Chapter 3
Custodial Violence and Human Rights

Custodial Violence is virtually a worldwide phenomenon that has been inflicted upon individuals regardless of sex, age or state of health. It is considered as a naked violation of human dignity and whenever human dignity is wounded civilization takes a step backward. It is an ‘illegitimate force’ or ‘illegitimate coercion directed by private persons against one another or against the regime’ ‘the illegal employment of methods of physical coercion’. C. Wright Mills identifies violence as a form of power when he opines that “All politics is struggle for power; the ultimate kind of power is violence...” Mao’s often quoted statement that political power comes out of the barrel of the gun lends support to the same point of view. Custodial violence results in custodial death, which is treated as the worst crime in a civilized society governed by the Rule of Law.

This worst form of human rights violations has become a very serious and alarming problem in the Third World countries like India. Brutal atrocities perpetrated by the police, jail authorities, armed forces and other law enforcing agencies on the suspects/accused persons and prisoners are menacingly on the increase day by day. Custodial torture is not confined to violent people like saboteurs, terrorists, dacoits and other hardened criminals as certain police officials would like to make out. Economically poor and socially deprived sections of our society form the majority of torture victims. They are generally members of schedule castes and scheduled tribes, tribal women, landless laborers and others. Hence, every year lakhs of people are taken into custody by the police and subject to torture and custodial violence.

Custodial torture has become so common these days that not only the police and bureaucracy but even the people take it for granted as a routine police practice of interrogation. As a result it causes a tremendous shock in a society, which ultimately leads to a public uproar. Only then the government rises out of its slumber. Even so the guilty cops usually suffer at best the punishment of brief suspension. Once the incident fades away from the memory of the public, they are again back in the service.

The phenomenon of torture is very old. Until the end of the eighteenth century, physical torture was legal and officially admitted as a method of interrogation in many countries. It was only after the Second World War that the torture had became a matter of international concern. The prohibition of torture has been advocated ever since the adoption of the Universal Declaration of Human Rights 1948 and the Geneva Convention 1949.

Considering the wide-spread violations, the UN General Assembly adopted the “UN Declaration on the Protection of all persons from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment” on 10th December 1975 and when even this Declaration did not satisfy the world community, the UN General Assembly adopted the Convention Against Torture on 10th December 1984 and brought the same into force on 26th June 1987. The UN convention against torture has been signed and ratified by very few countries of the world. There are 114 countries, which have ratified or acceded to this Convention. See Table VII

---

1 See, Nigel Rodley, "The Treatment of Prisoners under International Law" (1987)
### Table VII
### 114 Countries - as of 12 April 1999

<table>
<thead>
<tr>
<th>Afghanistan</th>
<th>Ethiopia</th>
<th>Peru</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>Finland</td>
<td>Philippines</td>
</tr>
<tr>
<td>Algeria</td>
<td>France</td>
<td>Poland</td>
</tr>
<tr>
<td>Antigua and Barbuda</td>
<td>Georgia</td>
<td>Portugal</td>
</tr>
<tr>
<td>Argentina</td>
<td>Germany</td>
<td>Republic of Korea</td>
</tr>
<tr>
<td>Armenia</td>
<td>Greece</td>
<td>Romania</td>
</tr>
<tr>
<td>Austria</td>
<td>Guatemala</td>
<td>Republic of Macedonian</td>
</tr>
<tr>
<td>Austria</td>
<td>Guinea</td>
<td>Republic of Moldavia</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>Guyana</td>
<td>Russian Federation</td>
</tr>
<tr>
<td>Bahrain</td>
<td>Honduras</td>
<td>Saudi Arabia</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>Hungary</td>
<td>Senegal</td>
</tr>
<tr>
<td>Belarus</td>
<td>Iceland</td>
<td>Seychelles</td>
</tr>
<tr>
<td>Belize</td>
<td>Indonesia</td>
<td>Slovakia</td>
</tr>
<tr>
<td>Benin</td>
<td>Israel</td>
<td>Somalia</td>
</tr>
<tr>
<td>Bolivia</td>
<td>Italy</td>
<td>South Africa</td>
</tr>
<tr>
<td>Bosnia and Herzegovina</td>
<td>Jordan</td>
<td>Spain</td>
</tr>
<tr>
<td>Brazil</td>
<td>Kazakhstan</td>
<td>Switzerland</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Kenya</td>
<td>Tajikistan</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>Kuwait</td>
<td>The former Yugoslavia</td>
</tr>
<tr>
<td>Burundi</td>
<td>Kyrgyzstan</td>
<td>Togo</td>
</tr>
<tr>
<td>Cambodia</td>
<td>Latvia</td>
<td>Tunisia</td>
</tr>
<tr>
<td>Cameroon</td>
<td>Libyan Arab Jamahiriya</td>
<td>Turkey</td>
</tr>
<tr>
<td>Canada</td>
<td>Liechtenstein</td>
<td>Uganda</td>
</tr>
<tr>
<td>Cape Verde</td>
<td>Lithuania</td>
<td>Ukraine</td>
</tr>
<tr>
<td>Chad</td>
<td>Luxembourg</td>
<td>United Kingdom of Great Britain and Northern Ireland</td>
</tr>
<tr>
<td>Chile</td>
<td>Malawi</td>
<td>United States of America</td>
</tr>
<tr>
<td>China</td>
<td>Mali</td>
<td>Uruguay</td>
</tr>
<tr>
<td>Colombia</td>
<td>Malta</td>
<td>Uzbekistan</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>Mauritius</td>
<td>Venezuela</td>
</tr>
<tr>
<td>Côte d’Ivoire</td>
<td>Mexico</td>
<td>Yemen</td>
</tr>
<tr>
<td>Croatia</td>
<td>Monaco</td>
<td>Yugoslavia (Serbia and Montenegro)</td>
</tr>
<tr>
<td>Cuba</td>
<td>Morocco</td>
<td>Zambia</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Namibia</td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Nepal</td>
<td></td>
</tr>
<tr>
<td>Democratic Republic of the Congo</td>
<td></td>
<td>Netherlands</td>
</tr>
<tr>
<td>Denmark</td>
<td>New Zealand</td>
<td></td>
</tr>
<tr>
<td>Ecuador</td>
<td>Niger</td>
<td></td>
</tr>
<tr>
<td>Egypt</td>
<td>Norway</td>
<td></td>
</tr>
<tr>
<td>El Salvador</td>
<td>Panama</td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td>Paraguay</td>
<td></td>
</tr>
</tbody>
</table>

*Source: UN and The Struggle against Torture. Factsheet No.7.*
In 1979 UN General Assembly adopted a resolution prescribing a code of Law Enforcement Officials, prohibiting torture and giving full protection to the person in custody. In India, the government adopted and issued a code of conduct for police in 1985.4

In October 1997, the Government of India signed the Convention Against Torture (CAT) making the following statement: "The Convention corresponds to the ethos of Indian democracy, rule of law, individual freedom, personal liberty and security enshrined in Indian polity. Signature of the Convention against Torture by India is an important milestone in the process of India's continued commitment to fundamental and human rights of all persons and directive principles of national policy. Ratification of the Convention is to follow."

However, India is yet to ratify the CAT. Therefore, the Convention remains a dead letter. The pundits in the Ministry of External Affairs argue that ratification would impose an undue burden of reporting. However, unless India ratifies the CAT—which would allow the rights under the Convention to become enforceable as domestic law—signing the Convention should be understood as a cosmetic exercise. Repeated appeals made by the Indian National Human Rights Commission and by individual human rights activists urging the Government to ratify the CAT have fallen on deaf ears.

Torture has been defined as "any act by which severe pain or suffering, whether physical mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or

4 See Appendix VIII.
other person acting in an official capacity". It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The definition is broad in scope as it takes into consideration the physical as well as mental pain or suffering of the victim. But the definition explicitly excludes 'pain or suffering arising... from... lawful sanctions'. This exclusion creates a serious loophole. Under the convention torture is allowed to continue as prescribed by the law of the land. It means that the "lawful" torture may continue in the states, which are parties to the convention.

Art.2 of this convention requires Party States to take effective legislative, administrative, judicial or other measures to prevent acts of torture and Art. 4 oblige them to ensure that all acts of torture become offences under their criminal law. Art. 17 requires establishment of a "COMMITTEE AGAINST TORTURE" consisting of ten experts of high moral standing and recognised competence, to monitor implementation of the Convention. This Convention globalises the prohibition against Torture and makes it the concern of the world community. Since its basic features are being enforced through judicial process, India may soon become one of its signatories. Till then, National and State Human Rights Commissions must act as agencies for monitoring prevention against torture.

Article 20 of the Convention provides that if the Committee receives reliable information which appears to contain well-founded indications that torture is being systematically practiced in the territory of a State party, the committee invites that State party to co-operate in the examination of the information and to submit observations with regards to the information concerned.

Under Article 21, a state party to the Convention may at any time declare that it recognizes the competence of the committee against Torture to receive and consider communications of a State party claiming that another State party is not fulfilling its obligations under the Convention. Article 22, enables a State part to

---

the Convention to accept the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of the violations of the provisions of Convention by a State Party.

Torture is neither defined in the Constitution or in any penal Law in India. Inspite of it, it is well understood and treated as violating constitutional guarantee of LIFE and LIBERTY in Article 21. Though sections 220 and 330 IPC have been mentioned as amplification of prohibition of torture, these provisions have been held to be inadequate in as much as they only punish the culprit without giving any benefit to the victim. According to the Supreme Court, “Torture of a human being by another human being is essentially an instrument to impose the will of the strong over the weak by suffering”\(^6\), and hence the law courts consider it as their sacred duty, as custodian and protector of fundamental and basic human rights of the citizens, to deter breaches thereof.

**Causes of Torture**

1. **Political**-
   - Torture by govt. agencies applied to anyone identified as ‘enemy’ of the state.
   - Torture and blackmail with threat of torture, to force compliance.
   - Torture and killing of people to force them to leave their lands.

2. **War-time** -
   - Against POWs.
   - Against spies and traitors.
   - Against civilians suspected of harboring enemies.
   - Against civilians of occupied territories to subjugate them.

3. **Police** -
   - To get confession and or information.
   - To quieten rowdy/disobedient/mentally disturbed prisoners.
   - Of prisoners who try to escape.

---

\(^6\) See 1997 1 *Supreme Court Cases* pp.424 para10.
- Of suspects at Police stations.
- Torture of kin or friends who try to help prisoners or those who try to question the legality of arrest.
- Pressure of the job

4. **Organised Crime** -
   - To establish obedience through fear.
   - To extort money.
   - To avenge rival groups.
   - To silence law enforcement agents.
   - Torture of kidnapped persons to hasten ransom.
   - Torture of witnesses to prevent reporting of crime.

5. **Miscellaneous** -
   - Torture over religious matters.
   - Over land/wealth disputes.
   - As a reaction to injury/insult to self/family/community.
   - As revenge for any reason.
   - Family violence.

**Torture as a Process**

The torture process starts with arrest, usually at night, with a formidable display of power and unnecessary use of violence. The "softening phase", which follows, usually consists of a couple of days and nights of unsystematic violence and beating, kicking and other humiliations. Later on, the real systematic torture starts, when the torturers explore the weak spots of the victim to make him or her break down. The final result may be a human being with little self-respect - a broken down personality - with a medical certificate, generally false, denying any form of maltreatment. The final result may also be death - the torturers disposing of the corpse by hiding it in a mass grave. It has been very perceptively observed by Professor Twining (Bentham on torture) that institutionalization of torture would lead to the “creation of a guild of professional torturers and would open the
door for steady erosion of resistance to it in less extreme cases until ordinary people become conditioned to accept it as common place and tolerable.  

**METHODS OF TORTURE**

The methods may be classified into:

- Physical
- Psychological
- Sexual

**Physical Torture**

The methods of physical torture are those which inflict pain, discomfort and dysfunction in different parts of the body. Killing the victim is not the aim of torture. The torturer also takes care that the torture inflicted upon the victim remains undetected by an ordinary examination. Therefore, torturers are trained to torture in such a way that these two precautions are well taken care of. However, despite all precautions, physical torture always leaves a trail that eventually leads to its discovery. It is something like a crime. It always leaves behind some clues that ultimately lead investigators to its discovery and to the criminals. Similarly, medical science has now developed to such an extent that the internal damage caused by such types of physical torture can be detected even after several years of its incidence.

**Types of physical Torture:**

Physical torture can be inflicted in many ways, but the commonly reported ones can be classified under four categories.

1. **Physical tortures that causes extreme pain.**

- Beating

It is the most common type of physical torture. Beating becomes sever when it is carried out with sticks, cables, whips, iron rods, chains, belts etc. Likewise.

---

9 See, UN Special Rapporteur of Torture
punching, kicking etc are considered severe beating. So, simple beating means slapping on less sensitive and delicate parts of the body, which does not cause significant external and internal damage in the body. Boxing the ears cannot be considered a simple beating as it can damage the eardrum and permanently affect hearing. The impact of severe beating depends not only on the instrument used but also on the body parts affected. So, simply saying 'severe beating' is not enough. It is essential to describe the instrument used, body parts assaulted, and also the duration and severity of beating.

• **Falanga**

 *Falanga* is the name for severe beating on the soles of feet. It does not fall under the heading of severe beating; it has been described separately since it is one of the most common types of systematic torture used in many countries around the world. Besides, this type of torture has immediate and longterm consequences, sometimes making a person disabled for several years. The pain continuously reminds the victim of the torture and thus handicaps his/her recovery. Falanga can be given in many ways. The victim may be suspended upside down. The victim's legs may be fixed on to a table etc. Any technique that immobilises the legs and feet can be used for applying Falanga.

• **Finger Torture**

Pencil or a similar object is put in between two fingers, which are then pressed hard together against the objects. Similarly, fingers may be twisted and pins pricked into fingers. Nails may be pulled out.

• **Suspension**

The victim is suspended by his legs or arms or by his/her hair. It is usually combined with other forms like Falanga, electric shock, heat, cold etc. One of the special types of suspension is called 'Palestinian suspension'.

• **Cold Torture**

The victim is subjected to varying degrees of cold in different ways. He/she may be forced to sleep on a damp floor, may be forced to stay naked in extremely cold
weather. Some of the Bhutanese refugees have alleged now they were forced to undress and roll on snow for long periods.

- **Heat Torture**
  The victim may be forced to stand for hours in the sun in temperature of more than 30 degrees Celsius. Cigarette burn is the most common type reported.

- **Irritant Torture**
  Irritants like chilli powder, table salts, etc are applied on delicate parts or open wound. Chillies may be burnt and victim forced to inhale the smoke in a closed room for several hours.

- **Sharp Instrument Torture**
  Victim is forced to walk barefoot over thorny surface or over broken glass covered floor. He/she may be forced to sit on an object with pointed and sharp edges.

- **Dental Torture**
  Healthy teeth may be broken or pulled out. May be asked to chew stone, wood, metal pieces etc.

- **Ear Torture**
  This is common the world over. Ears may be twisted or pulled to tear the ear. Thelphoné, both ears hit with open palms simultaneously; to impair hearing is also used.

- **Hair Torture**
  The victim is dragged by the hair, hair cut short, head shaven or hair pulled out forcibly.

- **Tied Down**
  One is tied down in many ways and kept in this position from several hours to days. Kicks blows etc may be added to this torture.

- **Lower Legs Torture**
Legs are tied together, a folded blanket is placed over the shins and a round wooden log/iron rod is rolled up and down with a load or two persons. Causes excruciating pain but leaves no signs.

- **Twisting Body Parts**
  The upper arms, lower limbs, neck etc are twisted to such an extent that the ligaments in the joints are torn off causing severe pain even after the twisting is over.

- **Poking**
  Poking the victim with a baton, rod or any similar object is quite common. Any part of the body may be poked.

2. **Physical tortures that causes fear of immediate death.**

- **Electric Torture**
  It is inflicted on the sensitive parts like nipples, genitals, etc. It is applied inside the mouth that is quite painful and difficult to detect later. Some times the victim is tied to a metallic bed and electricity applied affecting the whole body.

- **Sham Exhaustion**
  It is a well-known form of torture. Here, the victim is blindfolded and made to stand next to a wall. The victim is told that he/she is going to be run over by a motor vehicle. The vehicle is driven at full speed towards the victim and comes to a sudden halt close to the victim.

3. **Physical tortures that causes extreme exhaustion.**

- **Physical Exhaustion**
  Here the victim is forced to stand or do gymnastics for a prolonged period of time. The victim is asked to stand on one or both legs. She/he may be asked to stand on his/her head with legs in the air or supported by the wall for a prolonged period.

- **Forced Labour**
  This is a very common type of physical torture reported by torture victims in Bhutan and also in Nepal. The victim is made to work very hard without food and water and wages. They clear forests, break stones, dig ditches etc.
4. **Physical torture that causes disfiguring, mutilation and permanent disability.**

- **Telephono**
  Simultaneous beating of both ears with the palms of hands to cause rupture of eardrum, causing pain, bleeding and hearing loss. It is difficult for a doctor to detect it.

- **Mutilation**
  Chopping off ears, nose, fingers etc.

- **Disfiguration**
  Acid or any other corrosive thrown on the face or other parts.

**Psychological Torture**

Psychological methods of torture can be classified into the following categories:

- **Deprivation**
- **Coercion or Compulsion**
- **Threats and Humiliation**
- **Communication Techniques**
- **Pharmacological**

1. **Deprivation.**

- **'Sensory Deprivation'** of light and sound disorients a victim with reference to time and place.

- **'Perceptual Deprivation'** produces disorientation and confusion. It is created by frequent transfers while blindfolded, very frequent disturbances of sleep. Denial of letters, media and calendars.

- **'Social Deprivation'** includes not being allowed to see visitors, perform religious rituals & solitary confinement.

- **'Deprivation of Basic Needs'** includes denial of food, water, toilet facilities, sleep, medical facilities, and clothes, space, immobilisation, restraint and total darkness.

2. **Coercion & Compulsion**

---

10 Ibid.
In this, the victim is compelled or coerced to perform activities or to witness actions that torture him mentally.

- **Impossible Choices**
  The victim is compelled to choose between two alternatives that are equally bad and cause mental torture.

- **Incongruent Actions**

3. **Threats**
   Threats directed at the victim like threat of execution. Threats directed towards the family members, kin, friends... Humiliating remarks and actions.

4. **Communication Techniques.**
   - **Misinformation**
     The victim is given wrong information and tortured mentally.
   - **Conditioning**
     The victim is further tortured whenever he does not comply with the torturer's demands. Similarly, he is given better food, facilities etc whenever he yields to demands.
   - **Double Blinding**
     Brutal torture is followed by seemingly humane & sympathetic treatment from another person.
   - **Reverse Effect Technique**
     Torture is continued in spite of submission to every demand.

5. **Pharmacological Techniques.**
   Various drugs are used to torture the victim, to facilitate torture, to mask the effects of torture and also as a means of torture.
   - use of drugs to induce self disclosure, e.g. alcohol.
   - use of curare/etc to a point of asphyxiation.
• pain inducing drugs.
• hallucinogens.
• psycho-pharmacological drugs, etc.

**Sexual Torture**

Sexual torture has great social and psychological impact. It can be divided into the following three categories. The most common and serious form of torture for female is Rape.

1. **Sexual torture using instruments:**
   • penetration of vagina or anus by batons, rods, bottles etc.
   • suspension of weights on penis and scrotum.
   • electrical shock to sexual organs.
   • mutilation of breast, genital organ, etc.

2. **Sexual Torture without using instruments:**
   • verbal sexual abuse and humiliation.
   • being undressed in front of others.
   • rape by a person of the opposite sex, multiple rape and rape in the presence of kin.
   • rape by person of same sex.
   • squeezing of breasts.
   • forced masturbation.
   • forced witness of sexual torture of others.
   • forced to perform sexual torture on others.
   • forced pregnancy.
   • being photographed in humiliating positions and situations.

**Torture which leaves no visible signs**

• developing fear of the unknown
• creating uncertainty and constant unpredictability.

---

• causing disorientation and mental agony.

Therefore mentioned details are not comprehensive as the torturers keep devising newer methods using their mental aptitude and imagination. However, the aim of all forms of torture is the same. The torturer may use one or all of the methods of torture mentioned simultaneously to break the resistance of the subject quickly as well as to satiate his own animal urges.  

**Reasons for Torture -- to counter secessionist groups.**

Since India’s Independence a number of political or religious groups have wanted specific states to break away from the federation, in a number of cases the tactics used have been violent and of a terrorist nature. In the last ten years independence movements have been formed in Assam, Jammu & Kashmir, Manipur, Mizoram, Nagaland and Punjab. In each the state authorities or central government has responded with severe clampdowns on civil liberties, drafted Emergency Legislation which contravenes standards set out to safeguard the right to arbitrary detention, arrest, and life, and empowered security personnel, both police and paramilitary units, to freely operate when undermining militant activities.

If a person is suspected of being a militant then he or she will be handed over to the CIA and taken to a Joint Detention Center (JDC) where the person can be held and interrogated for additional months. It is only when the person reaches the JDC that an FIR is filed out and acknowledgement of the detention is official, before such time the individual is completely at the mercy of the police.

It is commonly recognised that the extraction of confessions, or information, which may ensure an arrest, is the most likely reason for the use of torture. This is due to the fact that confessions, under ordinary or emergency legislation, are permitted in a court of law. Another is that an arresting officer has to produce a suspect before a magistrate within 24 hours. This law was initiated to protect the

---


rights of a citizen, however, because police practice seems to be arrest first then gather evidence the law puts immense pressure on the arresting officer to secure a conviction in very little time; if the suspect confesses then there is less work for the officer.\textsuperscript{14}

Proportionally, when a suspect is held for ordinary criminal activity, the victims of torture are the unemployed, migrant workers or habitants of the numerous urban slums. In most cases they are illiterate, have no family (except similarly destitute people), and little access to the authorities who may be able to help. Mostly, these violations go unnoticed, occasionally, however, when the incident is so horrific, the media and public are attracted.\textsuperscript{15} The government's reaction generally depends on the reaction of the people and that of the press and media. If a case of custodial death provokes massive public reaction, judicial probes are ordered; in other less publicized cases, a dilatory feeble magisterial probe is the non-government reaction.

\textbf{National Security vs. human rights}

Apart from the plea to tackle the hardened and professional criminals, denial to the basic human rights like freedom from torture is sometimes justified on the ground of national security. It is argued that the government is obliged to defeat the terrorist, insurgents and arsonists who put innocent lives at risk and endanger the national security by their violent and antinational activities. So it is entrusted with wide-ranging powers to tackle such extraordinary situations.

Moreover, rights and liberties are not absolute, entirely free from any restraint, for that would lead to anarchy and disorder. Man can enjoy his rights only in the state where civil and social order exists. He cannot enjoy his rights in a state of anarchy. Thus the possession and enjoyment of all rights are subject to reasonable conditions such as public health, peace and order, morals of the

\begin{footnotesize}
\begin{enumerate}
\end{enumerate}
\end{footnotesize}
community, decency and national security\textsuperscript{16}. Such reasonable ground of restrictions on the individuals fundamental rights find place in almost all the constitutions of the world including the Indian Constitution. Inspite of this, there has been numerous assaults on the individual's rights and liberties by the state in the name of national security such as confiscation or nationalization of private property; surveillance through wire-taping and mail opening; arbitrary search and seizure; arbitrary arrest and detention for indefinite period; denials of appeals to the judiciary; so on and so forth.

Thus, there appears antagonism between the rights of man and the concept of national security. But they in fact are linked together. There is a close relationship between the two. A charter of rights has no meaning to those persons who constantly live in anarchy and disorder. People's rights may not last long when the country is in peril due to either external attack or serious internal disorder. In a word, human rights cannot last long without national security. On the other hand, the deprivation of individual's basic fundamental rights by the authoritarian or dictatorial regimes for a long time breeds anger, frustration and disillusionment which ultimately leads to rebellious and internal disturbance shaking the very foundation of national security. So the hundred-dollar question is – how far and how much can the individual's rights can be sacrificed to promote national security. This questioned cannot be answered properly unless the concept of national security is properly understood and is distinguished from the security of regime/individual.

Like individual, every state has the inherent right of self-defense. This right is available to the state in any situation, which threatens its existence. Accordingly, the state may exercise abnormal powers during an emergency and deviate from its normal obligation to protect and enforce human rights of its citizens. This right of derogation of the state is acknowledged under many

international instruments of human rights. But as human rights and fundamental freedoms are not absolute, the right of derogation of the state is also not an absolute one. There are certain rights, which must remain unaffected even during the public emergency. Emergency or no emergency these rights cannot be suspended. These “non-derogable” rights, right to life and freedom from torture being two of them, find place in international human rights instruments.

The state can exercise the right of derogation to meet the threat to national security. But quiet often national security is identical either with an individual’s or regime’s security and states often deviate from their obligations vis-à-vis human rights to ensure the individual’s – regime’s security. The International Commission of Jurist (ICJ) rightly notes:

There is a tendency for some government to regard any challenge to their authority as a threat to “the life of a nation”. This is particularly true of regime’s which do not provide any lawful means for the transfer of political power and which in consequence are inclined to any criticism of the government as an act subversive of public order.

The study continues:

Having dismantled the legal machinery for the protection of the citizens, they (individuals/regimes) frequently permit their security forces to abuse “non-derogable” rights, including the right to life and freedom to torture and other cruel, inhumane, or degrading treatment and punishment. This results in such inhumane practices as anonymous arrest, secret detentions, disappearances, extrajudicial killings, and systematic practices of torture.

18 See, e.g., International Covenant on Civil and Political Rights, art. 4 (2); The European Convention on Human Rights, art. 15 (2); and American Convention on Human Rights, art. 27 (2). See Robertson, supra note 9 at 204, 229 and 253.
Thus what is required is to distinguish national security from the individual's /regime's security. There should be a proper balancing between the rights of man and the requirement's of national security.

The national security should not become an excuse for the denial of the basic and non-derogable rights like right to life and freedom from torture. Under no circumstances, however, grave it may appear should these "non-derogable" rights be allowed to derogate. Because once there is derogation for an apparently justifiable cause, there is always a tendency among the wielders of power, in order to perpetuate their power, to continue the derogation of the human rights either in the name of national interest or the security of the state.

**Vulnerable sections: Women, worst victims**

**The Status of Women**

The cherish womanhood remained extolled since time immemorial. Many facets of the characteristics of the women could be portrayed when she nurses the child with motherliness, take care of the entire household intertwined with educative, instructive and nurturing the welfare and the well being of not only her own family but also kith and kin with a deep seated feeling discharges her duty for the concern of each and every member of the family, as a protector and saviour of the family for the futuristic planning, renders immense help at the old age of her husband so on and so forth, to quote but a few of the personifications of the selfless womanhood21.

It is often said that the status and position of women in society is the best way to understand a civilization, its progress and its shortcomings. In case of India, women have come a long way from women sages and scholars in the Rig Vedic period to women in the armed forces, IT sector, politics, industry and other significant areas while balancing their role as a daughter, wife and mother. This

---

journey towards modernization has not been easy. Women have had to fight the traditional Indian male-dominated society to emerge as stronger and independent entities. While all these are positive developments, cases of rape, harassment at workplace and dowry deaths are rampant. Illiteracy and ignorance about their rights are still prevalent among a majority of the women. It was in this background that the Committee on the Status of Women in India (CSWI) recommended nearly two decades ago, the setting up of a National Commission for Women to fulfill the surveillance functions to facilitate redressal of grievances and to accelerate the socio-economic development of women.

The human rights of women are judged in the type of the society we envision. Human Rights of women have been defined as:

"Collective rights for the women to be seen and accepted as a person with the capacity to decide or act on her own behalf and to have equal access to resources and equitable social, economic and political support to develop her full potential, exercise her right as a full human being and to support the development of others."[22]

Violence is an action or policy or an attitude that causes bodily or mental injury and debars or dehumanizes a person[23]. The violation of the rights of women is a human rights violation of her body and her right as a person.

The term ‘violence’ has been applied to “physically striking an individual and causing injury” to the act of striking a person with the intent of causing harm or injury but not actually causing it[24] (Gelles and Strauss, 1979), to “acts where there is the high potential of causing injury”[25] (Strauss 1980), and to “acts which may not involve actual hitting but may involve verbal abuse or psychological

---

22 See, 1968, APWCA “Code of Value”.
stress and suffering”.26 Megargee (1982:85) has defined violence as the “overly threatened or overtly accomplished application of force, which results in the injury, or destruction of persons or their reputation”. Violence affects the lives of millions of women worldwide, in all socio-economic and educational classes. It cuts across cultural and religious barriers, impeding the right of women to participate fully in society.

There are a number of reasons for this increase in violence against women.

1. In India, the past few years bear witness to increasing attacks on women belonging to minority communities or to dalit and adivasi castes. Humiliation of women by stripping them, parading them naked, abusing their bodies in inhuman ways are instruments to punish not only the women but also the community as a whole. Women are symbolized as repositories of “family honour” or “community honour” and their bodies become the site to wreck vengeance. In communalized situations, gender identities get fragmented and hostilities cross all such boundaries. Polarization along caste and communal lines has the potential to destroy communities living together27. This is threat emerging in the present scenario that has serious implications for women.

2. Another recent development relates to the values generated by the so-called globalization. In the wake of liberalization, consumerism and its generation of unreal aspirations have increased the gap between desires and their fulfillment28. Further, the new values made acceptable or even desirable by such consumerism are “getting rich quick in any way possible”. In such a setting the existing unequal power relationships within the family become a channel for acquiring wealth quickly at any cost. Thus, old crimes like dowry extraction take new extortionist and bride burning forms. This contributes in turn to making daughters so


27 See Rachana Kaushal Women and Human Rights in India, Kaveri Books, 2000, p.68.

undesirable that crime like infanticide rear their head again, and female foeticide assumes epidemic properties.

3. The increasing work conditions for women caused by increasing contractualization and casualization of the female workforce as part of the LPG policies has increased vulnerability at the workplace. Women in the unorganized sector especially migrant labour are at the mercy of the labour contractors and incidents of sexual harassment is widespread.

4. Moreover, older forms of violence have not only not disappeared, but are making a reactionary comeback. Ideologies glorifying “sati” or justifying wife beating are finding a wider reach. Incidents of “witch hunting” occur more frequently in rural areas are being reported. Such questionable ways of “disposal of widows” not only has an implicit religious sanction but are linked to commercial benefits that may follow. Thus, older and newer forms of oppression continue to strengthen and feed on each other.

Constitutional Safeguards

The Constitution of India, adopted in November 1949, contains several articles mandating equality and non-discrimination on the grounds of sex. however several laws that violate this principle continue to exist, particularly in the area of family law and personal law. So far there have been minor reforms in Hindu personal law, however, these changes have been motivated by political expediency and have resulted in the denial of women’s equal rights.

The Government of India has signed the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) it also made a unilateral declaration that "with regard to Articles 5(a) and 16(1)...the Government of India declares that it shall abide by...these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent." The government ratified CEDAW on 9 July 1993 and is now obligated to implement the entire Convention. The policy of noninterference is

incompatible with the objective of the Women's Convention, which is to improve the status of all women, regardless of cultural and religious dictates.\(^{30}\)

The Constitution of India under article 15(3) allows the union and the state governments to make special provisions in order to safeguard and protect the interest of women. The constitution was amended in 1976 to make it a fundamental duty of every citizen to renounce practices derogatory to women under article 51A(e). There are provisions in the criminal law granting special protection to women against custodial torture. Some of which are as follows:

Section 51(2) and 100 of the criminal procedure code say that if a woman is to be searched by a police officer in connection with crime “the search shall be made by another woman with strict regard to decency”

The court also lays down the women must be interrogated at her residence. “No male person under the age of 15 years or woman shall be required at any place other than in which such male person or women resides.”\(^{31}\)

Therefore, women should not go to the police station for interrogation or to give evidence. The concern police officer must meet her in her house.

The amendment to Section 375 of the Indian penal Code has made it mandatory that women not be arrested during night.

In order to curb the menace of custodial rape, the Criminal law (Amendment) at 1983 amended of Indian Penal Code\(^{32}\) providing deterrent punishments in such cases. It states that public servant convicted on charge of custodial rape... as in police station, jail or hospital.... Will be prosecuted and punished with a ten-year or even life imprisonment.

Greatly concerned with the pathetic situation of women in custody, the government setup in 1986 the National Expert Committee on Women prisoners under the chairmanship of Justice V. R. Krishna Iyer. The committee was asked to

\(^{30}\) See, Pammi Mehrotra, "H.R.S. Constitution for Protection of Women". *The PRP Journal of Human Rights* 2001(5) No. 4 – 15

\(^{31}\) See Crime Procedure Code Section 160 (1)

\(^{32}\) Ibid. Section 376.
study the handling the women offenders; to review their custodial conditions and treatment; to suggest measures to ensure fair and proper care to them and to improve the system. In its report\(^33\) the Committee reported various methods of torture met out to the women in which women police also participated. It also suggested various reforms. It recommended the formation of national policy on the custodial justice to women.

So far its recommendations remain unimplemented except that the government has set up a national commission of women to look into various matters relating to women. Most of the findings and recommendations are "under study".

In January 1992, the National Commission for Women (NCW)\(^34\), was set up as a statutory body under the National Commission for Women Act, 1990 (Act No. 20 of 1990 of Govt. India) to review the constitutional and legal safeguards for women; recommend remedial legislative measures, facilitate redressal of grievances and advise the Government on all policy matters affecting women.

As the problem of violence against women is multifaceted, the NCW has adopted a multi-pronged strategy to tackle the problem. The Commission has initiated generation of legal awareness among women, thus equipping them with the knowledge of their legal rights and with a capacity to use these rights. It assists women in redressal of their grievances through pre-litigation services. To facilitate speedy delivery of justice to women Parivarik Mahila Lok Adalats are organized in different parts of the country to review the existing provisions of the Constitution and other laws affecting women and recommending amendment thereto, any lacunae, inadequacies or shortcomings in such legislation's. It organizes promotional activities to mobilize women and get information about their status and recommend paradigm shift in the empowerment of women. The Complaints and Counselling Cell of the commission processes the complaints.


\(^34\) See Appendix VI
received oral, written or suo moto under Section 20 of the NCW Act. The complaints received relate to domestic violence, harassment, dowry, torture, desertion, bigamy, rape, refusal to register FIR, cruelty by husband, deprivation, gender discrimination and sexual harassment at work place.

NCW tackles the problems by ensuring that investigations by the police are expedited and monitored. Family disputes are resolved or compromised through counseling.

While some reforms have been introduced in the criminal laws to deal with the issue of violence against women (rape and dowry laws), they have never been effectively implemented. There is also a complete absence of laws dealing with women workers, most of whom are employed in the unorganized rural sector. Domestic violence has assumed terrifying proportions in India. Government statistics show a phenomenal rise in crimes against women. It is also recognized that these statistics represent the tip of the iceberg since most cases of violent crime against women go unreported. About 10,226 rape cases were reported in the country during 1994 while there were 4,277 dowry deaths. In 1993 there were 11,242 rapes and 5,817 dowry deaths.\(^3\)

**Violence in the community**

**Custodial Rape**

Rape can occur anywhere, even in the family, where it can take the form of marital rape or incest. It occurs in the community, where a woman can fall prey to any abuser. It also occurs in situations of armed conflict and in refugee camps.

As in other countries throughout the world, rape is extremely common in India. Hardly a day passes without a case of rape being reported in the newspapers. Violence against women by the very people who are supposed to protect them -- members of the law enforcement and criminal justice systems -- is widespread.

Women are physically or verbally abused; they also suffer sexual and physical torture. According to Amnesty International, thousands of women held in custody are routinely raped in police detention centers 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.

Women belonging to low castes and tribal women are especially at risk. What is particularly worrying about rape in India is the lack of seriousness with which the crime is often treated, and the degrading treatment to which alleged rape victims are often subjected by law courts and by their own communities. This problem is exacerbated by the fact that rape laws are inadequate and definitions so narrow that prosecution is made difficult.\(^\text{36}\)

Custodial rape is a particularly important category of rape since it represents a flagrant abuse of the authority of the Indian government, the very same institution which is bound to promote and protect the rights of women. The degree to which government authorities are willing to ensure that the perpetrators of this crime are brought to justice is likely to be a good indication of the esteem in which women's rights are held in the society as a whole.

*Hundreds of cases of police rape have been reported in India in recent years, but convictions of police officers for raping women in their custody remain rare. Few cases of custodial rape reach the trial stage. In 1990 five police officers in West Bengal were suspended for allegedly raping Kankali Santra in Singur police station. The police at first tried to avoid responsibility by claiming that she was mentally ill. Then they said she was a 'bad' woman. Public protest eventually forced charges to be brought against two of the officers, but the case was dismissed for lack of evidence*\(^\text{17}\).
Two notable incidents of custodial rape which were reported by the press are, one in Srikakulam police station area on 31st May, 1983 and another in Yallareddypeta in Sircilla taluq of Karimnagar district on 9th June, 1983. In the latter case the village police and two of his friends raped a beggar woman\textsuperscript{38}. Two major incidents, which attracted widespread attention, were from urban areas, Vikarabad and Hyderabad. Shri A. Rajalib reported a theft in his house. On June 17, 1983 police arrested his servant, Mehboob and on June 18, 1983 his maidservant Parvatamma aged 32 years were arrested. Mehboob was tortured for three days while the Circle Inspector raped Parvatamma at his house. Later, on June 21, 1983, she was taken to Dharoor Police Station. On the way, she was again raped at Anantagiri forest.\textsuperscript{39} This incident led to a bandh in the town and furore both inside and outside the Assembly. The State Government promptly announced the suspension of the policemen involved. But a week later, when Civil Liberties Committee visited Vikarabad and investigated the case, it was discovered that the policemen were not suspended but were only transferred. This type of behaviour has in turn increased the unwillingness on the part of the victims to report these incidents. Hence, it is a gross violation of the rights to life of the women.

**Violence against women migrant workers**

Female migrant workers typically leave their countries for better living conditions and better pay -- but the real benefits accrue to both the host countries and the countries of origin.

For home countries, money sent home by migrant workers is an important source of hard currency, while receiving countries are able to find workers for low-paying jobs that might otherwise go unfilled.

But migrant workers themselves fare badly, and sometimes tragically. Many become virtual slaves, subject to abuse and rape by their employers. Human rights

\textsuperscript{38} See Report of People's Union For Civil Liberties, 1984.
\textsuperscript{39} Ibid.
violations against women are rampant partly because they remain largely hidden.

A few reports cited from the daily newspaper highlights the plight of women.

1. Two police constables in uniform abducted and molested a young woman on the outskirts of Punc.\(^{10}\)

2. Three women were beaten and stripped at a district police station for alleged theft, even as Andhra Pradesh chief minister Chandrababu Naidu rolled out yet another scheme for the welfare of women and called for death to rapists. The women Lakshmi, Parvatamma and Anantamma, all Anganwadi workers were yesterday accused of stealing a gold chain from a co-passenger on a bus.\(^{11}\)

3. The police allegedly beat up an 80-year-old woman early this month just because one of her relatives had married a woman against the wishes of her family. Janki Devi’s entire family was picked up by the police and allegedly harassed at the Shakarpur (New Delhi) police station. The police wanted to know from Janki Devi and her relatives the whereabouts of the married couple, as the women’s family said she had been kidnapped.\(^{12}\)

4. Ganouri Devi who was allegedly gang raped by four hoodlums at Samastipur (Patna) has been fighting for justice since the incident in may last year. She had said she would take her own life if her rapists were allowed to go free.\(^{13}\)

**Ensuring that Laws Are Obeyed**

States have tended to adopt a passive attitude when confronted by cases of violations of women’s rights by private actors. Most laws fail to protect victims or to punish perpetrators. Hence, the weakest link in the present situation is a poor implementation of the existing laws. States should ensure that national legislation, once adopted, does not go un-enforced. State responsibility is clearly underlined in article 4 of the Declaration on the Elimination of Violence against Women, which stipulates that “States should exercise due diligence to prevent, investigate

---

\(^{10}\) *Times of India* (29/01/1993)

\(^{11}\) *Telegraph* (06/02/2000)

\(^{12}\) *Indian Express* (24/10/2000)

\(^{13}\) *Telegraph* (12/01/2001).
and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons". But what is needed is nothing less than a revolution for gender equality. Development has to be engendered, as societies cannot succeed while suppressing the talents of half of their members. While equality and the empowerment of women require actions in a number of areas, four areas stand out as most critically important for achieving equality of women with men. These are:

1. Building women’s capabilities.
2. Improving opportunities for women.
3. Ensuring legal justice to women and.
4. Establishing/strengthening institutional machinery to ensure implementation and monitoring of gender empowerment policies.

Meaningful and sustainable gender equality requires the creating of a new relationship between government, civil society and non-governmental agencies. Promoting female education and raising their economic status are crucial factors towards achieving equal status for women. The old stereotype of women as inferior and exploitable part of family and society must be rejected and changed. In the long run, it is education, which strengthens women and enables them to fight against the atrocities.

Women NGOs can also play an important role to make them aware of their rights. These women bodies though playing an important role are basically urban based. They should widen their network in rural and tribal areas of the country. Because most of the atrocities on women, which go, unreported, are committed in these areas. Women organizations can set up legal aid cells\(^{11}\) there. Knowledge of laws and access to judicial system would strengthen the position of women and enable them to seek remedies and relief available under the law. Moreover, the

National Commission for Women has also made certain recommendations on the Custodial Justice for Women.45

**Rights of suspects/accused persons**

**Under International law:**

The traditional thinking of international law was that whatever sovereign states did to its citizens was its own internal affair and the international community had nothing to interfere with it.46 The legal principle of non-intervention in domestic affairs of another state, together with the principle of absolute sovereignty, precluded any development in the international law of human rights under which an organ other than the state itself would determine the legality of its activities in respect of persons within its jurisdiction. However, later on, particularly since the end of the First World War, certain group of persons like minorities, refugees etc., began to enjoy certain rights under the international law. But there was hardly any development in the field of the international law of human rights between the two world wars.47

It was only after the Second World War that we saw the emergence of international law of human rights. With the creation of the United Nations in 1946, a process of law creation was initiated which resulted in the adoption of several international declarations, conventions and covenants seeking to define the basic human rights, which the international community endeavored to protect and enforce. The rights of prisoners/ suspects/ accused persons were also listed in those instruments. So before proceeding to examine their rights under the national law of India, it would be appropriate to look at certain important provisions of these instruments relating to their rights.

1. **Universal Declaration of Human Rights (1948) (Articles: - 1,3,5,6,8,9,10 and 11).**

---

45 See Appendix VI.
46 I. Lauterpacht, "International Law and Human Rights" (1968) p. 10.

3. Declaration on the Protection of All Persons from being subjected to Torture and other Cruel Inhuman or Degrading Treatment or Punishment (1975).


5. Optional Protocol to the International Covenant on Civil and Political Rights (1976) (Articles: - 2-5)29

6. Code of Conduct for Law Enforcement Officials30 (1979) (Articles:- 2-3 & 5-6)

7. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987).

As India has already signed or ratified the above mentioned instruments except Optional Protocol and Anti- Torture Conventions, the world community excepts the Indian government not only to include these rights in its national laws but also to implement and enforce them vigorously.

**Under Indian Law: -**

The Indian socio-legal system is based on nonviolence, mutual respect and human dignity of the individual. If a person commits any crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life, which constitutes human dignity.

For a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. Indian law provides certain rights to the prisoners/ suspects/ accused persons while in custody. These rights are so fundamental that no one can lawfully violate them. Unlike the International Covenant on Civil and Political Rights, the Indian Constitution does not

---

28 See Appendix I.
29 See Appendix III.
30 See Appendix VII.
specifically provide any right against custodial torture. However, certain fundamental rights enumerated in Part III of the Constitution are also available to them. These rights are mainly contained in articles 19, 20, 21, 22, 32 and 226 of the Constitution. Besides these constitutional rights, they enjoy certain other legal rights under the Indian Penal Code, Criminal Procedure Code and the Indian Evidence Act 1861. The Indian Supreme Court in a number of cases has not only acknowledged these rights but also expanded their scope through the process of judicial activism giving new and liberal interpretation.

What are those rights?

1. **Right to life**

This right is the basis of all human rights and the sanctum sanctorum of the constitutional temple. If there were no right to life, there would be no point in having the other rights.

In *ADM Jabalpur Vs. Shiv Kant Shukla* the Supreme Court took the view that if the President had declared a state of emergency in the country and has also suspended the right to move the court for the enforcement of any right, the right to life under 21 could also be suspended. The 44th Amendment Act engrafted an exception viz., that such declaration suspending the right to move any court for the enforcement of fundamental rights shall not cover article 20 or 21 of the Constitution.

Whereas, Maneka Gandhi's case was a landmark in Indian jurisprudence. In *Maneka Gandhi v. Union Of India*, the supreme court held that "the expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of men and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19 (of the constitution). The right to live under

---

1 See *Appendix V*.
3 See *Art. 359*.
Article 21 is not confined merely to physical existence or animal existence but it includes within its ambit the "right to live with human dignity".

In *Jolly George Varghese v. Bank of Cochin*, it was observed:

The High value of human dignity and the worth of human person enshrined in Article 21 read with Article 14 and 19, obligates the State to incarcerate except under the law which is fair, just and reasonable in its procedural essence.

In *Kharak Singh*, the Supreme Court held that the term "life" in article 21 meant not merely the continuance of one’s animal existence but a right to the possession of each organ of the body. Thus it includes the inhibition against the deprivation of any limbs and faculties of life. The provision further prohibits the mutilation of the body by the amputation of an arm or leg or the pulling out of an eye or destruction of any other organ of the body.

In *Francis Coralie Mullin*, The Court stressed upon the need of permitting the prisoners to meet their friends and relatives. The court held that the prisoner or detainee could not move about freely by going outside the jail and could not socialise with persons outside jail. It was rightly stated:

Personal liberty would include the right to socialise with members of the family and friends subject, of course, to any valid prison regulations and under Arts. 14 and 21 such prison regulations must be reasonable and non-arbitrary.

The apex court thus elevated immunity from torture to the status of a fundamental right under article 21 though it is not specifically enumerated as a fundamental right under the Constitution.

Custodial torture is also legal offence under the Indian Penal Code, Criminal Procedure Code and the Code of Conduct of the Police. The Indian Penal Code

---

55 Id. Article 622.
lays down that the third degree treatment of torture, which causes hurt to any person while in custody, is an offence punishable with 10 years of imprisonment.\textsuperscript{39} Section 29 of the Police Act 1961 also lays down that torture in custody is a punishable offence.\textsuperscript{60}

2. Right against self-incrimination

One of the motives of torture is to extract confession from the suspects for the crime he is alleged to have committed. He is subjected to various kinds of constant torture until he breaks down and finally makes confessional statement. However, he has right to refuse to answer all self-incriminatory questions. The Indian Constitution confers this right to the suspects/accused person under article 20(3).

Section 24, 26 and 27 of the Indian Evidence Act and sections 162, 163(1), 315 and 342 (a) of Criminal Procedure Code also prohibit forced confession or testimony as inadmissible in the court of law and protect the suspect/accused person against confessions.

The Supreme Court widely elaborated this right in its various judgements. The compulsion is held by the apex court to have taken place if the accused \textquoteleft{} is beaten, or starved or tortured in any way\textquoteleft{} during the course of investigation by the police. But this right of the accused was fully dealt with by the Supreme Court in Nandini Satpati.\textsuperscript{62} The court speaking through Krishna Iyer J. laid down a few propositions intended to act as concrete guidelines to provide protection to an accused person in police custody. It upheld the right against self-incrimination and right to silence of the accused.

But this right is widely violated by the police in most of the third world countries including India. Once captured, the police consider even an innocent person a criminal and every technique of torture is used to extract confession for

\textsuperscript{39} Ss. 330,331.
\textsuperscript{60} See, R.B. Sethi, \textit{"The Police Acts"}(1959), p.83
the alleged crime, through the involuntary confession made before the police is inadmissible in the court of law.

3. Right to be informed of ground for arrest.

Arrest involves the deprivation of the liberty of an individual by legal authorities. From the time a person is arrested, and if not released on bail, he or she is under custody. Any use of force, threat, psychological pressure etc., against the person in custody by the authorities is termed as custodial violence.

Arrest under the English law is defined as “The restraining of the liberty of a man's person in order to compel obedience to the order of the court of justice, or to prevent the commission of crime or to ensure that a person charged or suspected of a crime may be forthcoming to answer it. To arrest a person is to restrain him of his liberty by some lawful authority.” Similarly, in Corpus Juris Secondum it is stated that “In Criminal Procedure, an arrest is the taking of a person into custody in order that he may be held to answer for or be prevented from committing a criminal offence.”

Under the Indian Constitution, the arrested person whether arrested with or without warrant, has the right to be informed of the ground of his arrest and the arresting authority is duty-bound to communicate at its earliest, the grounds of such arrest to him.

In Joginder Kumar v. State of U.P., the Supreme Court issued directions regarding the procedure to be followed when a person is arrested. In Joginder Kumar Vs State Of UP and others (1994), the Court referred to the Third Report of National Police Commission's finding that 60% of all arrests were either unnecessary or unjustified and laid down five requirements to be strictly followed:

---

3. Id. Vol. VI at p. 570.
i. The right of the arrested person to request that a friend, relative or other persons be informed of his arrest and the place where he is detained.

ii. The duty of the police officer to inform the arrested person of this right.

iii. An entry to be made in the police station diary as to who was informed of the arrest.

iv. The duty of the Magistrate before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.

v. A police officer making an arrest should record in the case diary the reasons for making the arrest, implying there by that every arrest by the police has to be justified.

This right gives the arrested person, an opportunity to apply for bail or file a writ petition for his release, or to prepare any other defense in time.

4. Right to consult a legal practitioner

Article 22(1) of the Constitution of India also confers on the arrested person the right to consult the legal practitioner of his own choice and to be defended by him. But in the Indian Constitution, there is no specific provision which provides the right to free legal aid to the accused person. In Janardhan Reddy the Supreme Court specifically held that article 22(1) of the Constitution does not provide the accused person right to the services of a legal practitioner at the state cost.

The Supreme Court later filled up this constitutional gap through the creative judicial interpretation of article 21 in number of cases.

In M.H. Hoskot V. State of Maharashtra, the Supreme Court held that the right to legal aid is one of the ingredients of fair procedure. The benefit of article 39-A is available in those cases where public justice suffers.

The Supreme Court of India in Hussainara Khatoon (V) v. Home Secy., State of Bihar held that a duty was cast on the Magistrate or the Sessions Judge to inform the accused who is indigent that he is entitled to obtain free legal

services at the cost of the State. The court explained the true scope of article 39-A in the following words:

This article also emphasizes that free legal service is unalienable element of 'reasonable, fair and just procedure for, without it a person suffering from economic or other disabilities would be deprived of an opportunity for securing justice.... it must be held implicit in the guarantee of Article 21 (of the Constitution).

In Khatri v. State of Bihar, the court held that the right to free legal services was clearly an essential ingredient of reasonable, fair and just procedure. The Supreme Court once again reiterated the question of professional competence of the lawyer provided by the state to the accused in Ranjan Dwivedi v. Union of India. The Court made it incumbent upon the state to provide the accused with a counsel of equal standing "as a matter of procedural fair play".

The Supreme Court has also emphasized the role of people, voluntary organizations and social action groups in making legal aid meaningful, effective and purpose oriented. In order to fulfill the objectives of free legal aid, the Parliament has also passed "Legal Services Authorities Act, 1987". The basic aim of this Act is to provide free and competent legal services to the weaker sections ensuring that opportunities for securing justice are not denied to any citizen by reason of economic disability.

5. Right to be produced before magistrate within 24 hours of arrest.

This is also a very important and valuable right to the arrested person constitutionally guaranteed under article 22(2) of the constitution of India. Section 57 along with section 167 of the Criminal Procedure Code 1973 also require the police to produce the suspects/ accused person before the nearest magistrate within 24 hours of his arrest. The magistrate can either order release on bail or remand to the police custody to facilitate the further investigation of the case. The

---

2. Ranjan Dwivedi v. Union of India (1983) 3 SCC 307
maximum period for the police remand length is 15 days. Detention beyond 24 hours without being produced to and authorized by a magistrate is illegal.

This was held so in **Rajasthan Kisan Sangthan v. State**\(^6\). It was asserted in this case that right to be treated even during lawful detention in a manner commensurate with human dignity is a well-recognized right under Article 21 of the Constitution and if it is found that the police has maltreated any person in police custody which is not commensurate with human dignity he is at least entitled to monetary compensation for the torturous act by the police.

In **Inder Singh v. State of Punjab**\(^7\), according to the Court, the report of CBI, which investigated the case as per its directions, clearly established that the police was guilty of illegal abduction and detention of the persons\(^8\). The Court directed the State of Punjab to pay to the legal representatives of each of the said seven persons an amount of Rs 1.50 lakhs within 2 weeks\(^9\). It further directed that the guilty persons should be identified by the State and it should endeavor to recover the said amount, which is the taxpayers' money. The Court further directed that disciplinary inquiries must be started against those police officials who were responsible for delaying the registration of the complaint earlier and the guilty officials must be proceeded against.

In **Dhananjay Sharma v. State of Haryana**\(^10\), the detenu, while going by taxi, was waylaid by the State police and detained in the police station for two days along with the taxi driver. Pursuant to the habeas corpus petition, the senior police officials not only denied the waylaying and subsequent detention but also filed wrong affidavits in court regarding the whole episode. CBI report showed that the statements made by the police officials in their affidavits were wrong. The Court held that filing of false affidavits by the police officials amounted to contempt calling for stern action. Accordingly, they were sentenced to

---

\(^7\) *Rajasthan Kisan Sangthan v. State*, AIR 1989, at p. 16


\(^9\) *Ibid.*, at p. 704

\(^10\) *Ibid.*, at p. 706

imprisonment and were also fined. The Court rightly pointed out that it would be a great public disorder if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving false statements and fabricating false evidence in a court of law. 78


Handcuffing is certainly a practice, which is against a human dignity. It qualifies to be described as degrading treatment to the offenders. A person is to be considered innocent unless proven guilty beyond doubt is an axiom of our legal system. But a person stands punished by this humiliation though he may be subsequently acquitted by the court.

The Supreme Court examined the validity of handcuffing in the light of the right to personal liberty in Prem Shanker Shukla, 79 where the court observed:

Handcuffing is prima facie inhuman and therefore unreasonable, is over harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring, to inflict 'irons' is to resort to zoological strategies repugnant to Art. 21. 80

The court also examined the rules of the Punjab Police Manual 1953 relating to the handcuffing of the prisoners. The Manual 81 states that every individual accused of non-bailable offence, punishable with three years prison term, shall be routinely handcuffed. The court declared this rule as unconstitutional, being violative of articles 14, 19 and 21 of the Constitution. It observed that the nature of the accusation of the accused is not the criterion for handcuffing. The basis of handcuffing should be the clear and present danger of escape and breaking out of the police control.

78 Ibid., at p. 777
80 Ibid., p. 1536.
In *State of Maharashtra v. Ravikant S. Patil* as the undertrial prisoner was handcuffed and, taken through the streets in a procession by the police during investigation the Court held that Article 21 was violated. However, the Court further held that the police officer responsible for the act acted only as an official and cannot be made personally liable. The Court directed that compensation of Rs 10,000 be paid by the State and authorities may, if consider necessary, hold an inquiry against the police officer and then decide whether any further action is to be taken against him or not. It is submitted that when the complainant is entitled to compensation for violation of human rights or for physical or mental harassment, then an award of exemplary costs/damages can serve a useful purpose in vindicating the strength of law and promoting and protecting human rights.

**PRISON CONDITIONS IN INDIA**

Prisons in India are in a pathetic situation. The operational instrumentality’s of prison administration reduce the UN Standard Minimum Rules for the Treatment of Prisoners to a bundle of lies. The report of the All India Committee on Jail Reforms (1980-83) chaired by Mr. Justice A N Mulla, had observed that "prison administration in India has been of and on, a subject of criticism in the Press, the Parliament and the Judiciary". "Over-crowded prisons, prolonged detention of undertrial prisoners, unsatisfactory living conditions, lack of treatment programs and allegations of an indifferent and even inhuman approach of prison staff have repeatedly attracted the attention of critics over the year". Unfortunately, nothing much seems to have changed even during the intervening decade and more and there has been no worth while reforms affecting basic issues of great relevance to prison administration in India.

The Mulla Committee had noted that a majority of persons lodged in prisons consisted of people belonging to the unprivileged sections of society, and that the majority of the prison population was from a rural and agricultural background. First offenders involved in technical or minor violations of law accounted for a

---

large number of Prisoners. The Mulla Committee observed that a large number of offenders sent to prisons do not require any therapeutically correctional treatment. They are as normal as citizens outside prison walls and they need to be protected from the harmful effects of exposure to prison life.

The report of the National Commission for women on "Custodial Justice for Women" (1993) merits attention. The Krishna Iyer Committee forms the basis of this Report.  

The National Human Rights Commission (NHRC) in its first Annual Report (1993-94) has expressed its deep concern about the "appalling conditions of over crowding, lack of sanitation, poor medical facilities, inadequate diet and the like. in most of the jails of the country. These serious deficiencies are compounded by unconscionable delays in the disposal of cases for various reasons and mismanagement in the administration of jails, all of which need to be remedied". As an immediate undertaking, the Commission is in touch with competent judicial and executive authorities in Delhi with a view to:

i. expediting the trial of cases including those of some 3000 foreign nationals in various jails in the country;

ii. Convening meeting of the Sentence Revising Board for the release, whenever possible, of those serving life sentence and who have already completed the maximum of 13 1/2 years of their term.

iii. Segregating juveniles' prisoners sentenced for minor offences from those serving longer terms for heinous crimes.

The Mulla Committee, the National Police Commission, Justice Krishna Iyer's Committee, and the National Human Rights Commission have made numerous valuable recommendations to bring about not only improvements and reform in the jail administration but in the entire criminal justice system itself.

83 See Appendix VI.
Unless there is comprehensive reforms of the criminal justice system in its entirely, there is unlikely to be decisive change.  

Broadly speaking there are eight major problem areas, which afflict the system and need priority attention.

1. **OVERCROWDING**

   This is the most visible problem and yet no long term or short-term remedies have been found. In Delhi, Tihar Jail holds 8700 prisoners against a stipulated capacity of 2200. The reasons for overcrowding in jail are many. Inordinate delays in trials result in many undetalled having to be detained in jail for unduly long periods—in many cases extending to years. This, together with the routine new additions, literally clogs the system. In many cases, prisoners who are facing charges of grave, professional, violent crimes are outnumbered by others like suspected drug offenders, ticketless travellers, Railway alarm – chain pullers, and a variety of others who have technically violated law. Many of them are in jail only because they could not pay the fines imposed on them by courts. In some cases, prisoners prefer to continue in jail because they just cannot afford even a single meal a day outside.

2. **DELAY IN TRIAL**

   Trials delay in the courts has assumed very serious proportions. Even though this problem has been highlighted by the Mulla Committee, National Police Commission and thorough police interest litigation (in the Hussainara Khatoon’s case), there has been no relief at all.

   We continue to read in newspaper of children of under trial women’s growing to adulthood in prison. No one aspect of prison administration has affected the human rights of prisoners as delays in trial, for which the police, judiciary and the legal profession are all to blame.

3. **PRIVACY AND COMMUNICATION**


The arrangements for facilitating communication between prisoners and their relatives, friends and legal advisors leave much to be desired. Many of these aspects have been dealt with in the Mulla Committee Report and deserve immediate implementation. A connected issue, though more relevant in the context of providing legal aid is the near total absence of any contribution from the legal community.

4. HYGIENE

Overcrowding has aggravated the problem of hygiene. In many jails conditions are appalling. In many cases, such jails are no better than an unsatisfactory lock up. Latrine and bathroom facilities are inadequate to cater to the daily minimum needs of prisoners.

5. SYSTEM OF JAIL VISITORS

Even though this system exists on paper, it has not proved effective in practice. Visitors, including judicial and non official members, pay cursory attention to peripheral matters and do not take pains to go into the details of major problems, like the long and overdue detention of undertrials, inadequacies of medicare, problems faced by female prisoners, etc.

The system of jail visitors is to be an effective and useful instrument, the trials should examine all aspects of prison life, and with particular emphasis on these having a bearing on human rights and human living conditions.

6. ADMINISTRATIVE MATTERS

a. organisational structure and personal matters:

The Mulla Committee had made the following recommendations:

i. The State Secretariats do not have the requisite expertise in prison administration to assist the Government in taking appropriate policy decision.

ii. To begin with, senior officers having experience of correctional administration and the requisite expertise should be posted in the Department of Prisons, both at the centre and in the States.

See Yogesh Prasad Kalakar, “Rights of Prisoners and PIL”, 2002
iii. An officer should invariably head the Department of Prisons and Correctional Services, whose creation the Mulla Committee recommended, from this Department.

At present officers belonging to the IAS, IPS and Jail Departments are all being appointed as head of jail administration.

a. Annual Conference of IGP:

For all practical purposes no annual conference of IGS Prisons has been held for years, this has denied jail administrators the opportunity to meet and discuss problems of common interest and evolve strategies to introduce uniform practices, to the extent possible, all over India. However, occasional conferences have been held to discuss specific issues and developments of current interest.

b. A Common Jail Manual:

A "Model Prison Manual" was prepared as far back as 1970 and circulated to all States. The Mulla Committee noted that this had not been adopted and the position has not changed since.

It is nearly 20 years since the submission of the Report of the All India Committee on Jail Reforms (1980-1983) headed by Justice A.N.Mulla. One may ask why the recommendations of the Committee have not be followed both in substance and in spirit, have not been implemented. There is little significant improvement on an all India basis.

Prison administration is a state subject and this often cited as the main reason for the Centre not being able to implement the recommendations of the Mulla Committee.

**Cases**

The gravest concern for all victims of torture is that the officers supervising the interrogation let their juniors go too far, these results in a custodial death. The prevalence of torture by police in lockups throughout India is borne out by the number of cases of deaths in police custody.
Many cases of custodial deaths may not have been seen the light of the day and may have gone unreported and unpunished. Various NGOs have investigated just deaths. Some of the cases are given below.

**Thousands of tortured victims wander around with scars and deformities:**

**Kashmir**

Bashir Ahmed Mir, 19 years old from Ladoo, Pulwama, had his operation on 11th April 1995; his both feet were amputated. "I was kept standing on snow for six hours with my bare feet buried in. Returning to the interrogation centre they beat me up with bamboo sticks. After two days, some white fluid started oozing out from my toes and they turned black. I was in acute pain", narrated Bashir to Dr Zubair at the Bone & Joint hospital, Srinagar. The frost-bite was allowed to fester for two months in detention. He has his operation one day after his release. Bashir, like many thousands of young people crippled, cannot support his elderly parents, having lost both his feet.

Firoz Ahmad Ganai, a suspected member of an armed opposition group, was arrested in November 1995 in Sonawar, Jammu and Kashmir, and tortured while in the custody of the Border Security Force. He subsequently suffered kidney failure and had to have his leg amputated. In January, the government claimed that the leg became gangrenous after he fell and fractured it in heavy snow. Despite medical reports stating that the kidney failure may have been a result of torture, no investigation was carried out.

**Death of Sanabhaji Bhulabhai Machhar due to negligence of Police officials:**

**Gujarat**

The District Supdt of Police, Godhra in his fax message dated 6 July 1996 reported to the Commission the death in police custody of Shri Sanabhaji Bhulabhai Machhar on 4 July 1996. The brother of the deceased made a complaint and on that basis a FIR was lodged. However, the Magistrate who held

---

\[87\] See NHRC report 1995-1996.
\[88\] Ibid.
\[89\] See *National Human Rights Commission* report 1996-1997 (Case No. 3177/96-97/NHRC)
the inquiry held no one guilty and stated that the cause of death was due to a fall from a moving tempo and no action was taken against the policemen named in the FIR. According to the magisterial inquiry, the deceased was taken into custody by Shri U.R. Rathod, SI and his staff of the Ditwas Police Station in a case no.33/96 under sections 447,504 506(2) and 323 of IPC on 4 July 1996. While being taken to the police station in a tempo from his village the deceased jumped out from the tempo and sustained head injuries and eventually died on the same day in the hospital. The Magistrate, after listing the injuries sustained, noted that the final cause of death as ‘Intracranial hemorrhage shock due to head injury’. The Magistrate in his inquiry found the conduct of the officials in the matter and the facts surrounding the death of the prisoner raised reasonable doubt that the death could not have been caused by the alleged attempt to escape by the prisoner.

The Commission, on careful consideration of the evidence on record and the findings in the magisterial enquiry, formed the view that the death of the prisoner occurred under suspicious circumstances and that the police personnel on duty did not exercise the due diligence expected of them in the performance of their duties. The Commission, relying on provisions contained in sections 18(1) and 18(3) of the Protection of Human Rights Act, 1993, recommended that a compensation of Rs.1 lakh be paid to the dependants of the deceased.

Cruel arm of the law: Uttar Pradesh

Rakesh Viz lies in a dingy room at Sant Kabir Nagar in Varanasi. Uttar Pradesh, incapable of doing anything on his own except weep. Tears flow unabashedly as he removes his briefs to show scars of electric torture. His lungs do not function properly, forcing him to drink warm water even in the sultry heat of summer. The four broken teeth in his lower jaw give a mute testimony to his sufferings and a deep scar on his throat explains his hoarse voice. Rakesh is partly deaf because his ears were damaged and a spinal cord injury has left him incapable of any movement. He cannot even get up from the bed.
"I was denied food, water and sleep, and the cops beat me as if they were beating on a log. They pulled my teeth out, they poured icy water all over my body as I lay shivering in the extreme cold and brutally hit me with lathis."

Life came to a grinding halt for the Viz family on November 29, 1996, when the police picked up Rakesh after the murder of his friend Sanjay Singh.

"The four days I spent in the lockup were like hell," says Rakesh, 25. "I was denied food, water and sleep, and the cops beat me as if they were beating on a log. They pulled my teeth out, they poured icy water all over my body as I lay shivering in the extreme cold and brutally hit me with lathis. I lost count of how many times I lost my consciousness." He lay comatose for two months in hospital.

All that the police wanted of him was that he name someone in the murder case.

But the BCom student of the Banaras Hindu University, who lies crippled for life, is not the only sufferer in the Viz family. The incident has also crippled the business of his father, Raj Kumar Viz, 60. Prolonged legal battle, heavy expenses, virtually no earnings and the mental trauma have forced Rakesh's brother and sister to discontinue their studies. "It is like a deluge that has ruined my entire family. You can imagine the condition of a father whose young son is bedridden, living dead," says Raj Kumar in a choked voice. Thanks to several social organizations that sent petitions, the National Human Rights Commission last November asked the state government to pay Rs 10 lakh as compensation. The government paid him Rs 2 lakh and deposited the balance in a bank account in his name.

The commission also directed the government to bear all expenses for Rakesh's treatment either at All India Institute of Medical Sciences, New Delhi or at PGI, Lucknow. "But the government is yet to respond," says Rakesh. Nor has the government acted on the recommendation for disciplinary action against five police officials and doctors who submitted a false report that Rakesh had not suffered any grave injury in police custody. The doctors' report even claimed that he was recovering fast. Raj Kumar then persuaded the commission to get his son
examined by a different group of doctors. AIIMS doctors, who reexamined him, confirmed that his spinal cord was compressed and this debilitated his legs. The injuries had also hampered his bowel movement and damaged the bladder, and he was suffering from severe post-traumatic stress disorder as well.

"We are so grateful to the commission," says Raj Kumar. The commission had earlier taken up the case of two BHU students, Manoranjan Singh and Sarvendra Mishra, killed in police firing on the campus in 1997, and granted their families Rs 15 lakh each as compensation. The compensation may bring some relief to the Viz family, but life for Rakesh remains a torture.\(^{10}\)

**Illegal Detention: Delhi**

The Commission received a complaint dated 23 June 1995 from one Shri I.R. Singh, Advocate, Delhi High Court alleging that three persons namely, Dhauraj, Amar Singh and Raisuddin, residents of DDA Flats Mata Sundari Road, New Delhi were arrested by the police of police station Preet Vihar, Shahdara on 22 June 1995 at 8:30 P.M. when they were walking on the road and that the police had not produced them in the Court within 24 hours as enjoined by Article 22 of the Constitution of India.

On the directions of the Commission, its Investigation Division undertook an investigation. It was brought out that the above-named persons were actually arrested by the police on 22 June 1995 but the police has shown there arrest on 24 June 1995 and produced them before the magistrate only on 25 June 1995.

The matter was taken up with the Commissioner of police, Delhi. In response, the Deputy Commissioner of Police (vigilance) reported that the accused were arrested on 24 June 1994. The investigation Division made further inquires in the matter by summoning statement of the above named three persons who were arrested. On the basis of this further examination, it was concluded that arrests in the case were made by the police in the evening of 22 June 1995, but were actually shown on 24 June 1995. This finding was also based on the observation

that the complaint to the commission was dated 23 June 1995 and it was actually dispatched on that date. Had the arrest been made on 24 June 1995, Shri I.R. Singh could not have approached the commission with the complaint on 23 June 1995. It would be too much to say that Shri Singh wanted to forestall and anticipated arrest.

The Commission found that the legal detention of these three persons for more than two days were highly probable. Even so when the Commission called upon the Commissioner of Police to give a report, no meaningful inquiry was held and the Deputy Commissioner of Police (Vigilance) gave a self-serving and incorrect report, that was convenient to the police about the arrest.

A fact-finding team looking into custodial deaths in the Capital in July-August, has held the police guilty of torturing victims and shielding the accused and has demanded handing over of the investigation to the CBI.

The fact-finding team of the People's Union for Democratic Rights (PUDR), which investigated three custodial deaths at Kotwali, Okhla and Alipur police stations on July 18, August 4 and 15 respectively, said in a report released on Tuesday that the local police have a lot to hide and in all these cases, regardless of the "natural reasons" (cited by police for the deaths), police are guilty.

The report 'Three Deaths and Police Folk Tales' while noting that police had registered an FIR only in one case (Alipur), demanded that FIRs be lodged properly against the guilty in all three cases. It said investigation should be taken over by the CBI and compensation be given to the families of the victims.

"In none of the cases the police thought it necessary to get the accused medically examined...The local police have failed to give adequate reasons why illness takes a fatal turn in police custody. The story of illness and injuries is to fabricate reasons for custodial torture leading to death," the report said.

Also, the delay in SDM inquiry in two (Kotwali and Okhla) cases, would naturally lead to destruction of evidence which indicated official apathy and helped in shielding the guilty. According to the report, the total number of
reported cases of custodial deaths in 1999 had gone up to five. "Although a single death in police custody is a matter of grave concern, the frequency during the months of July and August has been alarming."

In each of the three cases the executive authorities had tried to explain away the deaths as natural and police had denied responsibility in all the cases. The PUDR investigation had revealed loopholes in the official accounts, according to the report. 91

Fruit vendor beaten to death by police for not paying "Hafta": Delhi 92

The Commission initiated proceedings in this case on the basis of a report received from the Sub-divisional Magistrate, Shadhara, Delhi indicating that death has occurred of one Matoob Hussain on 13 July 1996, following a severe beating inflicted on him by the two policemen of police station, Geeta Colony, Delhi on 11 July, 1996.

The Commission subsequently received petition from certain NGOs, namely the people's union for democratic rights and for people's union for civil liberties and also from Shri Syed Shahabuddin, former member of Parliament, who raised the General issue of violation of human rights of petty vendors in Delhi and elsewhere in the country.

In response to the Commission's notice, the Sub-divisional Magistrate of Shadhara gave the detail accounts of the events that had occurred. The report received from the police, however, gave a somewhat different version. From the reports, however, the Commission inferred that a Head Constable and a Constable had subjected the deceased to physical violence and the beating was so severe that it ultimately proved fatal.

The Commission observed that the higher authorities had done well in taking actions against the delinquent police officials by putting them under suspension and prosecuting them after due investigation, though regrettably this was done

91 Wednesday, October 20, 1999 “Custody deaths -- Delhi police found guilty” UNITED NEWS OF INDIA
only after the death of Shree Hussain. The Commission was, however, pained to observe the lack of sensitivity of the concerned Station House Officer (SHO) who had neither taken adequate nor immediate action for the medical treatment of Shree Hussain nor for the registration of case against the errand police officials even though he was aware of the incident. The Commission, therefore recommended that the disciplinary action be initiated against him.

The Commission asked the Government of the National Capital Territory of Delhi to pay a sum of Rs. 2.5 lakhs to the next of kin of Matloob Hussain who have died of police violence.

The Commission also asked Delhi Government to constitute the High Power Committee to look into the menace of the collection of Hafta by the police and other civic functionaries from the petty vendors and other similarly placed persons.

**Torture of a woman in custody: Punjab**

One example of custodial death is that of Bibi Resham Kaur. She was detained on 22 October, 1993, by district SP Manmohan Singh of Khanna Police, Punjab. The reason for her detention was to discover the whereabouts of Bhai Jagjit Singh, her husband, and a suspected militant. On the 23 October, 1993, the police announced that Bibi Resham Kaur died in custody, adding that she died at her own hands. So far there has been no notification that the body of Bibi Resham Kaur received an independent or police post mortem.

On 5 May 1995, police took Devki Rani, a 45-year-old female resident of Ludhiana, in the state of Punjab, from the Civil Hospital where she was visiting her husband. Her son, Rajesh Kumar (aged 18), had earlier been arrested and was also in police custody. Devki Rani was taken to the Atam Park police post where SI (Sub-inspector) rapped her, ASI (Assistant Sub-Inspector), HC (Head

---

Constable), Constable and two other men. She was kept in wrongful confinement for three days and was released on May 11.

The actions of police were apparently carried out on the instructions of a local clothes dealer who had employed Devki Rani's other son, Surinder Kumar (aged 15), but who had recently left his employment after he failed to receive his salary. Devki Rani filed a suit in the local Labour Court against the clothes dealer concerning this, and in response, the clothes dealer went to the police and filed a case against Devki Rani, saying that she had stolen some items of clothing.

Following the filing of a petition in the High Court by the International Human Rights Organization, Punjab, a CBI inquiry was ordered, which as far as Amnesty International is aware, is still proceeding.

Police in India have been accused of systematically failing to register cases of domestic violence and to take basic steps to investigate cases of rape and other forms of torture or ill treatment perpetrated in the community. Articles about rape in Indian newspapers have talked about the "double rape" of reporting such a crime at a police station where women become targets of ridicule and abuse. Moreover, access to justice is a significant hurdle (see article 14).

All too often reports of rape speak of attempts by police to persuade women to withdraw cases or to sully the reputation of women in order to imply that the incident did not occur. It is not a legal requirement for police to send women who allege that they have been raped for an immediate medical examination. Much medical evidence is lost because this simple procedure is not followed.

Police assault two young women of village Rajiana, District Moga95

A Report on the incident of August 16, 2000 at village Rajiana, Moga district, Punjab. (This Report was released at a press conference by Dr. Vinceta Gupta, General Secretary, Insaaf International on August 26 at Bhatinda. The two victims and their father were present.)

Incident

The team visited village Rajiana of Moga district of Punjab on 24. 8. 2000 and met the victims and their other family members. The facts as they emerged are as follows:
Jarnail Singh's two daughters, one unmarried and the other widow, of Village Rajiana in Moga District, became victims of police barbarism on 16.8.00. Gurmail Singh ASI (Assistant Sub Inspector of Police) of police station Baghapurana, District Moga raided the house of Jarnail Singh and his brother with heavy police force at about 5 PM on the said date. Policemen after scaling the walls, entered the compound of the house. No male member was present in the house. ASI abused and threatened the women and singled out two daughters of Jarnail Singh, Rani and Kaur (name changed), for his sexual assault.

Gurmail Singh ASI hurled choicest vulgar abuses at Kaur (a widow with about one and half years old child in her lap). He used such filthy language that it cannot be reproduced here. He tried to abduct the two girls by putting them in his jeep. The women started crying and screaming for help. They tried to free Rani as the ASI made an attempt to take her with him with the intention to rape her saying that he will finish her 'story' that day itself.

On hearing the screams of the women, neighbors and passersby's collected in the street. The Police team had blocked both sides of the street and none was allowed to come near the place of incident. At this critical moment some of the constables objected to the molestation and brutal behavior of ASI with the girls. At this the ASI withdrew with threats to come again.

The villagers were so terrified of the police brutality that many of them refused to talk when Insaf asked them about the incident, while many others, on the condition of anonymity, verified the truth of the matter. One of the shopkeepers totally denied knowledge of the incident by saying that his shop was closed that day.

"ibid."
Background

There is a long history of dispute and litigation between Jarnail Singh and Sadhu Singh since 1991. Sadhu Singh at present is a ruling Akali Dal MLA. According to Jarnail Singh he, his daughters Rani and her other sister and their mother are to depose against Sadhu Singh in Judicial court in a criminal case registered against the MLA. Prior to this incident Jarnail Singh has been 'picked up' and tortured many times by local police to pressurize him to withdraw his case against MLA. In one such illegal detention Jarnail Singh was recovered from the premises of the police station Baghapurana on 2.6.00 by the warrant officer of the honorable Punjab and Haryana High Court. But Jarnail Singh resisted all the attempts to cow him down. Then his two innocent daughters were made ultimate target to arm twist Jarnail Singh to withdraw the case against ruling party MLA.

Conclusion

Insaf International after talking to the victims, eyewitnesses, villagers, Akali MLA, SHO and SSP concludes that the incidence did take place on 16.8.00. The heavy police force headed by Gurmail Singh ASI raided the house of Jarnail Singh and his brother. The whole area was surrounded and all exit and entry points were blocked. None was allowed to enter the house. The police while entering the house by scaling the walls did not take along any member of the Panchayat, or the Sarpanch or any villager. No male member was present in the house during the raid. Gurmail ASI abused and misbehaved with women of the house. He tried to abduct Rani and Kaur with intention to rape but they were saved by the protests of a few of the accompanying policemen. He molested and threatened Rani of dire consequences. He threatened Kaur and Rani of rape and to parade them naked in the village. Gurmail Singh is guilty of indecent exposure. Sadhu Singh MLA has a definite role in the whole affair. Though Sadhu Singh totally denied having any personal dispute with Jarnail Singh but Insaf verified from the documents that Sadhu Singh is facing charges of injuring Jarnail Singh.
his wife and others in 1991 in a case State Vs Jagjit Singh and others including Sadhu Singh.

Women alleging humiliation, molestation and rape are often disbelieved and treated with disrespect by officials at all levels. Fear, silence and hesitation on part of common people to condemn, expose and punish those involved in such crimes will lead us into an abyss from which we will not be able to get out of.

**West Bengal: Illegal police practices lead to death in custody**

Debu Pramanik, an out of work docks labourer died in the custody of West Bengal police on 12 July 1996 after being held in custody for 60 hours. Debu Pramanik was taken into custody following a disturbance involving a drunken police constable from Keota outpost, Hooghly district, on 9 July 1996. The constable had become drunk after drinking at the house of Debu Pramanik. Unable to make his way back to the police outpost, at approximately 11.30pm, police from the outpost came to the village to remove the drunken police constable from the street where he was lying. Police also took Debu Pramanik with them.

He was taken to Sahagunge Thana police outpost and held until the early hours of 10 July before being transferred to Chinsurah police station. Police refused to allow his wife, Bula Pramanik to visit him in detention, did not provide him with food and did not register his arrest in their records. They subsequently registered the arrest as having taken place at 9.05pm on 11 July 1996. At around midday on that day, he was finally taken to the court of the Subdivisional Judicial Magistrate. However, the assistant superintendent of the court lock-up refused to admit Debu Pramanik because he was unable to stand or walk and sent him for medical treatment. However, police did not take him to a doctor and on 12 July at 12.55pm, he was released on bail. His wife attempted to take him home by auto rickshaw but he was pronounced dead by a doctor 35 minutes after his release. The post mortem report from Imambara hospital morgue, found a number

*See APDR report 1996-1997.*
of injuries on the body which were between 12-36 hours old. These included a number of burn marks, bruises and swellings on the victim's leg, toes, knee, chest and face. Debu Pramanik also suffered from pulmonary tuberculosis and cirrhosis of the liver.

Investigations carried out by the West Bengal Human Rights Commission following press reports and a complaint lodged by the Association for the Protection of Democratic Rights (APDR) produced overwhelming evidence that Debu Pramanik was arrested on 9 July 1996 finding that "most of the GD [General Diary] entries were manipulated and made subsequently to support the false claim of the police regarding the arrest and detention of Debu Pramanik on a later date".

The state Commission recommended the criminal prosecution of the officer in charge of Chinsurah police station, and the instituting of departmental proceedings against two other officers. In summing up, the Commission noted:

"The Commission views with displeasure the tendency on the part of even senior police officer, who, presumably, motivated by narrow departmental consideration goes out of his way to defend police action even if the said action is illegal and unlawful. The Commission initially faced difficulty in proceeding with this investigation because of lackadaisical response even from the S.P. [Superintendee of Police] Hooghly... The report received from S.P. is not found factually correct".

The Commission further asked that its "displeasure and disapproval" of the conduct of the S.P. and other officers should be communicated to them by the government and ordered that the investigation into the death initiated by the local police station should be transferred to the crime branch and that Rs20,000 in interim compensation be paid to Bula Pramanik. To date, no action has been taken against police officials.

It is alleged that the police officers arrested and tortured Debu Pramanik in order to obtain money from him. The victim's only source of income had been the
illegal production of alcohol which local police had allowed him to continue to produce in return for bribe money he was forced to hand over to police. It is reported that both police from Chinsurah police station and the police outpost were demanding more money, which Debu Pramanik was unable to pay.  

**A college lecturer becomes a victim of police brutality: Kerala**

The Commission took suo-motu cognizance of an instance of police brutality, published in the Hindustan Times on 3 September 1998, under the heading "Police brutality again in Kerala". The report stated that a college lecturer was beaten mercilessly by the police as he had dared to question the fare demanded by the driver of an auto rickshaw he had taken while visiting Kozhikode. When the lecturer became unconscious, his legs and hands were tied and he was shifted to a mental hospital, and a case was made out that he was a violent mental patient. The mental hospital did not admit him because of his serious condition and he was taken to the Medical College. The reporters and photographers, who tried to obtain a first-hand account of the torture inflicted upon the victim, were also assaulted by the police.

The Commission issued notices to the Chief Secretary and DGP, Government of Kerala. According to the report submitted by the Commissioner of Police, the deeds of the concerned police officials were confirmed. On the basis of this factual confirmation, the Government had suspended the culprits (2 sub inspectors, 1 ASI, 1 Head Constable, 3 Police Constables) and an inquiry was ordered against them.

Convinced that appropriate steps were being taken against the culprits, the case was closed by the Commission. The Govt. was directed to report the result of the disciplinary action taken against the delinquent officials with utmost expedition.

---