Chapter – VI

JUDICIAL CONTROL OF POLICE IN INDIA

Either due to inadequacy of law or abuse of discretion the police lawlessness continues. This results in violation of the rights of the common man. Human rights violations by the police are rampant in India. Due to this, the police are subjected to criticism by the courts. Justice Mulla of the Allahabad High Court once observed that, the crime record of any single lawless group in India will never come anywhere near the record of the Indian Police Force.¹ The use of third degree methods in the investigation process, deaths in police custody and encounter deaths are usual incidents in the police behaviour. The police abuses and violations of law are increasing. The government seems to have taken a cold attitude in containing this

Increase of crime rate and problems of violence and terrorism poses new challenges to law. New developments in the field necessitate constant review of the laws and procedure governing the investigation. However, this is conspicuous by its absence. The criminal justice administration fails to take advantage of the developments in science and technology due to the absence of sufficient legal backing. Legal framework to address these new challenges will work in two ways. Firstly, it will structure the police power in combating the new generation crimes by facilitating adoption of adequate preventive/detective measures. Secondly, it will facilitate adoption of scientific methods of investigation, which in turn will rule out illegal methods in investigation. Thus, it discourages the police to continue unfair acts.

In the absence of adequate legislative framework to bridle the police from violating the human rights by crossing the powers the courts, react against such violations of human rights by exercising its constitutional powers.  

**Judicial Control - justification**

Methods used in the enforcement of criminal law and the respect it shows for the protection and promotion of human rights is the indication of the quality of the criminal justice system. The actions of the police in India are not a matter to be proud of. This inadequacy is tried to be remedied by the intervention of the judiciary. It is indeed the judiciary, which plays an important role in striking a balance between the needs of the law enforcement and protection of the citizens from abuse of power. Courts act as guardians of fundamental rights guaranteed in the Constitution.

The normal remedy that was available to a person aggrieved of police lawlessness is to sue the erring officer in the civil court or prosecute him in criminal court for the redressal. This creates hurdle in the path of the aggrieved and it adds to his burden. Lengthy and time consuming procedure, financial stress, time consuming appellate stages, all forbid the victims from approaching the courts. Moreover, the plea of sovereign immunity may exclude the State from answering the violation. Moreover proving a case against the police is next to

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3 Nilabati Behera v. State of Orissa, (1993)2 SCC 746. In this case, petitioner’s son was taken from his home in police custody on 01-12-87 in connection with an investigation of an offence of theft and detained at the police out post. On 02-12-87, the petitioner came to know that the dead body of her son was found on the railway track. The allegation was that it was a case of custodial death and there after the body was thrown on the railway track. The letter written by the petitioner to the Supreme Court was treated as a writ petition. The prayer in the letter was for award of compensation to the petitioner for contravention of the fundamental right to life guaranteed under Article 21 of the Constitution.
impossibility. The situation had undergone a drastic change due to the intervention of the constitutional courts. The Supreme Court and High Courts in India rose to the occasion and has done matchless service in protecting the common man from police atrocities and human rights violations. Anand, J in *Nilabati Behera*\(^4\) observed thus:

>The old doctrine of only relegating the aggrieved to the remedies available in civil law, limits the role of the courts too much as a protector and guarantor of the indefeasible rights of the citizens because the courts and the law are for the people and expected to respond to their aspirations.\(^5\)

Neither the hands of the courts are tied nor are they helpless in a situation when the law enforcers violate the rights of the common man. If no specific provision is available, the court has to evolve new ‘tools’ to give relief in public law by moulding it according to the situation with a view to protect and preserve the rule of law.\(^6\)

The courts intervene and prevent the law enforcement agencies from acting lawlessly. Since the prosecuting agencies and the legislature shirks their responsibility, the burden of courts increases. This makes the situation worse and control of the law enforcement agencies become difficult. Irrespective of the vigilance shown by the Indian judiciary to denounce police lawlessness it did not work. This is due to several reasons. The court can act only at the instance of the parties. Unless the aggrieved brings the facts before the court many cases of police harassments and ill treatments goes unnoticed. Thus, the judicial control becomes unworkable in practice. Control by the police department turns to be futile because the complaint against the


\(^5\) *Id.* at p.768

\(^6\) *Id.* at p.767
police violence is investigated by the police officials themselves and is likely to be biased. It is probably due to this possibility the judiciary also goes to alternate mechanism to find out facts where the complaint is against the corpse. The Supreme Court did not relied on the police and entrusted the ascertainment of facts in such cases to lower judicial functionaries.7

Courts plays crucial role by reviewing the law enforcement decisions. This power helps the courts to control the police. To a certain extent, the judiciary successfully controls the law enforcement agencies. Thus, the courts ensure protection of rights of the citizens.

Custodial torture are heavily denounced by the courts thus shows its concern and respect for the dignity of the person. The apex court while dealing with a torture case, 8 where the deceased was dragged from the vehicle in which he was travelling, tied to a tree with a rope and shot dead by the police party, observed:

...But romance about human rights and rhetoric about Constitutional mandates lose credibility, if, in practice, the protectors of the law and minions of the State become engines of terror and panic people into fear.9

The rules governing investigation and the trial of a crime are designed to bolster the reliability of the evidence and to reduce the risk

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7 For example in Neelabati Behera v. State of Orissa, (1993)2 SCC 746, Supreme Court appointed the district judge to enquire and report the matter; Delhi Judicial Service Association, Tis Hazari Court v. State of Gujarat, A.I.R.1991 SC 2176, court appointed two High Court judges to enquire the matter; Afzal v. State of Haryana,(1994)1 SCC 425, Habeas corpus petition was filed for the release of two children alleged to have been taken away by some police officers and not produced before any magistrate. However, the police denied the arrest and detention. The report of the DGP and the affidavit of the SP revealed that some police officers took the said children from their residence. The court in order to ascertain the truth, directed the district judge to conduct a detailed enquiry and report.


9 Id.at pp.785-786
of abuse of power by the police. It is the duty of the police as well as
the judiciary to ensure that the rules are complied with. The courts
shall use their power to make their participation more meaningful,
effective and consistent with democratic values.

Judiciary’s role in overseeing the criminal law enforcement is
assuming a greater importance. It has to fight against the ‘law less law
enforcement’. Police often resort to deceptive practices. Law breaking
by the police is in the increase. It often results in loosing people’s
confidence in the police system. Unwarranted political interference in
the day-to-day affairs of the police worsens the situation. The only
hope, in such a scenario, is the judiciary.

The legal system of India places high value on individual rights.
Effective control of the police has an important role to play in this
regard. Measures are to be taken to see that the police are not
exceeding or abusing the power. It has to be ensured that the powers of
police do not become disruptive of personal liberty and invasive of
privacy of the individual.

The judicial control is imperative to preserve and maintain
respect for law and to promote public confidence in the administration
of justice.

Judicial Approach

Courts in India take active steps to control the police. Three
different approaches are resorted to by the courts viz., punitive,
compensatory and preventive.
Punitive approach

It seems to be the approach of the police that violence is to be met by violence. Could it be possible to ignore the issue by saying that it is universal? They resort to torture either to establish the guilt or by way of vengeance against the suspects/accused. In either case, the credibility of the police is the casualty. Charge sheeting the police for their illegality is very difficult due to the paucity of evidence to prove the charge. This results in escape from prosecution or acquittal even when prosecution is initiated. The Indian judiciary is well aware of the situation. Taking this seriously, courts are trying to salvage the situation by inflicting strict punishment to the members of the police agency, who are taking law into their hands.

It is inhuman and degrading treatment/punishment to inflict torture on a person, who is in the police custody. Custodial violence and atrocities being the greatest threat to the civil liberty courts come heavily on the police whenever the victims of such lawlessness approach for redressal. In a case of violence employed by the police to extract confession resulted in the death of a person suspected of theft, the Supreme Court observed:

We are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare 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. The vulnerability of human rights assumes a traumatic, torturesome poignancy; the violent

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10 ICCPR., Article 7, No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. U.N. Convention Against Torture, Art. 2, (1) Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. (2) No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture. (3)An order from a superior officer or a public authority may not be invoked as a justification of torture.

violation is perpetrated by the police arm of the State whose function is to protect the citizen and not to commit gruesome offences against them as has happened in this case. Police lock-up, if reports in newspapers have a streak of credence, are becoming more and more awesome cells. This development is disastrous to our human rights’ awareness and humanist constitutional order.\textsuperscript{12}

The court was in fact, fearing that the rule of law in our country will deteriorate, if something is not done immediately. The Constitution assigned a supervisory role to the Constitutional courts to ensure rule of law in the country. Now court is not a helpless spectator, but a vigilant saviour of the rights of the common man. The prophetic words of Krishna Iyer, J, in \textit{Premshanker Shukla}\textsuperscript{13} have become true. He observed:

\begin{quote}
If today freedom of one forlorn person fails to the police, somewhere tomorrow the freedom of many may fall, elsewhere, with none to whimper unless the court process invigilates and polices the police before it is too late.\textsuperscript{14}
\end{quote}

The experience shows that the courts in India are very serious and strict in deciding the cases where police officers are involved. At the same time, the court should analyse the evidence in its strict sense, because the actions in such cases have two implications. First, the view of the court shall have a demoralizing effect on the police. If the court interferes in all matters and convict the police on flimsy grounds that will have a negative impact. Secondly, the rights of the common man should not be allowed to be violated by the police officers. In

\textsuperscript{12} \textit{Ibid} at pp. 71-72.


\textsuperscript{14} \textit{Id} at p.529.
such cases, if adequate punishment is not given, the society will lose faith in the courts and law enforcement machinery. These two conflicting ideas must be reconciled while taking a view when the court wants to police the police.

Punitive provisions are contained in the Indian Penal Code, which seeks to punish violations of right to life. Indian Penal Code\(^\text{15}\) prescribes punishments to an officer who detains a person in confinement with a corrupt or malicious motive and to those who inflict injury or grievous hurt on a person to extort confession or information regarding the commission of an offence. These sections clearly show that willful exercise of excess power is punishable. Torture during interrogation or investigation is punishable. In *State of Madhya Pradesh v. Shyam Sunder Trivedi*\(^\text{16}\) the court observed:

> The courts are also required to have a change in their outlook and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime, so that as far as possible within their powers, the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the Majesty of Law has prevailed.\(^\text{17}\)

In this case, Supreme Court criticized the attitude taken by the trial court and the High Court and convicted the police officers for imprisonment and fine, for adopting an uncivilized method of interrogation of a suspect and his consequent death in custody. It was observed:

\(^\text{15}\) IPC ss.220, 330 and 331.

\(^\text{16}\) 1995 (4) SCC 262.

\(^\text{17}\) Id at p. 274.
The trial court and the High Court, if we may say so with respect, exhibited a total lack of sensitivity and a “could not care less” attitude in appreciating the evidence on the record and thereby condoning the barbarous third degree methods, which are still being used at some police stations, despite being illegal. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis, the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the courts because it reinforces the belief in the mind of the police that no harm would come to them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The courts should not lose sight of the fact that the death in police custody is perhaps one of the worst kind of crimes in a civilized society, governed by the rule of law poses a serious threat to an orderly civilized society…. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity, which they deserve; otherwise the common man may lose faith in the judiciary itself, which will be a sad day.18

In a similar case, apex court criticizing the High Court observed that, “death in police custody must be viewed seriously; otherwise it will help take a stride in the direction of police raj”.19 Here the court hesitated even to reduce the punishment given by the trial court and

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18 Id. at p. 273.

convicted the sub-inspector for seven years imprisonment. Considering the bad and dangerous effect of crimes by police courts reacted very seriously. The court adopted punitive approach to police crimes.

Though the courts show great concern over the police violence and shows seriousness in analyzing the evidence, in some cases they become helpless. The problem, which the court confronts, is the bias, which the police show in the investigation of such cases, which generally results in paucity of evidence. This may be the result of intentional destruction of available evidence to prevent successful prosecution, thus the men in their own tribe is saved. Abuse of power by the police has an adverse impact on our constitutional culture because injustice anywhere is a threat to justice everywhere. In *State of U.P. v. Ram Sagar Yadav*, Chandrachud, CJ. while convicting the accused who are police officers, directed the government to amend the law appropriately so that police officers who commit atrocities on persons who are in their custody, are not allowed to escape due to paucity of evidence. On the recommendations of the Supreme Court, the Law Commission suggested an amendment to the Indian Evidence Act to enable the court to presume that the police official in whose custody a detenue dies is responsible for his injuries. But, the government has not yet acted upon this recommendation. When crime is committed in the police station by the policemen, all who are on duty in the station are to be made liable. In *Anup Singh v. State of Himachal Pradesh*, the Sub-Inspector of police has taken a defence

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21 A.I.R 1985 SC 416, 421. In this case the police men extorted illegal gratification from one Brijlal for hushing up a case against him. He complained to Supdt.of Police. He was arrested by the Sub-inspector and manhandled and consequently he died in the jail.
22 A.I.R 1995 SC 1941
that, he was not physically participated in the crime committed by the constables in the station. The court observed:

Leaving apart his civil and departmental liability to be accountable for what happens in the police post, he cannot escape to say that the criminal deeds committed by his constables should confine to the constables alone, when these deeds were committed and are deemed to have committed with his tacit consent and connivance.\(^23\)

In *State of Maharashtra v. Narasingrao Gangaram Pimple*\(^24\) court found a strange situation where truth has been polluted and falsehood has taken its place because of the abuse of power by a clever policeman.\(^25\) After analyzing the case elaborately and awarding sentence of six months rigorous imprisonment and a fine of Rs.2000, under section 161 of the IPC, court observed:

In view of the seriousness of the offence and the blatant manner in which it was committed we find it difficult to make a substantial reduction in the sentence and we are afraid having found the respondent guilty of the offences charged against him, it is not possible for us to show any leniency.\(^26\)

The ‘protectors of law and order’ should not show an apathy and indifference to the sufferings of the common man, who is at the receiving end. Exemplary punishment must be given to the erring

\(^{23}\) *Id.* at p. 1943.

\(^{24}\) A.I.R 1984 SC 63, In this case one Shivram Rege filed a complaint against his tenant that he suspect the tenant was running a distillery in the property. Police report is that they could not found a distillery in the premises. The respondent after impressing the complainant that they charged a case against him for filing a false complaint and obtained bribe for avoiding prosecution.


\(^{26}\) *Id* at p.73.
officials and period of limitation is not applicable in police torture cases.

Women in police custody are being tortured either physically or mentally. This seems to be a grave problem, which the criminal justice system has to address. Probably because of the high incidence of such illegality in the police stations, the law prohibits requiring a woman to attend the police station for investigation purposes. This is reiterated by the apex court in *Nandini satpathy v. P.L.Dani*, where the court specifically stated that directing a woman to come to the police station might make for tension and negate ‘voluntariness’. But, all fell into deaf ears and even now the practice of requiring women to attend the police station continues in India. In *Arvinder Singh Bagga v State of U.P.* a married women who is not an accused, was detained in custody, on the pretext of her being a victim of abduction and rape. She was tortured and threatened that her husband and in-laws would be physically tortured in order to compel her to abandon her newly performed marriage. The court was shocked to hear that such things are happening in a country where rule of law govern. Court directed

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27 *P.E.Arifa v. State of Kerala*, 2006(1) Cri.L.J 59 (Ker.). In this case the petitioner was taken into custody by the police and detained at the Vanitha Police Station for about eight hours and thereafter taken to a rescue home in the suburbs of Ernakulam city and forced to remain there for three days without registering a case against her or arresting her.

28 *P.P.Unnikrishnan v. Puttiyottil Alikutty*, A.I.R 2000 SC 2952. In this case a complaint was filed by the respondent against the appellant, who was a sub-inspector of police and another constable before the Magistrate complaining that the appellants have committed offences u/Ss.325, 342, 330 and 506(1) IPC. The Magistrate took cognizance and issued process. The accused raised preliminary objection that the Magistrate should not have taken cognizance of the offence in view of the bar contained in S.64(3) of the Kerala Police Act, which fixed a period of six months from the date of commission of the offence for taking cognizance. Magistrate rejected the contention. Appellants moved the High Court. Again the petition is dismissed.

29 Cr.P.C., s.160(1).

30 (1978)2 SCC 424.

31 Supra n.27

the Government to take immediate action against the police officers and ordered to pay compensation. It was also directed that the compensation amount should be recovered personally from the police officers.

Law prohibits arrest of a woman before sunrise and after sunset.\textsuperscript{33} The purpose of these prohibitions is to avoid the presence of woman in the station during night and at odd hours and it reflect the concern of the legislature to prevent harassment and exploitation of woman. The presence of woman in the police station at night give an opportunity to the police to abuse their power by resorting into unethical practices as was happened in Tukkaram v. State of Maharashtra.\textsuperscript{34} In this case two constables over powered a poor, rustic village girl’s will in the night at the police station. The Bombay High Court found that the ‘passive submission’ of the girl before a person in authority was the result of fear. But the apex court over ruled this decision saying that, the fear in such cases must be a fear of death or hurt and it is absent in this case.\textsuperscript{35} Hence, the alleged rape is only a consented sexual intercourse. Here the question remains, why the police directed the victim to come to the police station and detained her at the station violating the law of the land? Is it for getting her consent to commit sexual intercourse? The judgment is silent about the use of the police station as a theatre of rape or submission to sexual intercourse.\textsuperscript{36} It is interesting to note that the Supreme Court did not commit the same mistake in the rape cases where policemen were

\textsuperscript{33} Cr.P.C., s.46(4).
\textsuperscript{34} (1979)2 SCC 143.
\textsuperscript{35} \textit{Id.} at p. 149.
\textsuperscript{36} Upendra Baxi, Vasudha Dhagamwar, Reghunath Kelkar, and Lotika Sarkar, “An Open Letter to the Chief Justice Of India”, (1979)4 SCC 17 (jou.).
involved. In *State of Maharahta v. Prakash*, the court had taken a firm stand while dealing with a rape case where a police man was involved. The court criticized the attitude taken by the High Court in acquitting the accused and observed:

> To these poor rustic villagers, the police constable represents absolute authority. They had no option but to submit to his will. In all the facts and circumstances of the case, therefore, we are of the opinion that the learned single Judge was in error in acquitting the accused.

The courts in India view custodial rape seriously and the courts are very particular that the technicalities of law should not be a hurdle in finding the victim in a helpless situation in the courtroom. In the Penal Code, rape and custodial rape are considered separately. For custodial rape, punishment prescribed is imprisonment for a term, which is not less than ten years. The reason for this increase in punishment is that it is a heinous crime committed by a person in authority who is over powering the will of the victim using his authority. In *Prem Chand v. State of Haryana* the trial court hesitated to reduce the punishment to the accused since they were police constables. In this case one Ravi Shanker, A1 committed rape on one Suman Rani on two occasions and thereafter abducted and took her to Jammu. When they reached Bhiwani A2 and A3, two constables took both Ravi Shanker and Suman Rani to Patram Gate Police Post and put them in two different rooms and committed rape on Suman Rani.

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37 A.I.R. 1992 SC 1275. In this case during a local festival season, first accused a police constable was posted at the village for duty. In the intervening night of 9/10th September 1978 A1 and A2, brought the victim and her husband to A2’s house and asked the victim to sign on certain papers. When she hesitated, she was taken to the room by A1 and committed rape on her. The trial court convicted both accused, but, the Bombay High Court acquitted them.

38 *Id.* at p. 1277

Thereafter A2 took both of them to the railway station and left them there. All the three were convicted by the trial court. A1 was sentenced to undergo seven years imprisonment and A2 and A3 for ten years imprisonment. High Court acquitted A1 and confirmed the conviction of other two. Supreme Court affirmed the decision, but reduced the sentence to five years and observed that, “no doubt an offence of this nature has to be viewed very seriously and has to be dealt with condign punishment”. In *Ram Kumar v. Nain Singh*40 a constable was convicted for turning deaf ear to the cries of the victim, who was raped by another police official inside the police station. His conduct was condemned by the court as consistent towards facilitating crime.41

Defective investigations in rape cases are also deprecated by the court in several cases. In the case of defective investigation court has to evaluate the evidence with due caution and to make sure that the accused never saved solely on account of the defect. If it were so, it would amount to playing in the hands of the investigating officer.42 In *Dagdu v. State of Maharashtra*43, The court observed:

> The police, with their wide powers, are apt to overstep their zeal to detect crimes and are tempted to use the strong arm against those who happen to fall under their secluded jurisdiction. That tendency and that temptation must in the larger interest of justice be nipped in the bud.44

41 Id. at p. 1966.
43 (1977)3 SCC 68.
44 Id. at p.88. In this case ten females were murdered including a one-year-old infant and five girls below the age of ten, in order to pacify some evil spirits. There were Eighteen accused, two were given pardon. While approving the conviction of the appellant and the acquittal of A1 and A2 the court cautioned the police that if the police adopt a short-cut solution by obtaining confession, good evidence might disappear. *Id* at p. 93
While analysing the approach of the courts on police torture, one can find that the court is very serious and strict in considering the evidence and imposing the punishment. Police crimes are bad and dangerous. The impact of police crimes in the society is damaging. This forced the courts to take a punitive approach to police crimes, rather than therapeutic, which is more appropriate to a welfare State.

B. Compensatory Approach

Torture and illegal detention by police are violations of fundamental rights of life and liberty guaranteed under Article 21 of the Indian Constitution. The three remedies available under Article 32 and 226 in such cases were viz., i. direction to set at liberty the person detained, if the complaint was one of illegal detention, ii. direction to the Government to conduct enquiry and to take action against erring officials, and iii. direct the CBI to conduct investigation, if not satisfied with the investigation conducted by the local police.

Award of compensation to the victim for the violation of the fundamental rights as a public law remedy was unknown to the Indian legal system. In the early post-independent period, two things prevented the courts from awarding compensation for the violation of fundamental rights. One is the defence of sovereign immunity and the other is the prevailing notion that public law remedy does not comprehend awarding of compensation as a remedy in such cases. This was the reason why India resorted to reservation of Article 9 (5) of ICCPR, which grants enforceable right to compensation for illegal arrest and detention. 45 This notion has undergone change. The court

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45 ICCPR. Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
forged new remedies to meet the increased incidents of custodial violence and police illegality. The court met the custodial violence/death and abuse of power by the police by resorting to awarding of compensation. In Bhagalpur Blinding Case\textsuperscript{46} Bhagawati, J. while dealing with a case of violation of fundamental rights observed:

\begin{quote}
But if life or personal liberty is violated otherwise than in accordance with such procedure, is the court helpless to grant relief to the person who has suffered such deprivation? Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty[?]\textsuperscript{47}
\end{quote}

The Court forged a new tool and in \textit{Khatri (VI) v. State of Bihar}\textsuperscript{48} and awarded compensation to the victims of police torture. The court ruled categorically that, while trying a writ petition against the violation of the fundamental rights by the police, the court must inquire into the violation to assess the liability of the State to pay compensation for such violation.

\section*{Notes}
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

\textsuperscript{47} \textit{Ibid} at p. 630.
\textsuperscript{48} (1981)2 SCC 493.
The question regarding the award of compensation for the violation of right to life was once again come before the court in *Rudul Shah v. State of Bihar*.⁴⁹ In this case *Rudul Shah* though acquitted by the session’s court, was released from the jail only after fourteen years of the judgment. Commenting on the illegal detention of the person and awarding compensation the court observed:

Article 21, which guarantees the right to life and liberty, will be denuded of its significant content if the power of this court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of the right can reasonably be prevented and due compliance with the mandate of article 21 secured, is to mulct its violators in the payment of monetary compensation. …respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner’s rights.⁵⁰

This dictum was followed in several cases⁵¹ and now the courts in India heavily depend on this dictum to award compensation to the victims of ‘government sponsored abuses’. Award of compensation is now accepted as a discretionary remedy for the violation of fundamental freedoms distinct from and in addition to the remedy in private law for damages.⁵²

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⁴⁹ (1983)4 SCC 141.
⁵² Compensatory jurisprudence is not an innovation of the Supreme Court. Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 (ICCPR), states that “anyone who has been the victim of unlawful arrest and detention shall have enforceable right to compensation”. But the Government of India did not accept this proposal on the argument that Indian legal system does not recognize right to compensation for victims of unlawful arrest and detention. But basing on the international covenant, judiciary evolved a right to compensation in cases of established
The concept of sovereign immunity is a well-accepted norm in common law, which immunizes the State from the claim of compensation arising out of governmental action. This question was considered in *Kasthurilal*. The petitioner in this case claimed back the gold and silver seized from him by the police. The police could not restore the same to the claimant since a constable had misappropriated it. The court rejected his claim for compensation on the plea of sovereign immunity. The court observed that the power to arrest a person, to search him, and seize property found with him, were powers conferred on the specified officers by statute and therefore, these powers could be characterized as sovereign powers and in this case, State is not liable to compensate the petitioner. Whether this rule continues to govern the situation or not is a matter of dispute. However, in infringement of constitutionally guaranteed rights the court has not tied itself with this technical rule. Though not specifically addressed and ruled about the principle of sovereign immunity the Supreme Court resorted to the method of awarding compensation for the illegality of government servants resulting in violation of fundamental rights. In *Nilabati Behera*, Supreme Court categorically said that the defence of sovereign immunity is not applicable to the public law remedies for the enforcement of the fundamental rights under articles 32 and 226. The court observed:

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*Kasthuri Lal v. State of U.P.*, A.I.R 1965 SC 1039. In this case one Ralia Ram, a partner in the appellant firm, went to Meerut with an object to sell gold and silver in the market. Before reaching Meerut he was taken into custody by three constables and they searched him and seized the gold and silver. Next day he was released on bail, but the seized gold had not been returned. He filed a suit and they had taken the contention that it was in the custody of the Head-Constable who misappropriated the gold and fled away to Pakistan.


*Id.* at p.763.
The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under article 32 by the Supreme Court or under article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. Therefore, when the court moulds the relief by granting ‘compensation’ in proceedings under Article 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State, which has failed in its public duty to protect the fundamental rights of the citizen.\(^\text{57}\)

Finally, in *Nagendra Rao & Co. v. State of A.P*\(^\text{58}\) Supreme Court ruled that, there is no distinction between sovereign and non-

\(^{57}\) *Id.* at p.768-69

\(^{58}\) A.I.R 1994 SC 2663. The appellant was a business man doing business in fertilizers and food grains under license issued by the authorities. The police inspector of the vigilance cell visited the premises of the appellant and seized huge stocks of fertilizers food grains and non-essential goods. The District Revenue officers (DRO) acting on the report of the Inspector directed the Assistant Agricultural Officer (AAO) to distribute the fertilizers to the needy and directed the Tahsildar to dispose the food grains and non-essential goods and to deposit the sale proceeds in the Treasury. The AAO did not take any steps to dispose of the fertilizers. The appellant made application to the DRO and AAO stating that the fertilizer will deteriorate and will be rendered useless thus a huge loss may cause to the appellants. Neither DRO nor AAO has taken any action in this regard. The District Collector, finding that the only violation was improper accounts ordered to confiscate the part of the stock and to release the rest. Despite Collector’s and the Sessions Judge’s order in appeal the AAO did not release the stock. Appellant submitted representations before the Chief Minister, Revenue Minister, agricultural Minister and various other heads of the departments. Finally, AAO issued a notice to the appellant to take delivery of the stock released in his favour. But, when the appellant went to take the delivery, found that the stock had been spoilt both in quality and quantity. After making objection, he demanded value of the stock released by way of compensation. He filed a suit for the recovery of the amount. The question in this case was whether the government is vicariously liable for the acts of its servants.

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sovereign functions and the principle of sovereign immunity will never absolve State from its liability. Court observed:

No civilized system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy...Any water tight compartmentalization of the functions of the State as ‘sovereign’ and ‘non-sovereign’ or ‘governmental’ and ‘non-governmental’ is not sound. It is contrary to modern jurisprudential thinking.59

Awarding compensation is the only practicable mode of redress available for the violation of fundamental rights guaranteed by the Constitution. It is based on strict liability principle and is awarded in addition to the private law remedy.

Awarding compensation helps in three ways to control abuse of power by the law enforcing agencies. First is to a certain extent, it makeup the loss suffered by the victim in monetary terms. Dhananjay Sharma v. State of Haryana,60 where the police illegally detained the petitioners for two days, show how curious the court in ensuring rights justice to the citizens. The court observed:

The state must be held responsible for the unlawful acts of its officers and it must repair the damage done to citizens by its officers for violating their indefeasible fundamental right of personal liberty without any authority of law in highhanded manner.61

59 Id. at p.2683.
61 Id. at p. 782.
In *Saheli v. Commissioner of Police, Delhi*, in response to a public interest litigation, Supreme Court ordered compensation to the deceased’s mother. In another case, police forcibly took some poor people to the police station in Delhi to work without wages. Court awarded compensation and ordered to recover the amount from the erring police officers. The Court applied the compensatory jurisprudence to custodial torture in the case of *Sudha Rashid v. Union of India*, where an advocate was tortured to death in the custody. Moreover, the apex court advised the subordinate courts to exhibit more sensitivity and adopt a realistic rather than technical approach to custodial crimes.

In *Nilabati Behera*, apex court while treating a letter as writ petition observed:

> We respectfully concur with the view that the court is not helpless and the wide powers given to this court by art. 32, which itself is a fundamental right, imposes a constitutional obligation on this court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monitory compensation in appropriate cases, where that is the only mode of redress available.

The Court adopted such a view in order to ensure that adequate monetary compensation in the form of relief to the victim’s family.

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62 (1990)1 SCC 422
63 In this case a nine year old boy was beaten to death by the police
64 *PUDR v. Commissioner of Police, Delhi*, (1989)1 SCALE 114
65 (1995)1 SCALE 77.
67 *Supra* n.55
68 *Id.* at p. 763.
Punitive and administrative actions in such cases are not sufficient since the right to life with their beloveds is denied by the law enforcing agencies. Moreover, it will be another rights violation if relegate the victims or their legal heirs to civil court for seeking relief by way of compensation.⁶⁹

Secondly, the award of compensation will urge the government to take appropriate action in this regard. The holding in such cases prima-facie proves the failure of the government machinery in protecting the life and liberty of the common man and to a certain extent the culpability of the police personnel also. So, just to avoid public anger Government will take action against the erring officials.

Police should not be made passive by putting scathing criticisms. One must understand that the functions of police are directly and closely connected with human rights. Therefore, whenever the police work efficiently, they are in fact protecting the human rights. Criticism for criticism will make the police inactive. But, this does not mean that the court shall recognize all misdeeds of the police. Such recognition may invite adverse consequences. It may be an encouragement for continuing with the misdeeds. The remarks made by the Supreme Court in *PUCL v. Ministry of Home Affairs*⁷⁰ that the society should not distrust the police since they are also concerned with human rights. It was a frustrating judgment because the court was not taken the actual peril happened due to the riots. When the Chief Judicial Magistrate, Nadiad, was handcuffed and paraded through the streets and tortured brutally by the police, the Supreme Court was very

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⁶⁹ Id. at p.767
⁷⁰ A.I.R 1985 Del. 268. The case was related to the communal riot occurred in Delhi after the assassination of the then Prime Minister Mrs.Gandhi. But, in a case with similar facts Madras High Court granted compensation. See, *R.Gandhi v. Union of India*, A.I.R 1989 Mad.205.
critical about the ‘police raj’ in the country and punished the police officers responsible, in the exercise of its contempt powers.\textsuperscript{71} The court ought to have taken the same view in the \textit{PUCL} case also.

Third, by awarding compensation court can very well protect the fundamental rights of the citizens enshrined in the Constitution. The importance of the protection of right to life enshrined in article 21 is well narrated in \textit{Kamini Bala Talukdar v. State of Assam},\textsuperscript{72} where an ULFA activist was shot dead by the police. In the case though the allegation that the deceased was an ULFA activist was accepted by the court, but clarified that it will not justify the atrocity of police. The Court pointed out that no attempt has been made to apprehend the hard-core terrorist alive, despite of many opportunities, and negligently killed him in cold-blooded manner. Negligence in the performance of duty by police is the flagrant violation of article 21. \textit{Samata Vedike}\textsuperscript{73} illustrates the judicial response where the police are taking law into their own hands and tortured and threatened of gang rape a lady during interrogation. On getting frightened of gang rape, the lady jumped from the second floor of the police station and severely injured. Court while awarding compensation observed that, “rule of law is the basic foundation of democracy. It can survive only with the active assistance of police”.\textsuperscript{74}

In \textit{Nilabati Behera},\textsuperscript{75} court said that award of compensation is a legal consequence of the contravention of constitutional rights of the citizens. The Constitution has given profuse importance to the concept

\textsuperscript{72} 1997 Cri.L.J 874 (Gau.)
\textsuperscript{73} \textit{Samata Vedike v. State of Karnataka}, 2003 Cri.L.J 1003 (Kant.)
\textsuperscript{74} Ibid.
\textsuperscript{75} Supra n. 55.
of liberty. When liberty is lost the breath of life gets into oblivion. In the name of investigation or interrogation when the police guillotine the fundamental rights the only way out is to award compensation just to repair the damage suffered by the victim. The court emphasized the humane facets of the Constitution and ruled that no authority has power to vivisect or dismember it. This approach helped the court to arrive at a proper conclusion.

C. Preventive Approach

In the absence of adequate legislation to prevent police atrocities court took the lead and laid down principles based on constitutional ethos to prevent the police atrocities. To a certain extent, the judicial intervention and spinning of regulatory provisions is useful for the protection of the rights of the common man.

The power to arrest is a limited power. The requirements of law as to reasonability of arrest in a given case, credibility of the information received really puts limitation on the power. It is the duty of the police officer to judge the situation, so as to ascertain whether the exercise of the power of arrest could be justified. These prerequisites would prevent the misuse of power by the police. The courts scrutinize the law enforcement decision of the police as and when the court is required to do so.

In order to arrest a person police must entertain a reasonable suspicion that the person has committed or is under preparation to commit a cognizable offence. This requirement is having fundamental importance, but receives scant attention. Though it is not possible to define what ‘reasonable suspicion’ means, it definitely proclaims that the arrest shall not be on mere vague surmises or information or personal feelings, but must be on definite facts tending to throw
suspicion on the person arrested.\textsuperscript{76} No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. In this connection Supreme Court observed:\textsuperscript{77}

It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness of and \textit{bonafide} of a complaint and a reasonable belief both as to the person’s complicity and even so as to the need to effect the arrest.\textsuperscript{78}

Reasonable suspicion presupposes the existence of some objectively verifiable fact or facts, which cause the reasonable police officer to form the suspicion in question.\textsuperscript{79} So, before depriving of the liberty of a person, the police officer must verify the facts of the case and arrive at a conclusion that prima-facie arrest is necessary in the case.\textsuperscript{80}

Before arresting a person, the police officer must examine the credibility of the information he received. The arrest and detention should not be for making evidence against the arrested person. Whenever the police taken a decision to arrest a person he must make sure that the information received by him is trustworthy and actionable. His duty is not to bolster up a case but to bring out the real unvarnished truth.\textsuperscript{81} Credible information means any information

\begin{itemize}
\item \textsuperscript{76} Tribhawan Singh v Rex, A.I.R 1949 Oudh 74.
\item \textsuperscript{78} \textit{Id.} at p. 1354.
\item \textsuperscript{80} Poovan v. S.I of Police, Aroor, 1993 Cri.L.J 2183 (Ker.)
\item \textsuperscript{81} Jamuna Chowdhary v. State of Bihar, (1974)3 SCC 744.
\end{itemize}
which in the judgment of the officer to whom it is given, appears entitled to credit in the particular instance and which he believes.  

In Subodh Roy Chowdhary v. Emperor Wamsley, J., pointed out that, the words credible and reasonable have reference to the mind of the person receiving the information and bare assertions cannot form the material for the exercise of an independent judgment. The power to arrest does not give the officer an unfettered power to arrest anybody. He must apply his mind and to form a judgment regarding the arrest.

While exercising the power of arrest the police officer is exercising his personal responsibility and so, he should make use of his personal judgment without relying on the belief of another person. The present day problem is that most of the arrests are for satisfying the higher- ups and the political masters.

In State of U.P. v. Niyamat Ali, one Dharmapuri was arrested. The constables were told that a reasonable suspicion existed that Dharmapuri was involved in some cognizable offences. Respondent came to the place to rescue Dharmapuri and scuffle involved and as a result, one person died. No evidence produced before the court to indicate that there was any complaint of Dharmapuri being involved in cognizable offence. The court observed:

The arrest was absolutely unjustified and not legal and in this view of the matter the

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82 Devi Dayal v. Emperor, A.I.R 1929 Lahore 720.
83 A.I.R 1925 Cal.278.
84 Id. at p. 279.
85 A.I.R 1987 SC 1652; 87 Cri.LJ 1881.
respondents had a right to get Dharmapuri rescued from the custody.\textsuperscript{86}

The police officer receiving the information must apply his mind and must exercise his independent judgment, and make the arrest only when there is reasonable suspicion that the person is committing or is about to commit an offence.

In 1997, a letter written by the Executive Chairman, Legal Aid services, West Bengal, drawing attention of the court to the death in police lock-ups and custody, provoked the Supreme Court of India to issue eleven directions to the police, which, they have to fulfil at the time of arrest of a person.\textsuperscript{87} Court found that, absence of transparency in the police action is the root cause of the lock-up deaths. In order to ensure that all the arrests are accounted to prevent abuse of power, Court issued directions,\textsuperscript{88} the non-compliance of which are considered

\begin{itemize}
\item[i.] The police man who is effecting the arrest and handling the interrogation should bear accurate, visible and clear identification and name tags with their designation. The particulars of such personnel must be recorded in a register.
\item[ii.] That the police officer carrying out the arrest shall prepare a memo of the arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
\item[iii.] A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
\item[iv.] The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the town or district through the Legal aid Organization in the district and the police station of the area concerned telegraphically within 8 to 12 hours.
\item[v.] The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is under arrest or is detained.
\item[vi.] An entry must be made in the diary at the place of detention regarding the arrest of the person, which shall also disclose the name of the next friend of the person who has been
\end{itemize}

\textsuperscript{86} Id. at p.1654.
\textsuperscript{88}
as serious and the person responsible will be punished for contempt of court.

This development is not a sudden revelation of the court in a particular case. It is the culmination of the courts interventions in the abuse of arrest power by the police in the post-independent era. The scheme of our criminal justice system never allowed the courts to interfere with the decision of the police to arrest a person under section 41 of the Code by using inherent power.\textsuperscript{89} However, when a person seeking the intervention of the court in the case of arbitrary arrest procedure adopted by the police, court cannot adopt a hats off attitude saying that it is a closed province earmarked for the police.

In \textit{Joginder Kumar v. State of Uttar Pradesh}\textsuperscript{90} court, for the implementation of Article 21 and 22(1) of the Constitution, laid down three rules. (i). An arrested person being held in custody is entitled, if he so requests, to have any friend, relative or other person who is known to him or likely to take an interest in his welfare, told as far as

\begin{itemize}
\item[vii.] The arrestee should, if he so requests, be examined at the time of arrest and the injuries on his body, if any, must be recorded at that time. The ‘inspection memo’ must be signed by the arrestee and the police officer effecting the arrest and a copy must be served to the arrestee.
\item[viii.] The arrestee should be subjected to medical examination every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by the Director, Health Services of the State. The Director should prepare such a panel for all tehsils and districts as well.
\item[ix.] Copies of all records including the memo of arrest referred to above should be sent to the Illaqa Magistrate for his record.
\item[x.] The arrestee must be permitted to meet his lawyer during interrogation, though not throughout interrogation.
\item[xi.] A police control room should be provided at all districts and State Headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.
\end{itemize}

\textsuperscript{89} Director of Enforcement v. Deepak Mahajan, A.I.R 1994 SC 1775; Johan Singh v. Delhi Administration, A.I.R 1974 SC 1146.

\textsuperscript{90} A.I.R 1994 SC 1349
practicable, that he has been arrested and where he is being detained. (ii). The police officer shall inform the arrested person when he is brought to the police of this right. (iii). An entry shall be required to be made in the diary as to who was informed of the arrest.

The direction put a clear limitation on the power of police to arrest a person. It makes sure that the arrests are not arbitrary and illegal custody is avoided. These guidelines are similar to the Judges’ Rules of England. Subsequently, in 1997, the apex court streamlined the procedures relating to arrest. Similarly, in Nandini Sathpathy v. P. L. Danti, Supreme Court upheld the right against self-incrimination and the right to remain silent at the time of interrogation. Detention is another area where the police misuse their authority. Detaining a person in custody without producing him before a Magistrate or without informing of the grounds of arrest or without allowing him to consult a lawyer is against the constitutional principles. This illegality cannot be cured or waived.

Police have no authority to detain a person without making any entry in the general diary and without proper authority. Denying a person of his liberty is a serious matter. In Poovan v. S.I of Police, Aroor, the Kerala High Court narrated the usual practice, which the police are following in this respect. Court observed:

This court has coming across many a petition for the issue of writ of habeas corpus with the complaint that certain persons have been arrested by police on a particular date and that

91 See annexure 1
93 (1978) 2 SCC 424.
95 Ibid.
though a number of days have passed, he has not been produced before any Court nor released. On receiving notice from this Court on such petition, counter affidavit is being filed stating that the person was not arrested on the date alleged, but on a later date, usually on the date of filing the petition for writ of *habeas corpus*, that he was produced before the Magistrate within twenty-four hours and the Magistrate has remanded him to judicial custody. On such counter being filed, the writ petition is disposed of saying that no further order is necessary, since the detention is not illegal.96

It is usual that persons are arrested and kept in custody without producing them in the Court. No entry will be made in the register and only when the police decide to produce the arrested person before the court an entry will be made in the register to show that the procedural requirements are complied with in the case.97 The complaints against the person may be true, but there is no justification in keeping him in custody, denying all rights and without any judicial scrutiny. In Poovan’s case court observed that, in such situations the lower court can conduct an enquiry into the disputed question of custody and issue a search warrant under section 97 of the Code.98 By this judgment, Court reminded the lower judiciary to exercise their authority in time when the rights of the common man are violated by the law enforcement authorities.

‘Pretended arrest’ or informal detention is a routine procedure adopted by the police in India either to please third parties or to take revenge against the person. The person in custody can claim the rights

96 *Id.* at p. 457.
98 *Supra* n.95 at p. 459
only when he becomes an arrestee. Police without recording arrest or registering a case took persons into custody and keeps them in custody. This custody is illegal and violative of all norms.

The Law Commission examined the subject “arrest” and made valuable suggestions to streamline the power of the police in this regard.99 Some of the recommendations of the Law Commission were incorporated in the Code of Criminal Procedure by the 2005 amendment.100 The Supreme Court has also taken the matter seriously and felt the need for increased judicial control. It elaborated certain steps, which the police should comply with while exercising the power of arrest. Most of the sufferers of police abuses being poor persons they may not approach the courts. This could either because of the ignorance of legal rights or due to fear of police officers. Poverty and consequential inaccessibility of the legal process adds to the peril. Rights of the arrestee as well as the legal duty of the police arise only when somebody is “arrested”. If the arrest is not recorded and the person is in illegal custody, he may not get the benefit of the apex court decisions.

In Poovan,101 Kerala high Court observed that in the case of illegal custody, the aggrieved can approach the Magistrate court under section 97 of the Code and the Magistrate must act in accordance with the procedure laid down in the section. In, In re Madhu Limaye 102

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99 Law Commission of India, 177th Report
100 Sections 46(4) deals with the procedure for arrest of a woman, and 50A made it obligatory on the person making arrest to inform about the arrest to a nominated person and about the rights of the arrested person.
101 1993(1) KLT 454
102 A.I.R 1969 SC 1014. In this case Madhu Limaye, a member of Lok Sabha and several other persons were arrested without communicating the reasons or grounds of arrest. He has addressed a petition in the form of a letter to the Supreme Court u/Article 32 of the Constitution praying for issuing a writ of habeas corpus for restoring liberty as the arrest and detention was illegal.
Supreme Court stated that the orders of remand would not cure the Constitutional infirmities. While remanding a person to judicial custody the Magistrate must apply his mind to all relevant matters. In *Ram Narayan Singh v. State of Delhi*, the Court observed that, “those who feel called upon to deprive other persons of liberty in the discharge of what they conceive to be their duty must, strictly and scrupulously, observe the forms and rules of law”.

In the case of search, the essential choice seems to be between two conflicting interests. One is the interest of the individual and the other is the interest of the society. The Code strives to strike a balance between these two interests. It became the duty of the court to ensure the balancing of these two conflicting views. Section 165 of the Code empowers the police officer to conduct search without a warrant. This section does not give an unfettered power to the officer; instead limit the powers by providing safeguards to the citizens, to prevent abuse of power by the officer. These safeguards are mandatory and not directory, and must be carried out immediately and fully, or as nearly so as they can be in the exigencies and circumstances of each case. Unless this is done, the

103 A.I.R 1953 SC 277. In this case, the petitioner filed a petition for a writ of *habeas corpus* on behalf of four persons, who were arrested by the police and prosecuted for alleged defiance of an order prohibiting meeting and processions. Writ was issued.

104 *Id.* at p.278.

105 *Kalinga Tubes Ltd. V. D.Suri*, A.I.R 1953 Ori. 153. Search conducted by the officers of Special Police Establishment of Delhi. Applicants challenged it as illegal since the officer did not obtain requisite consent of the Government of Orissa u/s. 6 of the Act, enabling him to exercise powers and jurisdiction of a police officer in Orissa State.

106 Section 165 Cr.P.C contains four conditions. **First**, the officer has reasonable grounds for believing that anything necessary for the investigation of the case cannot be obtained otherwise and without undue delay. **Second**, he should record the grounds of his belief and as far as possible the things for which the search is to be made. **Third**, if practicable, the officer must conduct the search in person, if it is not practicable, record the reasons and authorize the subordinate officer to make the search. **Fourth**, copies of all records shall send forthwith to the nearest Magistrate empowered to take cognizance to the offence and on application, owner or occupier of the place searched be furnished with a copy of the same.
search is without jurisdiction and bad in law. Statutorily imposed stringent conditions are there to control the exercise of power of search by the police. This is so because the search would otherwise be arbitrary in character. If those conditions are ignored, it cannot be said that the search is carried out in accordance with the provisions of the Code. In *State of Rajasthan v. Rehman*, the deputy superintendent of central excise received information that the respondent and his father had cultivated tobacco but had not paid the excise duty payable to thereon. The deputy Superintendent and his party went to the house of the respondent and declared their intention to conduct search in the house. Then the respondent and another person obstructed the making of search; as a result, the Dy.Superintendent fall down and received some injuries. The respondent was convicted under sec.353 IPC. On appeal, the session judge reversed the finding stating that the search had not been conducted in accordance with Sec.165 Cr.P.C. and remanded the case for fresh enquiry. The magistrate acquitted the accused. The High Court agreed with the findings of the lower court. The Supreme Court also affirmed the decision of the lower trial court since, the search was made in contravention of the provisions of the Code. Section 100 of the Code also contains some conditions, which is applicable to all kinds of searches.

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107 *Emporer v. Mohammad Shah*, A.I.R 1946 Lah. 456, 458. The respondent was charge sheeted u/section 353 IPC, for assaulting the police Inspector with intent to prevent him from discharging his duty. He was acquitted by the Magistrate. Hence this appeal.


110 *Supra* n.108 at p. 231.

111 i. The search shall be attended by two independent and respectable witnesses from the locality. ii. Search shall be made in their presence and a list of all things seized shall be prepared and must be signed by the witnesses. iii. Occupant of the place searched, or some
Non-registration of complaints is a very serious dereliction of duty, which is a negation of the rights of persons. The courts are denouncing such situations seriously, because if it continues, the rule of law principle proves to be a one-way traffic for the police and will be against the people. In *Vishnu v State of Maharashtra*, the prosecutrix was raped by the appellant. The police was informed and the Sub-Inspector of police came to the hospital and recorded the statements of the victim, mother and her brother. He made enquiry about her age. He did not register a case because the age of the prosecutrix as per the school record was more than sixteen years and she was a consenting party to sex. In this case, Supreme Court observed:

...we are shocked to note that in a grievous offence like rape being reported to the police, the police officer concerned did not register the case despite the fact that the prosecutrix had categorically stated that the accused had forcible sexual intercourse with her which no doubt would lead to the losing of confidence of the public in the police establishment.

Loosing confidence of the public in the police is detrimental to the interest of rule of law. People are looked upon the police as a mechanism to protect the safety in social life as well as protector of

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112 Niranjan Singh v. Prabakar Rajaram Kharote, A.I.R 1980 SC 785. The brother of the petitioner, who was on his way to Shirdi was stopped by the accused party comprising two sub-inspectors and eight constables. He was removed from the truck, tied with a rope to a tree and shot dead. No action was taken against the accused by the State Government. The complainant filed a private complaint. The contention of the accused was that the victim was a criminal and he sustained injury in an encounter. The bail application was rejected by the lower court, but session’s court granted bail and it was affirmed by the High Court. Though the Supreme Court did not upset the order of the lower court, vehemently criticized the lower courts and the Government.

113 (2006) 1 SCC 283.

114 Id. at p.286.
life and liberty. But, some unscrupulous officials bring bad name to the police by abusing their power. These kinds of activities will demoralize the police establishment and will impair their efficiency. Police have no authority to exercise discretion in registering a cognizable case.\textsuperscript{115} It is a mandatory duty of the police to record the information received, regarding the commission of a cognizable offence. Even if the police have no territorial jurisdiction, they shall record the complaint.\textsuperscript{116}

Regularity and consistency in law enforcement is essential in a country governed by rule of law. The public confidence in the police is essential in a democracy. They should show impartiality and shall also possess the ability to protect life and liberty of people and to maintain law and order. The failure of police in discharging their function will have a disastrous effect and it will undermine the effectiveness of the system. The post-independent experience clearly shows the gradual transformation of our law enforcement agency to a law breaking organization. If the police are not shouldering the responsibility for fair, effective, and efficient law enforcement, it will affect the criminal justice administration. In such situations, judiciary cannot act as a silent spectator. There is no stage of the criminal justice administration about which judges may say that it is not their concern.\textsuperscript{117}

\textsuperscript{115} Section 154 of the Code states that when ever an information is received regarding the commission of a cognizable offence, the police officer shall record the same.

\textsuperscript{116} State of Andhra Pradesh v. Punati Ramulu, A.I.R 1993 SC 2644. It was a case of murder. PW1 went to Narsaropet police station to report the incident. When he reached there the constable on duty informed him that the Circle Inspector had already received information and had left for the village. The police constable at the station refused to record the complaint presented by PW1 on the ground that the said police station had no territorial jurisdiction over the place of occurrence.

In U.S.A., the improper method of law enforcement is controlled by the application of the exclusionary rule.\(^{118}\) In U.K., control of police is ensured by section 78 of the Police and Criminal Evidence Act.\(^{119}\) However, there is no similar statutory provision in India.\(^{120}\) Even then, a close analysis of the judgments show that, courts are eager to see that the laws are abided by all concerned including the police.\(^{121}\) By using the interpretative techniques and timely intervention, courts are able to correct the improper enforcement of law. The object is to achieve greater fairness in law enforcement policy and practice.

**Effectiveness of Judicial Control**

Abuses of power by the police, resulting in the human rights violations are universal. No state is an exception to this. Despite the constitutional provisions and court rulings, crime by police continues unabated. The reason for this situation is the lack of political will to contain this by venturing new vistas in the police administration. Most of the times, court fail in controlling the police because of the lack of adequate evidence to book the culprit. Direct ocular evidence regarding the complicity of the police personnel in the custodial torture or abuse of police power, is very difficult to adduce before a

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\(^{118}\) Exclusionary rule means exclusion of evidence in the trial, which is collected illegally.

\(^{119}\) PACE Act, s.78, “(1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it. (2) Nothing in this section shall prejudice any rule of law requiring a court to exclude it.”

\(^{120}\) The courts in India enjoy ample freedom to exclude the evidence if it is prejudicial to the interest of the accused.

\(^{121}\) Prabhu Dayal Deorah v. The District Magistrate, Kamrup, A.I.R. 1974 SC 183. in this case the petitioner was arrested and detained by the respondent u/s.3(2) (a) of the Maintenance of Internal Security Act, 1971. the detention notice given to him did not specify the illegal activities he committed. Supreme Court stated that the ground for detention was vague for want of particulars and thereby vitiated the detention order. See also, R.P.Kapur v. State of Punjab, A.I.R. 1960 SC 806.
court. Only the police personnel attached to the station can say what happened inside the ‘police station’. They may sometimes remain silent or pervert the truth to save their colleagues. The Indian criminal trial procedure insists that the prosecution must establish the case beyond reasonable doubt. This very often results in the failure of prosecution in cases where police officers are the accused. Tortures in police custody are on the increase and are encouraged by the ‘proof beyond reasonable doubt’ doctrine. In such cases, the courts must adopt a realistic approach and must realize that the torture in police custody is one of the worst kinds of crimes in a civilized society, governed by rule of law. Court observed:

> It is the duty of the police, when a crime is reported, to collect evidence to be placed during trial to arrive at the truth. That certainly would not include torturing a person, be he an accused or a witness to extract information. The duty should be done within the four corners of law. Law enforcers cannot take law into their hands in the name of collecting evidence.

Constitution of India guarantees right to life and personal liberty to every person. Infringement of these guaranteed rights by the functionaries of the State is viewed seriously and the court expresses their concern over this problem. But the fact is that,

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122 *Munshi Singh v. State of M.P.*, A.I.R 2005 SC 402,404. In this case, one Shambhu Tyagi was taken into custody to extract confession. He was tortured by the police and as a result he died. His body was thrown near a stream. Case was investigated by the CID of police and the erring police officers are prosecuted. They were punished u/sections 304 Part I, 330 and 201 IPC. Appeals were dismissed by the High Court.

123 *Id.* at p.439-440.

124 Constitution of India, Article 21.

irrespective of the earnest efforts from the part of the court the inhuman police behaviour towards persons in custody continues unabated. In spite of a vigilant court, the abuse of power by the police is showing an upward trend. The reasons for this are two fold. One is the rule of evidence and the other is the vicarious liability doctrine.

It is not easy to prove custodial violence. What actually happened inside the police station is known only to the inside parties and without their co-operation and assistance, nothing will become known. No police officer will give evidence against his colleagues in the ordinary course. This prompted the Law Commission to propose amendments to the Indian Evidence Act, 1872.\textsuperscript{126} It suggested the incorporation of a presumption against the accused in case of custodial offence. In such cases, the court shall be required to presume that the police officer causes the injury on the body of the victim unless the contrary is proved. The object of this recommendation is not only to curb custodial crimes but also to make sure that the person responsible does not go unpunished. But, unfortunately, it has fallen in deaf ears.

In writ petitions where the court finds police, torture the victim is being compensated monetarily. This is generally being done without entering into the question of guilt of any particular individual. In custodial torture or cases of abuse of power by the police, victim may not be in a position to prosecute the offender or to file a damage suit in the civil court. Both procedures may be time consuming as well as difficult to prove. Moreover, it is not good for a developed legal system to relegate the victims to lower judicial forum to try their luck there. The court orders the Government to pay the compensation, presumably based on the principle of vicarious liability of State. In

\textsuperscript{126} Law Commission of India, 113\textsuperscript{th} Report.
some cases, court directed the State governments to recoup the amount from the erring police officials.\textsuperscript{127} Even without a direction from the court, State is powerful enough to regain the amount from the concerned officers because it is no part of their duty to violate the rights of the citizens and no law will justify such acts of the police. Hence, they are creating unnecessary burden to the Government. But, no governments in India has taken due action in this regard so far. The erring police personnel are left unaffected by the adverse finding of the court. The officer concerned loses nothing. This being the position the compensation awarded for fundamental rights violation fails to deter the erring officials. Consequently abuse of power continues. In *Peoples Union for Democratic rights v. State of Bihar*,\textsuperscript{128} the police opened fire at a peaceful meeting without observing any procedures. Consequently, twenty-one persons died and several others suffered injuries. The court directed the State government to pay a compensation of Rs.20000/- each for a case of death without prejudice to any just claim of compensation.\textsuperscript{129} In *Jwala Devi v. Bhoop Singh*,\textsuperscript{130} an old women was assaulted, tortured and paraded in the street, where court while finding that there is no proof to prove the accusation, directed the state to pay Rs5000/- as compensation.

Vicarious liability of the government for whatever violations the police officers committed leave them unhurt in most of the cases. When the court orders compensation, the government assumes the responsibility and disburses the amount to the victims. Normally, the


\textsuperscript{128} A.I.R 1987 SC 355.

\textsuperscript{129} Id. at p.366.

\textsuperscript{130} A.I.R 1989 SC 1441.
procedure ends there. Hardly there will be any proceeding against the erring police official except the criminal proceeding in some cases, which may end in acquittal due to the paucity of evidence. In fact, the award of compensation is a punishment to the government, which may have no effect in the police agency, and the abuse of power continues unabated.

Where the Court Fails

In *A.K.Singh v. Uttarkhand Jan Morcha*\(^{131}\) Supreme Court set aside the order of the High Court directing the convicts to pay compensation to the victims. Perhaps the apex court has not appreciated the gravity of the offence and the injury it caused, not only to the victims but also to the society. It was a peaceful demonstration, which is accepted in a democracy. Even if, the procession is not a peaceful one, who gave power to the police to rape the women who participated in the demonstration? Though the attitude of the police was inhuman, it is a shame for our democracy that such cases of flagrant violations of rights of the common man by unscrupulous policemen are not dealt with properly and seriously. Madras High Court in *Sivagami v. State of Tamil Nadu*,\(^{132}\) did not follow the reasoning of the apex court in *A.K.Singh v. Uttarkhand Jan Morcha*.\(^{133}\) The Madras High Court was deciding a case on similar facts where the court observed that, peaceful demonstrations are permissible in a democracy and police firing without resorting to lathy charge is a

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\(^{131}\) A.I.R 1999 SC 2193. Police firing and atrocities committed on a peaceful demonstration for a separate State of Uttaranchal in 1994. 24 persons killed, 7 raped, 17 sexually assaulted, many were injured. Allahabad High Court awarded compensation of Rs.10 lakhs each to the deceased victim’s families, Rs.10 lakh each to rape victims, Rs.5 lakh each to victims of sexual molestation and Rs.2.5 lakh to Rs.50000 for injured persons.

\(^{132}\) *Sivagami v. State of Tamil Nadu*, 2001 Cri.L.J 4618 Mad. In this case a mob assembled in front of the police station demanding arrest of a person suspected to be an accused in a murder case. One person died in the police firing.

\(^{133}\) *Supra* n.131.
negligent act.\textsuperscript{134} Such diametrically opposite verdicts on similar facts will send a wrong message to the perpetrators of crime and the abusers of power.

In *Raj Kumari v. SHO, Noida*\textsuperscript{135} court extensively verified the arrest records and the depictions to find out that the allegations regarding the arrest of the petitioner is in violation of the Supreme Court directions in *Joginder Kumar*\textsuperscript{136} and *D.K.Basu*\textsuperscript{137} as not correct. It is an unfortunate decision, which has the tendency to encourage the police to violate the procedure of arrest.

When a crime is reported, it is the duty of the police to investigate and collect evidence. In order to divert the investigation, the culprits may approach the court with false accusations of custodial torture or abuse of power against the police. So, it needs to be carefully examined whether the allegations are correct or are sham attempts to gain undeserved benefit masquerading as victims of custodial violence.\textsuperscript{138} A realistic approach from the court is needed in such cases. By giving importance to cases of police abuses court should not compromise the interest of the society. It is to be borne in mind that the court should, in cases of police torture, analyse whether the evidence is clear and incontrovertible or exaggerated and false.\textsuperscript{139}

\textsuperscript{134} Supra n. 132.
\textsuperscript{135} A.I.R 2003 SC 4693. It was a writ petition u/Art.32 of the Constitution. It is prayed that a writ of mandamus be issued directing the respondents to stop arresting women between sunset and sunrise except in grave offences like murder, and also to direct the respondents to allow a relative of the lady who is arrested with her and in her view if she is kept in police station. Also prayed to punish the respondent who arrested the petitioner.
\textsuperscript{136} Supra n.77.
\textsuperscript{137} Supra n.87.
\textsuperscript{138} Supra n.122 at p.405
Compensation scheme can better serve the victims only: no disability will cause to the violators of law and since they continue with the same *modus operandi* in their dealings. Except the award of compensation, there is little evidence that the guilty policemen have actually been punished. Even in those cases where prosecution has been launched, the cases remain pending for years in the absence of judicial monitoring of the proceedings.\textsuperscript{140}

In, *Bhagalpur Blinding case*\textsuperscript{141}, Chandrachud, C.J, observed:

The report of the doctor will shock the conscience of mankind. There has been the most flagrant violation of the safeguards provided by Article 19 and 21 of the Constitution. There is nothing that the court can do to restore the physical damage, which seems irreparable. But the offenders must at all events be brought to book at least in the hope that such brutal atrocities will not happen again.\textsuperscript{142}

However, in this case, several police officers allegedly involved were apparently escaped trial, and largest sentence awarded to the erring officials for deliberately blinding under trial prisoners, was only three years,\textsuperscript{143} though it was a fit case to award life imprisonment.\textsuperscript{144} There is no reasonable justification for reducing the sentence in such cases. Court ought to have awarded punishment proportionate to the brutality shown by the accused in committing the crime.

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\textsuperscript{142} Ibid.

\textsuperscript{143} Hydervali, “Law and Custodial Torture in India”, 1999 Cri.L.J. 36,40.

\textsuperscript{144} E.K.Chandrasenan V. State of Kerala, A.I.R. 1995 SC 1066. where the accused are convicted for life imprisonment under section 326 IPC. It is a case of sale of illicit liquor and the consequent death and blinding of some persons.
The concept such as “arrest”, “detention” and “taken into custody” are different. In all these, the common feature is the ‘deprivation of liberty’. Detention connotes confinement or restraint. So, when police detains a person it is a *de facto arrest*. Detention unaccompanied by consequences of a formal arrest is a general practice of the police in India. Detention for questioning or search is lawful, but prolonged detention overnight in the police station would be unlawful.

The concept, ‘taken into custody’ also implies several meaning. Arrest may or may not occur in such cases. Custody without arrest is unlawful. Why the police wanted persons to be in custody, when they are not charged with an offence? In *Wiltshire v. Barret*, Lord Denning M.R appreciated the problem and observed:

> The most effective way to do it is by arresting him then and there. The police have to act at once on the facts as they appear on the spot and they should be justified by the facts as they appear to them at the time and not on any *ex post facto* analysis of the situation.

Therefore, when reasonable suspicion generate in the mind of the police officer from the facts, and the officer wants the person in his custody he must arrest the person, and there is no need to detain a person or bring him into custody without resorting to formal arrest. After questioning, if the officer feels that, the person is innocent or his presence is not necessary for the time being, the arrestee can be set free.

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146 [1965] 2 All.E.R 271, where police arrested the complainant and taken to police station. Doctor examined him and certified that he was not unfit to drive. Complainant was forthwith released from custody without being charged. He filed a complaint alleging the arrest was unlawful *ab initio*.

147 *Id.* at p.274.
free or enlarged on bail or in the alternative he shall be brought to the magistrate’s court. Lord Denning went on to say, “...it has been settled law that if, after arrest, a man is found on inquiry to be innocent or at any time, or at any rate there is no sufficient case for detaining him he should at once be set free. There is no obligation to take him to the Magistrate”.148

Arrest is legal and detention or custody without arrest is illegal. However, there are common elements for detention and arrest, they differ in legal sense, because arrest requires legal validity. Arrest is de jure when it is made in compliance with the statute or the common law that creates the particular power of arrest149 otherwise, it would be illegal. Prof. Glanville Williams defined arrest thus:

To be an arrest, there must be an intention to subject the person arrested to the criminal process- to bring him within the machinery of the criminal law; and that intention must be known to the person arrested.150

Lord Diplock had given an inclusive definition for arrest in Holgate-Mohammed v. Duke,151 thus:

Arrest is a continuing act; it starts with the arrest or taking a person into custody (by action or words restraining him from moving any where beyond the arresters control), and it continues until the person so restrained is either released from custody, or having been brought before a

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148 Id. at p.276.
149 Supra n. 145 at p. 324.
151 (1984)1 All.E.R 1054. In this case, Mrs. Holgate-Mohammed was arrested without warrant at her house and detained in custody for about six hours in the police station. She filed a case for compensation.
Magistrate, is remanded into the custody by the Magistrate’s judicial act.\textsuperscript{152}

It is clear from this definition that there is no ‘half way house’ between liberty and arrest.\textsuperscript{153} Therefore, the detention short of arrest is illegal. Even by words if the person is restrained from moving, it is arrest. But, one cannot see such an unambiguous definition in India. Though, the Supreme Court elaborately dealt with the arrest procedures missed an opportunity to bring clarity to the concept of arrest and detention, which prompted our police to abuse their power. The present explanations regarding arrest lack precision. So, either the legislature or the court through its interpretative techniques shall define and differentiate arrest and detention in definite and simple language, so that, the police shall not use detention or custody without arrest, anymore in the law enforcement process.

The criminal justice system in India, give wide discretion to the police and they are using their discretion in a discriminatory manner prejudicial to the interests of poor, uneducated and powerless persons. They arrest a person because they are police officers engaged in the duty of law enforcement. This attitude creates problems. Whether they have the authority to arrest is the moot question to decide the validity of the arrest. If there is no authority, there is no arrest. When a person is detained without recording the arrest, it is wrongful confinement, which is punishable. Now what happened is that, a wide net is cast, drawing anyone who in the eyes of police is a likely suspect. They are then interrogated until they supply information or they admit to the crime. This practice accounts for many complaints of harassment by

\textsuperscript{152} Id. at p. 1056.
\textsuperscript{153} Dunne v Clinton [1930] I R 366, 372 quoted in Supra n.145 at p. 326.
the police. The police and the courts must realize that arrest is more than a deprivation of liberty. It is a step in the criminal process whereby the arrested person must answer an alleged or suspected crime, made in the lawful exercise of an authority with an intention to bring him before a judicial tribunal, unless, it would be qualified as ‘illegal’ and the police officer must be answerable.

**Conclusion**

The ruling of the apex court in *Rudul Shah* was an important development in the field of victim’s right to compensation. The court opened a new vista realizing the fact that, filing a suit for damages against the government is time consuming and difficult, which a common man cannot easily adopt. The fundamental right to life would lose its significance if the power of the Court were limited to passing orders, releasing the person from illegal custody. After this landmark decision, Supreme Court and High Court’s came up with decisions awarding compensation for the wrongs committed by the employees of the government.

The Indian Courts are very much keen in protecting the rights and liberties of the common man. But it is doubtful that whether the Indian courts have the constitutional authority to police the police. It is a misconception that the courts have the power to handcuff the police and control and supervise the activities of the police. But, when they transgress the limits and abuse their power, who else is authorized to control them, except the court. Here, the court is not imposing artificial restrictions on the police but taking measures to protect the

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155 Supra n.49
innocent people from police atrocities. So, it is not controlling the police but ensuring the prevalence of rule of law.

Problems regarding police atrocities cannot be solved only by the interference of judiciary, because of several reasons. First, as per the scheme of our criminal jurisprudence, courts have no authority to interfere with investigation process. The police themselves investigate even the complaints against police. They can kill the evidence and save the culprit, who are his brethren. Secondly, compensatory method sometimes makes the victim satisfied and they may not continue the litigation against the culprit. In most of the cases, the government will pay compensation and the police will get a reprieve on this. Thirdly, the accepted norm about the tortuous liability of the government in such cases has an adverse impact. Though police is the culprit, government is penalized. No pain or suffering to the erring officials. Earlier the courts in India were reluctant to accept the vicarious liability of the State for police excesses but give primacy to the doctrine of ‘sovereign function’. After some time court has taken the view that, the crime is committed by the police in their official duty and so, government is vicariously liable for it. A turning point came in 1978 when the apex court ruled that the state action affecting life and liberty of the people assured under Art.21 of the Constitution has to be ‘just fair and reasonable and not arbitrary, fanciful and oppressive’. Thereafter the courts evolved new jurisprudence in deciding police excesses. Hence, compensatory jurisprudence is employed by the judiciary to redress the grievance of the victims. But, the truth remains, that no government or governmental agency can violate the penal laws of the state. Hence, it is advisable to recoup the compensation amount from the erring officials, to prevent them from indulging in further criminal activities.
The non-compliance of directions given by the courts is another problem. Directions to the police given in *Joginder kumar*\(^{156}\) and *D.K.Basu*\(^{157}\) are applicable only to arrested persons. If the arrest is not recorded, there arise no question of complying those directions and consequently no contempt of court proceeding against police. Though it is open for the relatives of the victims to approach the magistrate court to get the person released from police custody, experience shows that no effective remedy can be obtained from resorting to this method. Moreover, the concepts such as arrest, detention and custody are not properly defined, to avoid abuse of power by the police. Suspects are detained or kept in custody without recording arrest for the purpose of interrogation and that too interrogation incommunicado.\(^{158}\)

Absence of proper complaints mechanism is another reason for the failure of control measures. If Complaints Authority is in existence, they can very well conduct separate independent investigation into the allegations against police to find out whether there is incontrovertible evidence against the accused. Moreover, prosecutions in cases of police atrocities can also be entrusted with the authority, which they can do better.

Whatever be the present statistics about police atrocities, it is not skyrocketing because of the strong and determined judiciary in India. The ways in which the Indian courts are dealing with such cases are commendable. But, the lower judiciary is inept and usually taken a middle way which ultimately help the police personnel.

\(^{156}\) *Supra* n. 77

\(^{157}\) *Supra* n. 87

The four agencies of our criminal justice system such as, the police, the prosecution, the judiciary and the correctional institutions must accept and enforce in its true letter and spirit, the constitutional and other norms to protect the rights of the citizens. Unless, the criminal justice system will be a failure and the people will not accept the rule of law and the consequence will be disastrous.