CHAPTER - 5

VICTIMS OF POLICE EXCESSES

Police excesses have assumed startling and enormous proportions. Various crimes like torture, molestation, rape of women in custody, custodial death, brutal and inhuman treatment meted out to the helpless suspects including children etc. are coming under this realm. Degrading and brutal treatment given to the helpless and defenseless persons in police custody is a constant recurrence, stirring the conscience of every sensitised individual.

Police have no concern for the custodial victims. They sometimes behave with those in their custody as if they are responsible for their fate. Police are either ignorant of the discipline of human rights or they deliberately disregard it in the matter of arrest, interrogation and detention.¹

Much of the concern of human rights activism has been on the victims² of police atrocities committed in the name of maintaining law and

² Speaking in a general manner, the statutory framework of criminal law in most countries in the Commonwealth, does not use the word 'victim' very frequently. For example, the Indian Penal Code does not contain this word in any of its provisions. Again, the Code of Criminal Procedure, while taking note of the need to provide for restitution to the person against whom an offence has been committed, does not make use of this particular expression. In England, criminal laws hardly make use of the word 'victim' in their substantive parts. For example, the Offences against the Person Act, 1961, which represents one of the earliest major codifications of the substantive criminal law in some of its aspects, avoids this word, even though its subject-matter was such that the concept of victim would have been very much in the minds of the framers of the Act. The Sexual Offences Act, 1956, which is even more directly concerned with the victim, does not appear to make use of that word. Neither the Larceny Act, nor the Theft Act, 1978 which replaced it, focuses attention on the victim. Similarly, the various enactments dealing with procedural and correctional aspects of the criminal justice system, appearing on the statute book as the Criminal Justice Act, 1948, the Criminal Justice Act, 1988 and the Criminal Justice Act, 1992 also make rather infrequent use of the word 'victim'. The same is true of Commonwealth legislation relating to criminal law in its substantive aspect. The Canadian criminal courts, the Crimes Acts as in force in various states of Australia, the Penal Codes in force in Malaysia, Singapore, Sri Lanka and other countries of the Commonwealth outside the Western World, do not appear to make use of this word. While the statutory framework in the Commonwealth does not often use the expression 'victim' and therefore does not need a definition of that expression, some reflection on the proper definition of 'victim' would be desirable for academic purposes and also for certain practical purposes. Broadly speaking, one can define him as a person who has suffered harm in body, mind, reputation or property as a result of an offence. The four types of harms included in this definition practically exhaust the kinds of loss that a criminal act may cause to a private person. The point to make is that only that person becomes the victim who has suffered harm, P.M. Bakshi, Victims and the Criminal Law (1982), pp. 82-87.
order. To discuss the various circumstances under which police adopt violent means against person in their custody we have to look into the types of victims of police high-handedness. Most of the victims of human rights abuses in the custody of police may belong to any one of the following categories viz., *dalits*, *adivasis*, women, politicians, human rights activists and people belonging to the backward categories including economically backward people.

**Dalits and Adivasis**

Usually the victims of police torture are mainly the most vulnerable groups of people such as *'dalits'* and *'adivasis'*. Dalits are the untouchable caste of India. According to the 1991 census the *dalit* of Hindu origin alone is over 25% of the population. These people have been fighting against a degenerating sense of helplessness in this society for thousands of years. Even today, in many villages and towns these people are considered as the last, the least and the lost in the society.

Human rights violations against *dalits* and *adivasis* are continuing and police are continuously reported culpable. The police in India have been accused of violating human rights on the basis of castes and sub-castes. There

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2. The term *dalit* meaning 'oppressed' - has been used to describe militant members of the Scheduled Castes. It has now gained broader currency and Amnesty International uses it in its broadest sense to describe all members of the scheduled castes, not merely the most militant., Amnesty International, *Torture, Rape & Death in Custody* (1993), p.14.
3. The word *adivasi* means tribal people. They are also called *girijan*.
4. This term is now considered to be derogatory by members of the Scheduled Castes. Its use has been banned in official documents by the Madya Pradesh and Uttar Pradesh governments and dropped by several newspapers.
6. During the freedom struggle, the colonial government, at the insistence of Dr. Ambedkar, wanted to know which were the castes considered outcastes and untouchables. Hence a schedule was prepared and those castes that were incorporated are called Scheduled Castes. At the Round Table Conference, Mahatma Gandhi tried to show concern and care for them and gave them the title ‘Harijan’(meaning the children of God), taking the cue from the Gujarat Saint, Narsi Melitha. The term *harijan* also means an illegal child. It was Dr. Ambedkar who gave these people the name ‘Dalit’, meaning Broken People (in Hindi ‘dal’ means ‘broken.’), Philip Setunga and Nick Chesman, *Torture: A Crime Against Humanity Human Rights Violations* (2001), pp. 51-52.
are research studies to show that the attitude and approach of the police to the
downtrodden people, especially the harijans and girijans-were reprehensible.
Hence Universal Declaration of Human Rights 1948 assumes importance even
in the Indian context.\(^9\) It may be recalled here that the criminal justice system
in some part of the country was totally based on caste consideration even
about a century ago. There were differences in the treatment of offenders.\(^10\)

There are allegations that police officers have their own caste and
gender biases and often behave towards dalits and adivasis in a discriminatory
way.\(^11\) The study of treatment of people belonging to Scheduled Castes and
Scheduled Tribes by the police reveals their discriminatory behaviours. Police
have failed to protect the weaker sections especially the scheduled castes,
tribes and harijans.\(^12\)

Police rape of dalit and adivasi women continues to be reported
throughout India. In collusion with the local land lords and the ruling groups,
police very usually raid the dwelling places of adivasi and dalit people, if they
are campaigning for wages or land reforms. Land lords have often relied on
violent and suppressive means to oppress those campaigns with the aid of
police since the late 1970's. The people, especially dalits and adivasis who are

\(^9\) Universal Declaration of Human Rights, 1948, Article 7 reads: "All are equal before the law and
are entitled without any discrimination to equal protection of the law. All are entitled to equal
protection against any discrimination in violation of this Declaration and against any incitement to
such discrimination". Article 26 of the International Covenant on Civil and Political Right, 1966
reiterates the same thing. Again Article 7 of the United Nations Declaration on the Elimination of
All Forms of Racial Discrimination reinforces it.


During field study 80 % of the respondents supported this view.

\(^12\) Of late, cases of atrocities on Harijans have increasingly been reported in the press., R.P. Joshi,
taken into custody are severely tortured by the police in the guise of extracting information about militants. 13

Even though the police officials at all level do not acknowledge police as the very people who commit crimes against dalits, the regional and national press speaks to the contrary. 14 When human rights of the dalits are violated, the media highlight such incidents, but very soon the issues are dropped and forgotten. The victims are very vulnerable. The social organizations, human rights activists, associations of dalits and backward classes and NGOs are not taking much initiative of prepare them mentally, socially and politically to resist all tortures and exploitations. The provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act must be made use of against the torturers. More economic assistance as well as legal assistance should be provided to the victims. 15

13 In early 1980's in the bastar district of Madhya Pradesh the Naxalites became very active and they organized strikes attacks and other forms of protest against police and murdered land downers. In 1985 the State was proclaimed as "disturbed area" under the Terrorist and Disruptive Activities (Prevention) Act (TADA). The PUCL investigated situation in Bastar the pattern behind around 90 armed police raids on adivasi villages and reported: "A large contingent of armed police sometimes as many as 100 descend on a village.... They conduct indiscriminate beatings.... In May [1989] the police took three youths and buried their neck deep in the fields. After such violence the people, especially men, are taken to a police station.... They may hang the adivasis upside-down from the ceiling, or subject them to the infamous roller treatment and beat them up for days together.... many people suggest that adivasis are being punished for giving food and shelter to the Naxalites. The ostensible purpose of the more sustained interrogations is to find the whereabouts of [the Naxalites]. The practice of using abominable third degree methods to extract information from the suspects is perhaps fairly common in most of the police stations of the country. But in Bastar it has absolutely no point since most policemen do not understand the language of the adivasis whom they torture", PUCL-Madhya Pradesh, Bastar, Development and Democracy, July 1989, cited in Amnesty International, Torture Rape and Deaths in Custody, Mimeo(1993), pp. 17 and 1.

14 The atrocities against the adivasis by the police in connection with the eviction operation at the Muthanga Wild Life Sanctuary has shocked the conscience of the people. The incidents resulted in the death of a tribal activist named Jogi. Injured adivasis were left unattended inside the forest, denied treatment and harassed in Government hospitals, kept in illegal confinement, treated inhumanely and not produced before court in accordance with the law. Adivasi Gothra Mahasabha (AGM) leader, C.K. Janu was severely beaten while in the custody of police. Even though her injured physical condition was seen by the people through television and press, it is highly unfortunate that our judiciary and the C.B.I which probed into the matter did not take her complaint seriously., The Hindu (Kochi), August 3, 2004.

Women

In ancient literature women have been greatly praised. They have been called 'Devi' and 'Shakti' in Hindu religion. But now even the women who approach police against sexual harassment are suffering. The conditions of this lovely, gently gender, even in custody, is so inhuman that sensitive people feel a sense of shock and shame since die-hard resistance to reverence of the women sector defeats humanism, softness, compassion and affection which mankind owes to its sisterly half.16

Women in general, says Varahamihira (A.D.500), are pure and blameless, they deserve the highest honour and respect. This attitude towards women is reflected in the placing of various crimes in order of priority or gravity by the National Crime Records Bureau. Thus Rape has been placed just after murder in the crime lists.17

Women face a lot of difficulties in all stages of criminal justice process, especially while in police custody. At the time of her arrest, the women suffer from lack of knowledge of their basic rights. It is most unfortunate that women, in particular the poor persons hailing from lower social segments, are victims of custodial crimes at the hands of the Police.18

Frequently, she is handicapped because of her illiteracy, low status and lack of independent capacity to mobilize resources for help.19 So the police find it most convenient to target the destitute women because they know that they may easily escape after committing even rape on them.20

Though procedural safeguards do exist, they are totally disregarded in matters like arrest, custody, transfer, search etc. These cause great hardships to women. The trauma would be all the more agonizing if one takes into consideration the fact that those who suffer from such violence are mostly women especially those drawn from that segments of society which is socially and economically most disadvantageous. 21

Article 15 of the Constitution permits the State to make special provisions for women. Accordingly, the Code of Criminal Procedure, 1973 makes special provisions for women. The Criminal Procedure Code provides for a number of checks to curb police atrocity on women. Code of Criminal Procedure makes it mandatory that a female shall be searched only by another female. 22 The Code also provides that no male person under the age of fifteen years or women shall be required by a police officer to attend at any place other than the place in which such person resides for taking their statements in the course of investigations. 23 But the practice is always otherwise. 24

In order to protect the rights of arrested women, the Bombay High Court directed that no female persons shall be detained or arrested without the presence of lady constable and in no case, after sunset and before sunrise. 25 Even though the Apex Court disagreed with this proposition in appeal, 26 many human rights activists including even police officers in the higher levels do not consider the proposition of the Supreme Court as a sound one. 27 However

22 Code of Criminal Procedure, section 51(2) reads: "Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency."
23 See section 160(1) of the Code of Criminal Procedure.
24 The study reveals that majority of the accused persons feel that police is not exercising the power diligently in calling the witnesses in police station. Similarly, majority of the accused persons are not aware of the fact that woman cannot be called in the police station as witness. The study also reveals that there is ignorance of law among the police personnel in this regard and powers are generally misused by the police.
27 Director General of Police, Kerala agreed with the proposition of the Bombay High Court in principle. He directed the Kerala Police to follow the existing practice with regard to the arrest of women.
these provisions are always violated and women are harassed in the name of search and statements. It is shameful that inside police custody helpless women are subjected to molestation and teasing.28

Women respondents who have been in the custody of police complained particularly of harsh treatment by the police including physical torture including beating, rough handling, and even sexual indignity or abuse. Such treatment unfortunately was meted out to offenders and non-offenders alike. A total disregard by the police of procedures applicable to arrest, search, custody, transfer and other rights of the arrestee creates immense hardships for the women. This is especially so when she has younger children to look after or if she represents a woman headed household.29

Women are also vulnerable to torture and ill-treatment including rape.30 Custodial rape is the worst crime against women. Legal meaning of the term rape is the performance of the sexual act with a woman without her consent through force or use of force or fraud without her consent.31 There are express legal provisions for punishing the offenders in rape cases.32

The rape cases in the custody of police at the precincts of police station is a fatal blow to the cherished concept of rule of law indicating an

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28 Supra n.16, p. 98.
30 In September 2000 it was reported that a 19-year-old mute girl had been raped by two police constables in a police van while traveling between the sub-divisional judicial magistrate's court at Alipore to Presidency Jail in Kolkata., Supra n.21, p. 25-26.
31 The incident described below actually took place in a small town of Bihar. Once a brother and sister arrived in the town by train. The train was late and it was past midnight. They had to go to a relative's place. They were poor. They could not afford anything more than a rickshaw. A police patrol stopped the rickshaw. They enquired about the girl. The boy said that she was his sister. The lecherous cops wouldn't believe it. They insisted that he had either abducted the girl or was eloping with her. The boy pleaded but was thoroughly manhandled. They were taken to the police station. Such was their perverted bent of mind that they did not rape the girl in front of her brother but raped her in an adjacent room from where he could hear all her cries and groans all night. Early in the morning both were kicked out. The boy has since then lost his mental balance., Anjali Nirmal, op. cit., p. 135-136.
32 Indian Penal Code, section 375.
33 Section 376 of the Penal Code provides that the rapist shall be punished with imprisonment of either description for a term which shall not be less than 7 years but which may extend to imprisonment for life or a term extending to 10 years with or -without fine.
indelible blot of shame on the organisation of investigating agency in a
democratic society.33

Rape is a humiliating and the most shocking of the crimes against
human conscience and morality. This crime occupies a significant place in the
penal status of every country. The laws relating to sexual offences do not have
adequate provisions for the protection of female victims. It has a lasting effect
on the mental and physical health of the victim and brutalises the tortured. The
lives of the victims of custodial crime of rape or molestation are ruined. They
are stigmatised in the society for no fault of theirs and looked down upon. Most
often, these victims hail from lower segments of the society. 34

In State of Punjab v. Gurmit Singh,35 the Court observed:

We must remember that a rapist not only violates the victim's
privacy and personal integrity, but inevitably causes serious
psychological as well as physical harm in the process. Rape is not
merely a physical assault—it is often destructive of the whole
personality of the victim. A murderer destroys the physical body of
his victim, a rapist degrades the very soul of the helpless female.36

Indian Penal Code and Indian Evidence Act contain provisions to
curb the offence of rape in the custody of police. Section 376 of the Indian
Penal Code views custodial rape seriously.37 The mere fact that the woman
meekly submits to such treatment does not mean that she consented to it. The
word 'injury'38 used in the definition of consent 39 is defined in

14 A.Ratnavelu, “Rapid Justice to Victims”, Victimisation of women in India, Leelamma Devasia,
V.V. Devasia (Ed.) (1999), p. 190.
15 Supra n. 18.
17 Id., p. 1404.
18 Supra n. 32.
19 The word ‘injury’ denotes any harm whatever illegally caused to any person, in body, mind,
reputation or property.
20 Defined in section 90., Infra n. 42.
Accordingly the offender cannot take the shield of section 87 of the Indian Penal Code because the consent to suffer harm mentioned in the section must be free consent contemplated in section 90.

The woman ordered by the police to remain at one place or to do some act is under fear of injury to her or to her relative who is in police custody if she disobeys the order and in such circumstances her consent and obedience would not be voluntary and hence the consent is void. Informal detention of women by police has been very often practiced. The usual trick of the police is to pretend to suspect that the woman has committed an offence or is in a position to give information about it. Informal detention of such so-called suspect or witness against their will by the police during the whole period of investigation even without formal arrest has been made illegal and amounting to wrongful confinement.

Following widespread protests against custodial indignities inflicted on women specific safeguards were proposed to be introduced in the rape laws. Along with Mathura's case, on the recommendations of the 84th
Section 376 (2) of Indian Penal Code prescribes the minimum sentence of ten years particularly for police custodial rape case. Further, the minimum sentence can be awarded only on the special reasons which have to be stated in the judgment itself. Similarly inducement or seduction of any woman in custody by any public servant to have sexual intercourse not amounting to rape is punishable with imprisonment for a term which may extend to five years with fine.

In order to give teeth to the provisions of rape, Code of Criminal Procedure and Evidence Act were also modified by the Amendment Act of 1983. The Criminal law (Amendment) Act 1983 amended Indian Evidence Act so as to include in it provisions regarding the burden of proof in the case of

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45 These changes include protection of victim during investigation, change in the definition to remove the element of consent, addition of custodial rape as a crime and increase in the punishment of custodial, gang rape and rape of a pregnant woman., Fatima Ehtesham Siddiqi and Sarala Ranganathan, Handbook on Women and Human Rights, Part - I (2001), pp. 110-111.

46 According to section 376(2) of the Indian Penal Code, where a police officer commits rape either with the limits of police station to which he is appointed or in the premises of any station house or on a women in his custody or in the custody of the subordinates, he will be punishable with a minimum punishment of ten years rigorous imprisonment which may extend up to life and also to a fine.

47 Indian Penal Code, Proviso to section 376(2).

48 Indian Penal Code, section 376 B.

49 Section 4 of the Amendment Act 1983 inserts in section 327 of the Criminal Procedure Code provision for in-camera trials for rape with a view to protect the victims of rape. Section 327(2), Code of Criminal Procedure reads: “The inquiry into and trial of rape or an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code shall be conducted in camera.” Provided that the presiding judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the court.

Code of Criminal Procedure, Section 327(3) reads: “Where any proceedings are held under subsection (2), it shall not be lawful for any person to print or publish any matter in relation to any proceedings except with the previous permission of the court.” The Act also introduces Section 114A in the Indian Evidence Act to state what was obvious but was not being by the Courts. This means that the evidence of the woman will have to be considered as a whole. Even before the amendment, logically speaking the statement of a woman that she did not consent to the general intercourse should have been treated like any other evidence and the burden of proof should have shifted to the accused. Even after then amendments the incidence of rapes still increased and became more brutal.
custodial rape. Section 114A of the Indian Evidence Act draws out a presumption in law favourable to women, in cases falling under section 376(2) of the Indian Penal Code. Accordingly, in a prosecution for rape of a woman in police custody, where the sexual intercourse by the accused is proved and if the woman who is raped gives evidence before the court that she did not consent for such intercourse, then the court shall presume that she did not consent.

However it is quite unfortunate that these amendments could not provide adequate relief to the victims of police torture. When these amendments were introduced, it was feared that more stringent punishment would result in fewer convictions but the judgments proved otherwise.

There are also detailed administrative instructions issued by the Home Ministry to the police with reference to the manner and procedure of treating women in their arrest and in custody. The central circulars also ask for prompt enquiry in every case of complaint of misbehavior with women in police custody; and for a conscious effort for getting the police to respect the status and dignity of the woman. While these enlightened provisions are

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50 Indian Evidence Act, Section 114A reads: "In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376(2) of Indian Penal Code when sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent."

51 The facts of rape cases in the custody of police reveal the beastly acts of police. In these cases, the poignant question that has to be borne in mind is whether the same legal yardstick as applicable to the private citizen, in the rape crimes, has to be applied to the police officer who is bound to protect the dignity, liberty, right, and the property of individual in a democratic society. It is true that such amendments under the Act 43 of 1983 examined the gravity of the rape crimes and the gloomy encircled position of the victims in the custody of police to some extent and introduced such a punishment to the offenders for the rape crimes in the Sec.376 I.P.C. But while analysing the confinement of woman in the custody of police, (authority) it requires rational approach in respect of the burden of proof and the presumption in the section 114 (A) of the Evidence Act, 1872 for proving such rape crimes. The power of armed policemen could not be equated on par with the ordinary private citizen in respect of the principle of burden of proof for proving the rape crime in the police custody under the section 376 IPC. The mere presumption under the section 114 A particularly rape crime in the custody of police without any positive change in the principle of burden of proof, cannot be considered as an effective one. The Supreme Court also expressed its concern about the position of such police officer and the hapless of victims of such rape crimes., (1990) 1 S.C.C. 550, p. 561.

52 Ibid.
impressive in nature, it is regrettable that custodial excess and police intimidations of women continue to exist.53

A study of the People’s Union for Democratic Rights reveals that in 10 cases of custodial rape in which investigation was pursued by the police, there was no conviction at all.54 In fact seven cases were closed by filing the final report.55

When the Supreme Court’s attention was drawn to horrible condition of women in police custody in the cases like Sheela Barse v. State of Maharashtra56 and Upendra Baxi and others Vs. State of U.P57 the Court issued detailed procedures to ensure enforcement of human rights of women and girls in police and prison custody.

Even then the attitude of the judiciary towards the rapist police officers is surprisingly very lenient. It is only in a very few cases that at least the minimum sentence is awarded.58 Many of the cases of rape in police custody end up in a few years imprisonment. In Tukaram v. State of

53 Id., pp. 143-144.
54 These were cases of custodial rape reported by the press from Delhi since November 1989.
55 PUDR published a report entitled Custodial Rape: A report on the aftermath in 1994. They had taken up the task of investigating every case of custodial rape reported in Delhi since November, 1989 in the press. They found that there were 10 cases where the women did lodge the complaints. The medical examination and circumstantial evidence strongly suggested of rape. However, at a later stage many women withdrew the charges. This is a fact which needs a closer examination. This shows the compulsions of the victims. Sometimes they are threatened, intimidated or harassed further. Sometimes the family members are held to ransom. For example, it is all too easy to explain to a poor woman that her husband would be booked under the NDPS Act. Further, the social consequences of rape and its aftermath carry over onto the family of the victim and become the stigma of the family. Then the public prosecutors are generally not sympathetic. It is a well known fact that their sympathies traditionally lie with the police. They also discourage the victim from pressing further. Thus the retraction actually reflects the consequence of familial and social pressures and persistent harassment by the police and the criminal justice system., Anjali Nirmal, op.cit., pp. 134-135.
58 One Mrs. Padmini was a victim of gang rape on June 2, 1992 by two subinspectors and three constables at Chidambaram in Tamil Nadu. Her husband was tortured and beaten to death when he tried to intervene. She filed a writ petition before the High Court of Madras for interim compensation. Before the intervention of the High Court, the Government of Tamil Nadu offered to pay Rs.1 lakh as interim compensation and also agreed to provide Government employment and accommodation in any one of the Government homes.,The Hindu, March 16, 1993, p. 3.
The Supreme Court held that the conduct of the victim, Mathura, in meekly following the policeman who was dragging her into the police station amounted to her consent. In *Premchand v. State of Haryana* also the Supreme Court reduced the minimum sentence of ten years rigorous imprisonment awarded by the Sessions Court and confirmed by the High Court to five years rigorous imprisonment taking into account of peculiar facts and circumstances of the case and the conduct of the victim girl. The Court also found that an offence of this nature has to be viewed very seriously and has to be dealt with condign punishment. The decision was followed by a very serious public controversy and even a demonstration was organized by some woman organization in front of the Supreme Court. A review petition was also filed by the State of Haryana as a result of which the Court had to concede that the character and reputation of the victim has no bearing or relevance either in the matter of adjudging the guilt of the accused or imposing punishment under sections 376.

In *Sheela Barse v. State of Maharashtra*, Justice Bhagavati showed deep concern for the right of women and gave detailed directions for protecting the rights of women confined in police lock-ups. In spite of these decisions and public agitations, custodial rape is a growing menace.
Thus the women victims of rape and molestation will continue to be haunted by the trauma, a social stigma in our orthodox or stratified society. They, more often, subject them to humiliation. The society does not treat them with sympathy nor extend them a helping hand. More often women themselves do ostracizing the unfortunate victims of custodial crime.\textsuperscript{66}

Also there is no guarantee that false allegations against their character may not be made and false evidence may not be given mainly because section 155(4) of the Indian Evidence Act\textsuperscript{67} allows this to be done in a rape case. This section gives an incitement to the accused as well as his lawyer to triumph up false evidence against her character.

It is very difficult to calculate the nature and extend of human rights violations of women in custody due to several reasons. Firstly, due to social stigma which the victims of sexual offences like rape, molestation etc. may have to suffer. Secondly, the parents do not want to stress the issue to the extreme because they are anxious of the future of the victim. Thirdly, to avoid publicity being given by the media. Fourthly, in some societies (Backward societies like tribal societies) human rights violations are not viewed with concern. Insufficient strength of women police can also be considered as a reason for not reporting human rights violations against women to the police.

Misconduct of policemen towards women and girls in police custody and during their interrogation has led to a growing demand by the public for employment of women police in large numbers for duties, e.g., interrogation of women and girls who are victims of sexual assault; interrogation of women and juvenile criminals and witnesses; guarding of women and juvenile prisoners in police lock-ups and escorting them to and

\textsuperscript{66} Supra n. 18, p. 130.
\textsuperscript{67} Indian Evidence Act, section 155 (4) reads: "When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character."
from courts, hospitals, etc.\textsuperscript{68} Jail Committee of 1980-83 recommended that there should be separate institution for women detainees. The staff of these institutions shall comprise women employees only.\textsuperscript{69}

The worst forms of human rights violation are inflicted on sex workers by the guardians of the law. By and large, the cops regard the prostitutes as the scum of the society. These hapless women, therefore, get the worst from the police. Electric shocks on the breasts of prostitutes, vaginal assaults with lathis and chillie paste and humiliation by stripping them naked in front of their children are samples of the police brutalities on sex workers brought to the notice of the National Commission for Women.\textsuperscript{70}

More than 200 women who are in the trade gave graphic accounts of police atrocities. Sex workers said that very often they are picked up by the police not at their work place but while walking on the road, from a cinema theatre or while waiting for a bus. Irrespective of their age, they are beaten up in front of their children. They are charged with drug trafficking, prohibition related offences or are picked up as suspects in criminal cases.\textsuperscript{71} Women are sometimes stripped naked and paraded through the streets. In the eyes of the police, a prostitute has no rights. She can be used at anytime free of cost. They know that a voice in protest would never be raised and nobody from the

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\textsuperscript{69} Report of the All-India Committee on Jail Reforms, 1980-83, p. 345. The same approach is reflected in the following recommendations of the Committee:
(a) All police investigations involving women must be carried out in presence of a relative of the accused or her lawyer and of a lady staff member. Women should not be called to the police station for investigation; (b) Police personnel should treat women with due courtesy and dignity during investigation and while they are in police custody; (c) Women kept in police lock-up should invariably be under the charge of a women official and while in transit they should always be accompanied by women escorts; and (d) Bail should be liberally granted to women undertrial prisoners; \textit{id.}, p.187.
\textsuperscript{70} Mohini Giri, chairperson of the National Commission for Women, in meetings in Hyderabad, Madras and Delhi, \textit{Indian Express (Madras)}, 11 Feb. 1996.
\textsuperscript{71} Anjali Nirnmal, \textit{op. cit.}, p. 140.
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society would come for their legal help. The tattooing case of Punjab was a classic case of the pervert mentality of the police.

In a sensational Baghpat episode a married woman of a respectable family was alleged to have been made to walk nude through the town after her husband and another man were killed by the policemen just because the deceased had protested to the teasing of the woman by a police officer.

The degrading condition of lockups has been graphically described by other groups. These inhuman citadels have no facilities for segregated, safe or hygienic custody of women. Women are spending many more than the mandated 24 hours in police custody without recourse to even a toilet, privacy, or other amenities. Sufficient attention to upgrading police station has not been forthcoming in the mistaken belief that arrestees, particularly women do not stay for long in police lockups.

In many police stations generally there is no lady police. Women are taken in custody, brutally tortured, molested or even raped by male police. Even the pregnant women are not spared. In some cases the police has stripped naked a woman and was made to parade. In one case in Punjab two women – Mrs. Gurdev Kaur and Mrs. Gurmit Kaur – were tortured by police in such a way that they were unable to walk properly. There are only a handful of separate police stations for women. Separate police lockups for women are a legal requirement but they exist only on paper.

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7 Id., p. 141.
7 Id., p. 143.
7 Id., p. 79. In states like Punjab women who are taken to police custody may be of two categories. First category belongs to families which are doubted harbourers or where militnants stay at gunpoint. Second category are the women related to those families members of which have joined the ranks of militnants., supra n. 21, p. 26.
7 Dipangshu Chakraborty, op. cit., pp. 141-142.
Under the colour of police power many police officials have often taken advantage of the helpless position of women. The case of rape and death by police of Miss. Salwinder Kaur and Miss. Sarabjit Kaur of Punjab is an extreme example of police atrocities against women.\(^80\) These types of custodial rapes would show that there is no meaning in enacting special legislations to safeguard the interest of women unless they are observed by the officers who are to enforce the law in practice.\(^81\)

Violence against women by the very people who are supposed to protect them is widespread.\(^82\) Reported cases speak volumes as to how custodial rape is committed by the policemen in the precincts of police station. Women are physically or verbally abused; they also suffer sexual and physical torture. Thousands of women held in custody are routinely raped in police detention centres worldwide. The report of the Special Rapporteur underlines the necessity for States to prosecute those accused of abusing women while in detention and to hold them accountable for their actions.\(^83\) They call out serious legal scrutiny on the high handed acts of police.\(^84\)

In police too much emphasis is laid on the physical training and the sensitization aspect is totally neglected. The result is that sometimes the protectors of the society or the guardians often become the perpetrators of the crime. Be it Mathuras's case,\(^85\) Padmini's case,\(^86\) Christian Community Welfare Council of India's case,\(^87\) large-scale molestation by the police has been reported. The reason behind these can be seen from two angles- firstly, the ordinary policeman is ill-equipped to deal with the difficult and sensitive cases of crime and secondly, the social background from which the policemen are drawn is itself found to be lacking a better attitude towards female sex.

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\(^80\) Committee for Information and Initiative on Punjab (New Delhi), *Disappearances in Punjab, - A Report in Human Rights Violation of Sikhs* (1990), pp. 5-7.

\(^81\) Supra n. 10, p. 21-22.


\(^83\) Rahul Rai, op. cit., p. 265.

\(^84\) Some reported news are included in Appendix IV.

\(^85\) Supra n. 44.

\(^86\) Supra n. 58.

Thus there is no gainsaying that the police force needs fundamental changes in concept, attitude, training and above all motivation.\(^8\)

However policy makers and even the judiciary are not much serious on the topic of custodial justice of women. This trend is reflected even in the recent Supreme Court decision regarding arrest of women in \textit{Christian Community Welfare Council of India’s} case.\(^9\)

In India, women’s participation in criminality is even less known, and understood. The magnitude of reported female crime is also modest. Women account for no more than 3 to 5 per cent of total arrests and imprisonments in the country. Their low numbers have provided a convenient excuse to criminologists and policy framers to set them aside in national custodial reform efforts.\(^10\)

\textbf{Children}

Juvenile or child is a person who has not completed eighteen year of age.\(^9\) He is likely to go astray and when he does an offence, he needs some care, protection and discipline even though his action deserves condemnation.\(^9\) The fear of police, which gets induced right from young age in an individual, lasts even through his adulthood and prevents him from interacting with the police.\(^9\) The current philosophy is that punishment should be oriented on reformation, much more so of juvenile delinquents, who are in fact not criminals.\(^9\)

It is recognized all over the world that children living in formidable conditions need special attention. Protection of the rights of the children is a major concern for the people all over the world. Attempts towards protecting

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\(^8\) Faiza Ehtesham Siddiqi and Sarala Renganathan, \textit{op. cit.}, pp. 119-120.
\(^9\) Supra n. 87.
\(^9\) Dipanwoti Chakraborty, \textit{op. cit.}, p. 135.
\(^9\) Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act 2000. Section 2(b) of the Juvenile Justice Act 1986, defines a juvenile as a boy who has not attained the age of sixteen years or as a girl, who has not attained the age of eighteen years.
\(^9\) “Police Student Interaction Programme”, \textit{Monthly Newsletter} of Torture Prevention Centre India (Top Centre India), July 2004, p. 2.
\(^9\) Supra n. 92.

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these rights began from the time of the very inspection of the League of Nations, formed after the First World War. There are a few international instruments which specifically deal with the appropriate treatment of juvenile offenders. The needs to fulfill the particular needs of children, has been recognised by the Geneva Declaration on the Rights of Child, 1924, the Declaration of the Rights of Child adopted by the General Assembly on 20th November, 1959, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.95

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice96 is complimentary to the International Covenant on Civil and Political Rights. The Rules provide standards for the protection of the rights of children. They are provided as a model for Member States in the treatment and handling of young persons in conflict with the law, within the framework of a juvenile justice system. The Rules set out the standards which are universally applicable in safeguarding the interests of juveniles worldwide. As regards the treatment of pre-trial juvenile detainee is concerned, the relevant principles are set forth in Rules 10.1,97 10.298 and 13 of the Beijing Rules.99 The above provisions of the Beijing Rules were given

95 International Covenant on Civil and Political Rights, Article 14(4) reads: “In the case of juvenile persons, the procedure (determining a criminal charge) shall be such as will take account of their age and the desirability of promoting their rehabilitation”.
96 Adopted by General Assembly resolution 40/33 of 29 Dec. 1985 (hereinafter referred to as the ‘Beijing Rules’), on the recommendation of the Seventh Congress.
97 Rule 10.1: Upon the apprehension of a juvenile, his or her parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter., See, “Juvenile justice and the Implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice”, International Review of Criminal Policy, No. 43-44 (1994) United Nations publication (Sales No.E.94.IV.5).
98 Rule 10.2: A judge or other competent official or body shall, without delay, consider the issue of release., *ibid*.
99 Rule 13 cautions against under-estimation of dangers to juveniles of criminal contamination while in police custody and recommends the widest possible adoption of alternative measures. In particular, the Rules provides as follows:
Rule 13.1: Detention pending trial shall be used as a measure of last resort and for the shortest possible period of time.
Rule 13.2: Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.
Rule 13.4: Juvenile under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
Rule 13.5: While in custody, juveniles shall receive such care, protection and all necessary individual assistance as they may require in view of their age, sex and personality., *Ibid*.
the force of international law by Articles 37 and 40 of the Convention on the Rights of Child.100

The standards laid down in the Beijing Rules are interpreted and elaborated upon in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.101 The Rules provided for even more adequate legal safeguards than the Rules for the Administration of Juvenile Justice by interpreting and elaborating the standards contained in the Covenant and the Rules.102 The Rules for the Protection of Juveniles postulates that the conditions under which an untried juvenile can be detained should be consistent with the rules set forth in Rule 18.103

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100 Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 Nov. 1989. Article 37 of the Convention requires the State Parties to ensure the following: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed on offences committed by persons below eighteen years of age; (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons and of his or her age. In particular every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

101 Adopted by General Assembly resolution 45/113 of 14 Dec. 1990; Compilation, Vol. I, p.275 (hereinafter referred to as the 'Rules for the Protection of Juveniles')

102 Rule 17 of the Rules for the Protection of Juveniles provides as follows: "Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Unnecessary police detention should be avoided only when there is no alternative... Therefore, all efforts shall be made to apply alternative, measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles".

103 The relevant Rule runs as follows: "The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to the followings: (a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications; (b) Juveniles should be provided where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention; and (c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice."
The appropriate authorities should endeavour to ensure, according to domestic law, assistance when needed to the dependents and, in particular, the minor members of the families of the detained persons and shall devote a particular measure of care to the appropriate custody of children left without supervision.\textsuperscript{104}

Mention should also be made of the United Nations Guidelines for the Prevention of Juvenile Delinquency\textsuperscript{105}, which sought to provide better safeguards to the juvenile delinquents by interpreting and elaborating the Beijing Rules.

It would be evident from the preceding discussion that the objective of the international standards relating to juvenile justice is to provide more 'core-oriented' treatment of juvenile offenders with the goals of reformation and rehabilitation of juveniles on one hand and the prevention of repetition of offences, on the other hand in mind. The standards also seek to secure to the juveniles the same guarantees of fair process for their protection as adults accused of crime.

The philosophy behind juvenile justice is that a delinquent juvenile is not a criminal but he is a person who needs care, affection and support. For a child in conflict with law either degeneration or rehabilitation may happen, depending on the care he gets from the society.\textsuperscript{106} He must get the benefit of humanised procedure and homely atmosphere in the police station. He has to

\textsuperscript{104} Principles 13 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereinafter referred to as the 'Principles on Detention'). The Government of India adopted the 1990-U.N.Convention relating to Child Rights in 1992. Keeping in mind the objective of this Convention, India, in 2000, amended the Juvenile Justice Act. This law was enacted for children who are in need of care and protection and for children who come in conflict with the law. Yet the sad plight is that the process of enforcing these laws, and enlightening the masses on the subject was deliberately delayed by the Indian states including Kerala. For the Act amended in 2000, the Kerala State Government eventually made the Rules in 2003. The reluctance to form the 'Juvenile Justice Board' for the safety of children is an example for the negligence on the part of the State Government.

\textsuperscript{105} Adopted by General Assembly resolution 45/112 of the 14 Dec. 1990 (hereinafter referred to as the 'Riyadh Guidelines')

\textsuperscript{106} Paras Diwan and Peeyushi Diwan, \textit{op.cit.}, p. 234.
realize his faults and correct himself. For that typical psychological environment has to be created.\textsuperscript{107}

When a juvenile is arrested for an offence, bailable or non-bailable, is to be released on bail with or without surety. However, he may not be released if there appears reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral danger or that his release would defeat the ends of justice. When a juvenile is not released on bail, the officer-in-charge of him will cause him to be kept in an observation home or a place of safety but not in police station, till the juvenile court passes an order. The court will order that the juvenile be sent to an observation home or a place of safety during the pendency of the inquiry regarding the child.\textsuperscript{108}

India has passed a number of legislations from the Apprentices Act, 1850 to the Juvenile Justice (Care and Protection of Children) Act, 2000 in order to give special care, protection, welfare, training and rehabilitation for children who are in conflict with law or neglected. Juvenile Justice (Care and Protection of Children) Act, 2000 lays down provision for avoiding police custody.\textsuperscript{109} But, what is seen today is that a number of children are put behind the bars and nobody seems to be bothered about it.\textsuperscript{110}

\textsuperscript{107} The non-institutional treatments of juvenile means that a juvenile is sends to: (a) Parents, (b) Correctional home, or (c) Released on probation. Before deciding on one course or the other, it is essential that sufficient information is obtained about the character, personality of the offender, his social and physical surroundings, his relation with members of his family and in the neighbourhood, and his behaviour in general and towards the society. The age, antecedents and character of the offender and the circumstances in which offence was committed are also the factors to be considered. Paras Diwan and Peeyushi Diwan, \textit{op.cit.}, pp. 234-235.

\textsuperscript{108} Id. P. 255.

\textsuperscript{109} Juvenile Justice (Care and Protection of Children) Act 2000, Section 12(2) reads: “When such person having been arrested is not released on bail by the officer in charge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.”

\textsuperscript{110} Field survey shows that children who are caught unofficially and apprehended informally by the police are detained even in police lock-ups for days together without being produced before the court or any other authority.
Section 23 of the Juvenile Justice (Care and Protection of Children) Act 2000 lays down that police personnel having the custody of children shall not cause any kind of physical or mental suffering.\(^{111}\) However there is lot of allegations against the police that they treat children with cruelty to the extent of abusing them. “Young boys of 10 to 14 years are being supplied to other detainees for their delectation and a boy named Munna... was in agony because after the way he was used, he was unable to sit”\(^{112}\)

A committee appointed by the Conference of the Inspectors General of police as early as in 1954 found that the Indian police had not been able to handle the problem of juvenile delinquency properly\(^{113}\) and the same situation is still continuing. Many States do not have a 'juvenile police' - not even a juvenile wing in the police- to handle children who are found to be in conflict with law or neglected. There may be financial barriers to the government and the police to give proper attention to the justice of juveniles but in such a society, children will not enjoy their human rights from the law enforcement machinery.

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest or detention of a child shall be in conformity with the law and shall be used only as a measure of last resort.\(^{114}\)

Article 15 of the Constitution permits the State to make special provisions for children. Accordingly, the Code of Criminal Procedure, 1973

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\(^{111}\) Juvenile Justice (Care and Protection of Children) Act 2000, Section 23 reads: “Whoever, having the actual charge of or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.”


\(^{113}\) Supra n. 10.

\(^{114}\) Article 37(b) of the Convention on the Rights of the Child, 1987. Rule 47 of the Kerala Juvenile Justice (Care and Protection of Children) Rules 2003 provides: “No juvenile /child dealt with under the provisions of the Act or Rules shall be hand-cuffed or fettered.”
makes special provisions for children. Thus the law is that they should not be called to police stations as witnesses for recording their statements in connection with crime investigation. But what is seen shockingly today is that children are brought to police stations as witnesses.

Certain acts or omissions towards a juvenile have been made punishable under the Juvenile Justice (Care and Protection of Children) Act, 2000. The statistics reveal that 88 percent of the juveniles arrested belong to poor families monthly income of which is less then Rs.500. Majority of them belong to Scheduled Castes and most of them have less than primary education.

The most critical stage in the life of a juvenile delinquent comes immediately after his release. Crude police methods of keeping tabs on ex-convicts results in the latter getting socially stigmatised, which spoils their chances of rehabilitation and acquiring an honest livelihood.

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115 Code of Criminal Procedure, proviso to Sec.160 (1) reads: "A person below fifteen years of age, or woman shall not be required to attend any place other than the place in which such person or woman resides."

116 The study reveals that majority of the accused persons feel that police is not exercising the power diligently in calling the witnesses in police station. Similarly, majority of the accused persons are not aware of the fact that police cannot call a male below the age of 15 years in the police station as witness. The study also reveals that there is ignorance of this provision among the police personnel and general public in this regard and powers are generally misused by the police when they call the children below 15 years in the police station.

117 Section 23 reads: "Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both."

Section 21(1) reads: "No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile nor shall any picture of any such juvenile be published:
Provided that for reasons to be recorded in writing the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in interest of the juvenile".

Section 21(2) reads: "Any person contravening the provisions of sub-section (1) shall be punishable with fine, which may extend to one thousand rupees."


119 Id. p. 100.
Juvenile offenders are on increase and the police need special training and skills to understand, appreciate and handle actual or potential delinquents and to devise schemes to help them to become law-abiding citizens instead of recidivists or anti-social elements in society. The primary object then must be to place the child in an environment conductive to his rehabilitation and providing scope for corrective action. In prescribing standards for the administration of juvenile justice the main criterion should be the developmental needs of the child. With this end we have given shape to special norms and standards regarding investigation of cases committed by juveniles.

Children who come into conflict with law need to be dealt with sympathy and proper understanding. Juvenile Justice (Care and Protection of Children) Act under section 12(1) provides for bailing out a delinquent even for non-bailable offences. But it appears that the release on bail, even in bailable offences is conditioned by the consideration that the child be kept away out of the association of reputed criminals and be saved from being exposed to moral dangers. This position of law is fortified by the judgment of the Supreme Court in Gopi Nath Ghosh v. State of West Bengal, wherein the Court observed:

Where a juvenile delinquent is arrested he/she has to be produced before a juvenile court and if no juvenile court is established for the area, the court of sessions will have powers of a juvenile court. Such a juvenile delinquent ordinarily has to be released on bail irrespective of the nature of the offence alleged to have been

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121 Juvenile Justice (Care and Protection) Act 2000, Section 14 reads: "Where a juvenile having been charged with the offence is produced before a Board, the Board shall hold the inquiry in accordance with the provisions of this Act and may make such order in relation to the juvenile as it deems fit: Provided that an inquiry under this section shall be completed within a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension."
122 Juvenile Justice (Care of Protection of Children) Act 2000, Section 12(1) reads: "When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedures, 1973 or in any other law for the time being in force, be released on bail with or without surety..."
committed unless it is shown that there appear reasonable grounds for believing that the release is likely to bring him under the influence of any criminal or expose him to moral danger or defeat the ends of justice. The atrocious bail system acts as much baneful to the adults as to the children. Therefore if we are really concerned about the maintenance and preservation of basic freedoms we should move towards humanization of the bail system.\textsuperscript{124}

*Politicians and Human Rights Activists*

In the pre-independence period, the politicians and freedom fighters suffered mental as well as physical humiliation from the police. In dealing with the terrorists and conspirators, the police methods were naturally more harsh and severe.\textsuperscript{125}

The biggest bane of the Indian Police system is its politicisation for partisan purpose.\textsuperscript{126} Now a day the police are being used by the ruling party as a weapon to oppress their political opponents. In many instances, they interfere and often encourage and threaten the police to use force against their political opponents.\textsuperscript{127} Any non-compliance to the political 'instructions' as to how to deal with people in custody results in the transfer of police officers to most inconvenient and remote areas or difficult places or may be penalised in some other ways.

Activists and human rights defenders are also the targets of police.\textsuperscript{128}

Many progressive thinkers are even brutally killed by the police.\textsuperscript{129} Journalists

\textsuperscript{124} Id. p 238.
\textsuperscript{127} The incidents like the torturous means adopted by the police to arrest the former Chief Minister of Tamilnadu during night hours is not an isolated incident.
\textsuperscript{128} Supra n. 21, p. 27.
\textsuperscript{129} The notorious Kakkayam camp, where the Engineering College student Rajan was alleged to have been killed by using the 'roller-treatment', the murder organized by 'a few' in Kerala police which was later brought to light through the confession made by a former head constable, one Rama Chandran Nair etc. are still live in the minds of the people of Kerala.
who expose human rights violations have also been detained and ill-treated. Threats against journalists and assaults on them are frequently reported.\textsuperscript{130} In West Bengal and Andhra Pradesh civil liberties organisations were functioning since the early seventies. In Andhra Pradesh, the Civil Liberties Committees has been consistently bringing to light the violation of law by the police and atrocities against the women, but it is really astonishing to note that the committee itself had become the target of police repression.\textsuperscript{131}

Human rights activists are holding the view that the police and the politicians have to work hand-in-hand to protect human rights of persons in the custody of police. At the same time police should not be an instrument in the hands of politicians especially when they are engaged in crime investigation duties. Some policemen are inclined to show their favour to the ruling front by victimising or humiliating the people of the opposition. Both the political parties and the police have to refrain from such unjust means. Rights of the people in the opposition have to be recognized by the ruling party and the police. The police should realise that they are the protectors of the rights of human beings without having any bias, fear or favour.

\textit{Weaker Sections of the Community}

According to the National Police Commission, the criterion for determining whether a person or a class of persons belongs to the weaker section is the relative state of helplessness or defenselessness of the person or a class of persons in securing the legal rights to which they are entitled under the law of the land.\textsuperscript{132} Many human rights activists are having the view that people belonging to weaker sections are very after the victims of police atrocities.

Justice B.N. Srikrishna Commission on the Mumbai riots observed:

Police officers and men, particularly at the junior level, appeared to have an in-built bias against the Muslims which was evident in their treatment of the suspected Muslims and Muslim victims of riots. The treatment given was harsh and brutal … 133

Though State is presumed to be the protector and promoter of human rights, in actual practice it appears to be the biggest violator. The coercive processes of the State machinery corrode the foundations of human rights. Increasing concentration of power in the hands of the executive has become alarming. We are witnessing the might and the dominance of the State in its myriad forms. Many human rights activists and civil liberty organisations condemn the Central and State Governments for the disregard of fundamental freedoms and human dignity. State has been depicted as the oppressor of the poor. 134 It is generally the poor who are the victims of custodial crimes. 135

The police generally practice two standards with two classes of people—the ‘haves’ and ‘have nots’. The majority is the poor ‘have nots’ and they seldom get humanitarian treatment. But the ‘haves’ constitute politicians, the rich, top bureaucrats, business men etc. They are usually given more than fair treatment by the police.

Many respondents opined that generally police favour the rich. Very often it functions as a ruler appointed agency. It is corrupt with no commitment to social service. 136 It is evident that the approach of the police to

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135 In that respect developing countries have greater problems than the developed countries., Pravin H. Parekh, "Custodial Crimes - Redressal Mechanism", Human Rights Year Book (2000), p. 123.
each individual is greatly dependent on one's social status. A man who looks poor is always ill treated by the police. Majority of people think that third degree methods are used against those who are not influential, poor and those belonging to backward classes. Filthy language is used against them and third degree treatment is given commonly even in public.

In one survey organised by the Bureau of Police Research and Development, it has been found that corruption in police service is rampant and also that the police is ineffective in their actions. Again, the attitude of the police towards the weaker sections of the society is quite unsatisfactory. The police behave with discourtesy to the persons in their custody as well as complainants and the reactions of the police, more often than not, are determined by the income and educational qualifications of such persons.

In 1980, Arun Shourie investigated 45 deaths in police custody in seven States. He found that “the victims are invariably poor. Several of them are hauled in on no formal charges at all. Even in the case of persons who are arrested, in an overwhelmingly large number of cases they are all accused of petty offences”. In some cases investigated by him, he observed that the bodies were so badly mauled that it was not possible to hide the crime committed. The explanation for these deaths were, ‘snake bite’, ‘heart failure on the way to the hospital’, ‘sudden illness’, etc. Some were said to have died of mysterious reasons, while the rest committed suicide. The accounts of suicide given have not varied even now – ‘by hanging inside the lock-up by using a lungi or a belt’, ‘jumping out of a building or in front of a bus’; or some such ludicrous and unbelievable account.

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137 92% respondents subscribe to this view.
139 Supra n. 20, p. 17.
Political interference and the ability of vested interests to ‘use’ the services of police ensures that often the most socially and economically weak members of society are most vulnerable to abuses including torture and ill-treatment by police. The Law Commission has also very pertinently observed that the weak and the poor are the worst sufferers of custodial crimes.

It is well known that all criminals and suspects are not treated alike by the police. They do not resort to third degree methods against affluent people, but it is used against the people belonging to weaker section of the community for whom none may dare to question the activities of police.

As far as the use of third degree methods is concerned, it happens mostly against criminals and suspects from the weaker sections. The rich and the influential are usually spared by the law enforcement system and the criminals and suspects who are from the poor majority are maltreated. When no voice of protest would arise on behalf of the poor, they get humiliating and beastly treatment. But the rich and the influential have recourse to legal aid and they procure anticipatory bail. Even if an influential or rich person is remanded to police custody the police would be very cautious in dealing with him. Thus there is much difference in the treatment given to the two classes of society.

Surveys and studies show that majority of arrestees are not well educated and are not well employed. Mostly they hail from rural areas and are unmarried. The parents or guardians of these people are also usually illiterate and poor. It can also be possible that crimes are registered not against the rich, they are spared and the poor are trapped.

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141 Most of the victims of police torture included in appendix IV and V are socially and educationally backward members of the society.
143 There is a feeling among the common men that police adopt different norms in enforcement of law and thus violate the basic concept of rule of law which should be the basis of its functioning. This kind of approach is attributed to the elements of corruption and political inference as well as to the existence of obscurantist attitude in the police. Bureau of Police Research Development, Government of India conducted a survey of police opinion in three matters and found their impression by and large, correct., The Hindustan Times (Bangalore), March 24, 1993, R.P. Joshi, Police Training in Community Relations (1993), p. 42.
144 Supra n. 120, p. 68.