CHAPTER – IV
USE AND MISUSE OF POWERS BY PUBLIC SERVANTS
AND JUDICIAL APPROACH TO THIS EFFECT

INTRODUCTION

Public Servants enjoy statutory powers vested in their hands but till they do not cross the statutory limits, they are safe but whenever they cross the barrier, they are treated as accused and are punished & severally in comparison to other citizen of the country. In this regard, the Apex Court has noticed misuse of the powers by the Public Servants many times. Here misuse of powers will be called as enforcement crimes.

A. GENERAL

Enforcement crime means a crime committed by the enforcement machinery while the law is enforced. While enforcing law, the Police may be charged with ineptness, partiality, discourtesy, indecency, dishonesty, cruelty, brutality, indifference, sleeping on duty, lethargy, illegal searches, informal arrests, calling of epithets, unnecessary detentions, concoction of evidence, perfunctory investigation, human rights unfriendly approaches etc. the police may be attacked by the Police, Press, Courts as being insensitive to the feelings and needs of Citizens they are employed to serve. The result is that there is not a smooth functioning of the Police system. People see that laws are violated when the law is enforced. This sort of law violations is called an enforcement crime in current criminology.628

B. CONCEPT, NATURE OF ENFORCEMENT CRIMES

(a) Concept and Nature

Law enforcement and enforcement of law may mean one and the same thing. But enforcement crime and enforcement of law are entirely different things. While committing enforcement crimes, there may be not only violations of the Panel Laws, but also violations of ethical, social, cultural, behavioural, religious and other laws. Law enforcement officers admit that they violate laws but they bring several interpretations and justification for their otherwise illegal acts. The courts today are forced to intervene

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628 “Police Enforcement Crimes and Injustices”, Vadackumchery, p. 19.
in too many instances of law violations which Public servants commit. The Supreme Court in D.K. Basu’s\textsuperscript{629} has given a directive to the police that custody/arrest memo must be issued to people when they are taken into custody/arrest. The Magistrate has to verify it when the suspect is produced before the Court. In the Code of Criminal Procedure, 1973 there are a number of provisions which are enacted to ensure detinue-Justice and the courts verify whether or not the suspects, arrestees, detainees are dealt with as per law and the procedure established by law. The procedure makes it clear that there can take place, violations of law in Police Stations or when the suspects, arrestees or detainees are in Public custody. Thus, the Indian Laws attest to the fact that there exist enforcement crimes. Human Rights Commissions award heavy compensation to the victims of abuse of power/authority by police and other Public servants. What do they Indicate? They show that enforcement agencies. This provides a clear inference that enforcement crimes do take place during investigation work of Police and other Investigation and preventive agencies.

Individual success and organizational achievements are two aspects of Police Work. Enforcement crimes may sometimes ensure individual success in police work. The officer may be called efficient, intelligent, capable, outstanding etc. and there are number of police officers/men who are honored by the police and the people. The people may demand the services of such law enforcement officers to achieve their targets, for they want only success in their cases, but in due course – After sometime they themselves may criticize the police officer/men who enforce law through law violations or enforcement crimes. Experience and history so far reveals that law enforcement through law violations do not ensure organizational achievements. Rather, the images of the organization are tarnished and the individuals who make the organizations are caricatured in bad shape when they commit enforcement crimes.\textsuperscript{630}

(b) \textbf{Extent and Intensity}

Generally Police Officers assert that enforcement crimes are a sine qua non for conviction of criminal cases form Indian courts. But it is equally true that the people have right to be secure in their persons, houses, papers and effects against unreasonable


\textsuperscript{630} Id. At p. 11.
searches and seizures. Nevertheless persons are searched during old hours of night at their houses without showing decency to the privacy of the family members. If this is done it is doubtlessly a misuse of authority and to that extent is an enforcement crime and a Human Right Violation. That is why in D.K. Basu’s case the Apex Court has given detailed directions regarding arrest and Interrogation of suspect persons. Further, a number of criminal cases are acquitted because the Courts observed some form of enforcement crimes. In Nadini Satpathy’s case, It was directed that “A police officer should not insist that a women should appear at the Police Station, as this contravenes Section 160(1)”. No doubt, Police Officers call women to police stations in many instances and the women, being afraid of the evil consequences go to police stations. This is a violation of law and on that account alone it is an enforcement crime, and they are accountable for the crime they commit.

In another case the injuries shown in the inquest report and the post-mortem report do not tally which clearly makes an inference of commission of enforcement crime. The defence counsel take note of these loop holes to get acquittal verdicts in criminal cases. The Supreme Court in a case made it clear that enforcement crimes committed by police became a ground for causing suspicion about the truthfulness of the police reports. The reason is apparent that if the police record becomes suspect or unreliable on the ground that it was deliberately perfunctory or dishonest, it losses must of its value.

In Kharak Singh’s case the History sheeters challenged the regulation 236 (6) of U.P. Police regulations which authorizes the domiciliary visit before the Supreme Court. The constitution bench of the Supreme Court held the regulation as unconstitutional on the ground that it infringes Article 21 of the Constitution. The court further held that the intrusion into the residence of a citizen and the knocking at this door with the disturbance to this sleep and ordinary comfort are a deprivation of the personal liberty guaranteed by Article 21. Thus in another way the Apex Court termed the domiciliary visit by police personnel as an enforcement crime in itself.

In the worst form of Enforcement crimes one Ershad Khan was beaten to death in Oct., 2000 by the four policemen before the eyes of his four year old son in the Indian Capital. That incident revoked calls for drastic reform in the country’s police force. The Delhi Government took serious note of that event US $1500 in Compensation and the City police chief ordered the arrest of the two of the law enforcers involved in, the Daylight roadside assault. Several senior police officers have also been transferred and an investigation ordered into the incident. Commenting upon such blatant violation of Human life and dignity in the form of enforcement crime. Human Rights groups said that much more needed to be done in India’s Police Force is to shed its isolated case of police brutality. What marks the case out from others, activists say, is that it could not be hidden from public view because it happened on the streets. The incident took place even as India’s Supreme Court demanded details of custodial deaths in the northern State of Uttar Pradesh. No less than 160 cases of deaths in police lockups were reported in the state in the past six months, In a widely reported incident in that state, a young woman was jailed for three days in the state capital Lucknow after she refused to pay money to two policemen who stopped her as she was riding a scooter.

C. DEVELOPMENT AND FORMS OF ENFORCEMENT CRIMES

(a) Development

Enforcement crimes did not come up one day, too soon, Certainly they had an origin and development. British were responsible once upon a time and there is no meaning or need to accuse them of what the Police do hic et hunc. No one thought about Enforcement crimes as the police had a lot of immunity when they did many things against law and procedures established by law. Police used to take people in custody without making any record of the same. Certainly, it was an enforcement crime; nevertheless, neither the police nor the people treated it to be an enforcement crime. Further enforcement crimes and enforcement criminals are not treated as they are in their real nature, Therefore, enforcement criminals do not feel that they are committing crimes when they do so. Any criminal law does not define enforcement crime and prescribed punishment for the. As such people do not think that there is special category of crimes called “Enforcement crimes”. While bribery/corruption etc. considered as crimes, no one

treats bureaucratic holding of files as a crime which may be punished. Delay in the disposal of files causes miscarriage of justice and is very much a developed form of an enforcement criminal. In one instance, Police Officers simply refused to arrest the culprit in spite of convincing evidence, the only reason was that they were influenced by the political forces. This is so possible because there is no proper law to initiate action against enforcement criminal. At the most disciplinary action may be initiated and most of such actions have a natural death. There is no accountability and no criminal liability for enforcement criminals Rather they are protected lot and they enjoy immunity for many things do in the name of justice or in the pretext of administering Justice

(b) **Forums of Enforcement Crimes**

A renewed Book Writer on enforcement crimes took the daily news papers for ten months and wanted to see the number of private complaints filed against police. There were a number of private complaints preferred against the police on many counts, and certainly, they indicate a portion of the prevailing enforcement crime in police department. Some of such published crimes may be reproduced here under:

(i) Women were kept in illegal custody for several hours in police stations. Children, whose age is below 16 years, if male, were shown as 18 in orders to proceed against them as adult offender. The Juvenile Justice Act-1986 says that male children under 16 years of age and female under 18.

(ii) Years of age must be treated as per the provisions contained in the Juvenile Justice Act-1986, Rising the age up helps the police to ignore the Juvenile Justice Act. This is an enforcement crime.

(iii) Refusal to register F.I.R,’s

(iv) Treating non-cognizable cases as cognizable by adding serious actions in the FIR or vice-versa. If they do so, it is indeed very difficult to proceed further in the right direction.

(v) A constable enters a theatre without purchasing a ticket.

(vi) A head constable dishonestly tells that the fuel allowed for the months is exhausted.

(vii) An assistant Sub- Inspector asks a Motor Vehicle driver to hand over the license for over speeding the vehicle. He takes the license to his possession, or demands
some money to let him free.

Apart from above a number of other enforcement crimes in different forms may be studied under several heads which may he as under:

D. LATEST INSTANCES

(a) In Mumbai the reputation of Azad Maidan Police Station, though showcased as a model Police Station but it took a beating when two youths complained that they were beaten up and humiliated by a drunken Sub-Inspector on a Sunday afternoon simply because they belong to a particular community, both the youths being in their early 20’s, They were even threatened to be killed in a fake encounter.

(b) In a recent event\(^{636}\) regarding police personnel violating traffic rules of which a serious note was taken off by the Superintendent of Police, Sonepat. The S.P., Sonepat, Paramjeet Singh Ahlawat is reported to have issued directions in all police stations in the District of Sonepat not to be lenient to such police personnel. Such directions were issued on information that as many as 3,800 two-wheeler drivers were challenged during the last six months for not wearing helmet. However, not a single police personnel was challenged during this period This was so despite several traffic police personnel themselves being found not wearing helmet.

(c) In a more recent new\(^{637}\) four policemen of a raiding party were suspended by the S.S.P. (Amritsar) for trespass into the house of Jaspal Singh who was not involved in any activity of flesh trade for which the police party proceeded to raid in the suspects in Jora Pathak area.

(d) Recently in a reported case\(^{638}\) Mr. Justice K.C. Gupta of the Punjab & Haryana High Court directed the S.H.O. responsible for the offence to pay Rs. One lakh as compensation to the victim’s mother. On an enquiry conducted by Kharar’s Sub-Divisional Officer it was reported that on March 6, 1993, S.H.O. Avtar Singh, alongwith a Police party kidnapped Gurdeep Singh from his house and his whereabouts were not known.

\(^{636}\)“Police personnel violating traffic rules not be spared” The Tribune (Delhi Edn. August 9\(^{th}\), 2003.

\(^{637}\)“4 Cops Suspended for trespass”, The Tribune (Delhi Edn.), August 19\(^{th}\), 2003.

\(^{638}\)“SHO ordered to pay Rs. 1 lakh”, The Tribune (Delhi Edn.), July 17\(^{th}\), 2003.
(e) In a corruption case involving the Judicial Officers, the C.B.I. is not investigating as to where suspended Judicial Magistrate SS. Bhardwaj stayed for a month after escaping from the C.B.I. custody during raids on his house on June, 10. This also amounts an enforcement crime on behalf of the most reputed Central Investigating agency i.e. the Central Bureau of Investigation.

E. CAUSES OF ENFORCEMENT CRIMES

The Governments/Public servants do not and cannot own the responsibility for the enforcement crimes which Police officer commits during law enforcement. The arguments are that:

(a) The Police Officers are appointed to enforce law in a lawful manner;
(b) They are not even remotely thought to involve in illegalities;
(c) If they do unlawful acts during law enforcement, the responsibility is theirs and not of the police departments or governments;
(d) Police officers/men responsible for law violations will pay the damages.

But the question which remains to be answered is why the public servants commit enforcement crimes. According to a study there were 87 causes of enforcement crimes which could be identified. They are further grouped into the Push and Pull factors. Some of these are enumerated below:

(a) Push Factors

(i) False ego feelings and pseudo-authoritarianism.
(ii) Desire to make easy money by quick means.
(iii) Quest for occupying certain posts/positions for a longer period.
(iv) Vulnerability/susceptibility, political influence and god-fatherly treatments.
(v) Urge to have quick result by short cut methods.
(vi) Longing for name, fame success and achievements.
(vii) Ignorance about the laws, rules procedures and code of conduct.
(viii) Lack of information about police ethics, professionalism, expertise etc.
(ix) Defective formation of an upright conscience, superego concepts and moral code.

(x) Over effect of “id” complexes (Freud). animal energies, instincts.

(b) Pull factors:
(i) Cultural and police subculture which promote enforcement criminality
(ii) Silent approval and open encouragement by Supervisory ranks for enforcement criminality providing it produces quick results.
(iii) Law and rules which favour enforcement criminality. They given immunity to the enforcement crime doers for the Acts they commit even in the wrong way.
(iv) Public’s tolerance and indifference to enforcement crimes.
(v) Political pressure and pressure from upstairs in police edifice.
(vi) Influence of money and other favours.
(vii) Social processes such as imitation, identification and suggestion etc.

F. EFFECTS OF ENFORCEMENT CRIMES

Whatever may be the causes of enforcement crimes and the rationale for their justifications, enforcement crimes and criminals tarnished the Police Image. Even among school-going children, Parents, Grandparents and others used to threaten or frighten their children/grand-children by telling that the Police would be called in case they disobeyed them. So much was the fear of the “coercive weapon” caused among the people that people used to look at police sub-culture as a culture of torture and coerciveness For several decades, enforcement criminality has been in vogue in India and if the same trend continues in the years to come, the police system itself will be shaken in its foundations and will be forcefully converted to function as a service which respects Human rights and the dignity of every human person etc. in the light of these observations, the effects of enforcement crimes may be studied as following:

(a) Effects on Victims

When more and more cases are acquitted people start thinking about the futility of the enforcement procedures and criminal Justice administration, What is the loss suffered by the acquitted in criminal cases? No one has any accurate account of the same yet it effects are far reaching. People have broken or become paupers by the time acquittal verdicts are pronounced As has recently been happened in Gujarat in Vadodra’s Best
Bakery case\textsuperscript{640} which acquittal verdict has been passed in favour of accused persons involved in communal violence in the aftermath of Godhra train incident. If acquittal verdicts comes out as a result of perfunctory investigation or indifferent prosecution (As remarked by the Hon’ble Supreme Court in respect of verdict passed in Best Bakery Case). then, who must beat the loss caused to the exchequer and to the accused. Ironically, at present there is no law to realize the lost of amount from people who are responsible for such enforcement crimes.

(b) Effects on Law Enforcement System

The people generally blame the police more than they do with other agencies. The reasons are obvious. Police do a lot of work fair or foul from the arrest to conviction/acquittal in connection with crime investigation and detection. Many things which the police do are conspicuously visible to the general public. The suspects/accused in crimes suffer the sufferings in connection with the investigation of the crimes. They tell others about their experience in police stations and the consequent propaganda they give carve out the image of Police. Ultimately, when the criminal cases are acquitted, people look at the police in disfavor. Some people say that the criminals are likely to escape from the court and therefore, whatever they suffer at police hands may be the real punishments however soft or severe-which the suspects/accused interprets as enforcement crimes. In this way Enforcement crimes committed by a few tarnish the image of the whole Law Enforcement System which poses a serious threat to the criminal Justice administration of the country.

(c) Effects on Society

Enforcement crimes are not tolerated by public as the people consider a crime to be a crime, no matter who commits it. Crimes are investigated by police and the expectation is that the criminals will be detected and punished. But, when the public see acquittals in large measure, they start doubting police sincerity in crime investigation \textit{ab initio}. When criminals are acquitted, nobody bothers about the expenditure incurred by the state’s exchequer for them. Acquittals reveal that there is a failure in the principles contained in ‘Management in objectives’. At present in India more and more criminal cases are acquitted and the loss caused to the exchequer is borne by the public at large.

\textsuperscript{640} Best Beakery Case (Still pending in appeal before Gujrat High Court).
Although the amount is diffused among the general public and no one has any direct loss or suffering. But, it affects the trust and confidence of the people on the various sub system that operate for administration of justice. When more and more cases are acquitted, people start thinking about the futility of the enforcement procedures and criminal justice administration. Further there is a school of thought which advocates that the people and the accused cannot afford to suffer loss in such instances and precisely therefore the individuals responsible for causing miscarriage of justice must bear the loss caused by them to State and to the accused.

(d) **Effects on Criminal Justice System**

Everything is limited in time and space and administration of Justice is not an exception to the general rule. When a crime is registered by police, there is no meaning in prolonging investigation beyond time and space. Everything must have finality in time, but instances are plenty to show that investigation continues for several years or decades. The present trend is to find fault with the state’s machinery to the extent of demanding investigation by the Central Bureau of Investigation. But most unfortunately and dishearteningly enough, the C.B.I. is also facing a credibility crises now as it becomes a target of adverse and negative criticisms from superior courts and the press in the recent past. People, of late express their lack of confidence in C.B.I.’s investigation and they emphatically say that the investigation conducted by the nation’s premier investigating agency is in no way superior to the same conducted by the State police agencies. This assumption also seems to be true in the light of recent cases against the highly placed political persons, registered by C.B.I. the case which have been registered include; the registering of FIR against the Ex. Uttar Pradesh Chief Minister Smt. Mayawati in connection with Taj Corridor\textsuperscript{641} matter in which the registering of FIR was ordered by the Hon’ble Supreme Court in India, by filing of charge sheet against the Chhatisgarh Chief Minister Ajit Jogi in connection with a forgery case\textsuperscript{642}, by registering of charge sheet against the former Uttar Pradesh Minister Amar Mani Tripathi and a number of raids by Punjab Vigilance Bureau on the various properties and farm houses of former Punjab Chief Minister Prakash Singh Badal etc. In all these cases the persons against whom the

\begin{footnotesize}
\textsuperscript{641} Hon’ble Supreme Court’s Ajit Jogi in
\textsuperscript{642} “CBI charge sheets Ajit Jogi in forgery case”, The Hindi, Delhi, October 8, 2003.
\end{footnotesize}
action was taken by the premier public servants termed it politically motivated, thereby spreading a deep sense of distrust among public towards the premier Public servants and ultimately endangering the whole criminal Justice System.

**ABUSE OF CUSTODIAL CRIMES**

**A. INTRODUCTORY**

Custodial Violence is one of the worst crimes in civilized society and therefore is a matter of concern for many reasons involving far reaching consequences. Custodial violence (Crimes) which includes torture, deaths in the Lock-ups and incidents of rape upon women strikes a heavy blow at the Rule of law which demands that the powers of the executive (Public servants) should not only be derived from law but also that they should be limited by law. It is further aggravated by the fact that persons who are supposed to be protectors of citizens, themselves commit violations of Rule of law and ultimate violation of their basic Human rights. These violations when committed under the shields of ‘uniform’ and ‘authority’ between the four walls of a police station, lock-up or prison where the victims are totally helpless, present the worst fate of the civilized society. This can be so termed in the light of well accepted principle emanating from notions of criminal Justice system that the quality of a nation’s civilization can be measured by the methods it uses in enforcing criminal law. However, in spite of the constitutional and statutory provisions contained in the Criminal in the Criminal Procedure Code, 1973 and the Indian Penal Code, 1860 aimed at safeguarding personal liberty and life of a citizen, the growing incidence of torture, rape and deaths in police custody has been a disturbing factor over the past several years since Independence. Experience shows that the worst violations of Human rights takes place during the course of Investigation when the police, preventive agencies (TADA/POTA authorities) with a view to securing evidence or confessions often resort to third degree methods including torture and techniques of arrests by either not recording them or describing the deprivation of liberty merely as “prolonged Interrogations”. All these gruesome violations of Human rights has been continuously in practice despite the Apex courts repeated directions and adverse remarks against the Public servants and more particularly
Despite the landmark judgments of the Supreme Court in D.K. Basu’s case\(^{643}\) and in Joginder Kumar’s case\(^{644}\). In Joginder Kumar’s case Supreme Court quoted that ‘it appears from the third report of the National Police Commission that nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police actions accounted for the 43.2% of the expenditures of the Jails. A reading of the Morning Newspapers carrying reports of dehumanizing torture, assault, rape and death in police custody or other governmental/Public servants almost every day is, indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the Rule of law and the administration of the criminal Justice System. As a result of this situation, the society rightly feels perturbed.

B. **CUSTODIAL CRIMES**

(a) **General**

Custodial Crimes are the common phenomena in today’s civilized and modernized Police Stations of India. They are frequently committed under the influence of uniform and authority. Generally, they are committed in the form of unjustified assault and inhuman practices of torture thereby expressly violating the basic Human Rights of the accused persons taken into the custody. Sometimes these brutal and inhuman acts of torture and assault. Etc. reach to such an extreme stage that it may result in death of the accused or it may incapacitate the accused to such an extent as would cause an irreparable injury in his body and soul. Even, on some occasions, they go to the extent of committing the most heinous offence of causing rape upon innocent girls and women in their custody. All these brutal practices put a huge question mark upon the functions and efficiency of the law Enforcement agencies as regards the nature of their work and duties which are enjoined upon them by the Law. Since such type of unlawful activities put an embargo before the prime object of maintaining law and order in a society governed by the basic principle of “Rule of Law”. Hence, to understand the above mentioned deep rooted problem of custodial crimes, they are required to be discussed more elaborately in the following manner;


(b) Custodial Torture

The word “Torture” which poses a challenge for the medical legal and other professions, today has become synonymous with the darker side of Human Civilization.\textsuperscript{645} Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. “Torture is anguish, squeezing in your chest, cold as Ice and heavy as a stone, paralyzing as sleep and dark as the abyss, Torture is despair and fear and rage and hate, It is a desire to kill and destroy including you.”\textsuperscript{646}

Torture is the very negation of human dignity and cuts at the root of the culture of Human rights. It is defined as “The deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons, acting alone or on the orders of any authority to force another person to yield information to make a confession or for any other reason.”\textsuperscript{647}

Due to growing phenomena of custodial torture, it has paved the way to make it an enforceable right to compensation in case of torture including mental torture inflicted by the State or its agencies; and now it is a part of the public law regime in India. In many of its decisions, the Supreme Court of India started a new era of compensatory jurisprudence in Indian legal history. This newly forged weapon to help the torture victims has been sharpened in many of its decisions, In Nilabati Behera case\textsuperscript{648} the Supreme Court said “the court, where the infringement of fundamental right is established, therefore cannot stop by giving a mere declaration. It must proceed further and give compensatory relief not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for a legal injury is a compulsion of judicial conscience.” This crystallization of the Judicial right to compensation was further reiterated in D.K. Basu’s case wherein the Court went to the extent of saying that since

\begin{footnotes}
\textsuperscript{645} VIIIth International symposium on Torture” – speech by Hon’ble Dr. Justice A.S. Anand, Chief Justice of India.
\textsuperscript{646} Adriana P Bartow quoted in “VIIIth International symposium on Torture”, speech by Hon’ble Dr. Justice A.S. Anand, Chief Justice of India.
\textsuperscript{647} The World Medical Association in Tokyo declaration 1975.
\textsuperscript{648} Nilabati Behra v/s State of Orrisa, (1993) 4 S.C.C. p. 746
\end{footnotes}
compensation was being directed by the courts to be paid by the state held vicariously liable for the illegal acts of its officials the reservation to clause 9(5) of I.C.C.P.R.by the Government of India had lost its relevance. The earlier instance of taking serious not of illegal arrests and torturous activities of the Public servants and awarding of compensation to the victims can be traced through cases of Rudal Shah649, Bhim Singh650 and Saheli651 in Delhi among others.

In Yousuf Ali’s case652 the Supreme Court reiterated that if the accused is beaten or starved or tortured in any way during the course of investigation by the police, it will be taken as a case of custodial torture. Further, in Nadini Sathpay’s case653 Justice Krishana lyer laid down certain guidelines to provide protection to an accused person in police custody. In this case the court held that if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect, but sufficiently substantial, applied by the Police in obtaining information from the accused, it becomes as case of custodial torture which is violative of right against self incrimination. Going a long way, in Kishore Singh’s case654 The Supreme Court expressed its serious concern for gruesome act of police torture and observed “Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional culture than a state official running Berserk regardless of Human rights.”

The most heinous facet of custodial torture in Police custody was reported when on 10th February, 1997 two men who had been detained in police custody for several days, were admitted to a Government Hospital in Rajkot, a town in the Western State of Gujrat with swollen eyes. Reports indicate that a concoction of Tiger Balm (a medicinal balm used for treating headaches) and Chilli powder had been rubbed into their eyes by Police officials. The following day, five more men were admitted with similar complaints. Soon after the first two detainees were admitted to G.T. Shetty Eye Hospital, The Hospital Superintendent wrote a letter to the Deputy Commissioner of Police urging that the Police restrain from treating people in this manner. The seven men had been ordered to

strip and slap one another before being thrashed with belts. On this occurrence, amnesty International said “The fact that such brutal practices continue, despite the existence of guarantees in the Indian Constitution and safeguards in the general criminal law, demonstrate the extent of the continuing problem of torture in police custody. The outcry after the Bhagalpur blinding, when in 1970 and 1980 thirty men and boys were blinded in Bihar, appears to have had little lasting effect.” Amnesty International is calling on the government of India to demonstrate its commitment to eradicate torture by ratifying and implementing the minimum standards in the United Nations conventions against torture and other cruel, inhuman or degrading treatment or punishment. The shameful part of this event lies in the fact that the Commissioner of Police, Rajkot issued an immediate denial of the use of third degree methods by police officials.

In a more recent instance the Controller of Wimpy International Limited alleged that he was “mentally and physically tortured” in Police custody. In his petition filed before the Punjab & Haryana High Court seeking the grant of bail in an alleged corruption case registered by the Vigilance Bureau at S.A.S. Nagar, in August last year on the basis of “Secret information”, the Controller added that he was also “stripped harassed and humiliated” by the officials “using filthy language”.

(c) Custodial deaths

Custodial crimes which include deaths in police custody have drawn attention of Public media and legislature over the past many years. Even the Human rights commission has taken serious note of such incidence, Deaths in police custody may occur in several forms which may include as following:

(i) Death in police custody of persons remanded to police custody by court.
(ii) Death in police custody of persons not remanded to police custody by court.
(iii) Death in police custody at the time of production/proceeding in Court/journey connected with investigation.
(iv) Death in police custody during Hospitalization/Treatment.
(v) Death in police custody due to accidents.
(vi) Death in police custody in mob attack /riot.
(vii) Death in police custody by other criminals.

(ix) Death in police custody while escaping from custody.

As per data’s published by a responsible Government Agency, the incidence of deaths in police custody may be studied in the following manner along with Tables containing comparable data’s.

(i) Death in Police Custody (of persons) remanded to police custody by court:

During the year 2000, 40 deaths in Police Custody of those persons who were remanded to police custody by the Courts, were reported compared to 22 such deaths during 1999; thereby showing an increase in such incidents by 90.5% over 1999. Magisterial enquiries was ordered/conducted in 21 cases at all India level but there were no Judicial enquires in the incidents relating to the custodial deaths, Only 9 number of cases were registered in connection with such custodial deaths during this year. 14 Police personnel charge-sheeted in connection with these incidents.

(ii) Deaths in Police Custody (of persons not remanded to Police Custody):

There were 38 such incidents of death in Police Custody during the year 2000 against 43 such incidents in 1999; thereby showing a decline of 11.6% over 1999. Magisterial enquiries were conducted in 27 incidents and no judicial enquiry was ordered in such cases. Police have registered 23 cases during 2000 and one policeman was convicted while 8 men were charge-sheeted.

(iii) Death in Police custody (at the time production/proceedings in Court/journey connected with Investigation:

A total of 25 deaths have been reported during the year 2000 in the custody of the police when the victims were either undergoing journey in connection with the investigation or they were proceedings to courts etc. against 15 such incidents during 1999; thereby showing an increase of 66.7%. In these incidents, magisterial enquiry was ordered in 9 incidents and no Judicial enquiry was ordered in such incidents. During the year 15 cases were registered and 11 policemen were charge-sheeted.

(iv) Death in Police Custody (During Hospitalization/Treatment): A total of 35 deaths in Police custody were reported when the victims were undergoing treatment or when they were under Hospitalization compared to 44 such incidents during 1999 registering a decline of 20.5%.

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(v) Death in Police Custody Accidents:
During the year 2000 a total of 2 such deaths were reported. This has shown a decline of 60% over the year 1999.

(vi) Death in Police Custody (By other criminals):
Three incidents of custodial deaths in which the persons were killed by another criminals, when the victims were under custody of the police personnel, were reported in the year 2000. An equal number of deaths were also reported during 1999.

(vii) Deaths in Police Custody (By suicides):
A total of 26 suicides were reported under police custody during 2000 against 24 such incidents in 1999 thereby showing an increase of 8.3% over the year 1999.

(ix) Deaths in Police Custody (while escaping from Custody):
A total of 11 deaths were reported when the victims were in police custody and tried to escaped from such custody compared to 12 deaths in 1999 registering a decline of 83% over the year 1999.

In a more recent instance\textsuperscript{657} of custodial death in the police custody has been reported to have occurred in Jammu on July 4, 2003. In this case Mohan Lal aged 26, a rickshaw-puller was tortured to death by Jammu Police allegedly taken up by Police on suspicion of being a member of the “Kale Kachhe Wale Gang”. The relatives of the deceased alleged that Mohan Lal was given electronic shocks in Police custody, Tara Chand, another person working as a Safai Karamchari at the Army Camp in Jammu alleged that the DS.P. (City) had threatened to hang him upside down if he spoke against the police. He also alleged that seven youths picked up form Amritsar were still missing.

In Another Instance\textsuperscript{658} consisting of shameful activities on the part of the police officials, two drunken policemen (Both Head-Constables) namely Ranjeet Singh and Balvinder Singh on patrol duty close to the residence of C.M. Captain Amrinder Singh played a cruel “sport” with an eleven year old boy in a vegetable-cum-tea shop in front of the National Institute of Sport on the afternoon of 1 August, 2003 which ended in his death. Both the drunken policemen shamefully and in the most inhuman fashion remarked

“Nothing has happened”, when the boy Gurpreet alias Kaka collapsed. Upon this incidents no one except the Deputy Speaker of Punjab Assembly Mr. Bir Devender Singh demanded immediate screening of the Punjab Police.

(d) Custodial Rapes

As in other countries though out the World, Rape is extremely common in India. Hardly a day passes without a case of Rape being reported in the newspapers. Women belonging to low castes and Tribal women are especially targeted towards this menace of the Human civilization. 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. In a notorious case from Rajasthan involving Rape of 43 years old Bhanwari Devi, a backward caste woman, alleged Gang Rappers were acquitted on account of their high caste and middle agedness. Bhanwari Devi was a voluntary woman social activists from Bhatri Village in Rajasthan. In her complaint she alleged that she had been Gang Raped on Sep. 22, 1992 by members of a rich, high caste family, whom she had attempted to report for organizing a child marriage as part of her job in the State sponsored Rajasthan’s women’s development project. This illustrates the difficulties of women who have been Raped and gives an insight into the status of women in India. Following the transfers of the case from the local police to the State Criminal Investigations Department, and then under pressure from women’s group, to the Central Bureau of Investigation (C.B.I), the District & Sessions Court in Jaipur dismissed her case and acquitted all five accused. The judgment emphasized that her First Information Report (F.I.R.) was not immediately filed and that she did not tell anyone else in the village about her ordeal.

In Kashmir Custodial Rape is frequently reported. There it has a greater significance than mere abuse of authority and it has become a tool of war. Since, Indian crack downs began against militants in Kashmir in 1990, rape has been used as a weapon by both the Indian border Security Force (B.S.F.) and by militants Groups.659

1992, 15 cases of rape were reported as being committed by the army and the B.S.F.\textsuperscript{660} Rape by the B.S.F. usually occurs during crack downs and search operations, during which men are held for identification while security forces search their homes. It is used as means of humiliating entire community and as a means of reprisal following militant ambushes. On Oct. 10th 1992 an Indian Army Unit entered the village of Chak Saidpora near the town of Shopian, Distt. Puiwama, searching for suspected militants. During the operation, 6 to 9 women were Gang raped by army Officer. The investigations which followed the incident were inadequate and characterized by unwillingness on the part of Indian Government to accept responsibility, and a deliberate attempt to discredit the testimony of the victims. All this has happened despite the provision in the Indian Criminal law which prescribes punishment for members of the Police or Security forces who have committed rape. The Criminal Law amendment (Prevention) Act, 1983 provides for the offence of custodial rape carrying a sentence of 10 years imprisonment, which may be extended to life imprisonment and may also include a fine.

**Core of the Problem**

The basic problem is that it is the State that fights the case for the victim, but having note rights than those of a mere witness. While it must, in principle, defend the helpless, its character reduces the defence to a farce. Beginning with the First Information Report and the Panchnama to the Medical Examination, delay in rape trials and the scope for tampering with evidence is full of loop holes which go against the victim. helpless, its character reduces the defence to a farce, Beginning with the First Information Report and the Panchanama to the Medical Examination, delay in rape trials and the scope for tampering with evidence is full of loop holes which go against the victim. Besides the subjective view of the Judges that creates much disparity in verdicts like that happened in Mathura’s case,\textsuperscript{661} is to be contended with. That notwithstanding, most accused are acquitted-quite often on superficial grounds like the future of youth offenders being marred by imprisonment. A feminist lawyer\textsuperscript{662} feels that activists have wrongly accepted the conventional, patriarchal definition of rape offered by the law which recognizes rape to have taken place only when there is penetration. She says such definitions are a product

\textsuperscript{660} Ibid.

\textsuperscript{661} Human Rights Watch/Asia and Physicians for Human Rights.

\textsuperscript{662} Flavia Agnes, founding member of Majilis, a legal-aid centre for women in Mumbai and Nagpur.
of a system that denies women economic rights and treats them as the property of men. Since penile penetration can lead to pregnancy and illegal heirs of family property, a male-dominated viewpoint recognizes only this as rape. Moreover, in many cases there is no justice for the women because rape cannot be proven and instead violating of modesty, which has a lighter punishment, is ascertained.

Whatever may be the form and extent of the problem, rapes in police custody is seen as a stigma on the law enforcing agency by the citizens. Police, which is a primary agency for ensuring safety of the women, children and those who were down-trodden, is not forgiven by the society. If they themselves get involved in rape cases that too in police custody thereby representing the most shameful abuse of the authority entrusted to them for the protection of life and liberty of the citizens. A number of such cases reported at All India Level for the years 1996-2000 as well as the cases disposed by Police and the Courts during the same period may be studied with the help of following Tables.

(e) **Other Custodial Crimes**

Apart from brutal crimes committed in the police custody there are other types of custodial violence practiced by Public servants while interrogating the accused or while investigating into the alleged offence. These other forms of custodial violence are discussed as following:

(i) **Illegal and Inhuman Handcuffing**

At present, India has one of the most progressive and human handcuffing regimes in the world. The use of handcuffs is the exception, not the rule. Unfortunately there has recently been tremendous pressure by the police to make mandatory handcuffing the law. On 10th July, 2002 the bureau of police research and development, in collaboration with the Institute of Social Sciences, organized a Seminar titled “Use of Handcuffing a rational approach”. The Seminar attended mostly by police representatives from across India, provided an opportunity for the participants to discuss to guidelines for handcuffing. An overwhelming majority of them advocated legal reform to make handcuffing mandatory. Such a move undoubtedly is very unfortunate on the face of a democratic and welfare State and that too on the part of the agencies entrusted with the supreme responsibility of protecting the life and liberty of the citizens and to prevent them from inhuman and unjust treatments. It is not disputed that as the police argue, restraints are sometime
necessary for legitimate security reasons. But in India they are frequently used, both publicly and privately, to humiliate, debase and intimidate arrestees and detainees. In a recent incident in Punjab which is enough to shaken the faith of law abiding citizens, Justice A.S. Bains, a former Punjab & Haryana High Court Judge, was arrested by the police and repeatedly placed in restraints even though there was no danger that he would attempt escape. Justice Bains brought a court case and was awarded Rs, 50,000/ as compensation. The High Court held that his handcuffing and illegal detention was definitely a violation of fundamental right.

The right to be free from torture and cruel, inhuman or degrading treatment is documented in Article V of the universal declaration of Human Rights (U.D.H.R.), Article VII of the international covenant on civil and political rights (I.C.C.P.R.) and forms the basis for the conventions against torture (CAT). The I.C.C.P.R. also contains the related rights of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person. These international instruments are all binding on India. The Supreme Court of India has also, with a view to curb the increasing incidents of illegal and inhuman handcuffing laid down alternatives of handcuffs in the landmark Prem Shankar Shukla’s case. These alternatives are as follows:

(I) Increase in the number of Escorts;
(II) Arm the Escort party if necessary;
(III) Give special training to Escort party;
(IV) Transport of prisoners in protected vehicle.

By adopting the above methods, the handcuffing is virtually abolished in the State of Tamil Nadu. Further it was also directed that the handcuffs can be used by the Escorting police party if the prisoner is dangerous and desperate, or if the prisoner is likely to break out of custody or play the vanishing trick. The Escorting authority should also record the reasons for handcuffing under trial prisoner even in extreme cases and intimate to court so that the court may consider the circumstances and issue necessary direction to the Escort party.663

(ii) Deprivation from adequate fooding and other Human amenities

The word “Custody” carries with it the responsibility to take care of the person or

the property which is taken into one’s custody. This responsibility becomes greater when policemen or any other responsible investigating agency take into custody any person thereby curtailing the liberty of such person. No matter, a person may have lawfully been taken into custody by the Police, yet in no situation the very and basic necessities for protecting the life of a person can be curtailed. But in Indian scenario the Police or other public servants involved in the function of enforcement of law and prevention and detection of crimes, treat the persons taken into custody on the accusation of committing the crime in a very inhuman manner. The persons accused of any offence are not given proper feeding and basic human amenities which in itself amounts to a custodial crime. Such a brutal attitude of the Public servants presents a very dark and ugly face of those persons who are responsible for proper enforcement of law.

(f) COMPLAINTS AGAINST POLICE PERSONNEL FOR VIOLATION OF HUMAN RIGHTS

(i) General

Whenever and wherever is a transgression of rights by the Government/State or any Law enforcing agency with respect to the rights guaranteed by the International, Regional or national/constitutional laws, it is violation of human rights In the violation of human rights the State may he directly involved or the State may fail to exhibit due diligence in protecting its citizens from the violations of their rights or an agent acting on behalf of the state may commit the violation.664 All Human Right violations can be classified as crimes and the State becomes accountable for any excesses or inaction. Wherever the police does not follow the correct procedure in identifying the offender and brings to book a wrong person it is a Human rights violation, hence, the investigator of Human Rights cases should ensure that the police and the Judiciary respect the law, exercise full judicial independence by prosecuting the persons involved in the crime even if they are politically or economically powerful.

The quality of Nation’s civilization can be largely measured by the methods it uses in the enforcement of criminal law. The police, in order to perform the role of the protector of the citizens have to be fearless and independent of executive government,


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although it is a part of organ of that government. Police is empowered with a plethora of unfettered powers have to be performed fearlessly and independent of executive government for the sole purpose of protecting the life and liberty of the citizens, but not as a tool of transgression of the same. Hence, the Supreme Court held that they would not interfere with the police in the matters within their exclusive province. In a recent case the Supreme Court reiterated its earlier stand while deprecated the practice of certain High Courts in interfering with the investigation and calling for the production of the case diaries when the investigation was in progress. But the real problem does not lie here; rather it has been widely felt that the police resort to short-cut and illegal methods in the performance of their duties, In this connection a renowned author has stated that the roots of police deviance are deep seated and multidimensional. It stems from, as seen in various countries of the World, ambiguous legislation, vulnerability to legal sanctity, occupational culture and a desire to produce quick results. In countries like India, the public expect the police to take law into their hands.

(ii) **Meaning and Principles of Human Rights**

**Meaning:** Human Rights are the rights that every human being is entitled to enjoy and to have protected. The underlying idea of such rights, which are fundamental to human dignity, is that they must be universally respected in the treatment of men, women and children. These rights exist in some form in all cultures and societies. Human rights have been legally granted to the citizens of countries all over the world. In general terms, they refers to a decent life, protection from ill health and unemployment, freedom of expression, right to education and many other rights.

The contemporary international statement of these rights is the Universal Declaration of Human Rights, adopted by the United Nations of December 10, 1948. The Declaration proclaims economic, social and cultural rights in addition to political and civil rights and freedom for the people of the world. These rights are considered the foundation of freedom, peace and justice. In 1986, the UN added a right of specific importance to developing countries such as India:

**Basic Principles:**

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667 “Conduct unbecoming”, Maurice Punch.
(I) All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

(II) Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin.

(III) Everyone has the right to life, liberty and security of person.

(IV) No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

(V) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

(VI) Everyone has the right to recognition everywhere as a person before the law.

(VII) All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination.

(iii) **Instances of Human Rights Violation by Enforcement Agencies**

Even after more than 50 years of India’s independence, in everyday newspapers there may be seen covering news of police excesses thereby violating the Human Rights of the Citizens in a country which is proud of being the largest democracy and having the only written constitution among all the democracies of the world and more so having in its constitution the specific and clear cut chapters on fundamental rights (Human Rights) of the citizens in consonance with rights as enshrined in the universal declaration of Human Rights. The people of Punjab still suffer the wrath of Police brutality. The government gave the Punjab Police excessive powers, so much so that they became a law unto themselves. The continuing excesses of security forces in Punjab have broken the backbone of the once peaceful and prosperous State.

Many Human Rights lawyers and activists paid with their lives or treading the path of political Justice. While the official figures put the total number of people killed in Punjab during the period from 1984 to 1996 at 15000, according to various Public servants and Human Rights group this figure rises to 25000 people who have been killed
by the Punjab Police. This includes persons “Missing from their homes, killed in “encounters”, cremated as “unidentified” and “escaped from police custody”. This will haunt the mind of every Punjabi and be remembered as the most sordid era in the history of the State of Punjab.668

In yet another writ position pending before the Allahabad High Court at that time, the U.P. P.U.C.L. has demanded the constitution of the State Human Rights Commission forthwith. Not only this, three orders of the Allahabad High Court have already been passed demanding to know from the C.M. Kalyan Singh why the government was ignoring the directives of the N.HRC. In an interesting incident reported from Lucknow the local police fictitiously identified victims of an encounter with a so called “Kachha Banyan Gang” of robbers. But the same day police in the neighboring Barabanki District claimed to arrest some criminals which shockingly also included names of those already killed in the encounter by Lucknow police. It is believed the victims of Lucknow encounter were agricultural labourers from Bihar who were on their way to Punjab in search of job. In another case, death of a top criminal Shreeparkash Shukla in a police encounter recently also created a controversy a BJP member of parliament Sawami Sakshi Maharaja had claimed earlier that Shukla had close connections with at least 8 ministers of the Kalyan Singh government, it’s suspected that Shukla was nabbed by the police, interrogated for about 12 hours and then killed in a so called encounter, The judiciary is yet to question why the U P. police believe in extra judicial killings.

**Human Rights Violations of Prisoners**

A prisoner does not lose all his rights when he is taken into custody or put in jail. He should not be subjected to torture, solitary confinement or other excess just because his freedom of movement has been taken away.669 Similarly, in a serious incident of Human right violation in which eight out of the ten under trials in Bhagalpur Central Jail in Bihar had lost their sight. The court asked the Registrar and another official to visit prison and talk to the blinded prisoners and other similarly situated to get the facts.670

National Crime Record Bureau (Ministry of Home Affairs) has collected datas in

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668 An Article by Arunleev Singh Walia, General Secretary, Lawyers for Human Rights International dated 15.08.2002.
respect of number of complaints received, enquiries and cases registered against police personnel during 1996 to 2000. The Bureau reported that during the year 2000, 68160 complaints were received against police personnel at All India level in which enquiries in 13734 cases), Magisterial enquiries in 236 cases and Judicial enquiries in 452 cases. But it is very surprising to note that the total number of cases that were either not substantiated or not found true amounted to 42608 cases, which amount to 62.5% of the reported complaints, which figure seems to be unconvincing at all. The comparative datas are presented in the following tables:

(g) **NATIONAL HUMAN RIGHTS COMMISSION AND CUSTODIAL CRIMES**

(i) **Brief Introduction to N.H.R.C.**

N.H.R.C. was set up after the passage of Human Rights Act in 1993 and following persistent efforts by human activists over several years. Its constitution gave rise to expectations that protection of human rights would no longer be ignored. Yet various concerns continued to be expressed as to whether the Commission would have the autonomy and the capacity to meet the ever-growing challenge to Human Rights.

The Human Rights Act envisages Constitution of state level Human rights commission so that the redressed of grievances can be swift inexpensive and the message of Human Rights reaches the grassroots level in the languages of the people. Further, the need for State Level Commissions has been felt acutely because of a rapid increase in the number of complaints. The Universal declaration of Human rights which carried a commitment to human dignity that emerged from the end of the Second World War and India’s achievement of independence. The Universal declaration adopted in Dec., 1949, preceding the completion of the Indian Constitution by a year. The preamble to the Indian Constitution and the chapters on fundamental rights and directive principles which together have been described as forming the core of the constitution, reflect the basic principles of the Universal declaration of the Human rights. The speech and expression and other rights under Article 19, cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individual dignity. The other rights include right to equality, freedom of speech and personal liberty, protection against arrest and detention in certain cases, freedom to manage religious affairs, prohibition of Traffic in human beings and forced
labour, and rights of minorities to establish and administer educational Institutions.

A renowned constitutional expert\textsuperscript{671} quotes article 1 of the Universal declaration as embodying the spirit of brotherhood that the preamble of the Constitution reflects. The article states “All human beings are born free and equal indignity ad rights. They are endowed with reasons and consigns and should act towards one another in a spirit of brotherhood.

(ii) **Role of N.H.R.C. in Curbing Custodial Crimes**

N.H.R.C. since its inauguration in Oct., 1993 has been the protagonist of the protection of most basic fundamental (human) rights of the people resident in the country. Soon after its constitution it called upon the law and order agencies at the District level throughout the country to report matters relating to custodial deaths and custodial rapes within 24 hours of occurrence. The Secretary General N.H.R.C. in its letter\textsuperscript{672} sent to Chief Secretaries of all States and Union Territories communicated “The Nation Human Rights Commission at its meeting held on the 6\textsuperscript{th} instant discussed the problems of custodial deaths and custodial rapes In view of the rising number of incidents and reported attempts to suppress or present a different picture of these incidents with the lapse of time, the Commission has taken a view that a direction should be issued forthwith to the District Magistrates and Superintendents of Police of every district that they should report to the Secretary General of the Commission about such incidents within 24 hours of occurrence or of these officers having rise to presumption that there was an attempt to suppress the incident”.

Further in 1995 the Chairman, N.H.R.C. issued directions\textsuperscript{673} to all the State that all post-mortem examinations done in respect of deaths in police custody and in Jails should be video-filmed and cassettes be sent to the commission along with the post-mortem report. The commission felt that the post-mortem reports are drawn casually and do not help in the forming of an opinion as to the cause of death. The commission was also of the view that at times Doctors succumb local pressure which leads to distortion of

\textsuperscript{671} “Introduction to the Indian Constitution”, Achariya Durga Dass Basu.
\textsuperscript{673} Letter by Justice Rangnath Mishra, Dated August 10\textsuperscript{th} 1995.
facts. Certain other letters  were also written by N.H.R.C. requiring to adopt the model autopsy form and the additional procedure for inquest, and seeking clarification regarding deaths in police custody and deaths in Judicial custody.

Following this direction, West Bengal Govt. issued orders to strictly follow the following procedure:

(i) All custodial deaths to be reported to the National Human Rights Commission, west Bengal Human Rights Commission, District Magistrate, the concerned court and Inspector General of Prisons within 24 hrs.
(ii) inquest of the dead body by the Magistrate.
(iii) Magisterial inquiry on the death.
(iv) Post-Mortem examination of the dead body.
(v) Video-filming of post mortem examination of the dead body.

**Judicial Approach against Custodial Crimes**

Inspired by Human Rights revolutions, Courts in different parts of the country are persuaded by a variety of factors, to follow that road to change.

(a) In Khatri Vs. State of Bihar, a case pertaining to the blinding of under trials by the police in Bhagalpur Jail, the Supreme Court directed that the under trials should be given the facility of being treated at the All India Institute of Medical Sciences at the cost of the State of Bihar. The court also made historical remarks in the same case that “The police are supposed to enforce the law and not to break it but here it seems that they of the State of Bihar. The court also made historical remarks in the same case that “The police are supposed to enforce the law and not to break it but here it seems that they behaved in a most lawless manner and defied not only constitutional safeguards but also perpetrated what may be described as a crime against the very essence of humanity.”

(b) In Khatri (II) Supreme Court remarked that it has been the beauty of the Judiciary to ensure that those who hold power in public trust do not misuse it. The court further held that the State in under an obligation to provide fee legal aid

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service to an indigent accused not only at the stage of trail but also at the stage where he is produced before the magistrate as well as he is remanded from time to time, it is clear that such a safeguard tends to prevent possibility of committing any kind of custodial violence upon accused in the hands of police or other investigating or preventive agencies.

(c) In Raghubir Singh’s Case the Supreme Court expressed its anguish at the recurrence of police torture during investigation and held, “We are deeply disturbed by the diabolical recurrence of police torture resulting in a terror in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore Human Rights to death”.

(d) Faced with repeated instances of custodial torture and illegal arrest, the Supreme Court in the famous D.K. Basu’s case laid down.

(e) In another case the Supreme Court held that the State, at the highest administration and political levels must organize special strategies to prevent the brutality by police methodology otherwise the creditability of the rule of Law in our republic visa-vis the people of the country will deteriorate.

**PROBLEM OF COMMUNAL RIOTS AND PUBLIC SERVANTS**

**A. Introduction**

Labeled as “Communal” because the violence involved the communities identified by religious differences, the riots are in fact orchestrated events which depended on the connivance or outright participation of police and other officials and political leaders. It is true that the term “communal conflict” originated in colonial analyses of religious conflict and repression that target communities based not only on describe violent conflict and repression that target communities based not only on religious affiliation but on ethnic, racial or linguistic characteristics. Press accounts of communal conflicts in India have frequently portrayed religious antagonisms, particularly between Hindus and Muslims, as intrinsic to the region. However, such an interpretation

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679 ‘Human rights Watch April 1996, Volume 8, No.2 C, Article titled “TNDIA”-communal violence the denial of Justice and General Assembly adopted by the Eight United Nations Congress on the prevention of subsequently welcomed these principles in Resolution 45/121 and called on all governments to be guided onal, India: Memorandum to the Government of India arising from an Amnesty Inter by them
fails to take into account the fact that political organizations and governments have exploited religious differences for political purposes. But the real problem remains uncured i.e. when persons demonstrating their sentiments accelerated by communal forces face violation of their Human Rights in the hands of law enforcement agencies.

The indiscriminate use of lethal force against unarmed demonstrators violates the ‘Basic Principles’ on the Use of Force and Firearms by Law Enforcement Officials’, which inter alia states:” Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms... Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury and respect and preserve human life The Basic Principles also state: “Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.” Unfortunately, the Maharashtra State government’s Guidelines for Dealing with Communal Disturbances 1986 authorize the early use of lethal force in order to quell a communal disturbance and prohibit firing warning shots in the air, in violation of the basic principles.

Victims of communal violence in India suffer a range of violations of internationally recognized Human Rights. these includes the right not to be arbitrarily deprived of life, the right to equal treatment before the law without discrimination and the right not to be subject to coercion which would impair the freedom to have or adopt a religion Ethnic, linguistic and religious minorities are guaranteed the right to enjoy their own culture, to profess and practice their own religion or to use their own language. Furthermore, under international human rights law states are obligated to prohibit by law any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination hostility or violence.

Communal Violence in India has reached unprecedented levels in the 1990’s, where conflicts were once localized, they now occur on a national level. The government

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680 The basic principles were Crime and the Treatment of Offenders on September 7, 1990. The UN Economic and Political Weekly (Bombay) April 9, 1994, p. 838.
claims to be committed to secularism and non discrimination but in practice it shows a conspicuous tendency to ignore the scale of violence and human suffering during communal violence. Members of particular community have been attacked in the presence of the Police and the police did nothing. In many cases like the post Ayodhya communal violence and in the recent Gujarat communal riots the police openly supported the rioters and accompanied them in the attack. Even when the victims went to the police station they were driven away without recording their complaints. In some cases the F.1.R.s have been recorded but no further investigation has been undertaking. The victims now has no faith in police and in the law enforcement agencies, which puts a huge question mark upon the ability and creditability of the public servants towards their commitment to the upholding the Rule of Law a basic principle of democratic setup like India. Human rights groups in India extensively documented the Ayodhya incidents and the Bombay riots much earlier to the recent Gujarat Carnage. Their reports described in detail the complicity of government authorities and security forces in the destruction of the mosque and the violence that follow. Several of these organizations have filed petitions at the Bombay High Court seeking to review the Shri Krishan Commission which was disbanded by the Maharashtra Government on Jan., 23 1996. On Jan. 25th 1996, India’s National Human Rights Commission stated that it intended to revive its investigation into the riots, which has been suspended after the Shri Krishan enquiry was established but later on March 18th 1996 N.H.RC. withdrew its proposal stating that since the matter in respect of status of the Shri Krishan commission was pending before the Bombay High Court and the Supreme Court it was unable to launch a new investigation. Keeping in view all the above mentioned problems and challenges the present chapter has been elaborately discussed in following lines.

B. Communal Riots in Punjab

The Punjab Police’s role in eliminating a particular religious community Sikhs in this case in their own homeland is unheard of. The manner in which the Punjab Police acted beyond the pale of the law has put civilization to shame. But the State Government seemed on a long vacation of sorts with its eyes and ears closed to the unending woes of the victims. On the one hand, the police excesses and administrative failures broke the backbone of the State, in the other hand the poor condition of the farmers due to the
discriminatory policies of the State Government in ignoring their demands for adequate water and cheap fertilizers added to the State’s problems.

The assassination of the chief Minister Beant Singh on 31st Oct., 1995 brought a halt to the corrupt and anti people rule in the State, Then came the Shiromani Akali Dal BJP alliance that promised to end the ‘Police Raj’ and assured Justice to the victims of state repression. But until end of their tenure in power, not a single police officer responsible for Human Rights violation has been hauled up for his/her acts of torture people in illegal custody, kills them in fake encounters maintain private goons, patronize criminals, grab land belonging to the poor and the weak and generally use muscle to crush opposition. The chief Minister of the state declared on 2nd Oct. 1997 that the cases of all those prisoners who were languishing in jails under TADA and other offences would he considered and that they would be released within a short period. But the promise was forgotten and many people who had nothing to do with militant activities still remained languishing in Jails.

(C). Hindu-Muslim Communal Riots

(a) Avodhya Riots

In the aftermath of the destruction of mosque Ayodhyas Muslim community was systematically attacked by Hindu mobs for two days. Muslims were physically attacked and their homes, shops and religious buildings were burned down. Local politicians denied that Hindus had carried out the attacks. BJP MP Uma Bharati complained to reporters that the Muslims were sitting their houses on fire. In neighborhoods where Muslims and Hindus lived next to one another, only property owned by Muslims was damaged and destroyed. On December 6 and 7, the police and the PAC did not protect Muslims and in some cases actively participated in the violence. Federal troops which were deployed in the vicinity were not used to restore law and order, Muslims were attacked until late in the evening on December 7 and December 8, the central government finally sought to stop the violence by which time at least fourteen people had been killed and 267 Muslim’s homes, twenty three mosques and nineteen graveyards were destroyed or damaged.

An eyewitness reported : The rioting began seriously only at about 4 am. (December 7, 1992) and continued for twelve hours, with mobs of several hundred
roaming the streets of this Temple town shouting “Jai Shri Ram (Long live Ram)” and plundering and torching each and every Muslim home 134 in all and business establishments in broad daylight. First they looted all the valuables and currency they could lay their hands on. Then they smashed to pieces everything that was inside the houses. What couldn’t be broken whether it was a motorcycle or some cattle or clothes and books went into huge bonfires and were reduced to ashes. After this the houses were set on fire, but not if they were too close to Hindu homes lest those too got damaged. Any other mosque they could find was an added bonus. As a result, barring two all the Masjids and Idgahs (Muslim religious sites) were either destroyed or damaged. This was not just some mindless and wanton destruction of human life and property by the kar sevaks in order to sustain the high they had achieved only a few hours ago by razing the Babri Masjid to the ground. On the contrary, they worked to a carefully crafted plan. But all their zeal and commitment would have come a cropper if some of the Hindus of Ayodhya and the U.P. (Uttar Pradesh) police and the Provincial Armed Constabulary posted there had not pitched in the locals helped the strategists by identifying Muslim property well before December 6, and the police force provided the final touches by either actively participating in the lootmar (pillaging) or turning a Nelsons’ eye to what was happening around them. For instance, on the morning of December 7, as I was walking through the heavily policed Ramkot area, not even a stone’s throw away from the disputed site, some kar sevaks were setting fire to the shop of Lala Tailors which was owned by a Muslim Instead of stopping the miscreants the PAC men on duty were urging them to quickly throw out the odd pieces of wooden furniture inside, which they then used for making a fire to ward off the winter chill right in the middle of the road.682

As per report of enquiry commission consisting of three former judges namely O. Chinnappa Reddy, Justice D.A. Desai, Justice and D.S. Tewatia, Justice following conclusions was drawn:

(i) The Central and State intelligence reports warned the central and State administrations of the possibility of destruction of the Babri Masjid well in advance.

(ii) It was widely known among the kar Sevaks in Ayodhya and reported by the Uttar Pardesh police to the State administration that the central forces in Ayodhya would not use firearms on December 6, Kalyan Singh (Uttar Pardesh Chief Minister) had announced that the Uttar Pardesh police would not use force against the Kar Sevaks on December 6.

(iii) Local residents and the police knew that Kar Sevaks had collected implements which could be used to destroy the Babur mosque. Some journalists and local residents are reported to have witnessed the rehearsal for destruction of the Babri mosque.

(iv) The Uttar Pardesh police warned their superiors in advance that Kar Sevaks were planning to destroy all the mosques and Muslim homes in Ayodhya.

(v) A very large number of Kar Sevaks were allowed to collect in Ayodhya and the central government reportedly helped in this process by providing special trains. Kar Sevaks were considered special guests by the administration and official machinery was used to make their life comfortable in Ayodhya.

(vi) Ample warning of the Kar Sevaks mood was given more than five days in advance when they started destroying and damaging Muslim graves, mosques and homes.

Images of the destruction of the mosque at Ayodhya spread throughout India via the India press and on British Broadcasting Corporation television. Muslims and advocates for a secular India held both peaceful and violent demonstration protesting the failure of the stale to intervene effectively. Unlike the attack on the Bahur mosque, such demonstrations consistently met with a strong response from the police. In various centres throughout India including Delhi, Hyderabad, Bijapur, Calcutta, Surat and Ahmedabad, communal violence ensured in which thousands were killed. Within two weeks of the destruction of the mosque, 227 were killed in communal violence in Gujarat, 250 in Maharashtra, fifty-five in Karnataka, fourteen in Kerala, forty-two in Delhi, 185 in Uttar Pradesh, one hundred in Assam, forty three in Bihar, one hundred in Madhya Pradesh and twenty three in Andhra Pradesh. In the majority of affected areas, the state failed to effectively respond to the attacks and in many cases was complicit in the violence. Such failures were well documented by nongovernmental organizations and
the mainstream press.

(b) **Mumbai Riots**

The communal violence that ravaged much of India wrought particularly widespread destruction in Bombay, India’s cosmopolitan commercial centre and the state capital of Maharashtra. The day after the destruction of the Babri mosque, the Bombay based Shiv Sena leader Bal Thackeray “issued a statement praising the Shiv Sainiks (Members of the Shiv Sena) whom he claimed were primarily responsible for having broken the domes of the religious site. Stating that he was the ‘happiest man’ Thackeray said that he was proud of those Shiv Sena Kar Sevaks who had done justice to Hindu cause.”

During the following days Muslims held public demonstrations in the streets of Bombay against the government for failing to prevent the destruction of the mosque. Many of these spontaneous gatherings particularly in south and central Bombay degenerated into violent attacks against police officers Government property including public transport facilities and police stations was also attacked. The police who responded quickly and forcefully sought to quash both the violent attacks and the peaceful demonstrations. Rather than shouting warnings to the crowds to disperse or using tear gas or non lethal weapons the police opened fire on the crowds Guns were not directed at the feet or above the crowds but rather directly at areas of the body which could suffer fatal injuries The majority of those killed were Muslims who died of bullet wounds to the head or chest Direct fire by the police was systematically employed in over fifteen police jurisdictions in Bombay clearly indicating that the various police stations were acting on orders from a senior city vide authority. According to Ashgar Ali Engineer prominent civil rights activist and academic: “... The post-mortem reports showed that out of about 250 deaths (in December), 192 persons died in police firing and out of those more than 95 percent had sustained injuries above the abdomen which shows that the police fired to kill and not to maim or injure.”

In stark contrast to police retaliation against Muslims in the preceding month, the police did not get involved in the initial days of the January riots and consistently failed to protect Muslims. In fact, transcripts of police radio conversations, obtained by journalists

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and shown to Human Rights Watch, reveal an explicit disregard for Muslim safety. In one recording the Bombay Police Control Room told a mobile police unit: Don’t burn anything belonging to a Maharastrian. But burn everything belonging to a Muslim.”

Many witnesses have stated that they were attacked in the presence of the police and police did nothing. In many cases, the police openly supported the rioters and accompanied them in the attack. When the victims went to police station they were driven away without recording their complaints. In some cases, the FIRs have been recorded but no further investigation has been undertaken ... What is regrettable is that in their frenzy to support a particular community, as against the other, the police had become indifferent to human misery (In) the case of Ms. F.S. from Sewri, the police were themselves involved in gang-rape. The victim now has no faith in the police and in the administration of justice.684

The report also names over 700 people in twenty six localities alleged to be involved in the riots including political leaders from the Shiv Sena, Congress Party and the BJP. This report shows that if the government was genuinely concerned with upholding its legal obligations in the protection of minority rights, it could draw on a large body of evidence to substantiate cases and initiate prosecution of minority rights, it could draw on a large body of evidence to substantiate cases and initiate prosecution. However, according to Communalism Combat, a Bombay based newspaper established by a prominent journalist, of the 2,278 cases filed with the police for activities relating to communal violence in Bombay between December 1992 and January 1993, by June 1994, 848 of the accused had cases filed against them, 1,333 cases were closed for lack of evidence, ninety seven cases were ongoing and no trials had begun. By the time the Srikrishan commission was dissolved, eighteen month later the number had changed little an additional thirty four cases had been dropped and still no trials had begun.685

(c) Communal Riots in Gujarat

The recent events in Gujarat demonstrate without a shadow of doubt that a section of the Indian ruling establishment is generating communal conflict and undermining the Indian Constitution. On several occasions’ responsible persons and organizations have

684 The people’s Verdict, pp. 104-105.
termed the massacres like the present one in Gujarat and in Delhi in 1984, and Hashimpura (Meerut) in May 1987 when PAC personnel killed more than 40 Muslim youth as genocidal killings. An eminent jurist like K.G. Kannabiran, National President PUCL, has also termed the present carnage in Gujarat as genocide.\textsuperscript{686} The seriousness of this genocide can easily be guessed in the fact that it necessitated the circulation of a statement “call for a national campaign for defence of Indian Constitution” as a contribution to the ongoing public discussions on the Gujarat events. The symptoms of this creeping coup d’etat against the Indian Constitution are as following:

(i) Mob violence and barbarity have been legitimized by high executives of the state. After the heinous and reprehensible attack on the Sabarmati Express at Godhra that led to the death of 57 Hindu rail passengers the entire Muslim community of Gujarat was held responsible for the actions of a few. The brutal killings of innocent men, women and children was sought to be justified in the name of the fascist doctrine of collective guilt the doctrinal basis of Hitlerism.

(ii) Revenge and retaliation have been made instruments of state policy. In Gujarat, armed Gangs owing allegiance to the ruling party have been given free rein by the State’s law enforcement agencies to indulge in crimes against humanity without any fear of law. The police were neutralized by orders from elected authority who are under oath to protect and implement the Constitution.

**APPROACH IN TACKLING COMMUNAL RIOTS**

The approach of the executive as well as the law enforcement agencies in tackling the law and order situation at times of communal riots has all along been remain faulty, Enforcement personnel relating to a particular community remained busy in the function of retaliation against the community which is subjected to violence and disregard of their basic Human Rights. Moreover, parallel system of representation is being forced upon the Indian people which system is nothing but amounts to a blatant violation of the Indian Constitution, It is not out of place to mention here that neither the R.S.S.V.H.P. represents all Hindus, nor do the Muslim personal Law Board and Babri Masjid Action

\textsuperscript{686} The Hindu, New Delhi, March 25, 2002.
Committee represent all Muslims. To perform one’s duty under the law more particularly by the law enforcement agencies they should not have required to seek any kind of permission from any higher-up official or any other executive. Commenting upon such kind of faulty practice and attitude on the part of the law enforcement/Public servants, the then N.H.R.C. Chairman Justice JS. Verma, rightly remarked “We call upon all state officials “not to seek permission to perform their duty under the law”. Further it has been very unfortunate that certain High State officials and political leaders have openly supported the mob violence shaping the same into communal cover and Humanity seems to be drowned into the deep sea when the culture of violence and bloodshed is being propagated ideologically as a “Nationalist” virtue and thereby the Indian society is tried to be rapidly converted into a war zone.

JUDICIAL APPROACH IN CASES OF OFFENCES COMMITTED BY PUBLIC SERVANTS

A. INTRODUCTION

Justice is administered as per law enacted by the Legislature. Law in a changing society should change to meet the needs and aspiration of the people. Unfortunately, many a time Law as it is, falls short of law as it ought to be for doing complete justice in a cause. Moreover certain new forms of criminal activities like ‘enforcement crimes’ and cyber crimes’ may e traced to have been committed in respect of which the existing law does not seem to provide adequate and effective remedy for tackling the same In such situations the judges of the Supreme Court with extraordinary vision and innovation power have tried to bridge the gap between law and justice by giving new interpretation of the law to met the needs and opinion of today. In this process the Supreme Court has evolved new juristic principles to activate the criminal justice system, to protect the human rights of the citizens and to give effective and efficacious justice to the people.

The principle of law enunciated by the Supreme Court in course of delivery of judgment becomes law of the land by virtue of Art. 141 of the Constitution of India. Many of these judgments contain comprehensive guidelines given by the Supreme Court to the Police and prosecution, prison authority and subordinate judiciary. These judgments are mostly published in the Law Journals. In the following paragraphs an endeavour is made to compile the gist of all important rulings of the Apex Court
delivered in respect of matters relating to enforcement of law and more particularly concerning the role of Public servants in maintaining and continuing the course of criminal justice administration.

B. SUPREME COURTS GUIDELINES RELATING TO LAW ENFORCEMENT

(a) The Apex Court has given the detailed guidelines in respect of obligation of police officers to be followed by them after arrest of an accused person. These guidelines has been delivered by the Apex Court in the celebrated K.K Basu’s case. These guidelines have already been discussed in detail in chapter V at appropriate places. Here the background needs to be discussed under which the Apex Court has delivered such guidelines. The executive Chairman, legal-aid services, W. Bengal addressed a letter to the Chief Justice of India drawing his attention to certain news items published in various newspapers relating to custodial violence. The letter was treated as a Writ application under Article 32 of the constitution and the case was treated as a Public Interest Litigation (PIL). The Supreme Court issued notices to all the State governments and also the Law commission of India calling upon them to file affidavits with regard to steps to be taken to check and prevent custodial violence by the law enforcement agencies. On consideration of these affidavits and on hearing submissions of all concerned, the Supreme Court has given the guidelines in case in hand to ensure proper enforcement of law relating to arrest and detention of the accused persons by the law enforcement agencies. These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the court from time to time in connection with safeguarding all the rights and dignity of the arrestee. As per these guidelines, in nutshell, the Apex Court seems to have directed that “the precious right guaranteed by Article 21 of the Constitution cannot be denied to convicts, under trials, law by placing such reasonable restrictions as permitted by law, Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution whether it occurs during investigation, interrogation or otherwise. Transparency of action and accountability are two possible safeguards which the court insisted upon. Attention is required to be paid to properly develop work culture, training

and orientation of the police force consistent with basic human values. The State must ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves.”

In earlier case also the Apex Court made valuable directions regarding attest of the accused. A person is not liable to arrest merely on the suspicion of complicity in an offence. Rather, there must be reasonable justification in the opinion of the officer effecting arrest that such an arrest is necessary and justified. The apparent reason behind such a requirement of Rule of law lies in the fact that arrest and detention in police lockup of a person can cause incalculable harm to reputation and self esteem of a person, hence no arrest can be made in routine manner on mere allegations of commission of an offence made against a person. On the other hand except in heinous of offences, an arrest must be avoided if the police officer issues notice to a person to attend the station House and not to leave station without permission. To ensure the above requirements and for effective enforcement of the Fundamental rights guaranteed under Article 21 & 22(1) of the Constitution, The Supreme Court issued the necessary directions somewhat same as were later on delivered in detail in D.K. Basu’s case. Here it is also worth quoting here that as per the third report of the National Police Commission nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the Jails. Further it is also the dictum of the Supreme Court that the above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf.

(b) **Guidelines against Handcuffing of Accuseds**

It is true that a police officer is vested with power to restrain a person by handcuffing him but there is simultaneous restraint by the law on the police officer as to the exercise of this power. The handcuffs should not be used in routine manner. The reason is that the minimum freedom of movement which event an under trial prisoner is entitled to under article 19 of the constitution, can not be cut down cruelly by application of handcuffs or other hoops. These are the intent of the remarks in respect of handcuffing made by the Supreme Court in Sunil Batra’s case, going a milestone further, in Prem

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Shankar Shukla’s case\textsuperscript{690} The Apex Court remarked that involvement of the prisoner in a score of criminal cases ins no ground for handcuffing. Nor can a person be handcuffed only because he is charged with grave offence. Also, it cannot be used only for the convenience of the Escort party. As a result of such an ideology, the rules, regulations and manuals of various States authorizing the police to use handcuff in general have been struck down as violative of Article 14 of the Constitution. In Sunil Gupta’s Case,\textsuperscript{691} it was categorically held that the Escorting authority should record contemporaneously the regions for handcuffing under trial prisoner even in extreme cases and intimate the court, so that the court may consider the circumstances and issue necessary directions to the Escorting party.

(c) **Guidelines regarding consideration of Bail**

The Apex Court has, from time to time, been issuing its clear cut direction regarding grant of anticipatory bail and ring of bail under different situations and laid down various principles for the guidance and as a (ready) reckoner to the law enforcement/public servants on the one hand and for safeguarding the interests of the persons liable to be arrested on an accusation preferred by the Public servants and also to ensure appropriate bail as per the nature of the case. In P.V. Narasimha Rao’s Case\textsuperscript{692} the Delhi High Court held that the governing factor for disposal of anticipatory bail is that there was apprehension of arrest of a person accused of non-bailable offence, but where charge sheet has already been filed and non-bailable warrants has been issued, it should be left to the regular court to deal with the matter on appreciation of evidence. Regarding right of bail in case default of Public servants to complete investigation within the stipulated time mentioned under section 167(2) of the Code of Criminal Procedure, 1973, the Supreme Court in C. Satyanarayan’s Case\textsuperscript{693} clarified that period of 90 days or 60 days shall be counted not from the date of arrest, but from the date of first production of the accused before the Magistrate i.e. from the date of remand order passed by the Magistrate. So the initial period of 24 hours in police custody after arrest of the person shall be excluded while computing the total period of 90 days or 60 days for the purpose

of grant of bail as per legislative mandate under section 167 Cr.P.C.

In the landmark Judgment (Gurubaksh Singh’s Case), the Apex Court set aside the full bench decision of Punjab & Haryana High Court {reported in A.I.R. 1978, Punjab & Haryana I(F.B)} and the detailed principles were enunciated for grant of anticipatory bail.

On the front of determination of bail amount and bail bond in bailable offence the Apex Court has cleared any type of shadow in which any Court may crept into while granting the bail. This was so clarified in Hussainara Khatoon’s Case, in which it has been clarified that if the court is satisfied on a consideration of the relevant factors that the accused has his ties in the community and there is no substantial risk of non appearance, the accused may, as far as possible, be released on his personal bond. But even while releasing the accused on personal bond it is necessary to caution the court that the amount of the bond which it fixes should not be based merely on the nature of the charge However the decision as regards the amount of the bond should be an individualized decision depending upon the individual financial circumstances of the accused and the probability of his absconding.

(d) Custodial Interrogation of Highly placed persons

The Apex Court seems to have hammered heavily in favour of custodial interrogation of highly placed persons in society, by rejection pre-arrest bail. Such a Historic direction was given by the Apex Court in the case of Shri Anil Sharma (M.L.A, of Himachal Pradesh). The brief facts of the case are that Shri Anil Sharma, a member of legislative Assembly of Himachal Pradesh, was a former Minister in Himachal Pradesh Government for about three years. His father, Sukh Ram was Union Minister for Telecommunications. The CBI has been investigation a case against Anil Sharma under Section 13(2) of the Prevention of Corruption Act, 1998 with the allegation that he had acquired wealth to the tune of Rs. 16,65,000/- in excess of his known sources of income. While the investigation was in progress, Anil Sharma got anticipatory bail from High Court of Himachal Pradesh, but the Supreme Court in a special leave petition cancelled the same.

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In Ramkishan Balothia’s Case\textsuperscript{697} which was based on the question of constitutionality of section 18 of the 1989 Act, in respect of which the provisions of Articles 14 & 21 of the Constitution. The offences categorized in the 1989 Act constitute a separated class and cannot be compared with offences under the Indian Penal Code. Hence, no question arises of consideration of anticipatory bail for offences under the 1989 Act. In this way the Apex Court has clearly safeguarded the rights of the down trodden for which purposes 1989 Act was enacted.

(e) **Speedy Trial of Criminal Cases**

On a number of occasions the Supreme Court recognized the speedy investigation and trial of criminal cases as Fundamental rights enshrined in Article 21 of the Constitution. Previously the Supreme Court gave some guideline for speedy trial in A.R. the Supreme Court supplemented the propositions laid down by the Constitution Bench in Antulay’s Case\textsuperscript{698}. Now in a recent case\textsuperscript{699} the Supreme Court supplemented the propositions laid down by the Constitution Bench in Antulay’s case with the following directions:

(i) In cases where the trial is for an offence punishable with Imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not, within the said period and the court can proceed to the next step provided by law for the trial of the case;

(ii) In such cases as mentioned above, if the accused has been in jail for a period of not less than one half of the maximum period of punishment prescribed for the offence, the trial court shall release the accused on bail forthwith on such conditions as it deems fit;

(iii) If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the

\textsuperscript{699} Raj Deo Sharma v. S
witnesses or not within the said period and the court can proceed to the next step provided by law for the trial of the case, unless for very exceptional reasons to be recorded and in the interest of justice the court considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time limit;

This right of speedy Investigation was also elaborated in Hussainara Khatoons Case\textsuperscript{700} wherein it was held that if the investigation is unduly delayed, the trial would automatically be delayed violating Article 21 and such delayed Investigation are liable to be quashed by the Courts and accused is entitled to be set free if the accuses (under trial prisoners) has been in jail for a period longer than maximum term for which he could have been sentenced, if convicted.

(f) \textbf{Prosecution of C.B.I. Constables for Contempt of Court}

The Supreme Court invoked contempt jurisdiction for punishing the police officers (Constables of C.B.I.), who abandoned their duty of care and caution and indulge in using physical violence against the physically weak and enfeebled detenu in the precincts of Supreme Court. In Jaspal Singh’s case\textsuperscript{701} on Jan 24\textsuperscript{th} 1994 the Supreme Court directed C.B.I. to produce the detenu Satish before the court in connection with a case filed by one Jaspal Singh against the State of U.P. The detenu Satish was beaten up and kicked up by the constables of C.B.I. in the precincts of the Supreme Court. The two Inspectors who were entrusted with the duty of production of Satish, allowed the abhorrent act of beating and kicking the detenu by the constables in their presence. Sh. Rajdip Singh S.P. C.B.I. admitted the occurrence and the lapses and omissions on his part to control the conduct of the constabulary. The physical condition of the detune was got examined by the Doctor of the Supreme Court Infirmary. After the incident was reported to the Supreme Court, the two constables, one headconstable, two Inspectors and the S.P. C.B.I. expressed unconditional apology for their respective conduct. The supreme Court observed that the incident is indeed symptomatic of the degeneration in the respect for law, Human dignity and Human rights by the police. Accordingly, a strong reprimand administered to Sh. Rajdeep Singh, C.B.I. and cautioned to conduct himself properly in

\textsuperscript{700} Hussainara Khatoon v. State of Bihar, A.I.R 1979, S.C. p. 1377
relation to courts in future. Two inspectors who were responsible for overseeing the
disgraceful and violent behavior of the subordinate police officers, were convicted and
sentenced to pay fine of Rs. 10000/- each, and two constables and one head-constable,
who were responsible for beating and kicking the detune were convicted and sentenced to
one month simple imprisonment and also to pay a fine of Rs. 1000/- each.

(g) Prosecution of Police officers for fabrication of records during Judicial
Proceedings

The Apex Court has taken serious note of the mal-practices and other practices
adopted by the police officials by way of making false statement in Judicial proceedings,
 misleading the court by false report, false affidavit in court and for assault on Judicial
Officers etc. In Afzal’s case, a writ petition was filed in the Supreme Court under
Article 32 of the Constitution for habeas-corpus of the two minor boys. The facts privy to
filing this writ petition are that the SHO. Ambala cantonment registered a criminal case
with Government Railway Police, Faridabad against one Rahim Khan on the allegation of
forgery of railway receipts, cheating and misappropriation. In connection with this case a
forgery of Railway receipts, cheating and misappropriation. In connection with this case a
case a police-party headed by Ishaq Ahmed, Inspector, C.I.A., G.R.P. Ambala had gone to Agra
to apprehend Rahim Khan, who was not available in the residence. It is alleged that the
investigating team abducted two minor boys-Afzal, son of Rahim Khan and Habib son of
Ahmed and kept them in wrongful confinement at different places. The Supreme Court,
on a writ petition filed before it under Article 32 as aforesaid, directed the Director
General of Police, Haryana to enquire into the matter and to submit report before the
court within 6 days. The order of the Supreme Court was duly communicated to the
D.G.P. Haryana. On 02.11.1993, an affidavit was filed in this case by M.S. Ahlawat,
Superintendent of Police, who denied the involvement of police officers in wrongful and
illegal confinement of two minor boys. But the court was not satisfied with the affidavit
submitted by M.S. Ahlawat, Rather the District & Sessions Judge of Faridabad was
directed to make an enquiry and to submit a report within six weeks from the date of
receipt of the order. The District Judge examined the witnesses, recorded their statements
and submitted his report to the Apex Court, but the Apex Court was not again satisfied

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with this enquiry. Ultimately, the Director of C.B.I. was entrusted with the task of 
enquiry, who submitted the report to the Apex Court after enquiring into the matter. On 
30.10.1993. Mr. Ahlawat filed another affidavit denying involvement of the police 
officials in taking two minor boys in wrongful confinement. This statement of Ahlawat 
was proved to be false from the enquiries conducted by D.G.P., Haryana District and 
Sessions Judge, Faridabad and also C.B.I. enquiry. After considering all the materials 
produced before it, the Supreme came to the conclusion that M.S. Ahlawat, S.P. of police 
made a false statement before the Supreme Court at different stages of the Judicial 
proceedings and that Mr. Ahlawat had given instruction to his subordinate Ishwar Singh 
to direct H.C. Krishan Kumar to forge his signature on the carob copy of the affidavit to 
be filed before Supreme Court, presumably because he did not want to commit himself to 
the false version regarding illegal custody and wrongful confinement of two minor boys 
by signing on the affidavit filed before the Supreme Court. The Court also held that all 
the erring officers have interfered with the due course of administration of Justice. 
Accordingly the Apex Court invoked the power of contempt under Article 129 of the 
Constitution and convicted all the erring police officers sentencing them to undergo 
different imprisonments.

In a more recent case\textsuperscript{703} one senior police officer of the rank of Superintendent of 
police was sentenced to imprisonment for one month and to pay a fine of Rs, 1000/- for 
actively abating the commission of assault on a Chief Judicial Magistrate, Nadiad, in the 
State of Gujarat. The incident which prompted the senior Police officer to commit such 
irresponsible behaviour, that too against a Judicial officer was the C.J.M. Nadiad passed 
Strictures and made complaint against local police for not co-operating with the court in 
effecting service of summons, execution of warrants and other processes of the court, The 
police inspector and other police officers of Nadiad were annoyed with C.J.M. on Sep 
25\textsuperscript{th} 1989 C.J.M. 1989 C.J.M. was invited to visit the police station by the police 
Inspector on the ground that this visit would mollify the sentiment of the local police. The 
C.J.M, visited the police station at 8:40 P.M. on the same day, where he was forced to 
consume liquor and on refusal he was assaulted physically, one panchnama was prepared 
showing the drunken stat of CJ.M. The C.J.M. was tied with a rope and sent to Local

Hospital for Medical Examination. The unfortunate worry of the C.J.M. did not stop here, rather it reached to its peak when he was not allowed even to contact the District Judge over telephone in the Hospital. Two cases were registered against him. First, under the Bombay Prohibition Act and thereafter, Under Section 332/506 I.P.C., so that C.J.M. may not be released on bail. The District Superintendent of police who was aware of the incident did not take any action against the police officials involved in the incident. The matter was brought to the notice of Supreme Court with prayer to exercise its jurisdiction under article 32 of the Constitution and upon this, one sitting Judge of the Allahabad High Court was appointed as Commissioner to make enquiry and submit its report before the Supreme Court.

On the same lines in a Haryana case\textsuperscript{704} one I.P.S. officer of 1982 batch was sentenced to Jail by the Supreme Court on a writ application giving rise to contempt proceeding. In this case on conclusion of hearing the Supreme Court passed strictures against Home Secretary, Haryana and D.G.P. Haryana for not responding to the first notice issued to them by the Supreme Court and for not fulfilling their constitutional obligation to assist the Supreme Court under Article 144 of the Constitution. The Supreme Court came down heavily on the Police Officers who acted in the most high handed manner to favour one party in a criminal case and for subjecting two innocent people to harassment and illegal detention in the Police Station. It is held by the Supreme Court that the three Police Officers, including S.S.P. Hissar committed grave contempt of court by not only interfering with the course of Justice, but also making calculated and deliberate attempt to obstruct the administration of Justice by filing false affidavits in the highest court of the land.

(h) Scheme for Insulting Public Servants from extraneous Influences

The Apex Court in its move to refine the Justice System by passing verdicts against erring police officials and other Public servants has also taken into account to safeguard the honest efforts on the part of the Public servants and framed the scheme for insulating them form extraneous influences. The Directions given by the Supreme Court in Vineet Narain’s case\textsuperscript{705} are worth discussion in this connection. The directions given

\textsuperscript{705} Vineet Narain v. Union of India, 1998(I) Crimes, p. 12 (S.C.)
by the Supreme Court in this case are mainly based on its observation in the matter of prevailing corruption in public life upon which the Apex Court remarked that if such corruption is permitted to continue unchecked it will have the deleterious effect of eroding the Indian polity. Hence the Supreme Court delivered a number of guidelines, some of which concerning the C.B.I are as following:

I. The Central Vigilance Commission shall be given statutory status.

II. The CVC shall be entrusted with the responsibility of exercising superintendence over CBI’s functioning.

III. Selection for the post of Central Vigilance Commissioner shall be made by a committee consisting of the Prime Minister, Home Minister and the Leader of the Opposition from the panel of outstanding civil servants with impeccable integrity, to be furnished by the Cabinet Secretariat. The appointment shall be made by the President.

IV. Appointment to the post of Director, CBI shall be made by the appointments committee of the Cabinet on the basis of recommendations made by a committee headed by the Central Vigilance Commissioner with the Secretary and Secretary (Personnel) as members.

V. The Director, CBI shall have a minimum tenure of two years, regardless of the date of his superannuation.

VI. Selection/Extension/Premature Repatriation of officers upto the level of Jt. Director shall be decided by board consisting of the Central Vigilance Commissioner, Home Secretary and Secretary (Personnel).

Continuing is move towards insulating of Public servants in proper discharging of their functions the Apex Court laid down principles upon which police custody may be justified during further investigation. In Dawood Ibrahim’s Case706 which is well known for a series of bomb explosions on 12/03/1993 which took place in and around the city of Bombay resulting in the death of 257 persons, injuries to 713 persons and damage to property worth Rs. 27 Crores. In this connections 27 separate criminal cases were registered and on completion of investigation, the police submitted a composite charge-sheet against 198 accused persons including 45 absconders under various sections of

Indian Penal Code, TADA, Arms Act and Explosive Substantives Act Subsequently on request of both Central Government an State Government of Maharashtra C.B.I. took up further investigation of the cases. Resultantly C.B.I. prayed for issuance of non-bailable warrant of arrest against some of the accused person, who were absconding and evading arrest. The designated court rejected the application holding the after taking cognizance on the police report, the Court can issue process to the accused person to compel them to face the trial, but no such process can be issued by the court in aid of investigation under Section 73 of Cr.P.C. The C.B.I. preferred appeal to the Supreme Court against the decision of the designated Court. The Supreme Court allowed the appeal and held that section 309 of Cr.P.C. dies not stand in the way of the court, which has taken cognizance of an offence, to authorize the detention of a person, who is subsequently brought before it by the police under arrest during further investigation, in police custody in exercise of its discretionary power under section 167 of the Cr.P.C.

In a significant judgement the Supreme Court provided more teeth to the Public servants in the matter of framing of charges against the accused and defined the scope of evaluation of evidence by the court at the stage of framing for charges against the accused persons. In this case the Apex Court held that at the stage of framing the charge, the court has to prima-facie consider whether there was sufficient ground for proceeding against the accused. It can’t appreciate evidence to arrive at a conclusion in the matter at the stage of framing of charge. In this case the Sessions Judge framed the charge after consideration the material on record. However, that charge was quashed by the High Court by accepting the contention raised by the respondents and considering the details of the material produced. But the Supreme Court held that entire approach of the High Court was illegal and erroneous and it appeared as if the Court was deciding the case as to whether the accused were guilty or not. In most of the cases it was only from the available circumstantial evidence that an influence of conspiracy was to be drawn. The Supreme Court observed that the High Court instead of considering the prima-facie case, appreciated and weighed the material on record for coming to the conclusion that charge against the respondents could not have been framed. It is a settled law that at the stage of framing charge, the Court has to prima-facie consider whether there is sufficient ground

for proceeding against the accused. The Court was not required to appreciate the evidence and arrive at the conclusion that the materials produced were sufficient or not for convicting the accused. Therefore, the Supreme Court held that there was no justifiable reason for the High Court to quash the charge framed by the Trial Court.

(i) Supreme Court Concern about High handedness of Superior Police Officers

In a case the Supreme Court pulled up Senior Police Officers for their high handedness and favouritism coupled with swearing false affidavit. In this case the Haryana police illegally detained one taxi driver alongwith one Mr. Dhananjay Sharma an employee with a business firm which had a civil dispute with the company owned by Sh Anoop Bishoni, son-in-law of Mr. Bhajan Lal, then Chief Minister of the State of Haryana. The Senior Police officers favoured the son-in-law of the Chief Minister and swore false affidavit before the Supreme Court in connection with writ of habeas-corpus. On this the Apex Court by invoking its contempt’s jurisdiction sentenced Sh. Anil Davra, 1982 batch I.P.S. Addi. S.P. Hissar and Rajender Singh Yadav, S.H.O., Sadar Police Station, Hissar to undergo imprisonment for three months in the same contempt proceeding. The Supreme Court observed that prime duties and function of the members of the police force is to prevent and detect crime, take such measures to ensure the safety of the life, property and liberty of the citizens and it was only for this object for which the police force was conceived and it was for this purpose for which it exists.

In Inder Singh’s case the Supreme Court interfered in allegations against a Senior Police Officer and sundry policemen of Punjab allegedly involved in abduction of seven persons. The allegations were found to be true from the enquiry conducted by D.I.G. (Crime) who recommended for the registration of a case against the abducting Police officer under Sections 364 of I.P.C. but no case was registered. Even no disciplinary action was taken against the delinquent Police Officers. Hence, the Supreme Court directed the Director of C.B.I. to make enquiry the matter.

(j) Protections against false encounters and custodial violence by Police

In a recent case concerning false encounters it is held by the Supreme Court that the post-mortem report as well as oral evidence unequivocally indicates that the

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The police party resorted to firing at the three deceased persons on a very close range. When the station with three dead bodies it was for them to explain under what circumstances three people were killed. The defence of Alibi in firing for self defence is nullified because the police party did not receive any injury and the police vehicle was also not damaged at all. The amazing part of this incident was that the entry was made in the Station House Diary by showing the incident as encounter. However the case was taken up by C.I.D, Patna for investigation. On completion of the investigation charge-sheet was submitted against five police officers including S.H.O. for committing offence under section 302/34 I.P.C. The Sessions Judge, Gaya convicted all the police officers and sentenced each of them to hang till death. On appeal the High Court upheld the conviction but committed the death sentence of the constables to life imprisonment on the ground that they had to open fire under instruction of the SHO. On further appeal to the Supreme Court, the conviction of all accused Police Officers was still upheld but the death sentence was commuted to life imprisonment. Here it seems that the view taken by the High Court was wholly erroneous in as much as commuting the death sentence to life imprisonment on the artificial and unjust view altogether unwarranted by law due to the reason that every public officer may it be a police constable has to obey only the lawful orders/directions of his superior and not the illegal/unjust orders and instructions. So keeping in view such as erroneous approach of both the High Court and the Hon’ble Supreme Court the present case would be a fittest case to fall under one that of “a rarest of rare cases” which theory was well propounded by the Apex Court itself in Bachhan Singh’s Case to be used in appropriate cases.

VICTIM COMPENSATION FOR STATE ATROCITIES

Over the years, on seeing the increasing instances of State atrocities, the Apex Court started its move towards recognizing the rights of the victims of such atrocities. It frequently passed sentences upon erring State officials and also recommended to the respective State of Authority for entering adverse remarks against such erring officials, A large number of disciplinary proceedings were also launched against such officials found guilty of atrocities, But despite all these measures, the State atrocities never took a respite, not to speak of their complete stoppage Hence in view of the matter, the Supreme

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Court evolved a new concept of compensator jurisprudence for providing compensation to victims of State atrocities. The following judgments of the Apex Court go to attest this phenomenon.

(a) **Compensation for Perfunctory investigation of rape case**

In Gajraula Nuns rape Case\textsuperscript{711} the matter came up before the Supreme Court by way of Public Interest Litigation. The Supreme Court sought an investigation into the matter by the C.B.I., which reported that the evidence collected by local police does not justify filing of charge sheet against the four accused persons. The enquiry report of C.B.I. pointed out major lapses in the investigation on the part of Subhash Kajal, SO, Gajraula, Bharat Ratan Baishni, SI, whose action or inaction resulted in loss of crucial evidence in the case. Apart from directing the Govt. of U.P. for initiating disciplinary action against the erring officials, the Apex Court directed the State of UP. to pay a sum of Rs. 250000/- as compensation to each of the victims of rape and a sum of Rs. 1 lakh to each of the other victims of crime (assault). It was further directed by the Supreme Court that the State government may recover the amount of money from the officers who would be held guilty of lapses amounting to misconduct in the process for investigation of this criminal case.

(b) **Guidelines of Apex Court**\textsuperscript{712}

In the Public interest Litigation (PIL) filed by Delhi Domestic Working Women’s Forum to espouse the pathetic plight of four domestic servants who were subject to indecent sexual assault by seven army personnel, the Supreme Court issued certain guidelines to the Government for assistance of the victims. The directions touching the issue of victim compensation may be studied hereunder:

(i) It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss; Some, for example, are too traumatized to continue in employment.

(ii) Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or


not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earning due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

(c) Compensation under writ jurisdiction

In Kewal Pati’s case\(^{713}\) the wife of one Ramjit Upadhyay (killed while serving out his sentence in Jail) filed an application under Article 32 of the Constitution before the Supreme Court praying for compensation for violation of Fundamental right of her husband enshrined under Article 21 of the Constitution. The Supreme Court allowed the writ petition and directed the State U.P. to pay Rs. 1 lakh to the legal heirs of Ramjit Upadhyay within a period of three months from the date of the order.

In another case\(^{714}\), seven persons of a family were abducted by a police party led by Dy. Supdt. of Police of Punjab on the suspicion that the said seven persons might have been connected in the abduction of his brother by the militants. The said seven persons were kept under unlawful detention in the police station at Kalanaur and Dera Baba Nanak in the State of Punjab. After failure of State’s law enforcing machinery, the matter was brought to the notice of the Supreme Court by filing a writ of habeas corpus under Article 32 of the Constitution. The Court not only directed the State of Punjab to take immediate disciplinary action against the erring officials including SSP and DIG, it has also directed to pay the legal representatives of each of the said abducted persons an amount of Rs., 150000/- within two months from the date of the order.

(d) Compensation for illegal confinement in Police Custody

In Bhim Singh’s case\(^ {715}\) the Supreme Court held that Mr. Bhim Singh was illegally detained by police personnel in collusion with the Magistrate who ordered for remand without production of the arrested person before him. The Court holding it as violation of Fundamental right of MLA enshrined in Article 21& 22(2) of Constitution directed the State of J&K to pay a sum of Rs. 50000/- as compensation to Bhim Singh within two months from the date of order.

(e) Compensation for illegal use of handcuff by police\(^ {716}\)

In one of the heinous activities of the Police, one Ravikant Patil was arrested and taken to the court of Magistrate from lockup for obtaining police remand. He was handcuffed and roped and paraded through the streets and squares of Solapur city. Such conduct on the part of responsible law enforcing agency not only violated mandate of Article 21 of the Constitution, it did violation of the law enunciated by the Apex Court in Premshanker Shukla’s case. According to Article 21 of the Constitution, life means life with dignity, and liberty means freedom from humiliation and indignity at the hands of the authority to whom the custody of a person may pass temporarily under the law of the land. The Bombay High Court, reacting sharply upon the incident, directed the police officer who arrested and put handcuff on the accused to pay Rs. 10000/- to the arrested person Mr. Patil within two months of the order.

(f) Compensation for Death in Police Custody due to Torture

In a Goa case, one Mr. Anthony Cardino, a store keeper in the mental hospital, Panaji, was arrested by police on the allegation of misappropriation of some hospital utensils and plastic ware worth Rs. 1500/-. He died in police lockup on Oct. 10-1979 due to alleged torture and atrocity of the police. Post mortem report also revealed that death was due to 20 different types of injuries suffered by the deceased. The Bombay High Court (Panaji Bench) held that the plea of sovereign immunity is not available in case of torture or other atrocity in police lock-up. So the State of Goa was directed to pay Rs. 2,00,000/- to the legal heirs of the deceased.

In another case relating to death in police outpost, one Suman Behera, aged 22, son of Smt. Nilabati Behera was arrested by police on the allegation of theft and detained in police outpost. On the next day his dead body with multiple injuries was found on railway track Jaraikela Railway Station The police cooked up the story that Suman managed to escape form police custody and was run over by a passing train But thanks to Supreme Court’s ever vigilant eyes, which held the death being caused due to state atrocity in police lock-up. The State of Orissa was directed to pay Rs. 150000/- as compensation to the mother of deceased Suman The State was further directed to fix responsibility on the officer in causing death of Suman in police lockup and take

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appropriate disciplinary action against him.

In yet another case of brutal torture by police, one Naresh, nine years old boy was forcibly thrown away on the floor at a distance of 8-9 feet by one Delhi police S.I Lal Singh. Naresh was hospitalized for treatment of injury on his head, but he succumbed to the injury. The women’s organization named “SAHELI” took up the matter to the Supreme Court under Article 32 of the Constitution. The Supreme Court directed Delhi administration to pay Rs. 75000/ to Kamlesh Kumari, the mother of deceased Naresh within one month.

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719 Saheli v. Commissioner of Police, Delhi (1990), 1 SCJ, p. 390.