REHABILITATION AND COMPENSATION TO THE VICTIMS OF POLICE ATROCITIES: A SOCIO-LEGAL STUDY

SYNOPSIS
FOR REGISTRATION OF THE LL.D. DEGREE
OF THE C.C.S. UNIVERSITY, MEERUT
YEAR 2006

Supervisor:
Dr. Ashok K. Sharma
LL.M., Ph.D. (Reader in Law)
J.V. Jain College,
Saharanpur (U.P.)

Research Scholar:
Pooja Khurana
LL.M.

RESEARCH CENTRE,
Department of Law
J.V. Jain College, Saharanpur

AFFILIATED TO
C.C.S. University, Meerut
REHABILITATION AND COMPENSATION TO THE VICTIMS OF POLICE ATROCITIES: A SOCIO-LEGAL STUDY

SIGNIFICANCE AND PURPOSE OF THE STUDY

What is ‘Police Atrocity’: Desperate need to Improve and train the entire police setup?

At the very outset it must be understood that the meaning and import of two words expression ‘Police Atrocities’ is very vast and comprehensive concept that covers every kind of brutality, torture, violence or atrocity perpetrated by police force or any one member of this force which is a legitimate organ of the state. Now we are living is an era which is marked by sharp judicial activism and any illegal, immoral and unconstitutional act by police is taken very seriously by our vigilant judiciary. The Supreme Court of India, from more than two decades now have been active not only in providing injunction against the unruly policemen but also awarded many illustrious payments of compensation and ancillary relieves to those who got victimized and brutalized at the cruel hands of 'men in khaki.' Now-a-days there are many recommendations for ‘policing the police’ and moreover studies are being undertaken so as to bring about total correctional approach towards improving the police system as a whole. Our Synopsis is structured in following manner:

The ‘Police Atrocities include indiscriminate Lathi-charge by them on mob, fake arrests, fake encounters, custodial violence, custodial, death, custodial rape and
molestation of women, other kinds of harassments while dealing with the usual offender, arrestees and sometimes rude behaviour and harsh treatment with innocent citizens also. In addition to all this police force is also indulge in illegal acts and take many objectionable and arbitrary steps, particularly while performing the function of maintaining law and order.

These and other types of human-rights violations are daily occurrences by police force, and this compels a man of ordinary prudence to think in terms of drastic reforms in police system. Sometime ago, images of lathi-wielding policeman raining blows on protesting students — shown ad nauseum on every channel — reignited a debate that is probably as old as the police in India. A retired IPS office K.S. Subramaniam says, “The police know how to maintain order but not law. The lathi-charge was a blatant violation of human rights since in a democracy, people have to be allowed to express their grievances without fear of assault.”

Of course, the police is making headlines for all the wrong reasons, be it a murder case, industrial unrest or peaceful protests, police are increasingly at the receiving end for going over the top in situation they are supposedly trained to handle. To complicate matters further, they are taking on tasks that training taught them nothing about — moral policing. After Meerut’s Operation Majnu, policemen are asking live-in-couples to get married in Shillong, preaching morality to hand-holding couples in Chandigarh, driving lovers out of parks in Orissa. The met result is that the image of the law-enforcer is plummeting. The public
perception is that the police is brutal, corrupt and inefficient. Though, there are statements defending the police force and their current conditions under they have to perform their duty. K.P.S. Gill defends thus: A constable’s salary- the constabulary forms 88% of the force- is about a third, even a 10th of the pay other professionals get. Talk of police brutality, and they will tell you they are the ones at the receiving end most of the time. Arvind Verma, an IPS officer from Bihar says, “When we talk of police brutality, we should remember the force has been brutalized by inhuman working conditions.” Sri KPS Gill says, “When Japan and Korea were facing street demonstrations, they retrained the whole police force.

Do we train our police force to deal with mob rioting? Society has to be willing to invest more on their training.”

So we see there are voices that seek to improve the conditions of general police force in our country. So this was the bitter truth behind the police brutality.

Our main concern in this research study is not really suggesting the steps for police reform or police-retraining as such, albeit such suggestions will be given space in thesis on relevant basis, but showing the various areas where the police brutalities or police violence took place and how the. Indian Supreme Court took this cognizance and provided relieves wherever needed to prevent the infringement of the fundamental rights of citizens and it also went many steps further when it ordered the payment of compensation to the victims where the police inflicted brutalities on the people. But this does not mean that we
would not find out the cases where the police force treated the people brutally while maintaining law and order, or with the rioting people treating innocent person, with torture or harassment. Such cases, if judicially recognized, will also be taken for our study.

Police atrocity has become a common phenomenon and a routine police practice these days, making much public uproar but once some time passes and the incident fades away, public memory also fades. The magnitude of police atrocities in India is evinced by the reports of Amnesty International, which shows the alarming dimensions of the problem.

The more dangerous is the police mind-set that justify torture and violence perpetrated by them. Police officials generally justify their cruel behaviour as a ‘necessary evil’ to keep ever growing crime rate under control. They support use of violence and third degree methods against apprehended criminals and the offenders of law and order on the following grounds

1. From practical point of view, rough and tough treatment with the criminals is inevitable, because if police deals with offenders politely and gently, no one would ever be prosecuted for his crime.

2. When the offenders have no respect and regard for the rights of innocent persons i.e. victims, why should the police respect their rights.

3. On many occasions of social unrest public also expects the police to give a sound thrashing to anti social elements and bad characters. In many criminal
investigations police faces acute lack of public cooperation and this frustrates their cause of finding the witnesses, who can give clue about the criminals. Besides, that police has to resort to self help for eliciting information about the crime from the offender by using third degree methods if the arrested offender is adamant in not divulging out the truth.

Whatever may be the justification for the institutionalization of such brutalities, atrocities and custodial torture/ violence by the police, the developing human rights jurisprudence demands that, this dangerous practice should be eliminated completely. On several occasions, our Supreme Court, reacted sharply against the tendency of police torture and use of third degree methods by them. In Niranjan Singh v. Prabhakar Rajaram, (AIR 1980 SC 785), while dealing with the cases of custodial torture in Police stations, the Supreme Court observed, the police instead of being protector of law, have become the engineer of terror and panic, putting people into fear. Again, in Kishor Singh v. State of Rajasthan (AIR 1981 SC 625), the Supreme Court expressed its concern for gruesome act of police torture and observed: “Nothing is more cowardly and unconscionable than, a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional culture than, a state official running berserk regardless of human rights.

Such and other cases of police brutalities, be it with the arrested persons or such brutality with persons threatening peace, law and order situations are blatant
violation of fundamental right to life as guaranteed by Article 21 of the Indian Constitution, hence, compensation has been considered as an appropriate relief in such cases. Of late, the concept of state violence or state lawlessness is on the increase. For instance, the police force, and the prison authorities are such authorities who often indulge in abuse of power instead of safeguarding the personal liberty and life of citizens. In the latter half of the twentieth century, the question of state liability for wrongful acts of its employees has assumed considerable significance. Misuse of power by these employees particularly the police force of their negligence may cause injury to the person or property of the citizen and involve even an assault on his fundamental rights. Such a situation calls for an adequate mechanism for determining liability of the state and compensating the victim. It is, however, very strange that the state which has extended its tentacles practically into all spheres of activities has not thought it fit to enact a statute for determining the citizens claim against the all powerful state. Indeed the judges had to take this onerous task on them to evolve such mechanism and to formulate such principles as would meet the aforesaid situation.

**Emergence of Compensatory Jurisprudence By Supreme Court: Keeping in view the Socioeconomic Evolution of the Masses.**

In the whole process of criminal administration of justice, the offender remains the prime figure and the victim is completely forgotten. Nobody cares to see as to
what happens to the victim after the committal of offence on him. Rather the victim is faced with interrogation, delays, adjournments, court appearances, harassment at the hands of people, police and lawyers, loss of earnings, wastage of time and frustration, etc. Not much authentic empirical surveys have been made to study the fate of victims of criminal offences. It is just few decades’ back that the criminologists/ sociologists realized to concentrate their thought to a procedure to help and insure that the victim is compensated. So far as the idea of compensation to victims has been confined mostly in criminal cases.

Recently, the Supreme Court of India in some cases has granted compensation to the victims of state excesses also by invoking Article 32 of the Constitution.

No system can develop properly until it aligns itself with the socio-economic evolution of the masses whose destinies it is meant to guide and control. Recognizing the importance being given to the concept of compensation to victims, the Supreme court has granted compensation/exemplary costs to those persons whose right was violated by the state and its administration especially, the Police force. Though the idea of compensation to the victims is implicit in both the concepts yet exemplary costs are essential in the nature of punitive damages. Exemplary costs serve as a measure of punishment to the state and at the time a measure of damages to the victim for the wrong done to him by the state.
Judicial Responses:

So far as judicial response is concerned, our Supreme court quite admirably, for the first time, considered the question of granting monetary compensation to a person whose fundamental right to life and personal liberty was infringed by the police in *Khetri v. State of Bihar (AIR 1981 SC 928)* (Popularity renown as Bhagalpur Blinding case) the court imposed a liability upon the state to pay compensation to the victim for violation of his personal liberty under Article 21. The issue of compensation to the victim of state excesses was again raised in *Sant Bir v. State of Bihar (AIR 1982 SC 1470)* where the victim was a criminal lunatic. Thus in both there cases the Apex Court expressed its concern about the grant of any compensation to the victims of state excesses, but failed to actually grant the same. Now this is what has come to be called ‘Victimilogy Jurisprudence’. Again a major break through come in this field in the form of *Rudal Shah v. State of Bihar (AIR 1983 SC 1086)* where the Supreme Court granted monetary compensation amounting to Rs 35,000 to an ordinary citizen against the lawless act of Bihar government which kept him under illegal detention for more than 14 years after his acquittal This was the first judicial concern to “repair the damage” done by the officers of the state to the victimized citizens. The court also provided ancillary relieves like rehabilitation, reimbursement of expenses which the petitioner might incur for medical treatment and compensation for the
illegal incarceration, thus accepting these relieves under Article 32, for the effective enforcement of the fundamental right under Article 21. But judicial caution is that such compensation is to be awarded by the court only in cases where the facts are revolting, outrageous and unusual indicating clear callousness on the part of the authorities.

In yet another unreported case of **Orason v. State of Bihar**, the supreme court awarded Rs. 15,000 as compensation to an under trial who was detained in the lunatic asylum for six years after he had been certified as fit for discharge. There is another case to Government’s lawlessness and anarchy. **Bhim Singh v. State of J & K (1985 .4 SCC. 677)** is such another example of the governments highhandedness. Here the victim was a member of the legislative Assembly. He was detained by the Police solely with the intention to prevent him from attending the session of the House on the petition filed by his wife under Article 32, the Supreme Court deprecated the role of police and innovatively deviated from the rule that the writ of habeas corpus is a remedial and not punitive and awarded compensation amounting to Rs. 50,000 for his illegal detention. In a public interest litigation case, the Apex court awarded interim compensation under Article 32. In, **Peoples’ Union for Democratic Rights v. state of Bihar (AIR 1987 SC 355)**, the court while issuing direction to the government of Bihar, evolved a working principle for award of compensation to the victims of police atrocities in case of death, Rs. 20,000 and for every case of injury, Rs. 5000
shall be paid, without prejudice to any just claim for compensation, this principle was subjected to many criticisms as it failed to distinguish between a minor and major injury, however, it was a step ahead in the matter of compensation to victims.

Supreme Court in A.S. Mittal v. State of U.P. (AIR 1989 SC 1570) further broadened the scope of Article 32, by providing a sum of Rs. 12,500 to each of the victims of eye surgery, resulting into irreversible damage to their eyes, and this sum was in addition to the sum of Rs. 5000 already paid by way of interim relief. In another writ petition under Article 32 of the constitution Saheli, a Women’s Resource centre through Ms. Nalini Bhanot v. Commissioner of Police Delhi. (AIR 1990 SC 513), the Supreme Court awarded compensation amounting to Rs. 75,000 to the mother of the victim for the death of a nine year old child because of beating and assault by Police officer. This is yet another case relating to the high handedness of the Police authorities, who along with the owner of house, adopted unlawful methods for getting the eviction of the home from the tenants. In this case Kamlesh Kumari, the tenant, was beaten up and molested by S.H.O. of Police, and Naresh, son of Kamlesh, was brought to such bad condition that resulted in his death. The Supreme Court, relying upon the earlier cases relating to the liability, directed the Delhi Administration to pay compensation to Kamlesh Kumari, a sum of Rs. 75,000 within a period of four weeks from the date of Judgment.
If we survey the above cases of compensation, we may conclude that the Apex Judiciary ushered in major break through expanding dynamically the scope of Article 32 of the constitution, which is also one of the fundamental rights providing remedies to its preceding fundamental rights given to the Indian citizenry. In *M.C. Mehta v. Union of India (AIR 1987 SC 1986)* our Supreme Court had another opportunity to spell out the compass of Article 32 by holding that this Article does not merely confer power on it to issue writs directions but it also empowers it to forge new remedies and fashion new strategies. The court observed that its power under Article 32 is “not only injunctive in ambit that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of fundamental right already committed. It has the power to award compensation in appropriate cases. It means compensation cannot be awarded in all cases. It has to be awarded where the infringement is gross and its magnitude is such as to shock the conscience of the court.

Thus the interpretation of Article 32 of the Constitution as to give compensation to the victim in case of state excesses / handedness/ lawlessness (here in this thesis it means Police- oriented lawlessness and all kinds of cases depicting brutalities by Police force) has given a new dimension to jurisprudence of *Victimilogy* in India. In all above stated cases our Supreme Court granted compensation/ exemplary costs only in cases of extreme necessity, where the infringement is gross and patent,
incontrovertible and glaring. No general yardstick has, however, been laid down to measure such hardships.

Thus, we have seen many types of cases above wherein police authorities showed different types of excesses and mal-treated with those whose safety and protection should have been their prime most duty and obligation.

In our study we shall try to obtain answers to the following questions relating to the study, in our thesis

- Does Indian Police resort to different atrocities?
- Is police atrocity a necessary evil?
- Are there any laws against police brutality in India?
- Are existing laws and police regulations in India sufficient?
- What is the public opinion about police atrocity?
- Is there a need for a comprehensive legislation relating to police atrocity?
**TENTATIVE CHAPERISATION**

Our comprehensive research study would be divided under following chapter heads-

I. **Introduction.**
   a. Meaning and Import of expression ‘Police Atrocity’.
   b. Type of Police Atrocities.
   c. Significance and Scope of study.

II. **Constitutional and Legal Rights of the Victims of Police Atrocities.**
   a. Rights of the Victims of Police Atrocities under Indian Constitution.
   b. Protection under Different Statutes.
   c. Protection under International Law.

III. **Role of Human Rights Groups in protecting the victims of Police Atrocities.**
   a. Protection to such Victims by human Rights Commission.
   b. Protection to Victims accorded by other Human Rights Groups.

IV. **Rehabilitation and Compensation to the victims of Police Atrocities.**
   a. Emergence of New Era of Compensatory Jurisprudence by the Supreme Court.
b. Emergence of New Concept of Personal Liability of Police Officials.
c. The Role of Media to Sensitize the Community against Police Atrocities.
d. Rehabilitation of Victims of Torture: An Important Area, requiring Juristic and Judicial Attention.

V. Conclusion and Suggestions.

N.B-
Necessary changes may be required to be done in tentative chapterisation and in the scheme of the study as the actual course of research study progresses and our thesis takes the final shape.
RESEARCH METHODOLOGY TO BE EMPLOYED

This is primarily a case-law based research work in which cases of police-atrocities along with the rehabilitation and compensation in consequence thereof decided by our Supreme Court and different High Courts will be critically analyzed. Therefore, both doctrinal and empirical methods of research shall be adopted. Effort shall also be made to make use of the modern tools of information technology viz., Computers and Internet in collecting, analyzing and tabulating the data on the subject of our research.
BIBLIOGRAPHY

BOOKS

(i) Constitutional Law of India — D.D. Basu
(ii) Constitutional Law of India — H.M. Seervai
(iii) Constitutional Law of India Narendra Kumar
(iv) Human Rights and Princes of poverty — Dr. Vijay S. Chitnis, Dr. Ramesh Tilak
(v) Perspective on Human Rights — Vijay K. Gupta (Editor)
(vi) Public Interest Litigation — P.M. Bakshi
(vii) Criminology and Penology — N.V. Pranjpe
(viii) Law and Change towards 21st century — K.L. Bhatia (Editor)
(x) Criminal Trail and Justice (Sentencing Process) — Prof. A. Lakshminath, Dr. J. Krishna Kumari
(xi) Human Rights and Social Justice- Gokulesh Sharma,
(xii) Criminal Law and Criminology — K.D. Gaur
(xiii) Judicial Activism in India- Dr. G.B. Reddy
(xiv) Judicial Activism in India — S.P. Sathe
(xv) The Dialectics and Dynamics of Human Rights in India (Yesterday, Today and Tomorrow)- Justice V.R. Krishna Iyer
(xvi) Bail Law and Procedures- Janak Raj Jai
(xvii) Human Rights in India (Problems and Perspectives- B.P. Singh Sehgal (Editor)
(xviii) Law relating to Dowry, Dowry Deaths, Bride Burning, Rape and Related offences- Paras Diwan
(xix) Early Disposal of Court Cases- V.K. Mathur
(xx) Law on Compensation- Sammaish Mundrathi

MAGAZINES
(i) Legal News and Views
(ii) The Front Line
(iii) Vidhi Samachar
(iv) India Today
(v) Kurukshetra
(vi) Green News
(vii) Yojna

NEWSPAPERS
(i) The Times of India
(ii) The Tribune
(iii) The Hindustan Times
(iv) The Hindu
(v) Sahara Times

REPORTERS & JOURNALS
(i) Journal of Indian Law Institute
(ii) All India Reporter (A.I.R.)
(iii) Supreme Court Cases (S.C.C.)
(iv) Annual survey of Indian Law (A.S.I.L.)
(v) Lucknow Criminal Reports (L.Cr.R.)
(vi) Supreme Court Criminal Digest
(vii) Crimes
(viii) Allahabad Criminal Cases (A.C.C.)
(ix) Supreme Court Cases (Criminal) (S.C.C. Cr.)
(x) U.P. Criminal Cases (U.P. Cr. C)

**ENCyclopedia AND DICTIONARIES**

(i) Encyclopedia Britannica  
(ii) International Encyclopedia of Social Sciences  
(iii) The Law Lexicon  
(iv) Webster’s new Collegiate Dictionary  
(v) Legal Glossary.

**IMPortant Acts AND Rules**

(i) Protection of Human Rights Act 1993  
(ii) Indian Police Act 1861  
(iii) Indian Evidence Act 1872  
(iv) Indian Penal Code  
(v) The Code of Criminal Procedure Act, 1973  
(vi) The Jail Manuals
LIST OF CASES

1. A.S Mittal v. State of UP AIR 1999 SC 1570
32. People’s Union for Civil Liberties v. Union of India AIR 1997 SC 1203
33. People’s Union of Democratic Rights v. Police Commissioner, Delhi Headquarter (1989) 4 SCC 730
34. Prem Shankar Shukla v. Delhi Administration
   AIR 1980 SC 1535
35. Pandit Parmanand Katara v. Union of India
39. Sebastian Hongray v. Union of India AIR 1984 SC
41. Shakuntala devi v. Delhi Electricity supply
44. State of Marijuana v. Prabhakar Pandurang
   AIR 1966 SC 424.
46. Sukhdas v. Union Territory of Arunachal Pradesh
   AIR 1986 SC 991
47. Sunil Batra (No II) v. Delhi Administration AIR 1980 SC 1579