Article 10(1) of the International Covenant on Civil and Political Rights reads: “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

102 Rule 20 of the Standard Minimum Rules for the Treatment of Prisoners requires the States that they should provide every person in custody at the usual hours food of nutritional value adequate for health and strength of wholesome quality and well prepared and served. In addition to good food, drinking water should be made available to every prisoner whenever he needs it. Rule 87 of the standard Minimum Rules for the Treatment of Prisoners provides that within the limits compatible with the good order of the institution, detained persons should, if they so desire, be permitted to procure their food at their own expense from the outside, either through the administration or through their family or friends. Alternatively, the administration should provide their food to them.

103 70% of the arrested persons who have been detained for a day in lock-up said that they were not given food. 80% of the persons who have been detained for more than a day in lock-up said that they were given food only once in a day. Among them 65% of the arrested persons were given the food brought by their relatives or friends, 25% were given the food at the expense of those who come to the station for other purposes including those who come to see other persons in the custody of police. (See the Interview Schedule in Appendix XI).
difficult to provide food for the arrested persons with the meager amount sanctioned by the Government. Moreover the procedural hurdles and the delay in sanctioning the amount compel the police personnel to neglect the amount sanctioned by the Government.\textsuperscript{105}

The detained person has a right to have him medically examined. A proper medical examination shall be offered to a detained person as promptly as possible after his admission to the place of detention, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.\textsuperscript{106} This would enable the arrested person to complaint to the Magistrate that he has been subjected to torture while in police custody. This puts restraint on the exercise of third degree methods by the police.

Similarly a detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or a judicial or other authority for a second medical examination or opinion.\textsuperscript{107} The fact that a detained underwent a medical examination, the name of the physician and the result of such an examination should be duly recorded. Access to such records should be ensured. Modalities therefore should be in accordance with relevant rules of domestic law.\textsuperscript{108}

\textsuperscript{7} Some police personnel said that though a contingency fund of an amount of Rs. 50 is granted by the department to each station, the superior officers are very particular that the amount should always be there in the station as such. (See the Questionnaire in Appendix X).
\textsuperscript{8} Principle 24 of Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
\textsuperscript{9} Principle 25 of Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
\textsuperscript{10} Principle 26 of Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
The Code of Criminal Procedure also gives right to an arrested person to get himself examined by a medical practitioner. The object of this Section is to confer on the arrested person the right to have his medical examination done. But, very often the arrested person is not aware of this right and on account of his ignorance, he is unable to exercise this right even though he may have been tortured or maltreated by the police in police lock-up.

Keeping this in view, the Supreme Court has in *Sheela Barse v. State of Maharashtra*, declared that on such occasions it is the duty of the Magistrate before whom an arrested person is produced to make enquiries whether the arrested person has any complaint of torture or maltreatment while in police custody and inform him that he has a statutory right under Section 54 of the Code of Criminal Procedure to be medically examined. In

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*Under Section 54 of the Code of Criminal Procedure, the accused person if brought before a Magistrate can request a medical examination. This provisions runs as follows: "When a person who is arrested, whether on a charge or otherwise, alleges, at the time when he is produced before a Magistrate or at any time during the period of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body, the Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexatious delay or for defeating the ends of justice".*

**NHRC** guidelines provide that if the arrestee has been remanded to police custody under the orders of the court, the arrestee should be subjected to medical examination by a trained Medical Officer every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. At the time of his release from the police custody, the arrestee shall be got medically examined and a certificate shall be issued to him stating therein the factual position of the existence or non-existence of any injuries on his person. (See Appendix III). Field study discloses that this direction is not followed by the police properly.

Similarly Section 53(2), Code of Criminal Procedure provides that when the arrested person is a female, the medical examination should be conducted under the supervision of a lady doctor. Field study shows that police do not follow this provision strictly.

*It was held in *D.J. Vaghela v. Kanibhai Jethabhai* [1985 Cri. L.J. 974 (Guj.)] that the Magistrate owes a duty to inform the arrested person about his right to get himself examined in case he has complaint of physical torture or maltreatment in police custody. The Supreme Court has cautioned the lower courts not to adopt a casual approach to custodial torture. In case the Magistrate considers the request of the accused to be vexatious or for defeating the ends of justice, he may refuse it. It has been held in *Mukesh Kumar v. State* [1990 Cri. L.J. 1923 (Delhi)] that the procedure adopted by the Magistrate to examine the body of the accused himself and then dismissing the application with his observation that they were seen in normal posture was wholly unwarranted and erroneous.*


Id. p. 382.
D.K. Basu v. State of West Bengal,113 Supreme Court made it clear that every
detinée should be medically examined at or after every 48 hours in police
custody. Police officers detaining a person in their custody should also ensure
that he is medically examined for any illness, injuries – afresh or old – and
they should make a record of the same along with suitable arrangements for
treatments of any illness.114

‘Life’ means to ‘live with human dignity’ and the police cannot
violate this right as well. The field study discloses that 100% of the arrested
persons are kept in the lockup after removing their clothes. They are allowed
to wear only underwear or in many cases newspaper or thorths as a
precautionary measure against any attempt to commit suicide by hanging.115

During the field study the police officers tried to justify their part.
Many police officers are holding the view that the people taken into custody
are generally in desperate mental conditions. Many of them have tendency to
commit suicide.116 But none of our police stations have suicide proof lock ups.
Moreover the usual practice of keeping persons in lock-up in underwear or
newspaper is not questioned by anybody. Police station is a public place where
people belonging to several walks of life including women are coming.
Women police constables who are on duty are also witnessing these scenes.

113 (1997)1 S.C.C. 416.
114 Id. p. 436...
115 Field study discloses that 70% of the persons in custody were given to wear only their underwear,
20% of the respondents were given only newspapers to wear, 10% of the custody was given to
wear only thorths. See the Interview Schedule in Appendix XI). Many of the police officers
admitted that as their the accountability to the public is governing day by day as a precaution
against suicides or attempts to commit suicide, they allow the detainees to wear only underwears or
newspapers. Those who do not have underwears or decent underwears feel it extremely difficult
and desperate to remain wearing only under clothings inside the lock-up. Sometimes, they are
allowed to make use of newspapers to cover nakedness and if this allegation against the police is
true, surely, it is humiliating, demoralising and causing severe mental pain for the detained.
116 The usual reason given by many police officers for not providing the usual dress to the persons in
lock-up is that they would commit suicide. But on further enquiry, it is revealed that this is not a
proper justification.
Denial of Access to Counsel

Detention in a police lock-up does not and cannot render an individual a non-entity. He is a person with inherent dignity. He enjoys many rights and his rights are not subjected or surrendered to the whims of police authorities. The right to legal aid steps in as soon as a person’s free movement is restrained and circumscribed. The justification for deprivation of liberty is to be ascertained through legal standards which call for the role of legal aid to the arrested person. Facilitating legal aid at the initial stage of the criminal justice system is more important to prevent the abuse of human rights of a person in police custody. Provisions relating to assistance of legal counsel find a place of pride in the International Covenant on Civil and Political Rights.117

The United States Supreme Court in Escobedo118 and Miranda119 expanded and expounded the concept of right to counsel as a pre-trial necessity. In U.S.A., the suspect has a right to remain silent. He has also a right to consult with his attorney. The police are law-bound to effectively advise the suspects of his rights. The suspects in India are also having many

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118 Escobedo v. Illinois, 378 US 478 (1964). In this case the police did not advise the accused of his right to remain silent. Instead they confronted him with an alleged accomplice who accused him of having perpetrated a murder which was denied. He was also denied a counsel. He was handcuffed and interrogated for four hours after which he confessed. The Court took note of the famous Wickerham Report to the Congress. The report after making extensive studies had found widespread prevalence of police brutality - beating, hanging, whipping - to extort confession. It found violence was also used to extort statements to incriminate third persons. The conviction of Escobedo was struck down as violative of his constitutional right to remain silent and his right to have assistance of counsel., Santosh Paul, “Right to Counsel”, (1997) 8 S.C.C., Ji., p. 14.

rights but they are not informed of them by the police before they are interrogated.

According to Article 22 (1), an arrested person has the right to counsel and to be defended by a lawyer of his choice. Thus the person arrested has a right to consult a legal advisor of his choice as soon as he is arrested and also to have an interview with his lawyer out of the hearing of the police\textsuperscript{120}. Purpose of law is the protection of all persons under any illegal detention or illegal imprisonments.\textsuperscript{121}

When we examine the history of this constitutional right as interpreted by the courts, it can be seen that earlier Supreme Court had held that Article 22 does not guarantee any absolute right to be supplied with a lawyer for by the State.\textsuperscript{122} Nor does the clause confer any right to engage a lawyer for a person who is disabled under the law.\textsuperscript{123} The right guaranteed is only to have the ‘opportunity’ to engage a competent legal practitioner of his choice. It has been further held that this right to counsel is not limited only to the persons arrested but can be availed of by any person who is in danger of losing his personal liberty.\textsuperscript{124} Thus, it is well settled that constitutional right to consult a lawyer is as much available at the time of arrest and subsequent interrogation by the police. Rather it is an obligation of the State to provide competent legal service to the indigent or poor accused. The preventive measures briefly outlined can go a long way in stopping the violation of the

\textsuperscript{2} The patent purpose behind this direction is to take note of the reality that, in India, a large majority of the people are illiterate and poor. Thus to render true the objectives of right to counsel as real and effective, a dynamic and purposeful plan of legal aid is a must., N.R. Madhava Menon, A Training Manual for Police on Human Rights (1997), p. 52.
\textsuperscript{2} State of Punjab v. Ajab Singh, A.I.R. 1953 S.C. 10; but see in State of M.P. v. Shobharam, A.I.R. 1968 S.C. 190, wherein Hidayatulla, J. held that there is nothing in Article 22(1) which limits the protection to cases of arrest made by executive or other non-judicial authorities. The two other judges, Bachawat and Shelat, JJ. Constituting the majority, left the question open.
human rights of a person in the process of law enforcement at preliminary stage of a criminal case.

But in 1976, by the Forty-Second Constitutional Law Amendment Act, Article 39-A was inserted to provide for free legal aid to indigent accused. The right enshrined in Article 22 (1) extends to the accused not only from the time of his arrest under any punitive law but also during the custodial interrogation.

The Code of Criminal Procedure has specifically recognised the right to be defended by a pleader of his choice. Section 303 of the code contemplates that the accused should not only be at liberty to be defended by a pleader at the time the proceedings are actually going on, but also implies that he should have a reasonable opportunity, if in custody, of getting into communication with his legal adviser for the purpose of his defence. It is recognized that the right to consult a lawyer for the purpose of defence begins from the time of arrest of the accused person. The accused must therefore get reasonable opportunity to communicate with the lawyer while in police custody. The consultations can be within the presence of the police but it would be unreasonable and unjust to have them within the hearing of the police.

In this context the Supreme Court in Sheela Barse case held that whenever a person is arrested and taken to the police lock up, intimation of the

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2 Constitution of India, Article 39 A reads: "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, provide free legal aid, by suitable legislation or schemes or in any other way to secure that opportunities for securing justice are not denied to any citizen by reason of economic or other difficulties."


4 Section 303 of the Code provides: "Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice."

5 Kailash Nath v. Emperor, A.I.R. 1947 All. 436 at 438; see also Hansraj v. State, A.I.R. 1956 All.641, p. 643


of such arrest must immediately be given to the nearest legal aid committee so that immediate steps can be taken for the purpose of providing legal assistance to the arrested person at State cost. It is necessary to protect the accused from torture, ill-treatment, oppression and harassment at the hands of his custodian. Even before Sheela Barse's case the availability of legal aid at preliminary stage was highlighted by the Supreme Court in Nandini Satpathi v. Dani which was followed in Khatri v. State of Bihar, wherein it was laid down:

Constitutional obligation to provide free legal services to an indigent accused does not arise only when the trial commences but also attaches when the accused is for the first time produced before the Magistrate. It is elementary that the jeopardy to his personal liberty arises as soon as a person is arrested and produced before a Magistrate, for it is at that stage that he gets the first opportunity to apply for bail and obtain his release as also to resist remand to police or jail custody. That is a stage at which an accused needs competent legal advice and representation and no procedure can be said to be reasonable, fair and just which denies legal advice and representation to him at this stage. Therefore, it is a Constitutional mandate that right to legal aid must come into existence immediately when a person is deprived of his liberty. Non-providing of legal aid at this stage leads to the vitiation of the whole process resulting into miscarriage of justice and violation of human right of personal liberty.

Thus the right to counsel begins when a person is being interrogated and continues through pre-trial stages to trial and into appeal since it is an essential ingredient of reasonable, fair and just procedures. It
would be prudent for the police to allow a lawyer where the arrested person
wants to have one at the time of interrogation, if the police want to escape
the censure that the interrogation is carried on in secrecy by physical and
psychic torture.\textsuperscript{136}

It assumed much importance when the Supreme Court of India in
\textit{D.K. Basu v. State of W.B.}\textsuperscript{137} laid down a detailed code to be scrupulously
followed by the police personnel prior to and after making the arrest. One of
the rights recognized is the right of the arrestee to meet his lawyer during
interrogation, though not throughout the interrogation. The presence of a
lawyer during the investigation process is perhaps the only perfect method to
prevent human rights abuses which has been the bane of the Indian
investigating system. In spite of the Supreme Court guidelines, the arrested are
generally not allowed to have consultations with their legal counsels.\textsuperscript{138}
Similarly Section 126 of the Indian Evidence Act provides that the
communication between client and his counsel is to be privileged. Thus, at the
time of consultation the accused shall not be surrounded by police officers.

\textbf{Denial of Opportunity to Interact between Detainee and His Near and Dear Ones}

The accused has a right to have a free and unfettered consultation
with his friends and relatives out of the hearings of the police officer.\textsuperscript{139} In
times of distress and adverse circumstances in life it goes without saying that
the greatest solace for the person in distress is interaction with dear and near
ones. Though section 303 Code of Criminal Procedure confers a right to legal
consultation, conspicuously there is no whisper among the legal community

\textsuperscript{136} Gian Singh v. State (Delhi Admn.), 1981 Cri. L.J. 100.
\textsuperscript{137} (1997) 1 S.C.C. 416.
\textsuperscript{138} During field study it was revealed that arrested persons demand legal aid only in 5-10% cases and it
is allowed only in less than 2% cases.
\textsuperscript{139} Francis Coralie Mullin case, 1980 Cri. L.J. 306 (S.C.). Further, it was held in this case that the
accused's right of communication is transgressed in his removal and confinement to a place
unknown to his relations and friends which shall amount to violation of his right of legal assistance.
regarding the right of interaction with dear and near ones. When there are large scale allegations regarding violations of conferred rights of arrestees by the police, the need and the scope for the arrestee to consult his near and dear ones goes without saying specifically. Absence of specific provision in this regard entails the police to grant or deny the opportunity according to their sweet will. During field study almost all the respondents complained regarding the denial opportunity. 140

The legal community and the humanists have to fight against custodial torture and condemn publicly the very idea that some people have the right to repress others. In keeping silent about evil, in burying it so deep within us that no sign of it appears on the surface, we are implanting it and it will sprang up a thousand fold in the future. When we neither punish nor reproach evil doers, we are ripping the foundations of justice from beneath new generations. 141

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*60% respondents who were in the custody of police have complained that their relatives have not been allowed by the police to meet them. 30% of them said that the relatives were permitted only after giving bribe. (See the Interview Schedule in Appendix XI).


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