Chapter Four

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The human being is the beginning and the end of all civilization. In the present set of society, the state has the fundamental task to create conditions of life affording adequate protection to the individual person in society so that he may live with dignity. Therefore human rights has been given to human being & which have been described as the touch stone of a civilized political system and recognized as core principals essential for the dignified human survival. In absence of these rights men would be enslaved and subjected to torture at the hands of the basic tenets of a liberal democratic system. These are those natural rights which every man and women living in any part of the world is entitled by virtue of having been born as human being.1

However, all over the world there is frequent violation of human rights by states & their enforcement agencies. Human rights are dishonored by those who are duty bound to be loyal and protect the society. The illegal arrest, unauthorized detention, lock -up deaths and rape of women in police custody are the living examples of violation of these basic rights which are frequently happening in a democratic country like India and the whole world.

India in fulfillment of International obligation has since beginning of its independence incorporated adequate provisions under different set of laws providing legal and constitutional protection to the accused against custodial violence. The set of laws which enshrines rules relating to rights of accused, prisoners and detainees are Constitution of India, Indian penal Code1860, Criminal Procedure Code1973, Indian Evidence Act 1872 and Human Rights Act1993 etc.

Constitutional Protection available to the accused and detainees

The Constitution of India is one of the most right-based Constitutions in the world. Drafted around the same time as the Universal Declaration of Human Right (1948), the Indian Constitution captures the essential feature of human rights in its preamble and enshrines the articles on fundamental right and the directive principles of state
policy. The Constitution of India is based on the principle of human rights and freedoms that guided India’s struggle against a colonial regime where civil, Political, social, economic and cultural rights of the people of India were consistently violated.

In spite of the fact that most of the human rights found clear expression in the Constitution of India though the Indian state under the guidance of Prime Minister Jawaharlal Nehru took many progressive steps and followed a welfare state model, however the police and bureaucracy remained largely colonial in their citizens and sought to exert control and power over citizens. Over the years, the articulation and assertion of human rights within civil society has grown into a much richer, more diverse and relatively more powerful discourse at multiple levels.¹

Preamble of Indian Constitution assures every citizen the dignity of the individual and guarantees to secure justice - social, economic and political, equality of status and opportunity.²

Some important Articles dealing with rights of the accused and detainees are discussed here under:

a) Prohibition against self-Incrimination-Article 20(3)

Violation of rights of accused by the police is continues unabated in India despite specific provisions under Article 20 (3), Article 21 and Article 22 of the Indian Constitution. Article 20(3) provides that no person accused of an offence shall be compelled to be a witness against himself. This guarantee extends to any person accused of an offence and prohibits all kind of compulsions to make him a witness against himself.³ It means no person can be compel to give evidence or become witness against his will if the giving answer to the question gives reasonable apprehension of guilt in some other offence.

The protection under Article 20(3) is available only against compulsion of the accused to give evidence against himself but left to himself he may voluntarily waive his privilege by entering into the witness box or by giving evidence voluntarily on request. Request implies no compulsion therefore evidence given on request is admissible against the person giving it.⁴ To attract the protection of Article 20(3) it must be shown that the accused was compelled to make the statement likely to be incriminate himself. Compulsion means duress which includes threatening, beating or imprisoning of the wife, parent or child of the accused person.
The Supreme Court of India has considerably widened the scope of clause (3) of Article 20 of the Constitution in *Nandini Satpathy vs. P.L. Dani*. In this case the Court observed that the prohibitive scope of Article 20(3) goes back to the stage of police interrogation and does not commence only in Court only. It extends to protect the accused in regard to other offence pending or imminent prosecution which may deter him from voluntary disclosure. The phrase compelled testimony must be read as evidence produced not merely by physical threats or violence but by psychic (mental) torture, atmospheric pressure, tiring interrogation, proximity, environmental coercion, over-bearing and intimidatory methods and the like. This compelled testimony is not limited to physical torture or coercion but extends also to techniques of psychological interrogation which cause mental torture to a person subjected to such interrogation.

In this case, the appellant was a former Chief Minister of Orissa and certain charges of corruption were leveled against her and in the course of inquiry she was called upon to come to the police station and to answer certain written questions. The appellant refused to do so claiming the protection of Article 20(3). She was charged under section 179 of I.P.C for refusing to answer questions put by a lawful authority. But the Court held that the accused person cannot be forced to answer questions. He is entitled to keep his mouth shut if the answer has a reasonable prospect of exposing him to guilt in some other accusation, actual or imminent, even if it is not with reference to that.

*Abhay Singh vs. State of U.P.* is another leading decision on the ambit and scope of Article 20(3) of the Constitution. This case was filed under 20(3) of Constitution of India for protection against testimonial compulsion by using Narco analysis and brain mapping test on accused for finding out facts relating to offence. Accused said it is violation of Article 20(3) which provides principle of testimonial compulsion. But the court after examining the facts and circumstances of the case held that Narco analysis and brain mapping test does not violate principle of testimonial compulsion embodied under Article. 20(3) of the Indian Constitution and said hair and nails of accused can be taken for utilization during investigation same principle should be applied to Narco analysis and brain mapping test also. Moreover Narco analysis test is conducted under supervision of doctors and there is constant surveillance of state of accused and, as such, element of risk is minimal. Thus if Narco analysis and brain mapping test can be
helpful in finding out facts relating to offence, it should be used and utilized and court should not obstruct conduct of exercise. 

But in Smt. Selvi and others vs. State of Karnataka the Hon’ble Supreme Court upheld its earlier decision and observed that compulsory administration of the impugned techniques like Narco analysis, polygraph test and Brain Electrical Activation Profile (BEAP) violates the right against self incrimination. This is because the underlying rationale of the said right is to ensure the reliability as well as well as voluntariness of statements that are admitted as evidence. The Court recognized that the protective scope of Article 20(3) extends to the investigative stage in criminal cases and when read with Section 161(2) of the Code of Criminal Procedure, 1973 it protects accused persons, suspects as well as witnesses who are examined during an investigation. The test results cannot be admitted in evidence if they have been obtained through the use of compulsion.

b) Protection of life and personal liberty—(Article 21)

Article 21 of the Constitution guarantees right to life and personal liberty to the citizen of India. The term “right to live” encompasses within all the other facets of life which makes the life of a person happy and meaningful. The ambit of personal liberty enshrined under Article 21 is wide and comprehensive. It embraces both substantive rights to personal liberty and the procedure provided for their deprivation.

Another avenue of protection against police excesses specially custodial violence has opened up with the expansive interpretation of right to life and personal liberty under Article 21 of the Constitution. It reads that “no person shall be deprived of his life or personal liberty except according to procedure established by law.”

Initially in A.K. Gopalan vs. State of Madras the Supreme Court took a literal view of personal liberty and held that the word ‘liberty’ is qualified by the adjective “personal” in Article 21. Personal liberty is nothing more than the liberty of physical body, freedom from arrest and detention, or freedom from false imprisonment or wrongful confinement. However, this restrictive interpretation was not followed by the Supreme Court in its later decisions.

At present the Fundamental Right Jurisprudence has reached a stage where one can safely say that the Indian Constitution recognizes fundamental right to human dignity
directly from Article 21 and accords protection against torture or cruel, inhuman or degrading treatment.

In *Kharak Singh vs. State of U.P.* Subba Rao J. approved the following observation of Field J. in *Munn v. Illinois*: 11

*By the term 'life' as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limits and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out an eye or the destruction of any other organ of body through which the soul communicates.*

While enlarging the scope of 'life' or personal liberty, in *Maneka Gandhi vs. Union of India* the Court gave new direction. It held that Article 21 was not only a restriction on the unbridled power of the executive, but it was also a restriction on the legislative power. It laid down that not merely there should be a procedure established by law, but procedure must also be reasonable, fair and just otherwise it would be violative of Article 21 of the Constitution.

The Supreme Court has taken serious note of police causing custodial violence. The basic judicial principle in respect of custodial torture has been developed in connection with the prisoners in jail. The process began in *Sunil Batra (I) vs. Delhi Administration* In this case, the Supreme Court was concerned with two prisoners, one of whom was Sunil Batra. He was under death sentence and was put in solitary confinement and his appeal was pending before the Court. The other prisoner Charles Sobraj was charged with serious offences and was put in bar fetters but for no particular reason.

The Supreme Court held that apart from the curtailment of the prisoner’s right necessarily arising out of the fact of his detention, all other liberties continue to be constitutionally guaranteed to him and the detainees should be ensured freedom from torture. In order to prevent the custodial torture the Hon’ble Court observed as under:

1. That the petitioner’s torture was illegal and he shall not be subjected to any torture until fair procedure is complied with.
2. No corporal punishment or personal violence on the petitioner shall be inflicted.

3. Grievance deposit boxes shall be maintained in jail which shall be opened by District Magistrate and the Session Judge frequently. Prisoners shall have access to such boxes.

4. District Magistrate and Session Judge shall inspect jails once every week, shall make enquiries into grievances and take suitable remedial action.

Again in Sunil Batra (ii) vs. Delhi Administration\(^4\), Sunil Batra brought to light the illegal practice followed in Tihar Jail. Prisoners were tortured to obtain money. A particularly ghastly instance of perverted torture was that wardens of the prison inserted a rod in the anus of the prisoners with a view to extorting money from them. This amounted to a custodial perversity, which violated the test of reasonableness and fairness implicit in Article 21. How cruel would it be if one went to a hospital for check-up and by being kept along with the contagious cases came home with a new disease said the Court. Krishna Iyer J. delivering the majority judgment held that integrity of physical person and his mental personality is an important right of a prisoner, and he must be protected from all kinds of atrocities and torture. Thus we can say that in the above cases honorable Supreme Court widend the scope of term life.

In Hussainara Khatoon (I) vs. State of Bihar,\(^5\) Pathak, J. observed that it is a primary principle of criminal law that imprisonment follows judgment and does not precede it. To keep under trials in prolonged detention is a torture and an affront to all civilized norms of human dignity. In Hussainara Khatoon (II) vs. State of Bihar\(^6\) and Hussainara Khatoon (III) vs. State of Bihar\(^7\)

Pankaj Kumar vs. State of Maharastra\(^8\) is another important decision on the point. In this case appellant and his father were charged with misappropriation of huge amounts in purchase of spare parts. Charge-sheet was submitted after unwarranted prolonged investigation of over 3 years of delay beside eight years in commencing trial was not in any way attribute to appellant but violated the right of accused to a speedy trial.
Court observed that right to speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep proceeding and investigation by police as well. The right to speedy trial extends equally to all criminal proceedings and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act taking into consideration all the attendant circumstances. In this case Court held that appellants constitutional right recognized under Article 21 of the Constitution stands violated. Therefore, criminal proceedings initiated against him in the year 1987, deserve to be quashed on this short ground alone.

*Mahesh Ram & Ors. vs. State of Bihar & Ors.*¹⁹ in this case a petition was field U/A 226 and 21 of the Constitution of India for compensation. Facts of the case are as under that police personnel conniving to virtually send persons to jail on totally trumped up charge which was fabricated by them, for offence of murder which was never committed. Means person for whose death petitioners were sent to jail, found to be alive. Alleged confessional statement recorded by police officer giving all details found to be false. Petitioner was in custody for over 6 month. After observing facts & circumstances of case Court held state is liable for exemplary damages of Rs. one lakh to each of petitioner which could be realized by state from erring police officials. Punishment of only stoppage of two increments for two years passed against erring officials by police department found inadequate. Court directed State Government to take appropriate action.

It will be appropriate to state that Article 21 is one of the luminary provisions in the Constitution of India and is a part of the scheme for protection of fundamental rights occupying a place of pride in the Constitution and contains inbuilt guarantee against torture or assault by the state or its functionaries.

(c) **Safeguards against Arbitrary Arrest and Detention (Article-22)**

Article 22 of the Constitution also lays down procedural safeguards to the pre-trial accused against arrest and detention. Arrest has been defined as a restraint on the liberty of the person. Article 21 defends life and liberty and provides safeguards against any arbitrary encroachment upon it. The present Article provides safety to the detainee or person arrested.
Article 22 (1) provides that “no person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice.

Clause (2) extends this protection and provides that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for journey from the place of such arrest to the Court of Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

Clause (3) makes certain exceptions to safety procedure against detainees. It says that nothing in clause (1) and (2) shall apply to any person who for the time being is an enemy alien or to any person who is arrested or detained under any law providing for preventive detention.\textsuperscript{20}

In \textit{A.K. Gopalan vs. State of Madras} case\textsuperscript{21} it was held that clauses (1) and (2) of Article 22 laid down the procedure which is to be followed when a person is arrested. The above stated provisions ensure following rights:

\begin{itemize}
  \item Right to be informed regarding ground of arrest.
  \item Right to consult and to be defended by legal practitioner of choice.
  \item Right to be produced before a Magistrate within 24 hours.
  \item Freedom from detention beyond the said period except by order of the Magistrate.
\end{itemize}

In \textit{Abdul vs. State of West Bengal}.\textsuperscript{22} it was observed that since Article 22 prescribed the minimum procedure that must be included in a law providing for preventive detention, its requirements are mandatory and if one of these requirements is not complied with, the detention must be rendered illegal.

In the case \textsuperscript{23} petitioners invoked extra ordinary jurisdiction of the High Court U/A 226 of the Constitution. It is alleged by petitioner that during police operation against ULFA extremist victim was picked up/arrested in injured condition and detained without producing before the Magistrate. Whereas Superintendent of police denied having arrested anybody during the said operation however from evidence of eye-witnesses to the said incident it is proved that said victim was arrested by police and remained untraced thereafter. Witnesses not cross-examined. After seeing facts and
circumstances of the case Court awarded compensation of Rs. 2 lacs which is payable to parents of victim & it is recoverable from officers responsible after holding enquiry against them.

In the light of above discussion, it may be concluded that under the scheme of Constitution of India, there are enough effective provisions which in letter and spirit seeks to protect and safeguard the fundamental rights of the accused and detainees. Notwithstanding constitutional safeguards to the life and liberty is a precious right but due to custodial violence by police steady process of devaluation of human dignity and personality is irresistibly advancing the brutal betrayal of the basic rights which are enshrined in part III of the Constitution. But there is a new emerging world of legal order. No doubt, the media and courts have been instrumental in checking this serious menace but much remains to be done.

Legal Safeguards available to the accused and detainees

Section 41 to 44 Cr. PC enumerates the circumstances under which police officers, magistrates and private citizen are authorized to make an arrest without warrant.

Sec-41 provides when police may arrest without warrant. It deals with the cases where a police officer may arrest a person without warrant. The circumstances warranting the arrest under section 41 are specified in schedule of the Code. This section enumerates nine grounds where under a police officer may arrest any person without an order from a Magistrate and without a warrant.

Sec-42 empowers a police officer to arrest on refusal to give name and residence.

Sec-43 empowers arrest by private persons and procedure on such arrest.

This section provides circumstances under which a private person may arrest.

Selection 49 provides that the person arrested shall not be subjected to more restraint than is necessary to prevent his escape. The Code also provides for certain right to the arrested person like the right to know the ground of arrest under section 50 (1).

Section 50 says that person arrested to be informed of grounds of arrest and of right to bail—

Clause (1) provides that every police officer or other person arresting any person without warrant shall forthwith communicate to the accused full particulars of the offence for which he is arrested or other grounds for such arrest.
Clause (2) provides that when a police officer arrests without warrant any person other than a person accused of non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

Section 56 provide that a police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a magistrate having jurisdiction in the case, before the officer in charge of a police station.\(^{24}\)

The object of this section is that the arrested person should be brought before Magistrate having jurisdiction in the case without any unnecessary delay.\(^{25}\) Such a person should not be detained for more than twenty four hours in police custody in absence of a special order of a Magistrate.\(^{26}\)

Section 57 provides that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable. This section requires that a person detained in custody must be presented within 24 hours of his arrest under section 167 of the Code.

Section 54 confers on the arrested person the right to have his medical examination done. It provides that when a person who is arrested, whether on a charge or otherwise, alleges, at the time when he is produced before a magistrate or at any time during the period of his detention in custody that the examination of his body will afford evidence which will disprove the commission on by him of any offence against body.

The Magistrate shall, if requested by arrested person so to do direct the examination of body of such person by a registered medical practitioner unless the magistrate considers that the request is made for the purpose of vexation or delay or for defeating the end of justice. In D.J Vaghela vs. Kanti bhai Jetha bhai\(^{27}\) the Court held that the Magistrate owes a duty to inform the arrested person about his right to get himself examined in case he has complaints of physical torture or maltreatment in police custody.

Section 163 (1), 167 and 176 of the Code also contains provision regarding statements of accused in police custody.
Section 163 (1) provides that no Police officer or other person in authority shall offer or make, or cause to be offered or made any such inducement, threat or promise as is mentioned in section 24 of the Indian Evidence Act, 1872.

Section 167 of the Code again provides procedure when investigation can’t be completed in twenty four hours.

Clause (1) says whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the Officer In Charge of the police station or the Police officer making the investigation, if he is not below the rank of Sub-Inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time forward the accused to such Magistrate.

Clause (2) says the Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

Provided that (a) the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under the paragraph for a total period exceeding-

i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

ii) Sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail,
and every person released on bail, under this sub-section shall be deemed to be so released under the provision of chapter XXXIII for the purpose of this chapter.

Clause (b) says no Magistrate shall authorize detention in any custody under this section unless the accused is produced before him.

Clause (c) provides that no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police.

Section 176 further provides procedure of inquiry by Magistrate when death is caused in the police custody-

Clause (1) says when any person dies while in the custody of the police or when the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of section 174, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

Clause (2) says the Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

Clause (3) Provides whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

Clause (4) provides where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and address are known, and shall allow them to remain present at the time of inquiry.28

Thus section 176 specifically deals with custodial death which provide a check on the inquiry held by the police or to calm any alarm that has been created in the mind of the public by reasons of violent or unnatural death or any unfounded suspicion or to put in force the law against the particular individual or merely to gain information which may be of some use of the authority.
Section 220 of IPC provides that whoever, being in any office which gives him legal authority to commit persons for trial or to confinement or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in doing so he is acting contrary to law shall be punished with imprisonment of either description for a term which may extend to seven years or with fine or with both.

This section punishes a person who having authority commits for trial or confines any person knowing that in doing so, he is acting contrary to law.

Section 330 again prevent confession by causing hurt. It provides that whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of containing the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

e.g. A, a Police Officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

Section 331 of IPC punishes voluntarily causing grievous hurt to make a statement or a confession having reference to an offence to give any information which may lead to the detection of an offence. This section is like the previous one except that the hurt should be a grievous one.

Section 348 of IPC further provides that whoever wrongfully confines any person for the purpose of extorting any confession or any information, which may lead to detection of an offence, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Thus Section 348 of IPC punishes wrongful confinement to extort confession.
Section 376(2) punishes rape committed in police custody. It provides that whoever being a police officer commits rape within the limits of police station to which he is appointed; or in the premises of any station house whether or not situated in the police station to which he is appointed; or on a woman in his custody or in the custody of a police officer subordinate to him, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life. Thus a mandatory minimum punishment has been provided.

Proposal for amendment and insertion of Section 300A in Indian penal Code, 1860 for making custodial death as an offence -

Proposal for amendment to make custodial death as an offence bill 210 of 1991, titled as the Criminal Law (amendment) Act, 1991 proposes to add section 300A in the Indian Penal Code as a new offence relating to custodial death. The proposed Section 300A reads: “A custodial death shall amount to murder unless such death is found to be natural by a judicial enquiry conducted under Chapter XIIA of the Cr. P. C., 1973. Explanation – for the purpose of this section “custodial death” means death of a detainee or any other person under the custody of the police, either by judicial order or otherwise in the course of such custody.”

The proposed amendment would necessitate amendment in the Code of Criminal Procedure in the form of chapter XIIA. Although amendment was proposed to make a custodial death as an offence under Indian Penal Code in order to prevent custodial death which is rampant now a day and to punish those guilty officers who are responsible for heinous acts. But till date no amendment has been made to add custodial death as an offence under Indian Penal Code, 1860 despite continues recommendations and suggestions by the various human rights agencies at national and international level even by National Human Rights Commission.

Safeguards under the Indian Evidence Act, 1872

Section 25 of the Indian Evidence Act Provides that the confession made to a police officer shall not be proved as against a person accused of an offence. If confessions to police were allowed to be proved in evidence, the police would torture the accused and thus force him to
confess to a crime which he might not have committed. Such a confession will be irrelevant whatever may be its form, direct, express, implied or inferred from the conduct.  

Very recently Goswami, J., of the Supreme Court noted:

"The archaic attempt to secure confessions by hook or by crook seems to be the be-all and end-all of the police investigation. The police should remember that confession may not always be a short cut solution instead of trying to "start" from a confession they should strive to "arrive" at it."

Section 26 of the Indian Evidence Act states that no confession made by any person while he is in the custody of police officers unless it be made in the immediate presence of a Magistrate shall be proved as against such person. This section is based upon the same fear, namely, that the police officer would torture the accused and force him to confess, if not to the police officer himself, at least to someone else.

These provisions were enacted keeping in view the malpractices by police officials in extorting confessions which may lead to custodial violence.

**Safeguards under Human Rights Act, 1993**

Criticism of police has never been as rampant and as pervasive as it is in these days. Indiscipline and insubordination in the ranks, brutality in lockups, rape and death in custody, widespread corruption, and of course, the notorious police encounters and news of all happening keep surfacing at regular intervals all over the country. Indeed, so frequent have been the accusations against the police force from all quarters that public perception of policemen have been reduced to one of an ineffectice, partisan, ruthless, and venal corps. The atmosphere echoes across the nation with public calls of police atrocities.

In spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidents of the torture and deaths in police custody have been disturbing factors. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third degree methods including torture and adopts techniques of screening arrest by either not
recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. A reading of the morning newspaper every day carrying reports of dehumanizing torture, assault, rape and death in custody of police or other governmental agencies is indeed depressing.\textsuperscript{34}

Having regard to these changing social realities and the emerging trends in the nature of crime and violence, Government has been reviewing the existing laws, procedures and system of administration of justice, with a view to bringing about greater accountability and transparency in them and devising efficient effective methods of dealing with the situation. The President of India promulgated the Protection of Human Rights Ordinance, 1993 under Article 123 of Constitution of India on 28\textsuperscript{th} September, 1993 to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto. To replace this Ordinance the Protection of Human Rights Bill, 1993 was passed by both the houses of parliament which received the assent of the President on 8\textsuperscript{th} January, 1994 and became the Protection of Human Rights Act, 1993 (10 of 1994)\textsuperscript{35}.

As to the functions and powers of the Commission, the Act provides that the Commission shall perform all or any of the following, functions:

i) Inquire suo moto or on a petition presented to it by a victim or any person on his behalf, into complaint of:
   a) violation of human rights or abetment thereof, or
   b) negligence in the prevention of such violation by a public servant.

ii) Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.

iii) Visit under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection and to study the living conditions of the inmates and make recommendations thereon.

iv) Review the safeguards provided under the Constitution or any law for the
time being enforce for the protection of human rights and recommend measures for their effective implementation.

v) Review the factors, including acts of terrorism, that inhibits the enjoyment of human rights and recommend appropriate remedial measures.

vi) Undertake and promote research in the field of human rights.

vii) Spread human rights literacy among various sections of society and promote awareness of the safeguards available to the person through publications, media, seminars and other available means.

vii) Encourage the efforts of non-governmental organizations and institutions working in the field of human rights

Elaborate inquiry powers have also been vested in the Commission. It has been empowered under the Act as a Civil Court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of summoning and enforcing the attendance of witnesses and examining them on oath; discovery and production of any document; receiving evidence on affidavits; requisitioning any public record or copy thereof from any Court or office; issuing commissions for the examination of witnesses or documents; and any other matter which may be presented.

The Commission shall have power to require any person subject to any privilege which may be claimed by that person under any law for the time being enforce, to furnish information on such points or matters as, in the opinion of the Commission may be useful or relevant to the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of Section 176 and 177 of Indian Penal Code.

The Commission or any other officer not below the rank of a gazetted official so authorized has also been empowered under the Act to enter any building or place where the Commission has reason to believe that any document be found and seize any such document or take extracts or copies there from subject to the provisions of Section 100 of the Code of Civil Procedure 1908, in so far as it may be applicable.
The Commission, when any offence is committed in view of or in its presence under Sections 175, 178, 179, 180, or 228 IPC, shall be deemed to be Civil Court and after recording facts, refer the same to the Magistrate for trial and would be considered as if forwarded under Section 195 Criminal Procedure Code. Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196 of IPC and the Commission shall be deemed to be a Civil court for the purpose of Section 195 and chapter XXVI of the Code of Criminal Procedure, 1973.

Another characteristic feature of the Act is to authorize the Commission to conduct investigations pertaining to the inquiry, utilize the services of any officer or investigating agency of the Central Government or any State Government as the case may be. After the submission of investigation report, the Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any arrived at. The Commission may also make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.38

For the purpose of providing for speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the same offences and also appoint an advocate who has been in practice as an advocate for not less than seven years, as a special public prosecutor for the purpose of conducting cases in that Court.

The Commission, the central or state receives thousands of complaints, conduct investigations, hearing and give its verdict also, though still with its vast, elaborate power it has not received due recognition from the persons in power who commit atrocities and oppression daily in the practical life. Thus despite the passage of Protection of Human Rights Act, 1993, the problem of arbitrary arrest and custodial violence are prevalent throughout the country. The manner in which it is committed is horrifying. Generally, police arrest a person without warrant in connection with the investigation of an offence and without recording the arrest. The arrested person is subjected to torture by the police in the police lock-up for extracting information for the purpose of further investigation or for the recovery
of case property or for extracting confession. They should learn that with the comprehensive power vested in the Commission; they will no more enjoy immunity. Responsibilities are to be executed with due regard and within the framework of procedure established by law.\textsuperscript{39}

The Supreme Court in \textit{D.K. Basu vs. State of West Bengal},\textsuperscript{40} itself emphasized implementation and application of the strict guidelines on the laws of arrest as laid down by it. It held that failure to comply with the requirements mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of Court and the proceedings for contempt of Court may be instituted in High Court of the country, having territorial jurisdiction over the matter. The Court further observed that the requirements referred, flow from Articles 21 and 22 (1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier.

The judgment further addresses the issue of implementation of the Supreme Court guidelines in a decentralized fashion so that they percolate down to the local police station as also become accessible as information about our basic rights to individual members of civil society who may not have access to legal documents through simple communication means like radio and television. It observed that the requirements mentioned shall be forwarded to the Director General of Police and the Home Secretary of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station at a conspicuous place. It would also be useful and serve larger interest to broadcast the requirements on the All India Radio besides being shown on the National network of Doordarshan and by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would in our opinion be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability. It is hoped that these requirements would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to commission of custodial crimes.
Even Law Commission Report quoted that Hon'ble Supreme Court judgements, guidelines and recommendation of National Police Commission were not followed or interpreted as laid down earlier. N.R. Madhava Menon, leading legal academician in his preface to "Training Manual for Police on Human Rights" commented that higher standards have been set in police conduct and better safeguards have been developed to ensure observance of human rights. While all these happened in the Constitutional jurisprudence of the country, it is unfortunate that the police organization and management continued in the century-old framework under the police Act of 1861[41].

The recommendation clearly states that representatives of registered rights groups and NGOs should be entitled, under law, to visit police stations and examine custodial records. This is the latest recommendation of the Law Commission of India based on an assessment of police conduct vis-a-vis protection of personal liberties as enshrined in the Indian Constitution.

The human rights violations of accused and detainees by the police officers give rise to the question as to what is to be done for making police function in accordance with the laws, rules regulations, departmental instructions, court directions and other human rights mandates. Since no civilized society will allow its police to violate the rights of its citizens punitive measures against policemen are desirable and essential in order to prevent this grave nature crime. In order to let these changes take place, the role of police has to be redefined, its organization radically restructured and its outlook carefully moulded and reoriented. Police problems can no longer be tackled by a conventional ambivalent approach and there is no shortcut to police reforms in India.

Today we have a 251 year old Police Act, 1861. The first comprehensive review at the national level of the police system after independence was undertaken in 1977, when the Government of India appointed the National Police Commission. In its first report, the Commission dealt with the modalities for inquiry into complaints of police misconduct in a manner which will carry credibility and satisfaction to the public regarding their fairness and impartiality and rectification of serious deficiencies in the system. Various Committees have been set up like the Dharma Vira Commission, Julio Roberto Committee, Soli Sorabjee Committee and the Padmanabiah Panel have
viewed on the maladies of the Police Act and called for drastic change in the functioning of the system. They discussed the issue of police reforms, suggestion by committees, judgments, proposal, and topic of police accountability. But our country has not taken a serious stance on the issue of Police accountability during investigations of crime when custodial violence as a tool in custody of police is used by them for confession and gathering information. In the United States of America, the rights of individuals have always received supremacy over the investigation process. This is to the extent that, if the rights of arrested person are affected, then the investigation to that extent will be declared invalid. In this manner, some degree of responsibility to follow the law is placed on the Police. Similar situations should be applied in India too so that the rights of the detainees and prisoners may be protected in this country. Thus the accused must have full knowledge of his rights at the time of the investigation and if he is not aware of them, the state must remind him of them as provided under Article 22 of the Indian Constitution.

As discussed earlier the issue of reforming the police system has been addressed by the National Police Commission also and other state-level police Commissions. The problems have been thoroughly examined and many valuable recommendations have been made previously. The pity is that many of the basic recommendations have not been accepted, or when accepted, not faithfully implemented.  

As reiterated time and again, the first priority in the agenda requires replacement of an outdated Police Act of 1861. On replacement, many senior police officials argue that it may enable the police to function as effective guardians of the law and perform their duties with discipline, dignity and pride. It is rightly argued that if the police function as an effective guardian of the law and order and discharge their duties lawfully, human rights violation by them cannot take place. It is pertinent to recall that all Police Commissions in India have been unanimous in their view that human rights violation takes place because police in India function under an archaic Act which came into existence much before the U.N. Declaration on Human Rights, 1948 and the Constitution of India which is the fountains of fundamental freedom of right to life and liberty. Therefore, it can be said that Police Act of 1861 does not assign to police any proactive social role of protecting the people’s rights. The Act only emphasizes the reactive role of the police in the maintenance of the peace, order in
prevention and detection of crime.\textsuperscript{43}

The next priority in police reform refers to minimizing, if not altogether eliminating, the political interference, which most people believe is the backbone of all police problems. Those in political authority do not give any serious thought to this issue, perhaps and mainly because of the fear that once they lose their power to exert pressure on police, they will lose much political ground and a mighty source of their survival would vanish. Whatever be the compulsion of the police and the politicians who lord over the police, the fact remains that as long as police remain under the tutelage of political and civil services authority interference, little improvement is possible in its working. Police can become genuine law enforcement body only when it derives its authority from the law and the Constitution.\textsuperscript{44}

"Policing the Police'' is new buzzword in all discourses on human rights violations these days. Those who believe that the courts hold the key and judicial verdicts will set the police right must remember that it had been true, that the Indian police would have been effectively inoculated against the virus of human rights violation since there exist a plethora of court verdicts. These judgments have made little impact, as it punished few derelict police officials whose excesses and atrocities have been challenged in the courts of law. The incidents of human rights violations by the police continue as ever before. The lesson is loud and clear that courts can’t alone effectively police the police. This task should be done by the high ups in the police hierarchy.

If the top men at the police hierarchy do not condone human rights violations, do not let the quality go scot-free, do not justify unlawful methods of policing under the pretext of maintaining order, it will act as deterrent towards the violation of human rights by the lower class of policemen. The real problem is the disciplinary crisis at the top of the police system whether at the state or at the district level. If the senior officials at their levels sincerely want to curb police lawlessness amongst their subordinates they can certainly do that by carrot and stick methods.\textsuperscript{45}

In order to strengthen the hands of police officers who want the problem of human rights especially custodial violence by their men to be effectively rooted out, there is need for amendment in the Law of Evidence. The Supreme Court in
State vs. Ram Sagar Yadav,⁴⁶ has proposed amendment in the Evidence Act to ensure that police officers who commit human rights violations should not evade punishment due to paucity of evidence. The Court has impressed upon the Government the need to change the Law of Evidence so that the burden of proof is shifted to police functionaries against whom allegations of human rights violations are made. In June, 1985 the Law Commission of India proposed that the Evidence Act should be amended by creating a new section 114B, to provide a rebuttable presumption that injuries sustained by a person in police custody have been caused by the police officer in-charge of his custody. It is indeed unfortunate that successive Governments have failed to implement these recommendations.
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27. 1985 Cri LJ 1974 (Guj.)
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33. Supra note 31.
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