The essence of a modern Criminal Justice Administration is enshrined in three great principles. First in order is the principle of ‘legality’ which implies that substantive norms relating to behaviour and sanctions as well as procedural norms are fixed by predetermined laws and limitations and restrictions applicable to substantive and procedural laws, in the interest of individual rights shall be sufficiently clear and precise to exclude arbitrary executive action. It further implies that the person subjected to the criminal process shall be treated equally without regard to rank or wealth. Legality also requires that individual freedom restricting procedures must be based on some law both emanating from the exercise of statutory power or through judicial process. The second principle is concerned with ‘due respect to the person involved in the criminal process’ which implies that regard must be paid to the dignity of the accused, the victim as well as witness etc. both at the substantive as well as procedural levels. This means a prohibition against measures that involve torture, inhuman and degrading treatment or punishment. It requires that interests of both the accused as well as victims be safeguarded. It also requires that till guilt is established by applying legal rules, accused is presumed to be innocent. The third is the ‘principle of quality of criminal justice’, which implies compliance with certain minimum standards that would be followed in various criminal processes such as independent and impartial judiciary, trial in an open court, access to legal counsel and free legal aid in case of poor, information about ground of arrest and charge and access to evidence, right to be released on bail and speedy trial.

The Mathura Rape Case\(^2\) (where Mathura, a kidnapped minor was raped by three policemen in the lock-up), the Bhagalpur Blinding Case\(^3\) (where in the course of investigation the police had poured acid in the eyes of the hardened criminals with a view

---

to discipline them), *the Indefinite Prisonization of under-trials Case*\(^4\) (where a large number of under-trial prisoners were identified in various prisons in Bihar State pending trials and even pending investigations and the *forgotten life-termers in Uttar-Pradesh Prison Episode*\(^5\) (where under the order of High Court 249 Life-Termers who had served more than 26 years in various prisons were located) and many other such cases expose the seamy side of our Criminal Justice Administration, which most of the lawmen would wish to be described nothing more than mere aberration.

In all these cases, there is failure on the part of one or the other agency of Criminal Justice Administration and involved abuse of custodial power or relate to perpetrating custodial injustice. Such custodial injustice is occasioned whenever there is a killing, a rape or torture of a person in condition of custody, whether in police lock-up, prison, juvenile custodial institution, nari niketan and mental asylum, orphanage etc. Even non-compliance by the administration agencies with the provisions of fair and just custodial care could be described as a situation of custodial injustice. So it means that custodial justice is not only an anti-thesis of every kind of custodial injustice but would also arise whenever freedom and liberty is denied to a citizen in custody. Thus, every instance of State sponsored denial of freedom to a person under detention of any kind can be related to custodial justice\(^6\). Criminal Justice Administration that guarantees the due process rights and freedoms to the citizens and non-citizens also confers wide and extensive powers of investigation, arrest or powers of remand detention and post-conviction incarceration on prisons and other custodial institutions. Such powers become more extensive under the special legislations and preventive detention laws that are justified on the ground of prepondering social interest or the protection of the State. Custodial justices involve special balance between the interest of the individual and the interest of the State and also require resolving the contradiction between *de jure* custodial justice and *de facto* custodial justice. There has been a growing tendency on the part of the State functionaries, particularly the police and para-military forces to sacrifice custodial justice values in the light of the social and political realities\(^7\).

The Supreme Court of India has come ahead to expand the constitutional prospect of providing certain rights and remedies to the prisoners. It heralded a new era of

\(^{4}\) *Hussainara Khatoon (I) v Home Secretary, Bihar* (1980) 1 SCC 81.


\(^{7}\) Ibid.
prisoners’ rights and blazed the trail of widespread recognition of these rights. The Court, in several cases, recognised the right of prisoner to be treated with dignity and humanity and laid down the holistic principle that human rights belong to inmates also and no one including the State has right to trample upon their human rights. The Fundamental Rights, which also include basic human rights, continue to be available to a prisoner and these rights cannot be defeated by pleading the old and archaic defence of immunity in respect of sovereign act.

**Judicial Initiatives on a Persons’ Rights from the Pre-Detention Period till his Release**

**Fair and Speedy Investigation**

Article 21 of the Constitution of India ensures a ‘fair, just and reasonable’ procedure in all facets of Criminal Justice Administration. A series of prescriptions have been made under the Code of Criminal Procedure, 1973 to ensure speedy trial of an accused in consonance with the spirit of Article 21. But it is equally clear that speedy trial is certainly dependent on fair and speedy investigation of the case by the police.

The worst violation of human rights and custodial justice guarantee takes place in the course of investigation, when the police act under the pressure to secure most clinching evidence often resort to third degree methods and torture. The Courts have not only exposed the seamy side of police investigation process but in several cases also dished out exemplary punishments to ensure human conditions of investigations.

In *Gauri Shanker Sharma v State*, eight members of police force were charged for custodial death in the course of investigation. It was revealed that the deceased was taken into custody without recording arrest in the general diary on the actual day of arrest. This way the injuries given in the course of investigation were shown to have been incurred in the pre-arrest period. Ahmedi, J. observed that the offence was of a serious nature aggravated by the fact that it was committed by a person, who was supposed to protect the citizens and not to misuse his uniform and authority to brutally assault them or else this would be a stride in the direction of Police Raj. It must be curbed with a heavy hand, the punishment be such that it would deter others from indulging in such behaviour.

Though investigation and prosecution are the functions of two distinct wings of Criminal Justice Administration, but often the investigating agency develops a

---

8 AIR 1990 SC 709.
commonality of interest with the prosecution and at times, resorts to foul and underhand means to forge evidence to somehow secure conviction. The case *Dilawar Hussain v State*⁹ relates to outbreak of communal violence in Gujarat, in which 8 members of one community were allegedly killed by a mob belonging to another community. Keeping in mind the sentiments of the population, strong punitive action was resorted to by arresting 2000 members of the mob. R.M. Sahai, J. observed, “Still sadden was the manner in which the machinery of the law moved from accusation in the charge sheet that accused were part of unlawful assembly of 1500-2000. The number came down to 150 to 200 in evidence and the charge was framed against 63 under Terrorist and Disruptive Activities (Prevention) Act, 1985 and various offences including Section 302 of Indian Penal Code. Even out of 63, 56 were acquitted either because there was no evidence or if there was evidence against some, it was not sufficient to warrant their conviction. What an affront to fundamental rights and human dignity. Liberty and freedom of these persons were in chains for more than a year, for no reason – one even died in confinement”.

In *Kishore Chand v State of Himachal Pradesh*¹⁰ K. Ramaswamy, J. highlighted the over zeal of investigation agencies and its dangers for the liberty of the individual and observed that, “it is necessary to state that from the facts and circumstances of the case it would appear that the investigating officer has taken the appellant, a peon, the driver and the cleaner for a ride and trampled upon their fundamental personal liberty and lugged them in the capital offence punishable under Section 302 Indian Penal Code by fabricating evidence against the innocent. Undoubtedly, heinous crimes are committed under great secrecy and investigation of the crime is difficult and tedious task. At the same time the liberty of a citizen is precious one guaranteed by Article 3 of Universal Declaration of Human Rights and also Article 21 of the Constitution of India and its deprivation shall be only in accordance with law”. In this case the Court advised to take extreme caution in admitting evidence that comes from tainted sources, being aware of the investigating agencies undue interest in cooking up evidence.

In *Shivappa v State*¹¹ Dr. A.S. Anand, J. declined to admit in evidence a confession under Section 164, as the facts in the case displayed a real possibility of police influence over the accused and absence of any assurance about the voluntariness of the confession. The Supreme Court in unmistakable terms indicted that, the duty of the

---

⁹ 1991 SCC (Cri) 163.  
¹⁰ 1991 SCC (Cri) 172.  
¹¹ AIR 1995 SC 980.
investigation officer is not merely to bolster up a prosecution case with such evidence that may enable the Court to record a conviction but also to bring out the real unvarnished truth.

The Supreme Court held in case of *State of Andhra Pradesh v P.V. Pavithran*\(^\text{12}\) that there is no denying the fact that a lethargic and lackadaisical manner of investigation over a prolonged period makes an accused in a criminal proceeding to die every moment and he remains always under extreme emotional and mental stress and strain and the remains always under a fear psychosis. Therefore, it is imperative that if the investigation of a criminal proceeding stagnates on with a tardy pace due to the indolence or inefficiency of the investigating agency causing unreasonable and substantial delay results in grave prejudice. Personal liberty will step in and resort to the drastic remedy of quashing further proceedings in such investigation.

**Arrest and Detention**

The Code of Criminal Procedure confers fairly extensive powers of arrest mainly on the police. Often the conferment of such wide powers becomes the cause for abuse and invasion of the liberties of the citizens who might become the victims either because they dare to offend the authorities or because they are too weak and powerless to oppose in any way, the designs of those who enjoy power. There are also techniques of screening arrest by either not recording arrest or describing the deprivation of liberty merely as prolonged detention in police.

No arrest should be made in a routine manner on a mere allegation of commission of an offence made against a person. 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 and bonafides of a complaint and a reasonable belief both as to the person’s complicity and even so as to the need to effect arrest\(^\text{13}\).

Article 21 of the Constitution has given vital rights to an individual. The Supreme Court observed:

> It may be pointed that our Constitution is a unique document. It is not a mere pedantic legal text but it embodies certain human values, cherished principles and spiritual norms and recognises and upholds the dignity of


man. It accepts the individual as the focal point of all development and regards his material, moral and spiritual development as the chief concern of its various provisions. It does not treat the individual as a cog in the mighty all powerful machine of the State but places him at the centre of the Constitutional scheme and focuses on the fullest development of his personality. But all these provisions enacted for the purpose of ensuring the dignity of the individual and providing for his material, moral and spiritual development would be meaningless and ineffectual, unless there is rule of law to invest them with life and forces.\(^{14}\)

The Supreme Court in *Joginder Kumar v State of U.P.*\(^{15}\) strongly opposing the practice of carrying out indiscriminate arrests said that “an arrest cannot be made simply because it is lawful for the police officer to do so”. This unusual case involved the arrest of an active practicing lawyer, who still remains to be the primary agency that can challenge the abuse of power of arrest. In this case the concerned lawyer was called to police station for an enquiry on 7 January 1994. On not receiving any satisfactory account of his whereabouts the family members of the detained lawyer filed a petition before the Supreme Court on 11 January 1994. In compliance with the notice of the lawyer was produced on 14 January 1994 before the Supreme Court.\(^{16}\) Rejecting the police version that Joginder Kumar was co-operating with them out of his own choice, the Court said, “the law of arrest is one of the balancing individual rights, liberties and privileges on the one hand and individual duties, obligations and responsibilities on the other, of weighing and balancing the rights, liberties of the single individual and those of individuals collectively”. The Supreme Court further said, “existence of power of arrest is one thing, the justification for the exercise of it is quite another. The police officer must be able to justify the arrest”\(^{17}\).

\(^{14}\) *A.K. Roy v Union of India*, AIR1982 SC 1325.
\(^{16}\) *Ibid.*
\(^{17}\) *Ibid.*
Harassment and Ill Treatment

Holding that protection of prisoner within his rights is a part of the office of Article 32, in case of Sunil Batra\(^\text{18}\), Krishna Iyer, J. observed that ‘even prisoners under death sentence have human rights which are not negotiable and even the dangerous prisoner has basic liberties that cannot be bartered away’, while ruling down the practice of putting bar fetters for under trials and provisions regarding solitary confinement.

The act of police officers in giving third degree treatment to an accused person while in their custody and thus killing him is not referable to and based on the delegation of the sovereign powers of the State to such police officers to enable them to claim any sovereign immunity\(^\text{19}\).

In Raghubir Singh v State of Haryana\(^\text{20}\) the Apex Court observed that, the diabolical recurrence of police torture resulting in a terrible scars in the minds of common citizens that their lives and liberty are under a new peril and unwarranted because the guardians of law destroy the human rights by torture. The vulnerability of human rights assumes a traumatic torture when functionaries of the State whose paramount duty is to protect the citizens and not to commit gruesome of offences against them in reality perpetrate them. In this case the Supreme Court quoted Abraham Lincoln that – if you once forfeit the confidence of our fellow citizens you can never regain their respect and esteem. It is true that you can fool all people some of the time and some of the people all the time but you cannot fool all the people all the time.

Prisoners’ rights have been recognised not only to protect them from physical discomfort or torture in the prison but also to save them from mental torture\(^\text{21}\). In State of U.P. v Ramasagar Yadav\(^\text{22}\) where a person was found dead due to torture in police custody, the Sessions Court returned a verdict under Section 304 of Indian Penal Code. The Supreme Court restored the order of the Sessions Court on appeal and pointed out that the Sessions Court had been unduly lenient to punish the accused only under Section 304 of IPC and not for murder. Further, as police officers alone in such circumstances are able to give evidence in which a person in their custody dies due to police torture, often there is reluctance on the part of the colleagues to give evidence and they prefer to keep

\(^{18}\)Sunil Batra(1) v Delhi Administration, AIR 1978 SC 1575.
\(^{20}\)AIR 1980 SC 1088.
\(^{21}\)Kishore Singh v State of Rajasthan, AIR 1981 SC 625.
\(^{22}\)AIR 1985 SC 416.
silent about the incident. Thus, no evidence is left of incidents done in the sanctum sanctorum of the police stations, and, therefore the lock-up death cases should raise a rebuttable presumption for it and the burden of proof must be shifted on to the concerned custodians. The Supreme Court said, “it wished to impress upon the Government the need to amend the law so that the burden of proof in cases of custodial deaths will be shifted to the police”. In case of Saheli\textsuperscript{23} the Court confirmed that the plea of immunity of State is no longer available and State will have to answer action for damages for bodily harm, which includes battery, assault, false imprisonment, physical injuries and death. The high headedness of the police authorities was brought to the light in \textit{Delhi Judicial Service Asson, Tis Hazari Court v State of Gujarat}. The case exhibited the berserk behaviour of police undermining the dignity and independence of judiciary. The Supreme Court took serious note of the whole incident and laid down detailed guidelines which are to be followed in case of arrest and detention\textsuperscript{24}:

(a). If a judicial officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.

(b). If facts and circumstances necessitate the immediate arrest of a judicial officer of the subordinate judiciary, a technical or formal arrest may be effected.

(c). The fact of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court.

(d). The Judicial officer so arrested shall not be taken to a police station, without the prior order or directions of the District & Sessions Judge of the concerned District, if available.

(e). Immediate facilities shall be provided to the Judicial officer for communication with his family members, legal advisors and Judicial officers, including the District & Sessions Judge.

(f). No statement of a Judicial officer who is under arrest be recorded nor any panchnana be drawn up nor any medical test be conducted except in the presence of the Legal Advisor of the Judicial officer concerned or another Judicial officer of equal or higher rank, if available.

(g). There should be no handcuffing of a Judicial officer. If, however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be over-

\textsuperscript{23} Saheli v Commissioner of Police, 1990 (1) SCJ 390.

\textsuperscript{24} AIR 1991 SC 2176.
powered and handcuffed. In such case, immediate report shall be made to the District & Sessions Judge concerned and also to the Chief Justice of the High Court. But the burden would be on the Police to establish the necessity for effecting physical arrest and handcuffing the Judicial officer and if it be established that the physical arrest and hand-cuffing of the Judicial officer was unjustified, the Police officers causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally liable for compensation and/or damages as may be summarily deter- mined by the High Court.

The Supreme Court in *D.K. Basu v State of W.B.* 25 handed down thirteen directions that not only prohibit certain practices but also require the police to fulfil certain positive obligations such as preparation of memo of arrest, allow the arrestee to meet his lawyer during interrogation, notification of time, place of arrest and custody, telegraphically, getting arrestee medically examined after arrest and every 48 hours, information about arrest to police control room etc.

In *Smt Selvi and Others v State of Karnataka* 26, while dealing with the involuntary administration of certain scientific techniques, namely, narcoanalysis, polygraph examination and the brain electrical activation profile test for the purpose of improving investigation efforts in criminal cases, a three-Judge Bench opined that the compulsory administration of the impugned techniques constitute ‘cruel, inhuman or degrading treatment’ in the context of Article 21. The Court further elaborated that, the compulsory administration of any of these techniques is an unjustified intrusion into the mental privacy of an individual. It would also amount to ‘cruel, inhuman or degrading treatment’ with regard to the language of evolving international human rights norms. In *Haricharan and Another v State of Madhya Pardesh and Others* 27, the Court held that the expression ‘Life and Personal Liberty’ in Article 21 includes right to live with human dignity. Therefore, it includes within itself guarantee against the torture and assault by the State or its functionaries. In *Vishwanath S/o Sitaram Agrawal v Sau. Sarla Vishwanath Agrawal* 28, the Court observed, “Reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a

25 AIR 1997 SC 610.
27 (2011)3 SCR 769.
28 (2012) 6 SCALE 190.
cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity.”

The Supreme Court in case of Dr. Mehmood Nayyar Azam v State of Chhattisgarh and Others 29 observed that when an accused is in custody, his Fundamental Rights are not abrogated in toto. His dignity cannot be allowed to be comatosed. The right to life is enshrined in Article 21 of the Constitution and a fortiori, it includes the right to live with human dignity and all that goes along with it. As such any treatment meted to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the Welfare State is governed by rule of law which has paramountcy. It is thus the sacrosanct duty of the police authorities to remember that a citizen while in custody is not denuded of his fundamental right under Article 21 of the Constitution. The restrictions imposed have the sanction of law by which his enjoyment of fundamental right is curtailed but his basic human rights are not crippled so that the police officers can treat him in an inhuman manner. On the contrary, they are under obligation to protect his human rights and prevent all forms of atrocities.

**Unhygienic Conditions in Lock-up**

Right to healthy and clean environment is included in right to life under Article 21 of the Constitution. In the case of Indu Jain v State of M.P. and Others 30 the Supreme Court ruled that death of a detained person due to unhygienic conditions in Jail would amount to custodial death and could make officials liable for prosecution. On 14 July 2004 Sri R.K. Jain, Deputy Commissioner, Commercial Tax, Bhopal was arrested for interrogation by the accused officers on a bribery charge. On 15 July 2004; he was found unconscious in the bathroom of the office of the Lokayukta and later died at a hospital. The post mortem examination of the deceased revealed certain injuries on the body including broken ribs but the cause of death was shown to be on account of asphyxia. The Supreme Court observed that, “The condition of the room where the deceased had been detained was completely unsuitable for a patient of asthma as it was filled with dust and cobwebs which was sufficient to trigger an asthmatic attack which could have caused asphyxia which ultimately led to R.K. Jain’s death”.

---

29 2012 CriLJ 3934 (SC).
30 AIR 2009 SC 976.
In *Court on Its Own Motion v Union of India and Others*\(^{31}\), the Apex Court held that, “The appropriate balance between different activities of the State is the very foundation of the socio-economic security and proper enjoyment of the right to life”.

**Privilege against Self-Incrimination**

The Supreme Court decision in *Nandini Satpathy v P.L. Dani*\(^{32}\) gave an interpretation to the constitutional guarantee against self-incrimination. The Apex Court speaking through Krishna Iyer, J. accorded a new expanse to the privilege by making it available right from the early stages of interrogation, thereby giving a meaningful protection to an accused person in police custody. According to the Court the ban on self accusation and the right to silence goes beyond the case in question and protects the accused in regard to other offences pending or imminent which may deter him from voluntary disclosure of incriminating facts. The Court ruled that if the police obtained information is strongly suggestive of guilt from an accused by applying any kind of pressure, subtle or crude, mental or physical, direct or indirect, it becomes a compelled testimony violative of privilege against self-incrimination.

**Bail and Remand**

Bail is an important factor in preserving the personal liberty of an individual. When bail is refused a man is deprived of his personal liberty, which is of too precious value under our constitutional system. It vindicates the traditional right to freedom before conviction; it permits unhampered preparation of a defence and prevents infliction of punishment prior to conviction\(^{33}\).

Supreme Court has always come ahead to safeguard the rights of the individual if the right of bail is denied or when a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigating powers. In *Moti Ram’s* case the Court held that there is a need for liberal interpretation of social justice, individual freedom and indigent’s rights and while awarding bail covers release on one’s own bond, with or without sureties. When sureties should be demanded and what sum should be insisted on are dependent on variables\(^{34}\).

---

\(^{31}\) (2012) 8 Supreme 646.


\(^{34}\) *Moti Ram v State of M.P.*, AIR 1978 SC 1594.
In the context of continuance of police remand the court ruled that ‘bail not jail’ should be the principle to be followed by Courts.\textsuperscript{35} In \textit{Kashmira Singh v State of Punjab}, Bhagwati, J. observed that it would be indeed a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the court ever compensate him for his incarceration which is found to be unjustified?\textsuperscript{36}

In \textit{Common Cause’s} Case the Supreme Court treated the long pendency of cases and consequent incarceration itself an engine of oppression and issued several directions for release on bail the diverse categories of under-trials.\textsuperscript{37} On the rights of bail Bhagwati, J. said that, “This system of bail operates very harshly against the poor and it is only the non poor who are able to take advantage of it by getting themselves released on bail. The poor find it difficult to furnish bail even without sureties because very often the amount of bail fixed by the Courts is so unrealistically excessive that in a majority of cases the poor are unable to satisfy the police or the magistrate about their solvency for the amount of the bail and where the bail is with sureties, as is usually the case, it becomes almost impossible task for the poor to find persons sufficiently solvent to stand as sureties”\textsuperscript{38}.

\textbf{Treatment of Women in Custody}

Women in custody are particularly vulnerable to physical and sexual abuse. Courts took a very serious view of complaints regarding rape in custody or harassment. Expressing serious concern about the safety and security of women in police lock up, the Supreme Court directed that a woman judge should be appointed to carry out surprise visit to police stations to see that all legal safeguards are being enforced. The Supreme Court directed\textsuperscript{39} that

1. Female suspects must be kept in separate lock-up under the supervision of female constable.

2. Interrogation of females must be carried out in the presence of female policewomen.

However, these directions have not been implemented. The Court issued detailed procedures to ensure enforcement of human rights of women and girls in police and

\textsuperscript{35} \textit{Godikanti v Public Prosecutor, High Court of A.P.}, AIR 1978 SC 429.

\textsuperscript{36} AIR 1977 SC 2147.

\textsuperscript{37} \textit{A Common Cause’s Registered Society v Union of India}, (1996)4 SCC 33, see also \textit{Siddharth Salingappa Mhetra v State of Maharashtra and Others}, (2011) 1 SCC 694.


\textsuperscript{39} \textit{Sheela Barse v State of Maharashtra}, 1983 SCC 96.
prison custody in *Dr Upinder Baxi and Others v State of U.P.* 40 and *Christian Community Welfare Council of India and Others v Government of Maharashtra and Others* 41 when the Court’s attention was drawn to horrible conditions in custodial institution’s for women and girls. In *Mehboob Batcha and Others v State Rep. by Superintendent of Police* 42, the Court observed, “Crimes against women are not ordinary crimes committed in a fit of anger or for property. They are social crimes. They disrupt the entire social fabric, and hence they call for harsh punishment”. The Court further held that the horrendous manner in which victim was treated by policemen was shocking and atrocious, and calls for no mercy.

**Prohibition against detention of Juvenile in Adult Custodial Institutions**

Practice of locking up children in adult custodial institutions not only exposes the minors to the ways of hardened criminals, but also makes them the victims of sexual and other forms of exploitation. Keeping this in view the Supreme Court ruled against detention of children in adult prisons in *Munna v State* 43.

In *Sheela Barse v Union of India and Others* 44 the Supreme Court held that, the State must ensure strict adherence to the safeguards of the jails so that children are not abused.

- take precautions that children below 16 years of age are not kept in Jail.
- ensure that trial of children should take place only in juvenile courts and not in criminal courts.
- ensure that if a First Information Report is lodged against a child below 16 yrs of age for an offence punishable with imprisonment of not more than seven years, then the case must be disposed off in three months.

The Supreme Court further pointed out that by ignoring the non-custodial alternatives prescribed by law and exposing the delinquent child to the trauma of custodial cruelty, the State and the society run the risk of sending the child to the criminal clan. 45 In *Sunjay Suri v Delhi Administration* 46, the Supreme Court gave specific directions to magistrates and the detention authorities. Ranganath, J. said, “We call upon every

---

41 1995 CriLJ 4223 (Bom).
42 (2011) 3 SCC 1091.
43 (1982)1 SCC 545.
44 AIR1986 SC 1773.
45 *Ibid*.
46 AIR 1988 SC 414.
magistrate or trial judge authorised to issue warrants for detention of prisoners to ensure
that every warrant authorising detention specifies the age of the person to be detained”.

**Compensation to Victims of Abuse of Power**

There is no wrong without a remedy. The law wills that in every case where a man is
wronged, he must have remedy. A mere declaration of invalidity of an action or finding
of custodial violence or death in lock-up not by itself provide any meaningful remedy to a
person whose Fundamental Right to life has been infringed, more needs to be done.

*Khatri (IV) v State of Bihar* 47 was the first case where the question of granting
monetary compensation was considered by the Supreme Court. Bhagwati, J. observed,
“Why should the court not be prepared to forge new tools and device new remedies for
the purpose of vindicating the most precious of the precious, fundamental rights to life
and personal liberty”. Article 21 would be reduced to nullity, ‘a mere rope of sand’ if
State is not held liable to pay compensation for infringing Article 21.

The Supreme Court brought about revolutionary break – through in the ‘Human
Rights Jurisprudence’ in *Rudal Shah v State of Bihar* 48 when it granted monetary
compensation to the petitioner against the lawless acts of the Bihar Government, which
kept him in illegal detention for over fourteen years after acquittal. The Supreme Court
observed, “The refusal of this Court to pass an order of compensation in favour of the
petitioner will be doing mere lip-service to *jus* Fundamental Right to liberty which the
State Government has so grossly violated”. 49

In *Nilabeti Bahera v State of Orissa and Others* 50 the Supreme Court observed,
“The Court is not helpless and the wide powers given to the Supreme Court by Article 32,
which itself a Fundamental Right, imposes a constitutional obligation on the 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
monetary compensation in appropriate cases”. The Court further said that, “the purpose of
law is not only to civilise public power but also to assure people that they live under a
legal system which protects their interests and preserve their rights. Therefore, the High
Courts and the Supreme Court as protectors of civil liberties not only have the power and

---

47 Supra note 3.
48 AIR 1983 SC 1086.
49 Id. at 1089.
jurisdiction but also the obligation to repair the damages caused by the officers of the State to Fundamental Rights of citizens”\(^{51}\). The Supreme Court directed that,

1. The State has an obligation to give compensation to a victim or to the heirs of a victim whose Fundamental Rights have been violated by its agents.
2. The State has a right to recover the compensation amount from the guilty officials.
3. An order of compensation by the State in a criminal case does not prevent the victims or their heirs from claiming further compensation in a civil case.

In *Sakshi Sharma and Others v State of Himachal Pradesh and Others*, the High Court has granted compensation of Rupees 15,60,000 to the victim and directed the suspension of the erring police officials. The High Court also directed the Chief Judicial Magistrates’s and the Sub Divisional Magistrates’s to visit police stations and submit reports to the Sessions Judge, who would take action against the persons who violated the constitutional provisions and legal mandate\(^{52}\).

In *Dr. Mehmood Nayyar Azam v State Of Chattisgarh And Others*\(^{53}\), the Court observed that, the purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Article 32 or 226 seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing 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. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, by not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

\(^{51}\) *Ibid.*
\(^{53}\) (2012) 8 SCR 651.
The Supreme Court of India has come ahead to expand the constitutional prospect of providing certain rights and remedies to the prisoners. It heralded a new era of prisoners’ rights and blazed the trial of widespread recognition of these rights. The Court, recognised the right of a prisoner to be treated with dignity and humanity and laid down the holistic principle that human rights belong to inmates also and no one including the State has right to trample upon their human rights. The Fundamental Rights, which also include basic human rights, continue to be available to a prisoner and these rights cannot be defeated by pleading old and archaic defence of immunity in respect of sovereign acts.

The Prime Minister of the country has shown such a serious concern about the arbitrary exercise of executive power and appreciated the positive role of the judiciary. The Prime Minister Dr. Manmohan Singh said, “Our Courts have protected out citizens from the exercise of arbitrary power and inequities of a poor country trying to modernise itself”.

The judiciary has to function as a watch dog to ensure that not only the legislature enacts custodial laws as per the constitutional and statutory rights, but also to ensure that if an executive exercises powers of interrogation, arrest, pre and post trial custody are exercised as per the rules too. The broad range of custodial rules and wide variation in the situations of their applicability make the task of the judiciary complex and almost daunting. That is one of the reasons why despite creditable performance of the judiciary, particularly the Supreme Court and High Courts in several spheres of custodial justice, there remain many ‘areas of darkness’ still.

In Lakshmi v Sub-Inspector of Police, Nagamalai Pudukotti Police Station, Madurai, Murugan, a boy of 15 years of age, was picked up by the police for interrogation in a theft case and detained in police lock-up and tortured in every possible way. The mother’s habeas corpus petition before the High Court revealed the plight of the little Murugan and also the sordid tale of abuse of custodial power not only on the part of the police but also the magistracy. The most serious violations, however, the respondent committed was the manipulation of the so-called surrender of Murugan before the Judicial Magistrate IV, Dindigul and a remand of judicial custody in Dindigul sub-jail and again, a remand to judicial custody under the orders of Judicial Magistrate No.7, Madurai. Murugan had charged the respondent by alleging that he and other policemen at

---

54 Supra note 6.
55 Ibid.
56 1991 CriLJ 2269 (Mad).
his command interrogated him (Murugan) and in the course of interrogation tortured him by removing his nails, applying chilli powder over his eyes and forcing him to consume ganja, arrack and human waste diluted in water. The Court said, “There was good material on the record to show that Murugan was produced before the Judicial Magistrate IV, Dindigul by the police. It is enough to conclude that Murugan was taken in custody by the respondent on 8 February 1991 and kept in custody without any authority of law until he was produced before the Judicial Magistrate IV on 1 March 1991. His judicial custody after 1 March 1991 in jail prison was also illegal and invalid as per provisions of Section 18 of the Juvenile Justice Act, 1986. How and why the Judicial Magistrate IV fell to the scheme of the respondent or any other police personnel is a matter of concern. It appears that it was on the basis of the said interpolation in the surrender petition that the Judicial Magistrate IV ordered remand of Murugan in judicial custody. That order formed the basis of the order of remand to judicial custody by the Judicial Magistrate 7, Madurai. That both the Magistrates failed to notice the obvious that, Murugan was a juvenile is yet another matter of concern. Was it a case of the accused not brought bodily before the Court? Was it a case of remand order passed blindly without seeing the accused? Magistrate who makes orders of remand blindly will not only fail in one case but would cause the failure of the justice system itself.”

In *Shakila Gaffar Khan v Vasant Raghunath Dhoble and Others* a private complaint was filed by the appellant (wife) alleging torture in custody of her husband who died in hospital within two days of his release on bail. The Court, particularly the Apex Court in this case, was inclined to agree that the appellant’s husband had been tortured in custody but was not prepared to make the accused legally responsible for it, though the fact of torture was considered enough for granting compensation to the widow.

In the aforesaid case would it not be an effective measure against torture if the Magistrate before grant of bail had got the victim examined medically for his injuries? Should the Magistrates not inspect the conditions and the physical state of persons remanded in police custody?

Reacting sharply to gross abuse of custodial powers leading to all-round torture, invasion of modesty and even death the Nagpur Bench of the Bombay High Court speaking through R.M. Lodha, J. (M.B. Ghodeshwar, J. concurring) in *Christian*
Community Welfare Council of India and Others v State of Maharashtra and Others \(^59\) had issued eight far-reaching directions to the State Government, Law Secretary, Director General of Police with a view to strengthening custodial justice network. Directions (VII) and (VIII) relate to detaining or arrest of females and their custody in lock-ups. It is said that instead of improving the custodial conditions and according a special consideration to female detainee, the State Government moved the Supreme Court against the High Court judgement. It is sadder still that the Supreme Court saw some merit in their appeal. The Supreme Court speaking through Hegde, J. (B.P. Singh, J. concurring) thought it was appropriate to water-down the High Court directions. It was observed in the context of special safeguard in a case of detention and arrest of women, “We think a strict compliance with the said direction, in a given circumstance, would cause practical difficulties to the investigation agency and might even give room for evading the process of law by unscrupulous accused. It may not always be possible and practical to have the presence of a lady constable when the necessity for such arrest arises”. \(^60\)

It may be submitted that the cause of custodial justice to vulnerable sections like women, children and many other under-privileged sections is much more urgent and vital than the ‘practical difficulties’ to investigation agencies. The judiciary must remember that in most of the situations of custody a person’s liberty is deprived because of some kind of exercise of judicial power. Therefore, the judiciary has to accept its primary obligation for securing to every citizen custodial justice.

The Indian judiciary, especially the Supreme Court of India, has played a significant role in evolving prison jurisprudence in India. The Indian Courts have become the Courts of the poor and the downtrodden. Various decisions reflect that Indian Courts are deeply sensitised to the need of doing justice to large masses of the people to whom justice had been denied by the heartless society for generations. \(^61\) However, while appreciating the judicial approach towards the prisoners, the fact that has to be borne in mind is that the country’s criminal justice system still suffers from substantive and procedural deficiencies. Once a citizen is arrested, even if on a relatively minor charge, he could be held in custody for years before his case comes up for trial. Those who are affluent are still able to negotiate their way around the numerous obstacles that lie on the road of justice. For an ordinary citizen, an encounter with the law is very much the stuff

\(^{59}\) 1995 CriLJ 4223(Bombay).


There is a long course before the Indian judiciary to be followed in order to achieve the goal of social justice.

**Initiatives of Human Rights Commissions**

National Human Rights Institutions (NHRIs) are a necessary corollary to the democratic machinery of Governments. They are means of democratic empowerment for those who are less powerful and less advantaged. Given that in a democracy the majority rules, sometimes standard Government machinery and institutions are not always sufficient to guarantee the protection of human rights. This becomes very much relevant for those people who are in minority and for those without significant financial or intellectual resources, as well as for sections of society that are not legally empowered as others. The National human rights institutions can complement existing democratic bodies within the Government.

Most suitable definition of Human Rights Commission can be given as under, ‘Human Rights Commissions deal with the protection of citizens from discrimination as well as the protection of other human rights. They are generally designed to hear and investigate complaints of human rights violations or discriminatory acts committed in violation of existing laws’. Most Human Rights Commissions are collegial bodies comprised of members who, in most, cases, are selected by the Executive. In many cases the Commissions enjoy statutory independence and are responsible for reporting on a regular basis to the legislative body.

National Human Rights Commissions have an important role to play in the fight against torture in Asia-Pacific region. The Asia-Pacific is the only region which has not its own mechanism against torture and other human rights violations. In the absence of such a mechanism, the role of NHRIIs assumes more significance. NHRIIs are equipped with varying levels of quasi-judicial powers that enable these institutions to investigate allegations of torture and other human rights abuses and in some instances, even hold inquiries and public hearings and carryout visits to places of detention. These institutions are also empowered to provide advice to their Governments on the ratification of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol on the Prevention of Torture, and to recommend

---

64 *Ibid.*
changes to domestic laws and policies that run counter to international torture prevention standards. These institutions also have the capacity to engage with UN mechanisms and processes, thereby bridging the gap between the international and national human rights sphere. These institutions therefore have the potential to be patent weapons in the struggle against torture when they are independent and utilise the powers within their mandates effectively.

National institutions have an obligation to remind their Governments of the importance of undertaking effective measures to prevent all acts of torture or cruel, inhuman or degrading treatment or punishment. They must remind them every step of the way that the right to live free from torture is non-derogable.

National Human Rights Institutions Origin

Economic and Social Council Resolution 2/9 was the first step. This resolution foreshadowed the establishment of national information groups or local human rights committees to act as channels for forwarding the work of the United Nations Commission on Human Rights. The second step was Economic and Social Council Resolution 772B (XXX). This resolution fleshed out an advisory role for national institutions focused on providing informed opinion(s) on questions relating to human rights to Governments. The third step was the adoption in 1978 of the first set of international guidelines on national institutions.

The most important step came in 1991, following the convening of an international workshop in Paris to discuss the NHRI question. As a result of this workshop, a document known as the Paris Principles was drafted. These principles were later adopted by the UN General Assembly and became the seminal instrument for NHRIIs. The Paris Principles envisaged NHRIIs as independent institutions with powers that encompass the promotion and protection of human rights. The Paris Principles also require NHRIIs to have clearly defined legal mandates, be plurastic in their composition, be provided with adequate resources to fulfil their responsibilities and have the competence to work together with other stakeholders, including civil society and the

---

65 Available at: http://www.asiapacificforum.net (visited on 15 March 2008).
66 Ibid.
67 UN Economic and Social Council, ECOSOC Resolution 2/9, 21 June 1946.
68 UN Economic and Social Council, ECOSOC Resolution 772B (xxx).
United Nations. Paris Principle did not specify a structure for NHRIs, thus NHRIs come in different shapes and forms, ranging from multi member human rights commission to ombudsman like institutions. Chris Sidoti summarises the main characteristics of NHRIs as, they are official but independent institutions, enjoying a status somewhat like that of an independent court system. They are established by law, either through the constitution or through an act of Parliament that guarantees their independence and defines their structure, functions and powers. They are resourced by the State out of the ordinary annual budget. They have complete operational freedom, in relation to policy, program, priorities and activities, subject only to the law.

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment specifically requires its State parties to ‘give due consideration’ to the Paris Principles when designating National Preventive Mechanisms (NPMs).

In India National Human Rights Commission came into effect on 12 October 1993, by virtue of the Protection of Human Rights Act 1993. Twenty three Indian States have also setup their own human rights commissions to deal with violations within their States.


The Supreme Court has now ruled that the International Conventions and Protocols that India has signed can be enforced by High Courts, provided there is no specific Fundamental Rights against them. These Conventions, without being adopted as a law by our Parliament, can be enforced.

---

72 The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly, UN Doc. A/RES/57/199, 18 December 2002, entered into force on 22 June 2006.
73 Available at: http://nhrc.nic.in (visited on 9 January 2013).
74 Section 2(f) of the Protection of Human Rights Act, 1993.
75 People’s Union for Civil Liberties v Union of India, (1997)3 SCC 433.
Functions of the National Human Rights Commission

The Commission has all or any of the following functions, namely\textsuperscript{76}:

1. Inquire, \textit{suo moto} or on petition presented to it by victim or any person on his behalf, into complaints of
   - Violation of human rights or abetment thereof; or
   - Negligence in the prevention of such violation, by a public servant.

2. Intervene in any proceeding involving any allegation of violation of human rights pending before a Court with the approval of such Court.

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

4. Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.

5. Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.

6. Study treaties and other international instruments on human rights and make recommendations for their effective implementation.

7. Undertake and promote research in the field of human rights.

8. Spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other viable means.

9. Encourage the efforts of non-governmental organisations and institutions working in the field of human rights.

10. Such other functions as it may consider necessary for the protection of human rights.

Powers of the National Human Rights Commission

The Commission while enquiring into complaints under the Act have all the powers of a Civil Court trying a suit under the Code of Civil Procedure and particularly in respect of the following matters\textsuperscript{77}:

\textsuperscript{76} Section 12 of the Protection of Human Rights Act, 1993.
\textsuperscript{77} Section 13 of the Protection of Human Rights Act, 1993.
1. Summoning and enforcing the attendance of witnesses and examining them on oath,
2. Discovery and production of any document,
3. Receiving evidence on affidavits,
4. Requisitioning any public record or copy thereof from any Court or office.
5. Issuing commissions for the examination of witnesses of documents.
6. Any other matter which may be prescribed.

The Commission is deemed to be a Civil Court and whenever any person omits to produce document which he is legally bound to produce, or refuses oath or affirmation when duly required by the Commission to make it, or refuses to answer any authorised question to the Commission, or refuses to sign any statement or intentionally insults or causes any interruption to any public servant sitting in judicial proceedings in the view or presence of the Commission, such person deemed to have committed an offence under the Indian Penal Code. The Commission may after recording the facts constituting the offence and the statement and the statement of the accused forward the case to the Magistrate, having jurisdiction to try the same, who shall proceed to hear the case against the accused.78

**Restrictions on Power of National Human Rights Commission**

The Complaints relating to following matters are not entertained by the Commission79:
1. Complaint in regard to events which happened more than one year before the making of the complaint;
2. Complaint with regard to the matter which are *sub judice* or pending before a State Commission or any other Commission duly constituted under any law for the time being in force;
3. Complaints which are vague, anonymous or pseudonymous;
4. Complaints which are of frivolous nature or
5. The complaints which are outside the purview of the Commission.

**Human Rights Courts**

A distinct feature of the Protection of the Human Rights Act, 1993 is the provision made therein for the establishment of Human Rights Courts. Section 30 of the said Act

---

78 Section 13(4) of the Protection of Human Rights Act, 1993.
79 Section 36 of the Protection of Human Rights Act, read with Section 8 of the National Human Rights Commission (Procedure) Regulations, 1994.
envisages the establishment of the Human Rights Courts to provide for speedy trial of offences arising out of instances of violation of Human Rights and these Courts are to be established in the States by the respective State Governments in concurrence with the respective Chief Justices of the High Courts. Where no human Rights Court is specified, the Court of Session or any other Special Court already constituted shall continue to try offences relating to violations of human rights. On public interest litigation filed by Non Governmental Organisation named Bhartiya Manavanhikar Association the Supreme Court issued notice to the Central Government. Public Interest Litigation urged the Court to issue directions to the Central Government to frame the rules and regulations regarding the powers, jurisdiction and functioning of the human rights Courts, pointing to the fact the ambiguity remained as to the precise nature of the offence that should be tried in such Courts.\textsuperscript{80}

**Investigation Division**

The NHRC (Procedure) Regulations, 1994 provide for the investigation team of the Commission. Section 11(1) (b) provides that Commission shall have its own team of investigation and such team is to be headed by an officer not below the rank of a Director General of Police and other officers and staff as may be necessary for the effective performance of the functions of the Commission.

**Inquiry into Complaints**

Sections 17-20 of the Act of 1993, deal with the procedure in dealing with the complaint. All the complaints received by Commission are placed before a Bench of two members for admission. Once the complaint is admitted, it seeks comments from the concerned authority or Government regarding complaint. If the report/comments of the concerned Government/authority are not received within the stipulated time, the Commission may proceed to inquire into the complaint on its own. If the report/comments are received from the concerned authority within the stipulated time, a detailed note on the merits of case is prepared for consideration of the Commission. If the Commission is satisfied that either no further inquiry is required or that the required action has been taken or initiated by the concerned Government authority, then it may not proceed further on the complaint.

\textsuperscript{80} Indian Express, 27 October 2013.
and complainant is informed accordingly. If the Commission is satisfied that it is necessary to inquire the matter further, it shall initiate inquiry.\textsuperscript{81}

After the inquiry is completed, the Commission may take any of the following steps\textsuperscript{82}:

1. Where after the inquiry it is found that there was violation of human rights or there was negligence in the prevention of violation of human rights by a public servant, the Commission may recommend to the concerned Government/authority to initiate proceedings for prosecution or take any other appropriate action against the concerned person.

2. The Commission may approach the Supreme Court or the concerned High Court for such directions, orders or writs as the Courts may deem necessary.

3. The Commission may recommend Government/authority for the grant of immediate interim relief to the victim or the members of the family.

4. The Commission is required to send the report of the inquiry to the concerned Government/authority within one week of the completion of the proceedings before it. The concerned Government/authority is required to give its comments on the report including the action taken or proposed to be taken thereon to the Commission.

5. The copy of the inquiry report is also given to the petitioners or his representatives.

6. The Commission is required to publish the inquiry report together with comments of the concerned Government/authority and the action taken or proposed to be taken by the Government/authority within the period of one week.

\textbf{Complaints against Armed Forces}

According to Section 19 of the Act, whenever the complaint regarding the violation of human rights by the members of the armed forces is received, the Commission has to seek a report from the Central Government and after receiving of the report from Central Government, it may, either not proceed with the complaint or, as the case may be, make its recommendations. Section 19 must be read along with subsections a (i) and a (iii) of Section 18 which deal with the nature of recommendations on conclusion of the inquiry,

\textsuperscript{81} Section 17 of the Protection of Human Rights Act, 1993 read with Section 8(1)-8(9) of the National Human Rights Commission (Procedure) Regulations, 1994.

\textsuperscript{82} Section 18 of the Protection of Human Rights Act 1993 read with Section 16 of the National Human Rights Commission (Procedure) Regulations, 1994.
when closure of the complaint is not considered appropriate. There is nothing restrictive in Section 19 to curtail this power of the Commission and the express power to make recommendations leads necessarily to this conclusion. Jurisdiction of the NHRC to deal with the complaints against armed forces is subject only to a restrictive procedure.

In case of Mohd. Tayab Ali,\textsuperscript{83} husband of the complainant who was taken in custody by the 17 Assam Rifles and the custodian has been unable to prove satisfactorily the lawful termination of custody, when he was alive. This case falls within the ambit of second part of Section 19(1)(b) since on receipt of the report from the Central Government the Commission found that it was a fit case for making recommendations in terms of subsections a (i) and a (iii) of Section 18 of the Act. The complainant lost her husband at a young age. At the time of her husband’s disappearance, she had five children and she was pregnant. The loss of the sole breadwinner rendered the family destitute. Since the violation of human rights in the present case is by members of the armed forces, the Commission, in exercise of its powers under Section 19 of the Protection of Human Rights Act recommended immediate interim relief of 3 lakh to the complainant. The Minister of Defence complied with the Commission’s directions and made payment.

**Guidelines/Instructions Issued by the NHRC**

The NHRC India has adopted two novel strategies to combat torture. The first strategy relates to special directions that have been issued by the NHRC to all State Governments and law enforcement authorities in India. Indeed, one of the first instructions of the Commission, issued on 14 December 1993, required all State Governments and Union Territory Administrations to send reports to the Commission within twenty four hours of any occurrence of custodial death or rape. It was made clear that failure to send such reports would lead to a presumption by the Commission that an effort was being made to suppress knowledge of the incident. In pursuance, the Commission has been receiving such intimations from authorities concerned and has initiated proceedings in each of those cases\textsuperscript{84}.

When examining reports on custodial death, the Commission was struck by the often unsatisfactory manner in which post-mortem examinations were conducted. The Commission reached the conclusion that the doctors concerned were bowing to police pressures when writing their reports. The Commission also noted that there was often a

\textsuperscript{83}Manoj Kumar Sinha, “Role of the National Human Rights Commission of India in Protection of Human Rights” *Journal of International Law of Peace and Armed Conflict*, n.3 200-205 (2005).

substantial time-gap between the post-mortem examination and the writing of the report, facilities in many mortuaries were abysmal, there was a lack of trained and qualified personnel. Then Chairperson of the Commission accordingly wrote to all Chief Ministers on 10 August 1995 that the Commission would like all post-mortem examinations in respect of deaths in police or jail custody to be video-filmed and the cassettes sent to the Commission together with the written reports of the post-mortem examinations. In response to deficiencies in the Autopsy form, the Commission evolved a Model Autopsy form and recommended it and also laid down the Additional Procedure for inquests.\textsuperscript{85}

As deaths resulting from custodial torture in prisons had been found to be comparatively rare, the Commission in December, 2001 modified its earlier guidelines requiring the video graphing of post-mortem examinations of custodial death occurring in jails while the video-filming of post-mortem examinations of all deaths occurring in police custody was to continue as before, this requirement was relaxed in regard to deaths occurring in judicial custody. In the latter cases, it was deemed to be necessary only when the preliminary inquest by a Magistrate raised the suspicion of foul play, or where a complaint alleging foul play was made to the concerned authorities, or some other reason giving rise to a suspicion of foul play.\textsuperscript{86}

**Law Reforms**

The Commission is of the view that a recommendation of the Indian Law Commission made in its 113\textsuperscript{th} report of 29 July 1985 on a reference by the Supreme Court of India, should be acted upon. In that recommendation, the Law Commission suggested the insertion of a Section 114 (B) in the Indian Evidence Act, 1972, to introduce a rebuttable presumption that injuries sustained by a person in police custody may be presumed to have been caused by a police officer. The Commission felt that such a provision could have well restraining effect on officers engaging in torture, further Commission supported the recommendation of the Law Commission that Section 197 of the Code of Criminal Procedure be amended to obviate the necessity of governmental sanction for the prosecution of a police officer where a prime facie case has been established, in an enquiry conducted by a Sessions Judge. The Commission also endorsed the view of the National Police Commission in its first report in February 1979 that there should be a

---

\textsuperscript{85} Guidelines issued by National Human Rights Commission on ‘the Video Filming of Post-mortem examination in cases of Custodial Deaths’, 1995.

mandatory enquiry, by a Sessions Judge, in each case of custodial death, rape or grievous hurt.\textsuperscript{87} Subsequently, Criminal Procedure Code was amended in 2005 which stipulated mandatory judicial inquiry by a Magistrate under Section 176 (1A).

In the decision of the Supreme Court in the case of \textit{Joginder Kumar v State of Uttar Pradesh}\textsuperscript{88}, it is laid down that an arrested person being held in custody is entitled, if he so requires, to have a friend, relative or any other person who is known to him, or likely to take an interest in his welfare, to be informed that he has been arrested and told of where he has been detained. This decision of Supreme Court has been circulated by the Commission to all Directors General of Police in the States, urging them to instruct all police officers in the field to act in consonance with the decision.\textsuperscript{89} The Commission recommended that there was also need for greater care in the observance of the UN Body of Principles for the Protection of All Persons under Any form of Detention and Imprisonment and the UN Standard Minimum Rules for the Treatment of Prisoners. The Commission also recommended that appropriate instructions be issued by the Central Government to the competent authorities reminding them about the provisions of these documents in the elaboration of which India participated\textsuperscript{90}.

\textbf{Review of International Conventions}

Chairperson of NHRC through a letter dated 9 December 1994, addressed to the Prime Minister, recommended signing and ratification of the 1984 Convention against Torture and other forms of Cruel, Inhuman and Degrading Treatment or Punishment\textsuperscript{91}. The Commission prepared a comprehensive paper which defined the issues involved and urged accession to the Convention. The apprehension that acceding to the Convention will open the country to ‘interference from outside’ was refuted in the paper by means of an analysis of the provisions of the Convention, particularly its Articles 21, 22 and 28\textsuperscript{92}. Permanent Representative of India to the United Nations signed the Convention against Torture on 14 October 1997, due to the efforts done by the Commission. Ever since, the Commission has been pressing the Government for early ratification of the Convention against Torture\textsuperscript{93}. The Commission also recommended that it was important to follow-up

\textsuperscript{88} \textit{Supra} note 15.
\textsuperscript{92} \textit{Supra} note 90.
on a series of practical measures that the fourth Report of the National Police Commission suggested, to check the use of third-degree methods by the Police. These include:\textsuperscript{94}:

- **Surprise visits to police stations and similar units by senior officers,** this could help in the early detection of persons held in unauthorised custody and subjected to ill-treatment and any malpractices so noticed should be met with swift and deterrent punishment.

- **A Magistrate or Judge,** before whom an arrested person is produced by the police for remand to custody, should be required to question the arrested person specifically as to whether he has any complaint of ill treatment by the police. If he has such complaint, the Magistrate or Judge should have him medically examined immediately so that further appropriate action can be taken.

- **Supervisory ranks** should eschew on essentially ‘statistical’ approach in evaluating police performance. Administrative reviews of a kind, which encourage subordinate ranks to adopt ‘short-cut’ methods to show ‘results’ should be avoided.

- **Training institutions** must pay special attention to the development of appropriate interrogation techniques and impart effective instruction to trainees in this respect.

**Compensation to Victims of Torture**

In several cases, the Commission has recommended provision of compensation for victims of torture. In case of custodial death of Atal Bihari Mishra,\textsuperscript{95} a student of Banaras Hindu University, initially the district police tried to show that the death of Mishra was caused by a bomb attack by some hoodlums on the vehicle in which he was travelling. Investigation by the Superintendent of Police of the Commission revealed that Mishra was implicated in a false case and tortured to death in the police station because of the political differences between his father and a local politician belonging to the then ruling party in Uttar Pradesh.

At the instance of the Commission, the State CID took up the investigation and submitted a charge sheet against as many as 19 police officers, including the


Superintendent of Police. The Commission further directed the State Government to pay to the father of the deceased a sum of 5 lakh by way of interim compensation. The Government of Uttar Pradesh took the stand that, as the case was pending in the Court of Chief Judicial Magistrate; compliance of the recommendations of the Commission could be possible only after the police officials accused were found guilty of the charges. The Commission considered the stand taken by the State Government is incorrect and pointed out that the award of interim relief under Sub-Section 3 of Section 18 of the Protection of the Human Rights Act, 1993 was not dependent upon the establishment of the culpability of the public servant. The remedy is ‘independent of such pettifoggeries’. The Commission pointed out that “the meaning to be given to Section 18 (3) by any State professing to be a welfare State should ensure a liberal construction to promote the philosophy of the Statute and to advance its beneficent and benevolent purposes. The view implies that administration of such ‘immediate interim relief’ could only be at the end of the day; after the guilt of the offending public servant is established in a criminal trial on the standards of criminal evidence would nullify the great humanism the Statute seeks to enshrine”\(^96\).

In a case of the killing of a businessman at Ranchi, the Commission received a complaint from Reeta Dhawan that the Maruti van of her husband, while he was returning from Varanasi, was surrounded by six policemen near the Police Civil Lines, Ranchi. They demanded 1 lakh and on being refused shot at the petitioner’s husband and others and killed them. They also removed the gold chain, rings and wrist watch from the body of the deceased. At Commission’s instance a criminal case was started against the police officers. The Commission also directed that an immediate payment of 10 lakh should be awarded to Reeta Dhawan without prejudice to her private law rights for damages. The State Government contended that as the accused persons had already been convicted and sentenced to death, the Government found no justification for paying a compensation of 10 lakh as this would cause an unnecessary financial burden on the State. The Commission pointed out that stand of the Government was incorrect and the establishment of a culpability of public servants in a criminal trial could not absolve the State of its liability for compensation\(^{97}\).

The Commission recommended that disciplinary as well as a criminal action must be taken against the delinquent officers in the case of custodial death of Pakistani national

\(^96\) *Id.* at 82.
\(^97\) *Id.* at 83, 84.
who was illegally detained in Banaskantha district of Gujarat and later died in the custody of police. In this case the Commission observed, ‘it as much alive to the human rights of foreigners as it is for the Indian Citizens’.

The NHRC has reportedly called for an amendment to the law so that cases relating to violations of human rights and compensation could be tried together in one Court with one set of evidence so that victims would not have to endure two separate cases and wait considerable lengths of time for final compensation. The need to file separate civil proceedings in the Courts to ensure compensation in civil cases deters many from seeking this form of redress. In 1999, the Chairperson of the NHRC Venkatachalilah, J. stated that “the very nature of the concept of immediate interim relief and the purposes for which it is intended would be defeated if this remedy is inter-woven with the fortunes of a criminal trial”.

Two writ petitions were filed before the Supreme Court containing serious allegations about large scale cremations resorted by the Punjab Police allegedly killed in what were termed as ‘encounters’. The main thrust of the Writ Petitions was that there were extra judicial executions and hasty and secret cremations rendering the State liable for action. The Supreme Court after examining the report submitted to the Court by Central Bureau of Investigation, relating to cremation of dead bodies disclosed flagrant violation of human rights on a large scale. On 12 December 1996, the Court requested the Commission to have the matter examined in accordance with law and determined all the issues related with the case. The Commission observed, ‘it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the Fundamental Rights of life of a citizen by the public servants and the State’.

The Commission strongly feels that mere intervention in particular cases of police abuse and initiation of action against delinquent officials is not sufficient to bring about the necessary and desired change in police work and conduct for this some systematic change is called for otherwise the core of problem will go largely untouched and

---

98 Supra note 93.
99 Ibid.
The answer to this malaise lies in not only making punitive laws to deal with such police officers but to also bring about changes in the system so that police officers do not feel compelled to hold individuals in illegal custody or to resort to third degree.

The NHRC under Section 12(c) of its Statute is empowered to visit custodial institutions but only after intimation to the State authorities concerned. In Annual Report for 1997-98 NHRC reported that ‘Disturbed by the increasing reports of violence in police lock-ups’, the Commission took a decision that its officers would make surprise visits to police lock-ups. In furtherance of this process the NHRC has issued check list to investigating officers carrying out inspections as well as a list of ‘Do’s and Don’ts’.

In 1998, the NHRC recommended that a non-statutory police complaints mechanism a ‘District Police Complaints Authority’ should be set up in each district to examine complaints of ‘police excesses, arbitrary arrest and detentions, false implications in criminal cases, custodial violence etc.’ which would then make appropriate recommendations to the Government and SHRC or NHRC. The Commission said that it should be composed of a District Judge as a Chair, the District Collector and a Senior Superintendent of Police.

Subsequently in March 1999, the NHRC announced the establishment of Human Rights Cells in police departments of all States to deal with complaints made against police regarding human rights violations. Announcing this project the then Chair of the NHRC Vekatachaliah, J. said that the cells would be ‘run by the policemen with their own genius, own resources and own consciousness’.

In case of extra judicial execution of 35 years old woman and seriously injuring of her husband by the personnel of the Gorkha Regiment in Assam on 30 November 2004, NHRC recommended the State Government to pay 3 lakh compensation to the kin of the deceased. In a complaint of extra judicial execution of 19 years old Pintu Singh, a college student of local college by the police of Jharkhand, on the morning of 19 May

---

102 Police Reforms Committee presided over by former Home Secretary Mr. K. Padmanabiah appointed by the Government in January, 2000 which presented its report and recommendations to the Government in October, 2000.
104 Id. at 37.
2005, in pursuance to the directions of the NHRC, Government submitted that 5 lakh was granted to the family members of the deceased\textsuperscript{107}. In a complaint relating to joint encounter conducted by jawans of 28 Assam Rifles and Police Commandos in Manipur on 14 January 2005, where three persons were killed, on the recommendations of NHRC a compensation of 1 lakh was granted to the next of kin of each deceased\textsuperscript{108}.

In case of death of under trial prisoner due to torture in jail in Orissa on the night of 28 August 2007 NHRC recommended a payment of 1 lakh as compensation to the next of kin of the deceased\textsuperscript{109}. In case of death of 17 prisoners in the high security Nanny Central Jail in Allahabad District in Uttar Pradesh in the first five months of 2008, due to lack of proper medical facilities and apathy of the prison administration, NHRC recommended the State Government to pay compensation and action against the guilty officials\textsuperscript{110}. In a complaint relating to kidnapping and rape of a seventeen years old girl by a Constable and his accomplices in the police residential quarters in Jammu on 1 June 2008; NHRC held that, “It is a clear case of violation of human rights of the victim by a public servant”. NHRC directed the State Government to pay 2 lakh to the victim\textsuperscript{111}. On 4 September 2009, The NHRC directed the State Government of Jammu and Kashmir to provide compensation of 5 lakh to the next of kin of the deceased, a rickshaw puller, who was tortured to death in Jammu in July 2003. The victim was picked by State Police from Amritsar (Punjab) for his suspected involvement in burglary\textsuperscript{112}.

The creation of the Commission has been considered a major development to promote and protect the human rights of all of its citizens. The responsibilities entrusted to the Commission are vast, the scope of its powers considerable by any reasonable standard of assessment and it can legitimately be argued that they should be enhanced in one or more directions.

**Effectiveness of National Human Rights Commission**

Autonomy and Transparency are the pillars on which the work of the commission is and must be based. The Act secures appointment of persons of known status, proven ability and long experience by a committee consisting of persons high in status and ability. Once members, including chairperson, are appointed, they work in accordance with the

\textsuperscript{107} Ibid.
\textsuperscript{108} Ibid.
\textsuperscript{109} Ibid.
\textsuperscript{110} Ibid.
\textsuperscript{111} Supra note 105.
\textsuperscript{112} Ibid.
provisions of the Act and not under any one by his or her sweet will. The Commission is authorized to develop its own procedure under Section 10(2) of the Act which indicates its working independence also. Because of these provisions, the Supreme Court in *Paramjit Kaur* case held NHRC an expert investigative body. It is thus possible to hold that these Commissions are in terms of law autonomous and independent. But in actual practice, the autonomy and independence of these Commissions is a myth, for the following reasons:

i. Administrative control of the Commission is through an IAS Secretary General or the Secretary working with Central or the State Government;

ii. Investigation in relation to complaints of human rights violations being done by police officials, working under the control of an IPS Officer belonging to the same department;

iii. Posting of staff required for efficient performance of Commissions’ work to be done by the Central Government under Section 11(2) in relation to National Commission and under Section 27 (2) in relation to State Commission;

iv. Exclusive privilege of the Central and the State Governments to fix quantum of financial grant to be given to the Commission, there being no statutory guideline given in the Act for the purpose;

v. Controlling financial expenditures of the Commission by extra judicial means;

vi. Ignoring reports and recommendations of the Commission by not tabling the same in the parliament or the State legislature.

In India, most of the human rights violations have been reported by the police forces or armed forces, particularly in those States which were affected by the terrorism problem. These forces are Government forces. The Commission can only ask for a report from the authority about complaints of the human rights violations by the armed unit. This is a very lukewarm measure and seems inadequate. At least where gross abuses are alleged, the Commission must be authorized to involve itself by associating a small group from its fold to be a part of the enquiry into the episode and must also ensure swift and prompt action and the plea of morale should not dampen the urge for deserving actions on the erring personnel.

---


114 *Supra* note 100.

115 *Supra* note113 at 4.
The Role of Non Government Organizations (NGOs) in the Prevention of Torture

The need to ensure observance of human rights is so important that continuous and relentless efforts are needed from everyone to ensure satisfactory levels of that vital societal need. Notwithstanding the effective and sustained efforts of the law courts in the land or the National and State Human Rights Commissions together with the administrative yardsticks issued to various agencies to make certain that human rights concerns are well woven in their respective functioning. It is necessary for the good of the society to have voluntary agencies those also aid and promote the cause of human rights.116

The Association for the Prevention of Torture believes that the effective prevention of torture requires three integrated elements:117

1. **Transparency in Institutions**: All places where persons are deprived of their liberty should be accountable and subject to regular scrutiny through independent visiting and other monitoring mechanisms.

2. **Effective Legal Frameworks**: International, regional and national legal norms for the prevention of torture and other ill-treatment should be universally respected and implemented.

3. **Capacity strengthening**: National and international actors who work with persons deprived of their liberty should be trained to increase their knowledge of and commitment to prevention practices.

Irrespective of the differences in basic orientations, the NGOs do have potential in playing decisive and crucial role in the protection of Human Rights. The strengths of NGOs were discussed at a national workshop of NGOs in Delhi, which include118:

- The closeness to the people and the rapport established with them at gross root level.
- The credibility they have earned as champions of the cause of the people.
- Awareness and promotion of holistic approach in human development.
- An effective alternative power to organise people and to support people movements.
- An identity and voice of their own.

---

• Capacity for advocacy and lobbying.
• Democratic style of functioning.
• Greater flexibility and openness for change.
• Capacity to adopt according to contexts and needs of people.
• Capable of committed leadership.
• Availability of committed professional.

The impact of NGOs in the society at large is so strong that nobody can ever simply ignore its presence and potential. The Government of India has recognised this fact and they are incorporating statutory provisions in laws and regulations for the involvement and participation of NGOs in the implementation of various programmes and policies\textsuperscript{119}.

In the Protection of Human Rights Act, 1993, specific provisions have been incorporated, requiring the human rights commissions to ensure collaboration with NGOs in spreading human rights literacy. There are indications of their role even in investigations of specific incidence of human rights violations under the Protection of Human Rights Act, 1993. The responsibility has been enjoined upon the Commission to encourage the efforts of NGOs and institutions working in the field of human rights\textsuperscript{120}.

The National Legal Services Authorities Act, 1987 has also provided for the identification of one NGO in each district for giving accreditation and to work with them for legal literacy and legal guidance. The impartiality of authentic NGOs has been upheld, when the Supreme Court laid down guidelines to be followed by the police when they arrest a person. In \textit{D.K. Basu v State of West Bengal}, Court states, “the time, place of arrest and venue of custody of an arrestee be notified by the police where the next friend or relative of the arrestee lives outside the district or town, through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically, within a period of 8 to 12 hours after the arrest”\textsuperscript{121}.

The NGOs emerged in a particular historical context to respond to a specific problem or situation that faced a group of people or society at large. In times of perceived necessity, NGOs have also joined hands at national and international levels to assume greater bargaining power. At the international level, 1990’s have witnessed three important events where the NGOs have made their presence felt in defending the dignity

\textsuperscript{119} \textit{Ibid}.
\textsuperscript{120} Section 12 (i) of the Human Rights Protection Act, 1993.
\textsuperscript{121} \textit{Supra} note 25.
and rights of human beings. These events are the Vienna Conference on Human Rights, the International Women’s Meet in Beijing and the WTO Seattle Conference. At the International level, NGOs like Amnesty International, Human Rights Watch, and Asia Watch etc. have taken positions in upholding rights and effectively influenced human rights policies of different States\textsuperscript{122}.

The most important roles that NGOs play are the following:-

**Human Rights Awareness Building**

There is a widespread ignorance and illiteracy regarding human rights. The various UN declarations, Covenants and municipal enactments on human rights have not reached the level of ordinary people. In a country like India, where a sizable population is still illiterate and live below poverty line; unless concerted effort is made, prevention of human rights violations will not become effective.\textsuperscript{123} The Government machinery is doing precious little to reach human rights awareness to the people who need it most. NGOs can play a vital role in this area.

**Organisation of People around Specific Issues of Human Rights Violations**

Awareness building alone is not sufficient to counter rights violations. It is only preparing the ground. When specific incident takes place, be it by the police or otherwise, efforts must be made to publicise the issue and organise the people locally or at regional level around the issue and initiate action with the active participation and involvement of the people\textsuperscript{124}. Such actions will reinforce the human rights awareness of the people and will serve as deterrent to further human rights violations.

**Investigation and Fact Finding**

NGOs conduct investigations and fact finding studies of specific occurrences of right violations with the involvement of experts and representatives of people. The report of such findings should be widely circulated among the people and publicised through media to the extent possible. These reports should be sent to departmental authorities, Government officials, and investigating agencies. It must be remembered that the impact of these reports will depend on its unbiased and impartial character.

\textsuperscript{122} *Supra* note 118.


Recourse to Judicial Remedies

In certain types of rights violations it is important that remedy is sought also with the help of judiciary, in the form of public interest litigations. They may be in the form of writ petitions, contempt of court proceedings or damage suits. Irrespective of its success or failure in the courts, it is bound to spread general awareness among the people leading to greater empowerment.\textsuperscript{125}

Advocacy and Lobbying

One effective role the NGOs can play is advocacy and lobbying. This can lead to changes in existing laws, besides generating public debate for new legislation’s and policy formulations.

Networking

NGOs are better positioned to establish linkages with other groups at regional, national and international levels. Action against human rights violations must be taken up by these larger networks for effective campaigning and remedial action.

It is submitted that law gives power to the police to exercise force for the purpose of peace keeping. Exercise of police power must be subject to checks and balances. As Convention against Torture explicitly states, “No exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked as justification of torture”. The Supreme Court and the NHRC have also upheld this view in their various judgements, recommendations and have jointly and individually established that the prohibition of torture is absolute, no matter how heinous the crime for which someone is arrested.