CHAPTER 1
INTRODUCTION

Men everywhere have certain inherent spiritual and material needs and the rights necessary to meet those needs are natural and inalienable. Rights are those conditions of life without which no man can be at his best. They are the claims recognised by the State i.e. claims, which have a wider acceptance and validity with the community.

The idea of ‘Human Rights’ is as old as the history of human civilization but the phrase ‘Human Rights’ as a subject of study is comparatively recent in origin. It is only natural rights, which eventually led to the formation of human rights. Human rights are dynamic concept which endeavours to adopt itself to the need of the day. Human rights are fundamental to our very existence and they constitute what might be called ‘sacrosanct rights from which no derogation can be permitted in the civilized society’\(^1\). They are not earned, bought or inherited nor does any contractual authority create them. Difference of sex, race, language and colour does not change these rights.

Human rights are those minimal rights, which every individual must have against the State or other public authority by virtue of his being a member of the human family, irrespective of any other consideration\(^2\).

Human rights are essential for full development of human personality and for happiness. They are indispensable for physical and mental upliftment of human race. But still some rights must be regarded as fundamental like right to life with dignity, right to freedom of conscience and of course right to minimal means of subsistence. All human rights are basic rights in the fundamental sense that systematic violation of any human right precludes realizing a life full of human dignity\(^3\).

Rights of a man are a symbolic depiction of the aspiration of man to free himself from oppression and tyranny from his fellow man and his innate urge for equality and fraternity amongst *Homo sapiens\(^4\). Human rights can be generally defined as those rights which are inherent in our nature and without which we cannot live as human beings. Human rights and fundamental freedoms allow us to fully develop and use our human

qualities, our intelligence, and our conscience to satisfy our spiritual and other needs. They are based on mankind’s increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection⁵.

Human rights are sometimes called fundamental rights or basic rights or natural rights. As fundamental or basic rights they are those which must not be taken away by any legislation or any act of Government and which are often set out in a Constitution. As natural rights they are seen as belonging to men and women by their very nature. Another way to describe them would be to call them ‘common rights’ for they are rights which all men and women in the world should share, just as the common law in England, for example, was the body of rules and customs which, unlike local customs, governed the whole country⁶.

Human rights can be broadly classified into political and civil rights and economic and social rights. The political and civil rights are also called classical rights, ideal rights or birthrights. Their distinctive feature is that they are available to man naturally by his birth even without any positive assertion on the part of the State or others. These rights are not acquired, nor can they be transferred, disposed of or extinguished by any act or event because these rights inhere universally in all human beings. The primary correlation of duties in connection with human rights falls upon the States and their public authorities⁷.

Human rights are truly universal. They are not the monopoly of any one culture or of any one geographical region. Human rights are indeed present in the cultural development of religions and philosophies in all parts of the world since the dawn of recorded history⁸.

Human rights do not constitute a mere enumeration of certain basic rights, which should be enjoined by an individual. The very concept of human rights essentially highlights certain clear conditions, which must be created leading to the fulfilment of an individual in society. The concept of human rights is expanding, as now a days it not only includes the more traditional civil and political rights but also economic, social and cultural rights. Various issues are seen from a human rights perspective. Many organisations propose to extend the concept to include also the ‘people’s or ‘solidarity’

⁸ Jan Martenson, Under Secretary General of Human Rights and Director General of the United Nations office at Geneva, in his key note address during the Third World Congress, convened at New Delhi from 10-15 December 1990.
rights pertaining to groups rather than individually, such as the rights to development, the right to peace and right to a clean environment. The quest for human rights and human dignity is a phenomenon of contemporary life of universal dimensions and immense significance. The concept of human rights is a concept of world order. It is a determination for so structuring the world that every individual’s human dignity is protected. International concern for human rights is not a modern innovation. It is, in fact, heir to all the great historic movements for men’s freedom to the enduring elements in the tradition of natural law and natural rights and in the most of the world’s great religions and philosophies and the findings of contemporary science about inter-relations of simple respect for human dignity and other individual and community values.

No society is free, no State democratic, unless every citizen actualizes human rights. The battle for justice is not confined to individual claims but to a transformation of the social system itself.

Dr. Nagendra Singh, describes four aspects of Human rights, first is the national aspect since human rights take their origin within the natural area, and second is the international aspect, which is equally profound. Human rights can not be compartmentalized to be restricted to national boundaries. The third aspect relates to human rights in peace as against human rights in armed conflicts. The fourth aspect pertains to the humanitarian laws of war. Right is generally taken to mean-‘The standard of permitted action within a certain sphere’.

The Lexicon Universal Encyclopedia describes human right expression as follows—

“Human rights are basic political and social conditions variously defined to which every individual is entitled as a human being. Originally they were called natural rights or the rights of man, and included the right to life, liberty and the pursuit of happiness cited in the US Declaration of Independence and over the years concept of human rights has been broadened to include rights to social benefits such as social security, rest, leisure and education.”

The truth is that the concept of rights of human being is neither entirely western nor modern. There are numerous thinkers who opine that the history of human rights and fundamental freedoms did not begin with the Magna Carta, signed by King John of England in 1215, nor did the world come to know of them for the first time through the endeavours of Locke, Rousseau and Jefferson or the proclamation of the ‘Declaration of Independence’ and the adoption of the declaration of the ‘Rights of Man’ and of the citizen by the National Assembly of France in 1789\(^5\). The concept of human rights in modern times can be traced to Natural Law philosophers who propounded these rights to protect individual against the excesses of the State. The new phrase ‘Human Rights’ was adopted in the present century from the expressions previously known as ‘Natural Rights’ or ‘Rights of Man’. Introducing the concept of ‘Human Rights’ it can be said that human rights is a 20\(^{th}\) century name for what has been traditionally known as ‘Natural Rights’ or, in a more exhilarating phrase, the ‘Rights of Man’\(^6\).

The ancient Greeks made two basic distinctions that started the long tradition in the western world about the human being as a person. They distinguished between man and the God on one hand, and between man and beast on the other\(^7\). The main characteristic they saw that distinguishes man from the God is the latter’s immortality. On the distinction between men and animals they saw presence of rationality in men and its absence in the beast as the decisive factor. With the latter distinction the Greeks simultaneously separated men from brute and also established the basis for the theory of Natural Law, the oneness of the human race and the equality of all men based on the concept of justice, human possession of reason and language.

Aristotle describes the nature of man as both ‘rational’ and ‘political’. First, he was pointing to the fact that man is the type of animal whose habitat is the State or polis, such that we can say it is the nature of man “to live, in a polis (State)”. Man is ‘political’ in that sense. Secondly, for man to be in inhabitant of a State, he has to be equipped by nature with the necessary instruments namely, “the power of speech” which is “difference from voice” or more sound because it is the “capacity for rational communication”\(^8\).

This relationship is summarised by Sabine in this manner “Right reason is the law

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\(^{16}\) A.P. Singh, “Human Rights: The Indian Context”, AIR 2000 (Jour) 8


of nature, the standard everywhere of what is just and right, unchangeable in its principles, binding on all men whether ruler or subjects the law of God”\textsuperscript{19}.

Hence, Natural Law was generally seen as “a fundamental law or law of nature, lying behind the civil law of every nation and binding, because of its intrinsic justice, upon all peoples and upon subjects and rulers alike”\textsuperscript{20}.

The genesis of the concept of human rights can be traced into the emergence of classical liberals. Classical liberalism made a passionate defence of the principles like competitive individualism, private property and market ethics etc. The modernist conception of natural rights took real shape during the 17\textsuperscript{th} century and 18\textsuperscript{th} century. The scientific and intellectual achievements of the 17\textsuperscript{th} century – the discoveries of Galileo and Newton, the materialism of Hobbes, the empiricism of Bacon and John Locke – encouraged a belief in Natural Law and universal order.

Hobbes opines that there existed no right or wrong in the moral or legal sense in the state of nature. He argues that it was necessary for men, to enter into a concept mutually among themselves by which everyone agreed to transfer all his powers upon one man, or upon an assembly of men. Hobbes considers that the sovereign, in order to perform its function adequately and safeguard the human rights was required to be omnipotent\textsuperscript{21}.

John Locke rejected the Hobbesian concept of law and absolute despotic sovereignty of the ruler. John Locke’s view was that State was designed to guarantee and protect natural rights of the individuals. His theory of social contract is another version of the doctrine of consent, which simply means that authority of State rests on the consent of the subjects\textsuperscript{22}.

The teachings of these liberal thinkers had a profound influence on the western world of the late 18\textsuperscript{th} and the early 19\textsuperscript{th} century. This can be seen in the American Declaration of Independence (1776) which stated “We hold these truths to be self-evident that all men are created equal, that they are endowed by (their) creator with certain inalienable rights, among these are life, liberty and the pursuit of happiness”. Similarly the French Declaration of the Rights of Man (1789) emphasised that “men are born and

\textsuperscript{19} George H. Sabine, \textit{A history of Political Theory} 150(1962).

\textsuperscript{20} \textit{Id.} at 442.


\textsuperscript{22} \textit{Supra} note 5 at 81.
remain free and equal in rights” which are “Liberty, Property, Safety and Resistance to Oppression”\textsuperscript{23}.

Despite practical success in France and England the idea of human rights as natural rights was not without its detractors. The doctrine of natural rights with the passage of time becomes less and less acceptable to philosophical and political liberals due to its frequent association with religious orthodoxy and its abstract nature. The most serious philosophical blow to natural law theory came from Edmund Burbe, David Hame and Jermy Bentham, they held the view we can never know human nature of men, and thus we can never identify human rights.

Bentham one of the founders of utilitarianism was more critical. He asserted that ‘right is the child of law, from real law come real rights but from imaginary laws, come imaginary rights”\textsuperscript{24}.

Immunal Kant, J.G. Merills and Roscoe Pound strongly maintain that legal orders recognizing and protecting rights, and human rights in particular, are rather historical and social phenomenon the struggle for which has been as old as human history itself for the reason that it concerns the needs to protect the individuals against the abuse of power by the tyrant. There are many unwanted separations and conflicts between individuals in their relations to one another and to the State\textsuperscript{25}. Darwin’s ‘Origin of Species’ (1860) and Herbert Spencer’s Social Statics completely destroyed the very roots of the Natural Law theory. Abandonment of Natural Law marks the rise of modern jurisprudence\textsuperscript{26}.

**Legal Concept of Human Rights**

The legal concept of human rights is the product of a specific period of history. In Europe, it mainly emerged under the umbrella of the philosophical, political and legal values, which gained ground from the Renaissance onwards. The emergence of these values and their development are themselves inseparable from a long historical process of economic, social, political and cultural transformation.

Historians credit the origin of the legal concept of Human Rights to MAGNA CARTA (1215). Magna Carta was a petition urging the King to concede certain rights to particular sections of the people. Article 39 of the Magna Carta, “No free man shall be seized, or imprisoned, or disseised, or outlawed, or exiled, or injured in any way, nor will

\begin{itemize}
\item \textsuperscript{23} ibid.
\item \textsuperscript{24} Supra note 21 at 18.
\item \textsuperscript{26} W.S. Carpenter, *Foundation of Modern Jurisprudence* 72(1958).
\end{itemize}
we enter on him or send against him except by the lawful judgment of his peers, or by the
law of the land”27.

The Habeas Corpus Acts of 1640 and 1679 have attempted to provide legal
remedies against arbitrary detention and imprisonment. The measure had come to be
accepted as a tool to move the authority seeking immediate release either from unlawful
detention or even lawful incarcerations but on appropriate grounds28.

According to Locke, people originally lived in a state of nature with no
restrictions on their freedom. Then they came to realize that confusion would result if
each person enforced his or her own rights. People agreed to live under a common
Government, but not to surrender their rights of nature to the Government instead, they
expected the Government to protect these rights especially the right of life, liberty and
property. Lock’s ideas brought a change in the thinking of the people and became part of
English Bill of Rights (1689), the French Declaration of the Rights of Man (1789) and the
US Bill of Rights (1791)29.

The Bill of Rights, 1689 evolved in the internal struggle within the English soil,
gave birth to the idea of Parliamentary Democracy that cried a halt to the arbitrary power
and unbridled authority of King of England. The American Declaration of 1776 and the
French Revolution of 1739-93 helped in the evolution of a springboard of international
opinion of supremacy of natural and imprescriptible rights of man. The French
Declaration gave birth to new ideas in expressions like ‘equality before law’, ‘freedom
from arrest exception conformity with the law’, ‘protection against retroactive operation
of law’, ‘presumption of innocence’, ‘freedom of opinion’, ‘freedom of religion’ and a
host of other concepts30.

After about 600 years of the Magna Carta, Abraham Lincoln, formally abolished
slavery and granted freedom from bondage to the wretched slaves. It was a mighty and
triumphant leap forward of human rights. In his famous speech, Lincoln, proclaimed in
1863, “Our fathers brought forth on this continent a new nation, conceived in liberty and
dedicated to the proposition that all men are created equal. We here highly resolve that
this nation under God will have a new birth of freedom and a Government of the people,
by the people, for the people”31.

27 Supra note 4 at 30.
29 Id. at 30.
30 Supra note 4 at 30.

After the First World War, the world community for the first time realized the need to establish some institutional mechanism to protect and preserve the rights of man. The establishment of the League of Nations was the first attempt in this direction. However, it should be born in mind that human rights did not find any direct and explicit reference in the Covenant of the League of Nations. Article 22(5) made responsible the State to maintain such conditions in the territory which will guarantee ‘freedom of conscience and religion’ and ‘the prohibition of abuses such as slave trade’ etc.\(^{32}\)

The International Labour Organisation, which was established at the Versailles Peace Conference, advocated minimum standards of labour and welfare, giving rise over ensuing years to hundred of important human rights Conventions. State members of the League accepted the obligation to endeavour to secure and to maintain fair human conditions of labour for men, women and children and also to secure the just treatment of the indigenous inhabitants of their colonies.\(^{33}\)

In fact, the horrors and worst kind of brutalization of human rights in Second World War was the main motivating factor in pursuing the goals of protection of human rights in the post war period. The general approach, which is adopted in order to protect human rights, is to give them the legal status, by incorporating them into some international charter or national constitution, thereby making them justifiable. A legitimate claim to certain rights is based on the concept of the human being as a person. Only person has rights, right meaning a certain quality or property of relationship between persons, such that one demands certain things and insists that he or she must have them as a matter of legitimacy.\(^{34}\)

The United Nations, which arose like a phoenix out of the ashes of Second World War, put the utmost stress on promotion and fastening of human rights and basic freedoms. The United Nations Charter was the first international instrument which in unequivocal terms proclaimed “Universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion”. The United Nations Charter has provided a constitutional basis on which the United

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\(^{33}\) *Supra* note 4 at 17-18.

\(^{34}\) Christopher S. Nwodo, “The Philosophical basis for Human Rights claims”, *India Quarterly* (April-September, 1989).
Nations can bring about changes in the status of the individual vis-à-vis his own state. The United Nations has been deeply involved in the furtherance of the cause of human rights ever since its inception in December 1948, after three years of preparatory work, the United Nations General Assembly proclaimed the declaration to be ‘a common standard of achievement for all people and all nations’. Adoption of Declaration was really an event of great significance, which launched a new era of hopes and aspirations for human civilization in the protection and promotion of human rights across the globe.\footnote{Resolution No.217 A (iii) of the United Nations General Assembly, 10 December 1948.}

The Preamble states “We the people of United Nations …… reaffirm faith in fundamental human rights, in the dignity and worth of the human persons, in the equal rights of men and women and of nations large and small…….” Article 1(3) includes among stated purposes, “to achieve international cooperation in solving international problems…… and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion…….”\footnote{Article 1(3) of the Charter of United Nations.} Article 56 imposes an obligation upon its members to take joint and separate action, in co-operation with the Organization for the achievement of the purpose set forth in Article 55. Article 55 provides that United Nations shall promote inter alia, “Universal respect for all and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, religion”.\footnote{Nagendra Singh, \textit{Human Rights and the Future of Mankind} 1316(1981).}

The United States defined Human Rights in a Policy Document in 1978 as:

“Freedom from arbitrary arrest and imprisonment, torture, unfair trial, cruel and unusual punishment, and invasion of privacy, right to food, shelter, health care and education and freedom of thought, speech, assembly, religion, press, movement and participation in Government”.\footnote{Ibid.}

In the case of \textit{USA v Iran}, the Court dealing with the capture of US hostages by Iran observed as follows: ‘Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of the hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in Universal Declaration of Human Rights’\footnote{Ibid.}

M.H. Beg, the former Chief Justice of India, has defined human rights as follows, “Human Rights imply Justice, equality, and freedom from arbitrary and discriminatory treatment. These cannot be subordinated to the interest of the rulers. No one can be
subjected to coercion for holding particular religious beliefs. The doctrine of national sovereignty cannot justify violation of human rights”39.

Justice V.R. Krishna Iyer has described40, “Human Rights and fundamental freedoms are indivisible without which full realization of civil and political rights and cultural rights is impossible. This process of realization calls for legal postvisisation, not political polemics nor diplomatic claptrap but normative formulation. But what are human rights? Religion of man is located in the Vedas, Buddhist Texts, Bible, the Quran or the holy literature or other authentic teachers to uphold human dignity. Every human being is a divine being and has a right to dignity, liberty, equality and other basic rights. We cannot understand or evaluate human rights divorced from the historical and social context. Idle ideals and empty assertions cut into ice. Status of human rights taken us to the lifestyle of a society that is why the Indian constitutional approach is soaked into the social milieu and human conditions. India is plural society and the concept of the human rights in such society has a different and a unique position.”

The protection of human rights is a constant struggle, which cannot be won unless every man and woman participates in it. In real practice the human rights is the sum of all rights necessary to ensure to be human and it is the duty of all peoples and Government to create the condition headed to exercise our right to be human.

**Evolution of the Concept of Human Rights in India**

The idea of human rights could be found in Vedic Scriptures of Hinduism. The Vedas (the metrical religious work of the ancient Hindus) offering guidance *inter alia*, on religious and social obligations. These constituted the base on which the Hindu Law was built. In the ancient Indian Literature no mention of the condemnation of the accused is found without providing him an opportunity of being heard41.

The concept of Human Rights in India may be seen to have existed in crystallization of values that are the common heritage of mankind. Long before Hobbes, the Indian scriptures tells us about the importance of the freedoms of the individual in State. The concept of ‘Dharma’, the supreme law which governed the Sovereign and the subjects’ alike covering the basic principles involved in theory of rights42.

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42 Ibid.
The Kautilya’s *Arthasastra* asserts: In the happiness of the subjects lies the happiness of the King and what is beneficial to the subjects is his own benefit. The King’s function was not conceived in terms of legislation but of protection and this involved the protection not only of his subjects from invasion, but also of the order of the society, the right way of life for all classes and ages as laid down in the sacred texts. The *Mahabharata* explicitly sanctions revolt against a King who is oppressive or fails in his function of protection, saying that such a ruler is no King at all, and should be killed like a mad dog\(^{43}\).

Kautilya also disapproved the theory of absolution of King and subordinated him to the law of duties. *Shantiparva* prescribes that King may be punished if he does not follows the path of *Dharma*\(^{44}\). A man, however, was not convicted of theft simply on ground of his being found in possession of stolen goods as it was possible that he might have found the article on the road dropped by a thief. According to *Mitaksara* if a man was arrested on suspicion, his case should be properly investigated and he should be given a chance to clear himself either by proof or by an ordeal. *Narada* further suggested that culprits should be traced by secret spies. These secret agents should associate with them, make friendship and carefully watch their behaviour and finally catch them\(^{45}\).

Two methods were employed to detect a crime. First was by setting a thief to catch a thief and by resorting to the tracking system. Tracking system can be said to be the ancient form of dog squad\(^{46}\). Seeds of scientific investigation can also be discovered in Kautilya’s treatise.

*Arthashastra* provides as under: Any person whose body bears the signs of scaling heights, any person whose body appears to have been scratched or wounded with dress torn off, any one whose legs and hands bear the signs of rubbing or scratching, anyone whose hair and nails are either full of dirt or are freshly broken, anyone whose foot – prints can be identified with those made near the house during ingress, any person the smell of whose sweat can be ascertained from the house, all such persons should be interrogated and examined after commission of crime\(^{47}\).


\(^{47}\) *Id.* at 8.
It is evident from the above extract that foot prints, smells, nails and hair have been identified as tools of investigation. Our scientific methods of investigation appear to have been born out of such observations.

The different forms and degrees of torture are described in some detail. Here and there, however, human touches appear and we are told for example, that ‘torture of women be half the prescribed standard’, while the aged, lunatics, pregnant women and ‘persons suffering from hunger, thirst or fatigue from journey’ were not to be tortured. Kautilya was fully aware that even an innocent person might confess under torture and he insisted that corroborative evidence must be produced. He was perhaps well ahead of his time in proposing fines as an alternative to the mutilations and other savage punishments which were prescribed\(^48\).

The study of *Mudra-Rakshasa* shows that dispensation of Justice was considered to be one of the important duties of the rulers. Whole system worked so efficiently that Magasthenese says “Kings employed spies not only to detect violations of human rights but gathered public opinion on various important matters”\(^49\).

Vaisaka Dutta in his *Mudra – Rakshasa* has depicted Chandragupta as a deity coming right from heaven to save his countrymen. King Ashoka inscribes: “All men are my children, and, just as I desire for my children that they may enjoy every kind of prosperity and happiness both in this world and in the next, so also as I desire the same for all men.” Ashoka worked day and night for the protection of human rights\(^50\).

There was a downfall of Human Rights jurisprudence in post-vedic age. In the post-vedic period, the rise of Buddhism and Jainism were certainly a reaction against the deterioration of the moral order as against the rights of privileged class. After Buddha, Ashoka protected and secured the most precious of human rights particularly right to equality, fraternity, liberty and happiness\(^51\).

It is, however, unfortunate that human rights jurisprudence witnessed downfall with the decline of Mauryan Empire. Harsha Vardan was the last Hindu Emperor. After the break up of his empire the whole India was split up. The philosophy of human rights lost sight.

Under Muslim legal system the *Quran* may be described as the supreme legislative code of Islam, which laid down basic rules of justice. To kill a living being is


\(^{51}\) V.A. Smith, *Early History of India* 171(1920).
one of the most formal prohibitions of the Holy Quran. Only the State and its representatives may approve the death of a man or an animal. But the law of retaliation, in the case of murder, is recognised by Muslim Law, the origin of which could be found in Roman law. It constitutes the private right of the victim, and can only be exercised against the guilty person. It is also a public right in the sense that it is protected by the State in the interests of social utility. It is considered as part of law of man as well as the law of God, since the victim is also one of God’s subjects. Under Islam, mankind has an inherent dignity, a moral quality that the offenders of the Universal Declaration of Human Rights called reason and conscience.  

At the time of the British rule in India, resistance to foreign rule manifested in the form of demand for fundamental freedoms, civil and political rights of the people. The Indian National Congress, which was in the vanguard of freedom struggle, took the lead in this matter. The Constitution of India Bill, 1895 prepared by the Indian National Congress, also known as ‘Home Rule Document’, talked about a Constitution guaranteeing everyone of the citizens basic human rights like freedom of expression, inviolability of one’s own house, right to property, equality before law, etc.

In 1920 Pt. Moti Lal Nehru said, ‘we want freedom of thought, freedom of action, freedom to fashion our own destiny and build up an India suited to the genius of her own people.’

The Constitution of the Republic of India enacted in 1950, incorporated ten of the nineteen rights enumerated in the Moti Lal Nehru Committee Report, 1928. The Rights emphasised by the Moti Lal Nehru Committee Report are:

1. Personal Liberty, inviolability of dwelling place and property.
2. Freedom of conscience and of profession and practice of religion subject to public order and morality.
3. Right to free expression of opinion and to assemble peaceably and without arms and to form association and unions subject to public order and morality.
4. Right to free elementary education and in the matter of admission into any educational institution maintained and aided by the State without distinction of caste or creed.
5. Equality for all citizens before the law and in civil rights.

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53 Supra note 28 at 57.
54 Ibid.
(6) Right of every citizen to the writ of *Habeas Corpus*.

(7) Protection in respect of punishment under *ex post facto* law.

(8) Non discrimination against any person on ground of religion, caste or creed in the matter of public employment, office or power or honour and in the exercise of any trade or calling.

(9) Equality of right to all citizens in the matter of access to, and use of public roads, wells and other places of public resort.

(10) Freedom of combination and association for the maintenance and implementation of labour and economic conditions.

(11) The Right to keep and bear arms in accordance with regulations and

(12) Equality of Rights to men and women as citizens.

Lahore Congress in 1930 declared freedom from foreign rule as a fundamental right. Karachi Congress passed a resolution in 1931 on fundamental rights and social change in three parts, (a) fundamental rights and duties; (b) Labour; and (c) Economic and social program.

Sapru Committee in 1945 stressed on the need for written code of fundamental rights. In the Constituent Assembly (1946) also demand for ‘Declaration of Fundamental Rights’ was raised. Promulgation of the Constitution by the people of India in January 1950 is watershed in the history of Development of the concept of human rights in India. The Preamble, Fundamental Rights and the Directive Principles of State Policy together provide the basic human rights for the people of India. Rule of law is the basis of the Indian system of rights.$^{55}$


According to Justice M.N. Venkatchaliah, the ‘Human Rights’ philosophy is the quest for translating the international standards of human rights ‘from phrase to action’.$^{56}$

Dr. Hansa Mehta, a Gandhian social worker, who had led the Indian delegation, had made important contributions in the drafting of the Declaration, especially by highlighting the need for reflecting gender equality. A number of activities were

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$^{55}$ *Id.* at 56-58.

organised in the country during 1998 to commemorate the 50th Anniversary of the Universal Declaration.

Undoubtedly, India has made honest efforts for the protection and promotion of human rights in the world over and is the greatest champion of the human rights in the Third World. However, the fact remains that there is wide gap between theory and practice. All that is preached is not always put into practice and India is no exception. Custodial torture may be called as ‘police excesses’, ‘police-brutality’, ‘police torture’, ‘custodial-violence’ and ‘lock-up crimes’. The general meaning attributed to this concept is that people in police custody are not being treated with the complete dignity and rights, which the citizens in a model democratic State deserve. The practice of causing degradation to the status of an individual, any physical or mental harassment to him, or any deprivation of his personal liberty or fundamental right of freedom in police custody can be treated as human right violations in police custody. It is really unfortunate that, State, supposed to be guardian and promoter of human rights becomes the prime violator.

**Police: Meaning and Evolution of the Concept of Police**

The birth of the policeman is to be traced to the earliest times when man started emerging from his savage animal-hood and using his power of reasoning and thought realised the need for self-improvement and the benefits of family and corporate life.

The word ‘Police’ is derived from the Greek word, Politeia which means ‘Government’. It refers to that segment of Government, which deals with the protection of life and property, preservation of public tranquillity and maintenance of order, and the prevention and control of crime. Among the various agencies of Government, police is the most visible community agency and is often in the ‘limelight’ of community scrutiny and evaluation.\(^57\)

The term police, according to Oxford dictionary, means ‘a system of regulation for the preservation of order and enforcement of law: the internal Government of a State’. Viewed from this angle, a policeman is ‘a person paid to perform, as a matter of duty, acts, which, if he was so minded, he might has done voluntarily’\(^58\). The new Lexicon Webster’s Dictionary of the English Language provides, *inter alia*, the meaning of ‘police’ as ‘body of people whose job is to keep order and enforce regulations’, as well

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as, ‘a department of Government responsible for the preservation of public order, detection of crime and enforcement of law’\(^{59}\).

Originally, the word ‘police’ was used in a wider sense to connote the management of internal economy and the enforcement of governmental regulation in a particular country with the passage of time, the term began to be used in a restricted sense to mean an agent of the State to maintain law and order situation and to enforce the orders of Criminal Court\(^{60}\).

Police can be termed as an organised body of civil servants whose primary duties are the preservation of order, the security of persons and the safety of property\(^{61}\).

The primary object of police as conceptualised by the present world is prevention and detection of crimes and the offenders and also maintenance of public order. The police, in these terms, can be understood to be the instrument for enforcing the Rule of Law. The police are generally regarded as the arm of law, detecting crime and seeing that offenders are brought to trial\(^{62}\).

Police system, as the State–controlled ‘bureaucratic organisation of professionals’ to ensure the essentials of civilised life, namely, law and order, protection of life and property, is a modern concept. This system exists in all the modern states, although its roots lie in the remotest past. Policemen have existed since time immemorial and are found almost everywhere in the world in one form or the other\(^{63}\).

**Historical Perspective of Indian Police**

During the Vedic Period of Indian history, there are hints of the existence of the police officers for the purpose of maintaining law and order. Manusmriti has the first exposition of the Hindu legal system, and proclaimed the fundamental law governing social relations. Manu classified crimes under eighteen heads. Manu classified police into two functional departments – the criminal investigation department and the law and order wing. The criminal investigation department was subdivided into two units – one for collection of criminal intelligence and investigation of crimes and other for collecting intelligence for the security of important dignitaries, prevention and prosecution of economic offences and undertaking espionage\(^{64}\). The *Apasthamta Dharm Sutra* (600-300

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\(^{60}\) N.V. Paranjape, *Criminology and Administration of Criminal Justice* 110(1997).


\(^{62}\) J.C. Curry, *The Indian Police* 17(1977).


\(^{64}\) M.B. Chadhe, *The Police in India* 54(1997).
BC) prescribes that the King should appoint, in towns and villages, officers and their subordinates who are pure and truthful for the protection of the subjects against thieves.\textsuperscript{65}

In *Arthasastra* of Kautilya, which is believed to have been written about 300 BC, there is a detailed and fascinating description of the use of spies in the criminal administration. Kautilya advised the King to have his spies controlled by reliable and capable ministers. It is possible that no modern CID in any country has ever been so highly organised as the system of espionage described by Kautilya.\textsuperscript{66}

The Maurya empire was truly a Police State. Police duties were performed by a large number of individuals of various categories including Government servants of numerous departments. *Dandaniti* propounded by Kautilya in *Arthasastra* was the science of dealing with the crimes and punishments. Later ‘Danda’ became the essence of the Government. The policing system of Kautilya was on two distinct lines i.e. civilian departments entrusted with police powers and a cadre of regular police officers. He had conferred police powers on almost all the departments, which had public dealing.\textsuperscript{67}

Following the break up of the Hindu empire, the Afghan and Mughal rules, who followed in quick succession, introduced their own concepts of police administration in India. On the existing structure of local responsibility for policing, they introduced Arabic feudalistic institution of ‘faujdar’ and the ‘Kotwal’. ‘Kotwal’, who being the chief of the city, had not only to maintain peace and order in the city but he was also incharge of the entire town. He was a Royal favourite because he was the head of the official spy organisations in the city. The Mughal faujdar was responsible for both revenue and police administration of his jurisdiction, and as such was the nearest parallel of the present day District Magistrate.\textsuperscript{68}

The period of British rule saw the emergence of centralised police force based on provinces and aided by the armed components of the same force. The permanent settlement which was introduced in parts of the country brought with it a system of police subordinates being in charge of small areas in the countryside. Warren Hastings was the first British statesman who made a serious attempt to institute a system of police in India.

\textsuperscript{65} Ibid.
\textsuperscript{66} Supra note 62 at 18-21
\textsuperscript{67} Supra note 45 at 84-85.
\textsuperscript{68} J.N. Sarkar, “Police System in Medieval India in Theory and Practice”, *The Indian Police Journal*, Delhi 22-28(1961).
Those police personnel who were found guilty of neglecting their duties were dismissed or fined\(^69\).

In 1843, Sir Charles Napier realised that only under a recognised organisation, the police could function properly and produce desired results and he took, as his model, the Royal Irish Constabulary. Napier’s system was based on two principles, firstly, the police must be completely separated from the military and they must be an independent body to assist the collectors in discharging their responsibilities for law and order but under their own officers. There was an Inspector General of Police for the entire territory, with superintendents in each district. The Superintendent was responsible to the Inspector General as well as Collector. This experiment was successful and its broad framework was used to recognise police administration. The main principles of Napier’s model were not altered even by the Police Commission of 1860, which designed the present force for India\(^70\). The concept of the Police role and performance underwent a significant change on 26 January, 1950. The Fundamental Rights and Directive Principles of the State Policy have made responsibilities of the police somewhat more onerous.

In the Inspector Generals of Police Conference in 1960 the following Model Code of Conduct for policemen was adopted\(^71\);

1. The police must bear faithful allegiance to the Constitution of India and respect and uphold the rights of the citizens as guaranteed by it.

2. The police is essentially a law-enforcing agency. They should not question the propriety or necessity of any duly enacted law. They should enforce the law firmly and impartially, without fear or favour, malice or vindictiveness.

3. The police should recognize and respect the limitations of their powers and functions. They should not usurp or even seem to usurp functions of the judiciary and sit in judgement on cases. Nor should they avenge individuals and punish the guilty.

4. In securing the observance of law or in maintaining order, the police should use the methods of persuasion, advice and warning. Should these fail, and the application of force become inevitable, only the absolute minimum force required in the circumstances should be used.

\(^69\) J.E. Colebrooke, *Supplement to Digest of Bengal Regulations and Law* 7, 13(1887).

\(^70\) *Supra* note 46.

5. Primary duty of the police is to prevent crime and disorder, and the police must recognize that the test of their efficiency is the absence of both and not the visible evidence of police action in dealing with them.

6. The police must recognize that they are members of the public, with the only difference that in the interest of the community and on its behalf they are employed to give full time attention to duties, which are normally incumbent on every citizen to perform.

7. The police should realize that the efficient performance of their duties will be dependent on the extent of ready cooperation they receive from the public. This, in turn, will depend on their ability to secure public approval of their conduct and actions and to earn and retain public respect and confidence. The extent to which they succeed in obtaining public cooperation will diminish proportionately the necessity of the use of physical force or compulsion in the discharge of their functions.

8. The police should be sympathetic and considerate to all people and should be constantly mindful of their welfare. They should always be ready to offer individual service and friendship and render necessary assistance to all without regard to their wealth and social standing.

9. The police shall always place duty before self, should remain calm and good humoured whatever be the danger or provocation and should be ready to sacrifice their lives in protecting those of others.

10. The police should always be courteous and well-mannered, they should be dependable and unattached, possess dignity and courage, and should cultivate character and the trust of the people.

11. Integrity of the highest order is the fundamental basis of the prestige of the police. Recognizing this, the police must keep their private lives scrupulously clean, develop self-restraint and be truthful and honest in thought and deed, in both personal and official life, so that the public may regard them as exemplary citizens.

12. The police should recognize that they can enhance their utility to the administration and the country only by maintaining a high standard of discipline, unstinted obedience to the superiors and loyalty to the force and by keeping themselves in a state of constant training and preparedness.
In England, Colonel John Woodford, the first Chief Constable of the Lancaster County Constabulary, which was formed in 1839, drew up 22 maxims to be strictly observed and borne in mind by the constables, the following are related to human rights issues:

- Constables are placed in authority to protect, not to oppress, the public.
- Never strike but in self-defence, nor treat a prisoner with more rigour than may be absolutely necessary to prevent escape.
- Treat with the utmost civility all classes of Her Majesty’s subjects, and cheerfully render assistance to all in need of it.

Maintenance of law and order and detection of crime have been the two traditional basic responsibilities of Police, before its inception as an organised institution. Prof R. Deb states, “If law represents the collective conscience of society, the policeman, its principle law enforcing agency, ought to be the staunchest protagonist, defender and keeper of that conscience. A policeman is an axis on which Rule of Law rests and rotates”.73

The National Police Commission further elaborates function of police in view of the preamble of Indian Constitution. Law enforcement by police should cover the following two basic functions74;

(i) Upholding the dignity of the individual by safeguarding his Constitutional and legal rights. Police secure this objective by enforcing laws relating to the protection of life, liberty and property of the people, and

(ii) Safeguarding the fabric of society and the unity and integrity of the nation. Police secure this objective by enforcing laws relatable to maintenance of public order.

**Police Custody**

Arrest of person leads to custody, which provides possible opportunity for commission of crime against the person in custody. Commission of crime by a public servant against the person arrested or detained person while in custody amounts to custodial crime. Custody commences on a person being arrested, the arrest may be legal or illegal, it may be formal or informal, it may be by word or action, whatever be the origin or category of the act of

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arrest, it has one very important consequence, it deprives the person arrested of his personal liberty from the moment onwards, he is totally under the control of the person arresting him. Arrest and custody are not synonymous terms. Custody may amount to arrest in certain circumstances but not in all circumstances. Arrest is a formal mode of taking a person in custody, but a person may be in the custody in other ways also.  

Arbitrary and informal arrest affected by police can be broadly categorized into three (i) Trial and Error Arrest; (ii) Taking into custody a person to teach him a lesson; and (iii) unnecessary harassment and detention of witnesses.

Taking person into custody in an informal way for questioning and interrogation until at last the police are able to find out and arrest the real criminals is called ‘Trial and Error Arrest’. These types of arrests are violations of the statutory provisions.

On the pretext of having committed the offence, suspects are taken into custody in an informal way, they are detained in an illegal way, questioned in depth and then are shown to have been arrested on record and produced before the courts of law only after establishing that he has committed the offence. Here everything appears to have been done as per law, but in actuality, there takes place violation of law. These kinds of informal arrest are made as a routine practice in almost all criminal cases.

According to the police standing orders in some States an informal arrest means “taking a person into custody by police without any legal formalities being followed”. Study of cases of persons who were tortured to death in police custody would prove that some of them were not involved in any crime at all and they were killed not during an interrogation but while using third degree methods. They were taken into custody by police for no violation of law, but in connection with pending enquiries, or during the police patrols, etc. because they questioned the authority or power of police to arrest them.

Depending upon situation custody may be called as ‘Direct Police Custody’ or ‘Indirect Police Custody’. Direct police custody means police custody of a person after arrest as per provisions of the Criminal Procedure Code. In Empress v Lester, the concept of indirect police custody has been made clear. An English woman under arrest on a charge of murder was taken in a tonga, from the place where the alleged offence was

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76 Dr. K.P. Singh, Human Rights and State Custody in India 46(2009).
77 Ibid.
79 (1895) 20 Bom 165.
committed to the principal town of the district. A European friend drove with her in the
tonga and a mounted policeman rode in front. In the course of journey, the policeman left
the tonga and went to a neighbouring village to procure a fresh horse, the tonga
meanwhile proceeding slowly along the road for some miles without any escort. In the
absence of the policeman, the accused made a communication to her friend with reference
to the alleged offence. At the trial it was proposed to ask what the accused had said, on
the ground that she was not then in custody and that Section 27 of Indian Evidence Act
did not apply. It was held that notwithstanding the temporary absence of the policeman,
the accused was still in custody, and the question could not be allowed.

A man offering to give information to police implicating himself, whether free or
on bail, may be deemed to have surrendered to police and should be considered to be in
police custody for the purpose of discovery under Section 27 of Evidence Act.

The apex Court in *Gurbaksh’s case*\(^{80}\), has clearly held that even a man released on
bail and giving information leading to the discovery of a fact can be deemed to be in
police custody with in the meaning of Section 27 of Evidence Act. In the light of the
decisions of the apex Court in *Gurbaksh Singh’s case*, If the word ‘custody’ connotes
some form of watch, restraint or lack of free will to depart, then a man under police
interrogation is certainly subjected to more of restraint than a man who comes voluntarily
to make a statement before the police.

When the question arose about custodial torture, a simple but comprehensive
definition of police custody needs to be adopted. Police custody is defined as custody
during the period when some limitation placed upon the liberty of the person and that
limitation must be imposed, either directly or indirectly, by the police. Madras High Court
in the case of *Roshan Beevi*\(^{81}\) held that it was immaterial whether or not the custodial
offences occur within the premises of a police station or chowki. What matters is control of
police over the victim. Police custody, thus, means placement of the victim with police
during any action, which resulted in loss of freedom of movement of the victim.

**What is Torture?**

Treating persons under pressure, both mental and physical, by the agents of law or the
State is a practice prevalent in all parts of the world and in fact, the system has its roots
dating back to the ancient times. In the first picture ever drawn of police, they are shown

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\(^{80}\) *Gurbaksh Singh v State of Punjab*, 1980 Cri LJ 1125 (SC)

\(^{81}\) *Roshan Beevi and Others v Joint Secretary to Govt. of Tamil Nadu*, 1984 (15) ELT 289 Mad.
administering third degree to a suspect. These drawings are in twelfth dynasty tombs (about 2000 BC) in Beni Hassan, Egypt and represent a man being beaten by a stick by one policeman, while his legs and arms are held by three others and a fifth officer took on supervising the proceedings.\(^{82}\)

Torture is the deliberate infliction of pain by one person on another in an attempt to break down the will of the victim. Because cultures vary, not all practices considered torture in one society will be considered in another. However, certain aspects of torture appear to be universal. It is generally acknowledged, for example, that the physiology of the human nervous system is the same for all people regardless of race, climate or culture. All human nervous system respond to beatings, electric shocks, prolonged hanging by the arms or feet, and the injection of drugs in similar ways.\(^{83}\)

Charles Franklin, in his famous exposition on the subject has observed that the term “third degree” originated in the United States. The Encyclopaedia of Social Sciences defines it as “the use of brutal method as an aid to criminal investigation” and adds that, “the third degree is usually charged in the United States, though similar complaints against the police are by no means rare in other countries.”\(^{84}\)

The above definition is not wide enough, for third degree practices involve more than physical brutality in order to extract or extort information or confession. The use of duress as well as physical force can be broadly categorised as ‘third degree’. Prolonged sessions of questioning, denial of food, drink or rest and the mere threat of violence, are third degree methods, as much as the use of force itself. The origin of term is somewhat disputed. Some say it is borrowed from the Russian Police who used severe physical violence on suspects who failed to respond to cross-examination or confrontation. Others say that it is an ironic reference to third degree in masonry, a dignity that is conferred with considerable ceremony understandably, this euphemism may have acquired significance, as in the case of third degree, the abuse of power on the victim is said to be so inflicted that it may not case of third degree, the abuse of power on the victim is said to be so inflicted that it may not be possible for a casual observer to see the pain or injury on the victim, similar to the work of a masonry expert qualified for the third degree as he is

\(^{82}\) Dr.S. Krishnamurthy, Human Rights Vol.1 47(2006).
\(^{84}\) Supra note 76 at 98.
expected to join bricks without leaving any marks of joining bricks visible to a cursory observation"85.

The Torture Commission of India, 1884 defines ‘Torture’ and quoted Dr. Johnson who said that “torture” was “pain by which guilt is punished or confession extorted”. It can be summed up that torture or third degree, “would clearly include any and every type of physical violence and further, it would also cover case of psychological/mental and other forms of harassment or perversion imposed on the person in custody or under the authority of the person inflicting it”86.

The Encyclopaedia American defines torture as “the infliction of severe physical pain upon a person to force him to act against his will or to punish him”, further, it adds that torture is an instinct known probably to all humans which has occurred in all ages in many civilizations, often being prescribed as a specific legal procedure. Torture, so called ‘third degree’, can also be termed as a sanction (though, not conceded at least in current times) inflicted on a person under physical custody of the perpetrators causing intense mental and physical suffering aimed at forcing the victim to do or say something against his will87.

Amnesty International defines torture as “the systematic and deliberate infliction of acute pain in any form by one person or another or on a third person in order to accomplish the purpose of the former against the will of the latter.”88 Using similar language, the World Medical Association defines torture as “the deliberate, systematic, or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority to force another person to yield information, to make a confession, or for any other reason”89.

In 1984, the United Nations adopted a Convention against Torture known as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention came into force on 26 June, 1987. Part I of the Convention defines torture as ‘Any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third

85 Supra note 4 at 64.
87 Supra note 76.
89 ‘Declaration of Tokyo’ by World Medical Association.
person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.\textsuperscript{90} It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

**Three Vital Elements in Definition of Torture**

**First**, it is the act of State official, torture by private individual is a domestic crime.

**Second**, there is a high threshold for an act to be considered torture, the severity of pain or suffering that is criminalised when considered a torture under the law is quite high. For some listening to the full twenty hours of Wagner’s complete Ring Opera Cycle is bliss, for others it is torture, but it unlikely that the law would view it as a criminal offence, in the ordinary case where a person chose to see the opera of his own free will. In short, not every discomfort brought upon a detainee in the course of legal detention is ‘torture’ – it is, in the terms of the convention “pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

**Third**, the pain and suffering that may be considered torture must be inflicted intentionally. Torture is commonly associated with the interrogation of detainees. In the context of an armed conflict, acts of violence, that take place during combat are typically not considered ‘torture’ when they happen before the ‘fog of war’ has lifted, while there are uncertainties about the size of the opposing force, its location and intentions. Once the dust of war has settled, acts of violence that are meant to cause serious pain and suffering to the opposition may come close to the definition of ‘torture’\textsuperscript{91}.

Elaine Scarry in her classic treatment of torture was correct in observing, that, ‘torture consists of a primary physical act, the infliction of pain, and a primary verbal act, the interrogation’. The first rarely occurs without the second. As is true of the present period, most historical episodes of torture, such as the inquisition, have inevitably included the element of interrogation; the pain is traditionally accompanied by ‘the question’\textsuperscript{92}.

The prime example, then, of torture is the interrogation process, in this relationship, one side has the power \textit{de facto} (in fact) or \textit{de jure} (under the authority of the law) – over the other person’s life, health, and liberty. It is in such situations, that torture,

\textsuperscript{90} ‘Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ adopted in 1984 by the United Nations General Assembly.

\textsuperscript{91} Available at: http://www.hearetz.com/hasen/spages/640957.html (visited on 28 June 2008).

especially when legally conducted, raises the most discomfort in our minds. The use of violence, in a premeditated fashion, against a detainee that is held captive and poses no immediate physical threat is very troubling, at last in a free and democratic society.\footnote{Ibid.}

In 1910, Major Rechard, the then President of the association of Chiefs of Police, USA who bought the phrase ‘third degree’ into police parlance to denote the physical force used on a suspect by the police to tell him the truth. Major Rechard clarified that first degree refers to legal arrest and custody. Second degree refers to illegal arrest and custody. Third degree refers to the physical force used on a suspect by the police to force him to tell the truth.\footnote{Ibid.}

Supreme Court of India defined the term ‘torture’ in the following words:

“It would clearly include any and every type of physical violence and further, it would also cover cases of psychological, mental and other forms of harassment or perversion imposed on the person in custody or under the authority of the person inflicting it.”\footnote{Collection of Malaber v Erimal Ebrahim Hajee, AIR 1957 SC 688 at 691.}

In Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 1984, a distinction is made between torture and inhumane treatment, albeit torture is a species of inhumane treatment. Such a distinction needs to be made. For one thing, some treatment, e.g. flogging, might be inhumane without being sufficiently extreme to count as torture. For another thing, some inhumane treatment does not involve physical suffering to any great extent, and is therefore not torture. Some forms of the infliction of mentally degrading treatment, e.g. causing a prisoner to pretend to have sex with an animal.\footnote{Available at: http://plato.stanford.edu/entries/torture/ (visited on 28 June 2008).}

UN Convention identifies four reasons for torture, namely (1) to obtain a confession; (2) to obtain information; (3) to punish; and (4) to coerce the sufferer or others to act in certain ways.

It seems that in general torture is undertaken for the purpose of breaking the will of victim. Consideration in favour of the proposition that breaking the victim’s will is a purpose central to the practice of torture is that achieving the purpose of breaking the victim’s will is very often a necessary condition for the achievement of the other four identified purposes. In case of interrogations torture of an enemy spy, for example, in order to obtain the desired information the torturer must first break the will of the victim. And when torture – as opposed to, for example, flogging as a form of corporal
punishment – is used as a form of punishment it typically has as a proximate, and in post constitutive, purpose to break the victim’s will. Hence torture as punishment does not consist – as do other forms of punishment – of a determinate set of specific, pre-determined and publicly known acts administered over a definite and limited time period\(^\text{97}\).

The other consideration is that torture involves substantially curtailing the victim’s autonomy. However, to substantially curtail someone’s autonomy is not necessarily to break his will. Consider the torture victim who holds out and refuses to confess or provide the information sought by the torturer. Nevertheless, a proximate logical endpoint of the process of curtailing the exercise of a person’s autonomy is the breaking of his will, at least for a time and in relation to certain matters. Torture is (a) the intentional infliction of extreme physical suffering on some non-consenting, defenceless person; (b) the intentional, substantial curtailment of the exercise of the person’s autonomy; and (c) in general, undertaken for the purpose of breaking the victim’s will\(^\text{98}\).

All of these definitions make explicit the essential features of torture. First, the infliction of torture requires at least two persons – the perpetrator and the victim. Second, the torturer has effective physical control over his or her victim. Third, although infliction of severe or acute physical pain and mental suffering is integral to the process of torture, the purpose of torture is to break the will of the victim and ultimately to destroy his or her humanity. Finally, torture usually entails purposeful, systematic activity. The torturer’s intent is, variously, to obtain information, a confession, or a recantation from the victim or a third party, to punish the victim, or to intimidate the victim or others\(^\text{99}\).

Distinctions are often made, however, as to the degree to which certain forms of abuse constitute torture specifically, as distinct from other forms of ‘ill-treatment’ or ‘cruel, degrading or inhumane treatment or punishment’. For example, that one blow to a detainee’s body should be considered ‘ill-treatment’, while continued beating for, say, 48 hours constitute ‘torture’. Similarly, solitary confinement or other isolation in itself is not generally regarded as a torture or ill-treatment under international law. However, Amnesty International argues that when courts and international organisations examine complaints of solitary confinement, they should take into account the age, sex and state of health of the prisoner as well as the length of such confinement and its known likely


\(^{98}\) Supra note 96.

physical or mental effects on the prisoner, and determinate their rulings accordingly. These distinctions remain purposely vague – at least in longer age adopted by the United Nations – in the hope that the scope of its application, particularly by Governments, will be “interpreted so as to extend the widest possible protection against abuses, whether physical or mental”100.

“Ill-treatment” is used synonymously with the more legally correct phrase “Cruel, inhuman, or degrading treatment or punishment” to describe practices that are also strictly prohibited by international law for example, involuntary confinement in a psychiatric hospital is not necessarily in itself torture. However, if such confinement includes the systematic infliction of severe physical pain or mental suffering, then such treatment is torture101.

Torture: Past and Present

Second to murder, torture is the most egregious violation of human rights one human being can inflict on another. Unfortunately, torture’s history is probably as long as that of murder. For centuries, torture was in many countries a part of the legal process, and it was not completely forbidden until 1808, when Napoleon’s Coded instruction criminelle ended secret juristic procedures102.

In ancient Greece, citizens could never be subjected to torture, but slaves and foreigners could be tortured under a wide range of circumstances. Not only could slaves be tortured in criminal cases, but they could also be tortured when serving as witnesses in civil suits between free men. Normally slaves were not allowed to testify in these suits, as they were noncitizens, but the use of torture was thought to lend credibility to the slave’s testimony, and made their testimony admissible. Little importance or moral objection seems to have been placed on the physical pain suffered by the slave103.

The Roman Republic and early Empire prohibited torture against citizens, except in the case of treason, but this changed in the late Roman Empire, as the number of Roman citizens grew and the category of citizens became divided into two classes. First class citizens could not be tortured except in cases of treason, but second class citizens could be tortured in criminal if the crime was serious and some evidence already existed to indicate guilt. In the early Roman Empire, State authorities also periodically tortured

100 Ibid.
101 Ibid.
102 Supra note 99 at 8.
Christians, whose refusal to worship the Emperor, was considered to be a type of treason. Pagans feared that the God would be angered by the Christians’ refusal to pay homage to them, and when natural disasters occurred, pagan authorities sometimes tortured and executed Christians as a way of appeasing the God\textsuperscript{104}.

Torture was rarely practiced in early medieval Europe and was generally only practiced against noncitizens groups, such as slaves and foreigners. In certain limited cases citizens could be tortured as well, primarily when there was strong evidence indicating that they had been guilty of treason. Torture was also occasionally used against citizens who were repeat criminals, or persons infamous for their poor moral character. In these cases, the citizen’s prior criminal record or bad reputation, combined with circumstantial evidence, indicated probable guilt and thus made torture permissible\textsuperscript{105}.

Beginning in the 12\textsuperscript{th} century, torture comes to be used more frequently on citizens, both for ordinary criminal offences and for the special crimes of heresy and witchcraft. As John Langbein (1977) has explained, the unusually high prevalence of torture in medieval Europe resulted in large part from the unusual characteristics of the medieval legal code, particularly its use of an exceptionally high standard of proof for medieval judges to find an accused party guilty, they needed to have either a confession or the testimony of two eyewitnesses to the crime. If there was much circumstantial evidence that indicated guilt, but no eyewitnesses or only one eyewitness, judges were not able to reach a finding of guilt if the accused party maintained his or her innocence. In these cases, judges would sometimes authorise torture to compel a confession. In medieval Europe, as in previous historical periods, a citizen accused of a criminal offence could only be tortured if other evidence made his or her guilt seem probable\textsuperscript{106}.

What strikes us most in considering the medieval tortures is not so much their diabolical barbarity, which it is indeed impossible to exaggerate, as the extraordinary variety, and what may be termed the artistic skill, they displayed. They represent a condition of thought in which men had pondered long and carefully on all the forms of suffering, had compared and combined the different kinds of torture, till they had become consummate masters of their art, had expanded on the subject all the resources of the utmost ingenuity and had pursued it with the ardour of passion. The system was matured

\textsuperscript{104} Garnsey, Social status and Legal Privilege in the Roman Empire 141-47 (1977).
\textsuperscript{105} Supra note 103.
\textsuperscript{106} Ibid.
under the medieval habit of thought, it was adopted by the inquisitors, and it received its
finishing touches from their ingenuity. Charles Franklin in his well documented treatise on the subject of ‘third degree’
has surveyed the police interrogations and has listed a staggering number of events and incidents, which makes one realize that the abuse of police power seems a more or less
universal malady.

The concept of ‘torture’ thus, traditionally had an air of authority imposing a penalty, as it were, for the crime committed. Historically, it was a ‘traditional’ method of
arriving at the truth of determining the responsibility for offences by means of eliciting confession or other information. Conversely, it was also intended to terrorize the concerned sections of the populace by sheer barbarity and cruelty of the punishment, as an effective deterrent.

The practice of torture remained legal during the early modern period, but its use in Europe slowly declined. European Governments started to ban torture during the 18th
century. At that time, reformers urged the abolition of torture on practical and moral
grounds, and in adopting their recommendations; Governments emphasized their progressivism and humanity.

Contemporary scholars have proposed several alternative explanations. John Longbein argues that torture was abolished during the 17th and 18th centuries because the standards of legal proof were relaxed to allow convictions without eye witness testimony or confessions. These changes in procedure made confessions unnecessary and thus made torture unnecessary as well. Then Lisa Silverman, states that torture was abandoned because a shift in cultural ideas about the value and meaning of pain deprived torture of its moral foundation. The third explanation, proposed by Michel Foucault, states that torture was abolished because the authorities found disciplining methods to be more effective than torture and corporal punishment in enforcing social control.

Although torture was virtually eliminated in Europe by the end of the nineteenth century the historical record is clear on one point, torture was widely used throughout the world in 20th century. This prevalence has continued until the present time. Amnesty International report on torture in the year of 2000 estimates that the Governments of over

\[107\] Ibid.
\[108\] Supra note 84.
\[109\] Ibid.
\[110\] Supra note 103.
132 countries use torture. While Government secrecy makes estimating exact levels of torture impossible, Amnesty International, Human Rights Watch, Freedom House, and the US Department of State have all released hundreds of reports on torture since these organisations began reporting on human right abuses in the 1970s.\(^{112}\)

Despite its prohibition under the Universal Declaration of Human Rights and the Geneva Conventions, torture remains a concomitant of armed conflicts. The French, for example, systematically tortured opponents during the eight year Algerian War which clearly indicates that all parties involved used it. Security forces in E I Savadar and Guatemala have routinely tortured captured guests and their sympathizers. In 1982, Indonesian troops in East Timor were reportedly issued a secret military manual permitting the use of torture against members of the East Timor Resistance Movement, Fretlin. The manual instructs soldiers to avoid the use of force in the presence of local witnesses during interrogation sessions so as not to arouse ‘the antipathy of the people’. The manual also warns soldiers not to photograph prisoners being stripped naked and tortured with electric shocks.\(^{113}\)

The practice of torture today is not only used during conventional wars, it is also sanctioned by some Governments, particularly military regimes, as a means of countering ‘subversion’. Security forces throughout the world often see their major role less of fighting conventional wars than as stopping the spread of insurgency or terrorism within their own countries.

Official sanctioned torture often emerges and is combined with an erosion of the rule of law. Constitutional guarantees are cast aside, including the process of *habeas corpus* and other legal safeguards designed to acknowledge detention and to protect these in official custody. Martial law allows Governments to shift trial of political detainees from civilian to military courts and to suspend all constitutional rights.\(^{114}\)

Today Governments that routinely use torture generally deny that they do so. One way Governments cover-up torture is by using sophisticated psychological and pharmacological techniques that produce intense pain but leave few overt signs of physical trauma. Another way Governments cover up torture is by making victims simply ‘disappear’.\(^{115}\)

\(^{113}\) *Supra* note 99 at 9-10.
\(^{115}\) *Ibid.*
An alarming aspect of contemporary torture is the emergence of military or police training programs that instruct security personnel in interrogation techniques that amount to torture. Torture trials held in Greece in the mid-1970s, for example, revealed the security personnel trained to torture under the military junta underwent extensive ideological and psychological conditioning—including beating and being beaten by fellow conscripts, to prepare them for the task. In Argentina, the Alfonsin Government has found extensive evidence of the training and modus operandi of torturers and executioners, known as ‘task forces’, who worked in hundreds of secret detention centres run by the military and police from 1976-1983. Serious charges that US advisors working in Brazil and Uruguay in the late 1960s for the office of Public Safety of the Agency for International Development (AID), has trained Brazilian and Uruguayan security personnel in ‘harsh interrogation techniques’ prompted the US Congress to terminate the agency’s Public Safety Program in 1975. Although AID officials denied that US advisors had even trained foreign policemen in ‘third-degree methods’ of interrogation, they did concede that students at the Agency’s International Police Academy in Washington, D.C. were taught such interrogation techniques as making ‘emotional appeals’, ‘exaggerating fears’ and giving psychological ‘jolts’.

Even to this day, crude abuse of authority or power by the guardians of law against those arrested and detained under their custody by them seems to be a prevalent malaise in almost all democracies where the Rule of Law, paradoxically is the dominant value. This appears so notwithstanding the need for the strict compliance of the mandated criminal procedures.

**Torture in India**

Experience is not greatly different from the pattern of as had transpired all over the globe. Though India is playing a vital role in the United Nations system and other world forums for the protection of human rights, the Supreme Court decisions reveal that the human rights of the persons in the custody of police continue to be violated, unabated even today. Most of the reports on human rights violations in police custody show that they have emanated from indigenous sources. Main focus of these reports is in torture,

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116 *Supra* note 103.
including rape and death in custody. The reports criticize practices that are blatantly unconstitutional\textsuperscript{117}.

The country faces an embarrassing situation, because human rights abuses have become common and a sense of hopelessness intruded our thought and reaction. Justice Krishna Iyer describes our human rights record as ‘teasing illusion and promise of unreality’\textsuperscript{118}.

There is persistent increase of human rights violations in police custody including rape, custodial violence and death in India. Very often, the suspects and witnesses are picked up in custody illegally by the police and tortured for a long time even without recording it in the general diary. They are tortured for the purpose of extracting confessions or for the recovery of case property or for securing information about the commission of crime irrespective of whether a crime has actually been committed or not.

Thus the worst violations of human rights of person occur during the course of investigation and interrogation when the police resort to third degree methods on the person in custody.

In his report to the United Nations Commission on Human Rights in April 2001\textsuperscript{119}, the UN Special Rapporteur on Torture, Sir Nigel Rodley made the following observations about the situation of torture in India: While the size and diversity of the country make it difficult to characterize the intensity of the problem all over, it certainly appears that there is a tradition of police brutality and arbitrariness in much of the country, the degree of brutality frequently being sufficiently unrestrained to amount to torture, often with fatal consequences. The brutality is sometimes linked with corruption and extortion and is often deployed in the service of local vested interests, be they economic or official. The use of excessive and indeed unprovoked and unjustified force is common, especially in response to protests demanding rights. The prosecution of those pursuing complaints against the police is not infrequent phenomenon ….. In general, while not absolute, the level of impunity among police and security forces seems sufficiently substantial as to conduct a general sense among such officials that their excesses, especially those committed in the line of duty, will at least be tolerated, if not encouraged\textsuperscript{120}.

\textsuperscript{118} \textit{Ibid}.
India has a record of flagrant violations of rights at every level. It is really unfortunate that, State, supposed to be the guardian and promoter of human rights becomes the prime violator. Both the Central and State Governments are still being condemned by the human rights activists and civil liberty organizations for the negligent attitude towards safeguarding the fundamental freedoms and human dignity. But undermining all these efforts, human rights violations are increasing day by day and liberty of the citizens are still being jeopardized by mounting incidents of State violence. Police has a long history of law-breaking. Its record of too little regard for human rights is not a thing of the past, it is flourishing now as even before 121.

Torture and violence have been identified with the police in India ever since the Vedic Age (2000-1400 B.C.). The ordeals of fire, water and single combat were used. In the Epic period (1400-1800 B.C.) torture was practiced on prisoners by the police. Torture in various forms was widely prevalent in various forms in the Age of Laws and Philosophy (800-320 B.C.) 122. As per the dictates of the ‘dandaniti’, torture was recommended as a major technique of obtaining confessions. The Mauryan states were autocratic police states and their functions were political, economic, social and at times religious, and it affected almost all the aspects of human life and allegedly infringed on the privacy of men from the time of conception to cremation 123.

Kautilya’s Arthashastra speaks about various kinds of torture such as burning of limbs, tearing by wild animals, tampling to death by elephants and bulls, cutting of limbs and mutilation, etc. Manu, the Law giver of this age emphasized the necessity of torture to protect the society from the hands of criminals. In the Arthashastra Chanakya mentioned espionage for collecting intelligence and torture for obtaining confessions. But being aware that even innocent persons may also be forced to confess under threat or use of torture he insisted on corroborative evidence. Incidentally, shaving of the head, something our police occasionally do even today is also prescribed in Arthashastra 124.

P.V. Kane in his ‘History of Dharamshastras’ has cited incidents replete with details of trial by ordeal, as imposed by following various gruesome methods as prescribed and commended by Dharamshastras, ‘Sita was not the first to undergo the fire ordeal, ordeal by fire and water is mentioned in the Rigveda. In the Arthaveda Vatsa is accused by his step brother of being the son of a low-caste woman, a Sudra, in fact. Vatsa protested and

121 Supra note 117 at10.
123 Supra note 119.
urged that he was a Brahmin and to prove the truth of what he asserted, he entered the fire and came out uncatched and unsinged. Chandogya Upanished speaks of an accused holding the heated head of an axe to prove his innocence. Bana is his Kadambari, speaks of ordeal by fire, water, balance and poison. Manu discussed them at length and attributed their occasional failure, in that a thief may not be burnt due to the Karma of his previous birth.\footnote{125}

From the works of Kalidas it appears that the administration of urban police department was not always satisfactory and the integrity of officials was questionable. They were experts in accepting bribes and many of them were alcohol addicts. Watchmen usually wondered about the town either on their routine rounds or in search of thieves. They kept watch on roads and highways with ‘Danda’ in their hands. Even ladies of suspicious activities were seized by them while on duty. Kalidasa records the existence of a band of frontier guards who often oppressed simple and innocent travellers. Persons with suspicious movements were occasionally menaced with torture by policemen. The police exhibited enormous cruelty to extort confession which sometimes proved fatal.\footnote{126}

The Buddhist period (B.C.320-300 A.D.) was an Age of great humanitarianism and the administration of justice had become correspondingly imbued with humanitarian ideals. Torture in any form was strictly forbidden and special favours were shown to prisoners who happened to be women, aged or who had many dependents. In the Gupta period (A.D. 320-500) if facts against a prisoner were not clearly established by evidence recourse was to be had to four kinds of ordeal, trial by ordeals was fairly common.\footnote{127}

With the invasion of India by Muslims created new situation where in the Muslim rulers or Sultans followed a policy of discrimination against the Hindus. In the Mohammadan period, the Shariat Law was applied to crimes, a thief’s hands are to be cut off, stoning the adulterer and adulteress to death, life for life, tooth for tooth, if blood money or any other form of compensation to the next of the kin or the sufferer himself was not acceptable. Under the Mughals, no criminal or civil code existed.\footnote{128} The Shariat law was in force. Torture to extort confession was widespread. The performance of magisterial function by the police Kotwal was an important feature, which was also later followed by the English East India Company. When the Emperor or the Subedar was not in residence, the capital was ruled by the Kotwal. All petty criminal cases were disposed

\footnote{125} Supra note 82 at 49.\footnote{126} Supra note 45 at 84-86.\footnote{127} Supra note 122.\footnote{128} Supra note 45.
of by him by a summary procedure. He had been vested with power to inflict torture. The Mughal being essentially an urban people, neglected the protection of villages. The police officials started exploiting the situation to their advantage and became notoriously corrupt and oppressive. They used this opportunity for their personal aggrandizement, mutual revenue or public plunder.\(^{129}\)

When the English East India Company assumed political responsibilities, there was no stability or peace in the country. Even in the presidency cities of Calcutta, Bombay and Madras, where Europeans were settled in considerable numbers, the police were very inefficient, and the dissatisfaction of the residents was frequently expressed.\(^{130}\) Extortion and operation was practised by all ranks of police officials.

The administration of police was hopelessly disorganized, mischievously corrupt and utterly inefficient. During the company period the combination of revenue, judicial and magisterial functions in one person resulted in tyranny, the collection of revenue was made through torture. The complaints became so numerous that on 9 September, 1854 the Governor in Council of fort St. George appointed a Commission “for the investigation of alleged cases of torture at Madras.” On 16 April 1855 the Torture Commission gave its valued observations and recommendations. Due to concentration of both the judicial and the executive powers in a single authority, perversions and abuse were natural in the day to day life of the common people, more so in the remote and inaccessible rural areas. Torture Commission received 1959 complaints, within a short span of only three months as the Government decided to stop receiving the complaints after a fixed cut-off date.\(^{131}\)

The Torture Commission covered complaints exclusively in relation to the Madras Presidency and Majority of the complaints were against the Revenue Officials though a sizeable number of complaints were made against the police as well.

During the period of 1861-1902 the British Government did not pay serious attention to the welfares of the police personnel, especially in the subordinate rank. As a result of law emoluments and absence of welfare amenities, they resorted to corrupt practices and misused their powers. The police was ill equipped and had acquired a bad name. In order to remove these defects and to reform the policies in regard to personnel administration, a thorough probe became necessary.\(^{132}\)

\(^{129}\) *Ibid.*

\(^{130}\) Supra note 62 at 23.

\(^{131}\) Supra note 124.

The Indian Police Commission (1901) revived one of the constraints of the Police Act of 1861 by amending the then Indian Evidence Act wherein confessions made to a police officer were not admissible as evidence. In addition to that, the Indian Penal Code introduced Sections 330 and 331 prescribing punishment for the offence of torture by the enforcement agencies. But the recommendation of the Police Commission to separate the revenue and police functions was not implemented. Numerous complaints were made before the Commission of “the Coarse and brutal way in which the police often treat crowds and individuals with whom they have to deal”. As a result people dread the police and ‘avoid having anything to do with the police’. The Commission referred to annoyance, vexation, extortion and oppression. People are harassed sometimes by being compelled to hang about the police officer for days, sometimes by having to accompany him from place to place, sometimes by attendance at the police station, sometimes by having satellites quarter on them for days, sometimes by threats of evil consequences to themselves or their friends if they did not fall with his view of the case, sometimes by invasion of their houses by low-caste people on the plea of searching for property, sometimes by unnecessary severe and degrading measures of restraint. The Officer-in-Charge of the police station discharges his duties with unnecessary severity and inflicts unnecessary annoyance and people are kept in wrongful confinement for days together. The Commission concluded: What wonder is it that the people are said to dread the police and to do all they can to avoid any connection with a police investigation? Deliberate association with the criminals in their gains, deliberately false charges against innocent persons on the ground of private spite or village faction, deliberate torture of suspected persons and other most flagrant abuses occur occasionally\textsuperscript{133}.

The Darogas were replaced by the Magistrates who were not interested in the village affairs in anyway nor did they listen to the common grievances of the rural population. The Torture Commission was of the opinion that the main object of the British rulers was to collect revenue with the police help. The police was merely an instrument in the hands of the District Officers to enforce the autocratic will of the officers\textsuperscript{134}.

Later on the administration system was changed with one officer for each unit of administration who was called a Collection Magistrate and was authorized to control all

\begin{footnotes}
\item[133] \textit{Supra} note 125 at 52.
\item[134] R.K. Bhardwaj, “The Role of Police Force and Spheres of Activities”, \textit{Indian Police Administration} 22 (1978).
\end{footnotes}
the administrative affairs including the police. The police was concerned to maintain law and order not for the good of the people or in public interest but to facilitate collection of revenues and keep the villagers under subjugation. The Superintendent of Police was made subordinate to the District Magistrate with the result that voices were raised against the dual system in the District. This discontentment against the revenue officers and the police officers continued for a petty long time without much change more or less on the usual patterns\textsuperscript{135}. 

The British bequeathed a concept of the rule of police. The people at large were put to almost inhuman atrocities and hardships at the hands of local administration principally through the agency of the British Police. The repression carried out during the Indian Political movement for independence, mainly through the agency of the police further trained the already tarnished image of the police in the public mind. In India the police become a monster machine with tentacles spreading in all the spheres of social and non-social, political and non-political work of the State\textsuperscript{136}.

During the period from 1914-1946 some hurried increase in the force was sanctioned. Fractional Indianization of the superior police service had started, but still over 90% of the officers were not of Indian origin. During the period there was no substantial improvement in prevention and detection of crime and rendering satisfactory criminal justice to the peoples for entire recourses and energies of the police were channelized to safeguard the British Imperial interest in India in the last bid to perpetuate their regime. All sorts of atrocities, which the institution of Darogas had committed on the people in the past, were allowed to be committed in innumerable places by the Europeans as well as native police officials in order to suppress the national uprising for freedom of India. In these nefarious acts, the British Government not only incited the police, but also actuated them to behave in this atrocious fashion for ensuring its own safety, stability and consolidation of regime in this sub-continent\textsuperscript{137}.

During the period of Indian independence struggle, the police force considered a terror and was abhorrent to the people. During this period the repressive attitude of the British Imperialism was adopted through the police agency to crush serious political movements. This was to some extent natural that the loyalty of the police to the Government of that time was unimpeachable due to restrictive regulations and disciplined

\textsuperscript{135} \textit{Ibid.}
\textsuperscript{137} \textit{Supra} note 64at 65.
organizations. Pandit Jawaharlal Nehru has given a graphic description of what happened to him when he demonstrated against the Simon Commission Lucknow. He said, “I felt pain all over my body and great fatigue. Almost every part of me seemed to ache and I was covered with confused wounds and marks of lathis. But, fortunately, I was not injured in any vital spot. Govind Ballabh Pant, who stood by me, offered a much bigger target, being six feet tall, and the injuries he received then have resulted in a painful and persistent malady which prevented him for a long time from straightening his back or leading an active life”\textsuperscript{138}.

The police had clashed not only with hosts of congressmen and other patriots actively participating in non-violent anti-government activities; they also attacked innocent people who had no role in the struggle for freedom movement\textsuperscript{139}.

The police culture that existed in the pre-independence period was allowed to continue even after India became independent. The Police Act of 1861 instituted the system of police which is still in force in India. There was no sincere or wholehearted attempt on the part of the Governments to redefine the role and responsibilities of the police until the National Police Commission was appointed in 1977. Thus the police sub-culture that was in existence during the British regime continued to operate and in that culture torture of citizens and calling of bad names against them were permitted and tolerated by the authorities and the general public alike\textsuperscript{140}.

The police force was not conceived as a service organization. It was designed as a force to be used against the community but at the same time, it was so constituted and controlled as not to overwhelm its creators\textsuperscript{141}. The British used the police to mercilessly violate all human rights and as a result, all police commissions appointed in India to study the police functioning have been unanimous in their views that the police in India have shown no regard to human rights\textsuperscript{142}.

Almost all the State Commissions\textsuperscript{143} have commended adversely on police behaviour. The conclusion part of Punjab Police Commission reads:

“The Commission is of the opinion that most of the investigating officers have no training in the use of scientific methods of investigation, and the only method of investigation known to them is that of third degree. Third degree methods are used by

\textsuperscript{138} Supra note 134 at 68.
\textsuperscript{139} Giriraj Shah, \textit{The Indian Police – A retrospect} 134 (1992).
\textsuperscript{140} Supra note 136 at 92.
\textsuperscript{141} P.D. Sharma, \textit{Indian Police – A Development Approach} 13 (1977).
\textsuperscript{142} Supra note 134.
\textsuperscript{143} Supra note 124 at 36.
them in one form or the other to extract confessions or else such statements as make the use of Section 27 of the Indian Evidence Act possible. The Central Investigation Agency, a special branch of this organization charged with the duty of investigation of heinous crimes has acquired notoriety in the public for third degree methods and is styled as ‘butcher-khana’. Instances of people dying as a result of torture by the police are not wanting and this is a big blot on the organization”\(^\text{144}\).

Before the Maharashtra Police Commission a number of witnesses stated that the police use third degree methods and policemen, particularly in the lower ranks, are often rude and discourteous to the public and that the police force is an instrument of oppression\(^\text{145}\). The Tamil Naidu Police Commission further found that “when a person goes to police station with a complaint no one listens to him willingly or patiently” and if the complainant insists on being heard immediately he receives a shower of abuses in ‘vile language’ and is threatened with some sort of action against himself. The Delhi Police Commission also stated, “Indeed, almost all the public witnesses who appeared before the Commission have testified that the police have no public image at all, people do not trust them because they are unreliable and corrupt”\(^\text{146}\). The Third All India Police Commission in its fourth Report discussed the use of third degree methods in the investigation of offences. It expressed regret that several police officers ‘under pressure of work and driven by a desire to achieve quick result’, use force on witnesses, suspects and accused. The Commission voiced concern at the inclination of some of the supervisory ranks to countenance this practice in a bid to achieve quick results by short-cut methods\(^\text{147}\).

Police have established several centres where inhuman and sadistic tortures are inflicted. Corruption has been rampant and the interrogation officers have been extorting money for the release of innocent persons. The persons killed due to torture were said be disposed of in clandestine manner and most of them were thrown in the water ways or fields. These arrests were made by police without First Information Report and therefore, treated as deaths due to mutual rivalling of militant groups. In other cases, no doubt, First Information Report is registered but a concocted story is made that in course of recovery


\(^{145}\) Supra note 124 at 36.

\(^{146}\) Ibid.

\(^{147}\) Ibid.
of arms, when detainee was being carried by the police party, he ran away or killed by militants when they tried to liberate him.\textsuperscript{148}

The police faced with a peculiar problem in Punjab during days of militancy. In the State of Punjab torture has been institutionalized in the form of group of policemen who excel in method of interrogation called criminal interrogation agency headed by an official of Inspector’s rank. The ‘cause of arrest’ is not on the record and if the victim dies during interrogation the agency denies ever having seen him. If he confesses or helps the interrogators recovering anything connected with the crime, he is transferred to a proper police station and a case is registered against him. If he refuses to confess or looks innocent after inflicting torture, he is just let off, often at right, and told to be wise enough not to complain to anyone. People never complain to anyone due to fear of police torture.\textsuperscript{149}

Various laws have been passed by the Union Government and the State Governments enabling the Government to detain any person so as to prevent him acting against the security or defence of the country. The Constitution (Fifty-ninth Amendment) Act, 1988, which was passed by Parliament and assented to by the President, raised serious implications not only for Punjab but also for the future of democracy in India.\textsuperscript{150} The introduction of Article 359-A seeking to amend Article 352 in relation to Punjab by providing that an emergency could be declared for an additional reason, namely when ‘the integrity of India is threatened by internal disturbance in the whole or any part of the territory of Punjab’ was considered denial of right to life in Punjab. The obvious object if the amendment was considered to bring the people of Punjab under emergency regulations forthwith. Article 358 was amended and the Government acquired the right to suspend Article 19 including the right to life.\textsuperscript{151} Much worse was the amendment in Article 359 which enabled the Government to suspend Article 21 as and when proclamation of emergency is made in respect of Punjab or in any part of its territory. The total effect of the suspension of this Article could be, that a person can be deprived of his life and liberty without any sanction of law, he could be harassed, detained, tortured and


\textsuperscript{149} \textit{Ibid.}

\textsuperscript{150} Article 359-A, repealed by the Constitution (Sixty-third) Amendment Act, 1989.

even killed, and he or his family members would have not right to approach the Court for relief\textsuperscript{152}.

**Victims of Torture**

Generally the victims of torture belong to weaker sections of the society. The poor, the down trodden and the ignorant with little or no political or financial power, are unable to protect their interests. The affluent members of the society are generally not subjected to torture as the police is afraid of their resources as such resourceful persons immediately approach higher authorities and Courts to regain their freedom. Members of the weaker or poorer sections of the society are arrested informally and kept in police custody for days together without any entry of such arrests in the police records. During the informal detention they are subjected to torture, which at times results in death. In the event of death in custody, the body of the deceased is disposed of stealthily or thrown to a public place making out a case of suicide or accident.

**Dalits and Adivasis**

Many Indians are members of the scheduled castes (castes which are recognized by the Constitution as oppressed) or members of the scheduled tribes, known as ‘adivasis’\textsuperscript{153}. ‘Dalits and adivasis’ are the poorest and most vulnerable groups of people in India. Their special vulnerability has been recognized as requiring extra protection, Article 17 of Indian Constitution, forbids untouchability and its practice in any form and in the Untouchability Offences Act, 1955 (which was retitled as Civil Rights Protection Act in 1976). The Scheduled Casts and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 makes it a criminal offence for legal and administrative proceedings to be deliberately abused by police or security forces in case involving members of scheduled casts and tribes. It allows States to establish special courts to try such cases and provides for legal aid and for compensation for victims of abuse\textsuperscript{154}. There are allegations that police officers have their own caste and gender biases and often behave towards dalits and adivasis in a discriminatory way\textsuperscript{155}.

In June, 1990\textsuperscript{156} a public outcry forced the Maharashtra State Government to suspend several police officers and to order a police inquiry into the killing of a teenage

\textsuperscript{152} B.P. Singh Sehgal, *Human Rights in India* 87 (1995).
\textsuperscript{153} Torture, Custodial Violence and Disappearances, *Indian Institute of Human Rights, New Delhi*, 4 E-I.
\textsuperscript{154} Ibid.
\textsuperscript{155} Ibid. note 120.
\textsuperscript{156} *Supra* note 153 at 11-12.
nomadic tribal youth and the torture of his pregnant sister. The boy, Namdeo Atab was reportedly beaten to death for trying to prevent seven police officers abducting and raping his sister, Parvati. According to Parvati, “they were all drunk and were dressed in ordinary clothes. They ordered me to come with them. I refused. Then they began abusing me and two of them lifted me by my hands and feet”. When Namdeo insisted on accompanying his sister, he was also thrown into their jeep. Both were taken to police station. There, according to Parvati, some of the seven policemen tied Namdeo to a table and began whipping him with their belts and hitting him with their lathis. Meanwhile, the rest caught hold of me. One of them gripped my hair and stripped apart my blouse, while another disrobed me and stood on my thighs………… They kept abusing me and also kicked me on the stomach”. However, the Maharashtra Chief Minister rejected calls for a judicial inquiry into the case.

The atrocities against the adivasis by the police in connection with the eviction operation at the Muthanga Wild Life Sanctuary have shocked the conscience of the people. The incidents resulted in the death of a tribal activist named Jogi. Injured adivasi were left unattended inside the forest, denied treatment and harassed in Government hospitals, kept in illegal confinement, treated inhumanly and not produced before Court in accordance with law. Adivasi Leader, C.K. Janu was severely beaten while in the custody of police. Even though her injured condition was seen by the people through television and press, it is highly unfortunate that our judiciary and the CBI, which probed into the matter, did not take her complaint seriously.

The social organizations, human rights activists, association of dalits and backward classes and NGOs are not taking much initiative to prepare them mentally, socially and politically to resist all tortures and exploitations. The provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 must be made use of against the tortures. More economic assistance as well as legal assistance should be provided to the victims157.

Women

Women in general, says Varahamihira (A.D. 500), are pure and blameless, they deserve the highest honour and respect. This attitude towards women is reflected in the placing of

various crimes in order of priority or gravity of the National Crime Records Bureau. Thus rape has been placed just after murder in the crime list.\textsuperscript{158}

Women face a lot of difficulties in all stages of criminal justice process, especially while in police custody. At the time of their arrest, the women suffer from lack of knowledge of their basic rights. It is most unfortunate that women, in particular the poor persons hailing from lower social segments, are victims of custodial crimes at the hands of the police.\textsuperscript{159}

Though procedural safeguards do exist, they are totally disregarded in matters like arrest, custody, transfer, search etc. These cause great hardships to women.

Article 15 of the Constitution permits the State to make special provisions for women. The Code of Criminal Procedure, 1973 provides for a number of checks to curb custodial atrocity on women. Code of Criminal Procedure makes it mandatory that a female shall be searched only by another female.\textsuperscript{160} The Code also provides that no male person under the age of fifteen years or women shall be required by a police officer to attend at any place other than and the place in which such person resides for taking their statements in the course of investigations.\textsuperscript{161} But the practice is always otherwise. Provisions are always violated and women are harassed in the name of search and statements.

Rape of women in custody is the worst crime against women. Rape is a humiliating and the most shocking of the crimes against human conscience and morality. It has a lasting effect on the mental and physical health of the victim and brutalizes the tortured. The lives of the victims of custodial crime of rape or molestation are ruined. They are stigmatized in the society for no fault of theirs and looked down upon. The society does not treat them with sympathy nor extend them a helping hand.\textsuperscript{162} In State of Punjab v Gurmit Singh, the Court observed, “we must remember that a rapist not only violates the victim’s privacy and personal integrity, but inevitably causes serious psychological as well as physical harm. Rape is not merely a physical assault – it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim; a rapist degrades the very soul of the helpless female”.

\textsuperscript{159} V R Krishna Iyer, “Are not women human even when in custody”, Human Rights Year Book 127(2000).
\textsuperscript{160} Section 51(2) of the Code of Criminal Procedure, 1973.
\textsuperscript{161} Section 160(1) of the Code of Criminal Procedure, 1973.
\textsuperscript{162} Dipangshu Chakraborty, Atrocities on Indian Women 143 (1999).
\textsuperscript{163} AIR 1996 SC 1393.
In September 2000, a 19 year old mute girl had been raped by two police constables in a police van while travelling between the sub-divisional judicial magistrate’s courts at Alipore to Presidency Jail in Kolkata\(^{164}\).

In a small town of Bihar, once a brother and sister arrived by train and it was past midnight. They had to go to a relative’s place. On the way, a police patrol stopped the rickshaw. They enquired about girl. The boy said that she was his sister. The Cops would not believe it. They were taken to the police station. They did not rape the girl in front of her brother but raped her in an adjacent room from where he could hear all her cries and groans all night. In the morning both were kicked out. The boy had since then lost his mental balance\(^{165}\).

A study by the People’s Union for Democratic Rights reveals that 10 cases of custodial rape in which investigation was pursued by the police there was no conviction to all in fact seven cases were closed by filing the final report\(^{166}\).

It is very difficult to calculate the nature and extent of human rights violations of women in custody due to several reasons. Firstly, due to social stigma which the victims of social offences like rape, molestation etc. may have to suffer. Secondly, the parents do not want to stress the issue to the extreme because they are anxious to the future of the victim; thirdly, to avoid publicity being given by media. Insufficient strength of women police can also be considered as a reason for not reporting human rights violations against women to the police.

The worst form of human rights violation is inflicted on sex workers by the guardians of the law. By and large, the cops regard the prostitutes as the scum of the society. Electric shocks on the breasts of prostitutes, vaginal assaults with lathis and chilli paste and humiliation by stripping them naked in front of their children are samples of the police brutalities on sex workers brought to the notice of the National Commission for Women\(^{167}\). In the eyes of police, a prostitute has no rights. She can be used at anytime free of cost. They know that a voice in protest would never be raised and nobody from the society would come to their legal help.

In a sensational Baghpat episode a married woman of a respectable family was alleged to have been made to walk nude through the town after her husband and another

\(^{164}\) Supra note 155.
\(^{165}\) Supra note 122.
\(^{166}\) Supra note 149 at 134-135.
\(^{167}\) Mohini Giri, Chairperson of the National Commission for Women, in meeting in Hyderabad, Madras and Delhi, *Indian Express (Madras)*, 11 September 1996.
man were killed by the policemen just because the deceased had protested to the teasing of the woman by a police officer\textsuperscript{168}.

The report of the UN Special Rapporteur underlines the necessity for States to prosecute those accused of abusing women while in detention and to hold them accountable for their actions\textsuperscript{169}.

\textbf{Children}

It is recognized all over the world that children living in formidable conditions need special attention. Protection of the rights of children is a major concern for the people all over the world. Attempts towards protecting these rights began from the time of the very inception of the League of Nations, formed after the First World War. The need to fulfil the particular needs of children, has been recognized by the Geneva Declaration on the Rights of Child, 1924, the Declaration of the Rights of Child adopted by the General Assembly on 20 November, 1959, the Universal Declaration of Human Rights,1948 and the International Covenant of Civil and Political Rights,1966.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice is complimentary to the International Covenant on Civil and Political Rights. They are provided as a model for Member States in the treatment and handling of young persons in conflict with the law, within the framework of a juvenile justice system. Article 37 of the Convention\textsuperscript{170} on the Rights of Child requires the State parties to ensure the following: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age.

India has passed a number of legislations from the Apprentices Act, 1850 to the Juvenile Justice (Care and Protection of Children) Act, 2000 in order to give special care, protection, welfare, training and rehabilitation of children who are in conflict with law or

\textsuperscript{168} \textit{Supra} note 122 at 29.
\textsuperscript{169} 67\textsuperscript{th} General Assembly Third Committee on 23 October 2012.
neglected. Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 lays down that police personnel having the custody of children shall not cause any kind of physical or mental suffering. However, there is lot of allegations against the police that they treat children with cruelty to the extent of abusing them.

A committee appointed by the Conference of the Inspectors General of Police as early as in 1954 found that the Indian Police had not been able to handle the problems of juvenile delinquency properly and the same situation is still continuing. The police generally view street children as vagrants and criminals. While the children are sometimes involved in petty theft, drug-trafficking, prostitution and other criminal activities; the police tend to assume that whenever a crime is committed on the street, street children are either involved themselves or know the culprit.

Police have financial incentives to resort to violence against children. Many children report that they were beaten on the street because the police wanted their money. The prospect of being sent to a remand home, the police station or jail, coupled with the threat of brutal treatment, creates a level of fear and intimidation that forces children or in some cases, their families, to pay the police or suffer the consequences.

**Politicians and Human Rights Activists**

There is also a pattern of torture and ill-treatment in punitive reprisals for resistance to police or military operations. In the pre-independence period, the politicians and freedom fighters suffered mental as well as physical humiliation from the police. The biggest bane of the Indian Police System is its politicization for partisan purpose. Now a days the police are being used by the ruling party as a weapon to oppress their political opponents. In many instances, they interfere and often encourage and threaten the police to use force against their political opponents. For example, the Calcutta based Telegraph reported in February 1990 the villagers from Rampur village, near Balagarh in West Bengal, said they had been tortured due to pressure from local members of the state ruling party, the Communist Party of India. Apparently, a CPI (M) activist had lodged a false complaint of assault against a village leader who was member of the rival Congress (I) party. The police then took a number of villagers, including several women, into custody and reportedly tortured them at Balagarh Police Station. One victim was 12 year

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171 *Supra* note 136.
173 *Ibid*.
old girl, Sabina Yasmeen. Another victim alleged, “The police beat me up black and blue saying I must not dare to support Congress again”175.

Any non-compliance to the political ‘Instructions’ as to how to deal with people in custody results in transfer of police officers to most inconvenient and remote areas or difficult places or they may be penalized in some other ways.

Activists and human rights defenders are also the targets of police. Many progressive thinkers are even brutally killed by the police. Journalists who expose human rights violations have also been detained and ill-treated176. In Andhra Pradesh Civil Liberties Committee has been consistently bringing to light the violation of law by the police and atrocities against women, but it is really astonishing to note that the committee itself had become the target of police repression177.

In Bihar editor of ‘Awaaz’ a Hindi newspaper named Bramha Deo Singh Sharma, was dragged out from his house by police and arrested. This occurred after he wrote an editorial condemning the police administration for failing to punish police officers who had publicly stripped and beaten unconscious, Maleti Manijihan, a tribal teenage girl. He was released following protests by journalists and others178.

**Weaker Sections of the Community**

Though State is presumed to be the protector and promoter of human rights, in actual practice it appears to be the biggest violator. It is evident that the approach of the police to each individual is greatly dependent on one’s social status. A man who looks poor is always ill treated by the police. Majority of people think that third degree methods are used against those who are not influential, poor and those belonging to backward classes. Filthy language is used against them and third degree treatment is given commonly even in public179.

Justice, B.N. Srikrishan Commission on the Mumbai riots observed: Police Officers and men, particularly at the junior level, appeared to have an in-built bias against the Muslims which was evident in their treatment of the suspected Muslims and Muslim victims of riots. The treatment given was harsh and brutal……. 180.

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175 Supra note 153 at 11.
178 Supra note 122.
180 Supra note 11 at 15.
In the survey organized by the Bureau of Police Research and Development, it has been found that corruption in police service is rampant and also that the police is ineffective in their actions. The police behave with discourtesy to the persons in their custody as well as complainants and the reactions of the police, more often than not, are determined by the income and educational qualifications of such persons\textsuperscript{181}.

In 1980, Arun Shourie investigated 45 deaths in police custody in seven States. He found that “the victims are invariably poor. Several of them are hauled in on no formal charges at all. Even in the case of persons who are arrested, in an overwhelmingly large number of cases they are all accused of petty offences”. In some cases investigated by him, he observed that the bodies were so badly mauled that it was not possible to hide the crime committed. The explanation for these deaths were, ‘snake bite’, ‘heart failure on the way to the hospital’, ‘sudden illness’, etc. Some were said to have died of mysterious reasons, while the rest committed suicide. The accounts of suicide given have not varied even now – by hanging inside the lock-up by using a lungi or a belt; jumping out of a building or in front of a bus or such ludicrous and unbelievable account\textsuperscript{182}.

The National Police Commission has also very pertinently observed that the weak and the poor are the worst sufferers of custodial crimes\textsuperscript{183}. It is well known that all criminals and suspects are not treated alike by the police. They do not resort to third degree methods against affluent people, but it is used against the people belonging to weaker section of the community for whom none may dare to question the activities of police.

\textbf{Causative Factors for Custodial Torture}

Many factors can be attributed to the causes of the custodial torture such as, psychological, infrastructural and administrative reasons. Corruption in police service, inadequate and improper training, lack of human rights awareness, non-use of and non-availability of scientific means of investigation and interrogation, absence of effective system of collection of evidence, lack of necessary infrastructure in police stations, work load of police personnel, understaffing in the police stations, insufficient judicial vigilance and other supervisory mechanism, delay in criminal justice system etc. have also contributed infliction of torture by the police on persons in their custody.

\textsuperscript{181} Supra note 149 at 17.
\textsuperscript{183} 7\textsuperscript{th} Report of National Police Commission 2 (1981).
**Police Sub-Culture**

The police sub-culture that existed in the pre-independence period was allowed to continue even after India became independent. During the ‘British Raj’ the police was used as an aggressive agency to create a servant – master relationship between the governor and the governed. The police, as an instrument of the executive, were an instrument of oppression by the rulers, the people were meant to be oppressed, suppressed and tortured.

The basic law, the Police Act, 1861 remained practically unchanged and there was no sincere or whole hearted attempt on the part of the Governments to redefine the role and responsibilities of the police until quite recently. Thus the police sub-culture that was in existence during the British regime continued to operate and in that culture, torture of citizens was permitted and tolerated by the authorities and the general public alike. Even though Article 2 of the Code of Conduct for the Law Enforcement Officers provides for the protection and respect of human rights by the police, it is unfortunate that the Indian Police has still not woken up to the fact that it is a civilian force which is part of the civil society. The Indian Police still continue to be basically colonial in character, organization and operation\(^{184}\).

**Familial Cause**

The family conditions of police personnel assume some importance in identifying their undesirable patterns of behaviour. Now the people in the administrative level are recognizing that the spouse and other members of the family are significant elements in the success or failure in a law enforcement career. Marital and family strife, discard and perpetuating unresolved emotional problems affect the development, motivation, productivity and effectiveness of police personnel in many ways\(^{185}\).

A police officer is supposed to be the protector of law and order in a society for this, his conduct and career play a vital role. Many of them are addicted to intoxicating liquors. The pathetic side of it is that it adversely affects their conduct and career both in their service field and domestic life. It leads to quarrels, immorality, lack of consideration and understanding etc. and ultimately changing them to a delinquent police.

The society maintains a view that police are generally rude, discourteous, brutal and corrupt. Inspite of his ostensible function as protector, the policeman meets only


those who do not love him. His children are teased in School because of the very reason that their father is in the police force. He feels hated and persecuted in all walks of life and finds himself alienated from society. The alienated policeman may be brutal, inactive and corruptible.

**Social Causes**
In India, the police contact with the citizens takes police only in crisis situations and the police have a Dracula like image in rural and urban areas. The use of force is related to the social distance between the police and the members of the public. Amongst many other factors advanced to explain the main reasons for the brutal behaviour patterns of policemen, it is also indicated that the society in general is highly cruel, exploitative and torture ridden. The public also try to justify the police atrocities by saying that “we get the police we deserve”.

Prof. Baxi is also of the view that if the essence of torture is to apply severe mental or physical pain, then instances and illustrations of impositions of physical or mental pain can be seen practically in all areas of our life in family, the use of corporal punishment in the field of education, social structure, agrarian economy, industrial relations ethnic and minority group relations, bureaucracy or health, power politics and organized crimes, all of which the police are expected to combat. Even though these arguments can at best rationalize the issue to state that police is also one of the groups which uses unjustified force in its dealings, they fail to impress us, as two wrongs do not make a right. It is not wise to advise the society to have a fresh starting point on the subject of protection of human dignity. However, police can set an example for the rest of our social groups.

**Public Approval**
People still believe in the retributive theory containing the principle of ‘an eye for an eye’ and ‘a tooth for a tooth’. Therefore, the society approves the use of violence on suspects ‘to get the truth’. Usually the complainants, especially those in property offences and the offences relating to human body, request the police to use force or violence against the suspect.

Julio Ribeiro, a former Director General of Punjab Police wrote: The tragedy is that third degree methods used by our police have the sanction of society. It is not only

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187 *Supra* note 184 at 139.
188 *Id.* at 138.
the victim of thefts or other crimes who insist on the recovery of their property through
the use of force and not only the senior officers who apply pressure on their subordinates
to maintain good statistical records, but also the people at large, particularly the middle
class who expect the police to practice, violence because of their sub-conscious fear of
lumpen elements. When the police are ‘soft’ on a criminal, allegations of corruption are
immediately made and people suspect the worst complicity between them and the
criminals189.

In the ‘Bhagalpur Blindings’, where the policemen allegedly poured acid into the
eyes of the undertrials, got the support of the local people who even took out a procession
to show their support. An opinion study conducted by the “Illustrated Weekly of India”
using a ‘general sample’ of 863 and opinion leaders’ sample by 280 spread over Bombay,
Calcutta, Madras, Gwalior, Patna and Bhagalpur found that in Bhagalpur more than two
third of the general sample and 60% of the opinion leaders sample were of the opinion
that the blindings were justifiable, 73% of the outside Bihar sample felt that it would have
been okay if instead of blinding them the police had beaten up the lot190.

Even enlightened members of the society expect police to take ‘tough action’ not
sanctioned by law against anti-social elements who are escaping conviction and getting
away scot-free because of the malfunctioning of criminal justice system191.

Performance Pressure
Policemen are always under pressure to produce results. Moreover, policemen have got
the trouble on both the sides. If they fail to extract information and put the case before the
court properly with irrebuttable evidence they would be charged with the allegation by the
superiors that they have not pursued the case diligently. But at the same time if they use
the third degree methods for extracting information there is a cat-call of ‘police brutality’,
Sutherland pointed out “police officers are in a difficult position, for in order to do their
work efficiently they must use more power than the law seeks to give them. They are
responsible for maintaining the order and for catching and arresting people suspecting of
violating the criminal law but they cannot meet these responsibilities under the power and
authority granted to them. At the same time, if they exceed their authority when dealing
with certain suspects and offenders they are subject to severe public criticism. They can

190 R.K. Ray, “Custodial Crime Causes and Remedies” – a paper published in *CBI Bulletin* 17-20 (July,
1996).
safely exceed the legal authority only when dealing with people who are not powerful politically and who are therefore, relatively helpless\textsuperscript{192}.

**Economic Causes**

It would be really pathetic if police who are supposed to protect the person and property of an individual become corrupted. Comparing to other fields, corruption in police service is detrimental to the society. Corruption in police has a two fold effect, on the one hand it leads emergence of more crimes as the corrupt police officers would make the enforcement of law lenient, and on the other hand it affects the human rights of the persons in custody, as many people are giving bribery to police to inflict both physical and mental torture on the persons in police custody. More over bribery also enhances the tendency of the police officers to book more persons in cases and to bargain for money either not to inflict torture or to release them without being charged\textsuperscript{193}. Police personnel are usually bribed for behaving decently, avoiding humiliation, for not inflicting torture, providing food, granting bail etc.\textsuperscript{194}

The average policeman compares himself with the men in various professions, in politics, in business, in the large corporations, in the banks, insurance companies, and in railways and realizes that his income is not so better when compared to the nature and quantum of work done by him. So he seeks unlawful means to satisfy his needs ignoring the dignity of the persons who are dealing with them\textsuperscript{195}.

Inadequate working conditions of the lower wings of police force are also responsible for many of the excesses. Suggestions for reforming police, like those proposed by National Police Commission since 1979 have been consistently ignored by the successive Central and State Governments. The meagre payment, lack of promotion possibilities, inadequate training and pressure to produce high conviction rate breed a tremendous degree of frustration, discontentment and helplessness in the police force\textsuperscript{196}. This situation has led to many police revolts. The pathetic and adverse working conditions of the police are reflected in the words of a leader of an unofficial Police Association:

“We are the lowest paid among the Government employees, misused by politicians and officials alike, run around for twenty four hours and earn finally not two

\textsuperscript{192} Supra note 125 at 229-231.
\textsuperscript{193} Supra note 63 at 115.
\textsuperscript{195} Supra note 63.
\textsuperscript{196} J.C.Madan, *Indian Police* 11(1980).
square meals but a bad name from the public”

Multiplication of laws, particularly unenforceable laws are also responsible for the widespread corruption and the consequent human rights violations by the police.

**Lack of Supervision of Lock Ups**

There are international standards which cast an obligation upon the State to take steps for the inspection and supervision of the police lock-ups to ensure the human rights of the detenues. European Committee for Prevention of Torture provides that regular and unexpected visits by the prosecuting or judicial authorities to places where persons are detained by the police can have a significant effect in terms of preventing ill-treatment.

Protection of Human Rights Act also empowers the commission to visit the police lock-ups to study their living conditions. However these obligations are not complied with.

**Lack of Judicial Vigilance**

In India there is a lack of prompt remedy in cases where the right to life and the freedom from torture are violated. In most of the cases of custodial death by police, there has been no decisive action to investigate the allegations promptly and properly. Though inquiries by Magistrates in cases of allegations of custodial deaths is mandatory in law, the lack of it in many cases is significant and a matter of deep concern.

The relevant statutory provision is silent on the subject as to whether the inquiry is to be conducted by the Executive or Judicial Magistrates. In practice, most inquiries are conducted by Executive Magistrates, who have their own limitation in collecting evidence and examining the officers who are accused of torture.

The National Police Commission, while denouncing the use of force against individuals in custody as grossly unlawful and despicable, noticed that the percentage of substantial complaints of police torture is highest in judicial inquiries, lower in magisterial inquiries, and lowest in inquiries conducted by other agencies including departmental authorities. The Commission therefore suggested that a mandatory judicial inquiry should be held in all cases of alleged rape of a woman in police custody.

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Unfortunately, this sensible recommendation has not been implemented yet and judicial inquiries are exceptionally held\textsuperscript{201}.

When investigation cannot be completed within the period of 24 hours as per Section 57 of Code of Criminal Procedure, the police may approach the Magistrate for remanding the arrested person. If the Magistrate is satisfied that there are sufficient grounds for putting him in custody he may pass an order to this effect, but it is noticed that the Magistrates and even the Chief Judicial Magistrates are treating the matter very casually\textsuperscript{202}.

In \textit{State of Gujarat v Swami Amar Jyoti Shyam}, the Gujarat High Court observed that the general rule is that the arrested person must be produced before the Magistrate within 24 hours of arrest. It enables the Magistrate to keep check over the police investigation and its scrupulous observance by the police is vital for the protection of human dignity and human rights of the arrested person. But there are several instances which reveal that it is not adhered to\textsuperscript{203}.

\textbf{Political Interference}

Unnecessary interference by the politicians in the enforcement of law is really an obstacle to the police to act impartially and treat all men equal under the law. Political pressure has, over the years, encouraged resort to improper methods, torture and even killings. Policemen are often unable to fight the culture that envelops them\textsuperscript{204}.

Successive ruling parties have regarded police as their strong arm rather than as an independent force governed by the law and the constitution. Political interference by party functionaries and legislators has contributed to create a nexus between political power and police power rather than impartial law enforcement machinery\textsuperscript{205}.

The ruling party uses the police to punish their opponents. If it suits to protect its own political image the party in power does not hesitate to withdraw its support and sacrifice the officer. In India, political intrigues are capable of demoralizing police just by effecting transfer of police officers from strategic posts\textsuperscript{206}.

\textsuperscript{202}In Re Nagendra Nath Chakravarti v Unknown, ILR 51 Cal.402 at 412.
\textsuperscript{203}1989 CrilJ 501 (Guj.).
\textsuperscript{204}Supra note 194 at 88.
\textsuperscript{205}Sahay, “Report on Custodial Crimes”. \textit{The Hindustan Times (Delhi)}, 8 October 1993.
\textsuperscript{206}Supra note 63 at 88.
The police are forced to achieve instant results in certain cases as per the interests of political bosses. This will result in the police torturing of suspects and the political opponents.

**The Existing Problems in Statutory Provisions and Judicial System**

In a few cases of torture policemen responsible for such atrocities had been awarded with suitable punishment while in other cases responsible officers could not be prosecuted for lack of evidence. As a matter of fact, in case of custodial torture and violence it is difficult to produce evidence as the witnesses in presence of whom such unlawful acts are perpetrated are in most cases policemen who out of a sense of brotherhood refrain from giving evidence against fellow policemen responsible for such case.

The Supreme Court\(^\text{207}\) was anxious that police officers who commit atrocities on persons in police custody do not escape punishment for want of evidence. Law Commission has suggested the insertion of the following Section in Indian Evidence Act\(^\text{208}\);

> "114 B (1) In a prosecution (of a Police Officer) for an offence constituted by an act alleged to have caused bodily injury to a person, if there is evidence that the injury was caused during the period when that person was in the custody of the police, the court may presume that the injury was caused by the police officer having custody of that person during that period.

> (2) The court, in deciding whether or not it should draw a presumption under subsection (1) shall have regard to all the relevant circumstances, including in particular (a) the period of custody, (b) any statement made by the victim as to how the injuries were received, being a statement admissible in evidence and (c) the evidence of any medical practitioner who might have examined the victim’s statement or attempted to record it.”

The Supreme Court in *Prakash Singh’s*\(^\text{209}\) case laid down guidelines to regulate the police in the discharge of their duties. In passing these directives the Court put on record the deep rooted problems of politicization, lack of accountability mechanisms and systemic weaknesses that have resulted in poor all round performance and fomented present public dissatisfaction with policing.

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\(^{207}\) D.K. Basu v State of West Bengal, AIR1997 SC 610.


Only eleven states have enacted fresh Police Acts to replace the old legislation and two States have amended their earlier laws on the subject to accommodate the new directives of the Court\footnote{Commonwealth Human Rights Initiatives, ‘Seven Steps to Police Reform’ September 2010.}

**Defects in Investigation System**

Investigation is a science and hence the police have to be given training in scientific investigation, which in our country is unfortunately not provided to them. Modern scientific investigation does not rely on the torture. In most police stations the investigating officers have not been given training of modern scientific investigation, they have no equipment and modern facilities for this purpose and hence there is no such thing as scientific investigation in our country\footnote{Santosh Paul, “Right to Counsel”, (1997) 8 SCC (Jour) 14 at 39.}.

There are two reasons for the lack of knowledge. The police in our country have been found to be having interest only in detection of cases by any means. Scientific study of investigation, prosecution, trial and correction has never been an area of interest for the police. Another reason is that in our existing system of police investigation, Ducking Theory (This theory says that a police officer learns to swim while he is on the job.) seems to dominate the thinking of the higher-ups in police\footnote{Supra note 194 at 147-148.}

The first-hand investigation officers who are dealing with the scene of crime in almost all cases are head constables or other junior level officers who are illiterates in the scientific methods and styles of investigation. They either destroy the evidence or contaminate the scene of occurrence. Without collecting the valuable piece of evidence they leave the scene after making a ‘scene’ at the scene of occurrence. Usually these attempts do not find the goal. Later when the need or outcry for further investigation, either by the higher-ups in the police hierarchy or by specialized agencies arises, nothing more remains for scientific investigation.

Then the doors open before those who investigate further on the matter is nothing but the short cut of third degree and violation of human rights of the suspects, witnesses or their relatives. Thus the department itself is showing a deaf ear attitude towards the need of scientific methods of investigation and indirectly encourages the human rights violations\footnote{Donald R. Taft, *Criminology* 363-369(1942).}.  

\begin{footnotesize}
\footnote{\textsuperscript{210} Commonwealth Human Rights Initiatives, ‘Seven Steps to Police Reform’ September 2010.}
\footnote{\textsuperscript{211} Santosh Paul, “Right to Counsel”, (1997) 8 SCC (Jour) 14 at 39.}
\footnote{\textsuperscript{212} Supra note 194 at 147-148.}
\footnote{\textsuperscript{213} Donald R. Taft, *Criminology* 363-369(1942).}
\end{footnotesize}
Ill informed and ill-equipped police are a curse to the present system of criminal justice administration.

**Defects in Recruitment and Training**

System of recruitment of police during the pre-independence period continued even after independence. Police constable was recruited merely on the basis of physical test, as they were strong enough to fight the hooligans of the community and to face the mobs. In a dynamic society it would not be advisable to have a police service of gymnasts\(^{214}\).

Generally the under-qualified head constables are preparing records which the prosecutors, judges and defence counsels are forced to rely on. In the present system of recruitment in police service, most of the persons have to bribe for getting an appointment. In turn, to get back the money that they have invested, they take advantage of illegitimate opportunities\(^{215}\).

Another reason advanced for the deteriorating standards of police in India is lack of training. In the past more physical than mental training was imparted to police. But in the present conditions, a systematic training for the police officers in proper methods of investigation is required\(^{216}\).

The investigation police officers are prone to the interrogation of the people who are assembled in the place of occurrence instead of going into the collection of valuable material evidence. This is mainly because of their lack of training in the methods of the collection of evidence\(^{217}\).

After the Amnesty’s report on custodial deaths in India, the Government of India sent an advisory letter to the all State Governments urging them to ensure that custodial violence is eradicated. But so far no state has taken steps for establishing a school for training for eradication of custodial violence\(^{218}\).

In our system, policemen receive very poor legal training and hence their legal knowledge is not upto the mark. Under the present training programme the duration of the training for legal awareness is very limited.

As a result of this, the police have become unaware of the human rights and civil liberties provided by law to every civilian and they have a notion that human rights are a subject which is quite alien to the present legal system. Moreover, quite a large number of

\(^{216}\) Ibid.
\(^{217}\) Ibid.
\(^{218}\) Ibid.
cases investigated by the police result into acquittal of the accused due to the lack of knowledge in procedural and legal formalities\textsuperscript{219}.

The Indian Police is functioning even today as per the provisions under the Police Act, 1861, which do not contain any provision for the protection of human rights of persons in police custody.

**Stress and Strain**

Police constables have duties like prevention of crime, detectives of crime, maintenance of public order, protection of life and property etc. In the modern police system the primary importance is being given to law and order. Unfortunately with his preoccupation with law and order duties, a police officer is not able to concentrate on other important aspect of his work and gradually his approach to crime work tends to be unsystematic and unscientific\textsuperscript{220}.

For conducting the interrogation successfully, the interrogator has to find out sufficient time. The subordinate police officers are usually subjected to great pressure from their department superiors, press and general public to produce quick results. Due to lack of professional expertise and sufficient time, the investigation officer has to resort to custodial violence in order to obtain quick results. Often there are orders from senior officers that a breakthrough is needed within 24 hours.

Improper conduct and rude behaviour are often the results of unsatisfactory working and mental conditions. Policemen work at the station house for 15-16 hours a day in constant discomfort, with no weekly off holiday, no leave, no family quarters, and these conditions generate stress and strain and manifest themselves in frayed temper. Even they are denied overtime allowance for the extra hours of duty\textsuperscript{221}.

There are no employers in the world who can insist that their employees should not be given religious or national holidays. Enjoyment of Sundays and National Holidays is human right and is accepted all over the world. It is only in the Indian Police system that policemen are not allowed to have religious or national holidays\textsuperscript{222}.

National Police Commission also found that an investigating officer is able to devote only 37 days a year in the investigational work and rest of the time is spent for other duties such as maintenance of public order, VIP bandobust, petition enquiries, court


\textsuperscript{220} Supra note 28 at 237.

\textsuperscript{221} Speech by Mr. Kirti Samant, National Police Commission : It Relevance Today, Papers and Discussions at Seminar organized by Nehru Centre and Hindustan Andolan on 19 April 1997 at 25.

\textsuperscript{222} Supra note 63 at 114.
attendance etc. Under these circumstances we cannot expect a police officer to act in accordance with the provisions of international standards of human rights.\textsuperscript{223}

The Padmanabhaiah Committee\textsuperscript{224} concluded that, “A large section of people strongly believe that the police cannot deliver and cannot be effective if it does not use strong-arm methods against the criminals and anti-social elements of society. And these people include India’s political class, the bureaucracy, and large sections of the upper and middle class. In their own perception, the policemen feel that they are doing a job. They resort to torture for ‘Professional Objectives’ – to extract information or confession in order to solve a case, in order to recover stolen property or weapons of offence, in order to unearth other crimes that an arrested hardened criminal may have committed, in order to ascertain the whereabouts of other criminals and in order to locate hide outs……. Another ‘Professional objective’ of the police after follows, which is, to terminate the criminality of a professional criminal who could be a burglar, a robber or a gangster or even a terrorist…… by maiming him by making him lore, rendering him incapable of further crime.”

\section*{Methods of Torture}

The methods may be classified into\textsuperscript{225}:

\begin{itemize}
  \item Physical
  \item Psychological
  \item Sexual
\end{itemize}

\subsection*{Physical Torture}

The methods of physical torture are those which inflicted pain, discomfort and disfunction in different parts of the body. Killing the victim is not the aim of torture. The torturers also take care that the torture inflicted upon the victim remains undetected by an ordinary examination.

\textbf{Types of physical torture:} It can be further classified under four categories:

\begin{enumerate}
  \item Physical tortures that cause extreme pain:
\end{enumerate}

\textsuperscript{223} \textit{Ibid.}

\textsuperscript{224} Police Reform Committee presided over by former Home Secretary Mr. K. Padambhiah appointed by the Government of India in January 2000 which presented its report and recommendations to the Government in October, 2000.

\textsuperscript{225} \textit{Supra} note 28.
- **Beating** – It is the most common type of physical torture. Beating becomes severe when it is carried out with sticks, cables, whips, iron rods, chains, belts etc. Likewise punching, kicking etc. are considered severe beating.

- **Falanga** – Falanga is the name for severe beating on the sole of feet. This type of torture has immediate and long term consequences, sometimes making a person disabled for several years.

- **Finger Torture** – Pencil or a similar object is put in between two fingers, which are then pressed hard together against the object. Similarly fingers may be twisted and pins pricked into finger, nails may be pulled out.

- **Suspension** – The victim is suspended by his legs or arms or by his/her hair. It is usually combined with other forms like falanga, electric shock, heat, cold etc. One of the special types of suspension is called ‘Palestinian Suspension’.

- **Cold Torture** – The victim is subjected to varying degree of cold in different ways. He/she has to be forced to sleep on damp floor, may be forced to stay naked in extremely cold weather.

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

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

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

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

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

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

- **Tied Down** – One is tied down in many ways and kept in this position for several hours to days. Kicks, blows etc. may be added to this torture.
• **Lower Legs Torture** – Legs are tied together, a folded blanket is placed over the shins and a round wooden log/iron rod is rolled up and down with a load of one or two persons cause excruciation pain but leaves no signs.

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

2. **Physical Tortures that Cause Fear of Immediate Death**

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

• **Sham Exhaustion**- Victim is blindfolded and made to stand next to a wall. The victim is told that he/she is going to be run over by a motor vehicle. The vehicle is driven in full speed towards the victim and comes to a sudden halt close to the victim.

3. **Physical Torture that Causes Extreme Exhaustion**

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

• **Forced Labour**- This is very common type of physical torture reported by torture victims. Bhutan and also in Nepal, the victim is made to work hard without food and water and wages to clear forests, break stones and dig ditches etc.

4. **Physical torture that Causes Disfiguring, Mutilation and Permanent Disability**

• **Mutilation**: Chopping off ears, nose, fingers etc.

• **Disfiguration**: Acid or any other corrosive thrown on the face or other parts of the body.

**Psychological Torture**

Psychological Methods of torture can be classified into the following categories.

1. **Deprivation**

• ‘**Sensory Deprivation**’ of light and sound disorients a victim with reference to time and place.
• ‘Perceptual Deprivation’ produces disorientation and confusion. It is created by frequent transfers while blindfolded, very frequent disturbances of sleep denial of letters, media and calendars.

• ‘Social Deprivation’ includes not being allowed to see visitors, perform religious rituals and solitary confinement.

• ‘Deprivation of Basic Needs’ includes denial of food, water, toilet facilities, sleep, medical facilities and clothes, space, immobilization, restraint and total darkness.

2. **Coercion and compulsion** – Signing of false statements, disclosure of information forced to commit blasphemous acts, forced to violate social taboos, forced to witness torture of other victims, forced to torture other victims, etc.

3. **Threats** – Threats directed towards the family members, kin, friends, humiliating remarks and actions.

**Sexual Torture**

It can be divided further into these parts[^226]:

1. **Sexual Torture Using Instruments:**
   - Penetration of vagina or anus by batons, rods, bottles etc.
   - Suspension of weights on penis and scrotum.
   - Electric shock to sexual organs.
   - Mutilation of breast, genital organ etc.

2. **Sexual Torture without Using Instruments:**
   - Verbal sexual abuse and humiliation.
   - Being undressed in front of others.
   - Rape in the presence of kin.
   - Rape by person of same sex.
   - Squeezing of breasts.
   - Forced masturbation.
   - Forced witness of sexual torture of others.
   - Forced to perform sexual torture on others.
   - Forced pregnancy.
   - Being photographed in humiliating positions and situations.

The Torture Commission of India, 1884\textsuperscript{227} described methods of torture:-

“Among the principal tortures in vogue in police cases we find the following: twisting a rope tightly around the entire arm or leg so as to impede circulation, lifting up by the moustache, suspending by arms while tied behind the back, searing with hot iron, placing scratching injects such as the carpenter beetle, on the navel, scrotum and other sensitive parts, dipping in wells and rivers, till the person is half suffocated, squeezing the testicles, beating with sticks, prevention of sleep, nipping the flesh with pincers, putting pepper or red chillies in the eyes or introducing in the private parts of man and women, these cruelties occasionally preserved until death sooner or later ”.

Some of the types and forms of torture, used by the armed forces in Nagaland as described by the villagers then were (a) Execution in public (b) Mass raping (c) Deforming sex organs (d) Mutilating limbs and body (e) Electric shocks (f) Puncturing eyes (g) Hanging people upside-down (h) Putting people in smoke filled rooms (i) Burning down of villages and crops (j) Concentration camps and (k) forced starvation and labour etc.\textsuperscript{228}.

The techniques and methods, employed by the Army and Paramilitary forces in Manipur were allegedly of the following kinds:

(i) Beating with cane sticks and wooden objects all over the body and on the soles of feet, leading to blood oozing from mouths and noses. Roller treatment is also a common practice.

(ii) Suspension of the body upside down and hanging it in public.

(iii) Giving successive electric shocks leading to unconsciousness.

(iv) Keeping blind folded and tied to pillars for many days.

(v) Mock executions.

(vi) Hammering and battering which leads to fractures of arms and limbs.

(vii) Burning of various parts of the body – chest, back, private parts etc.\textsuperscript{229}.

Almost all the police commissions and research studies so far show that our police\textsuperscript{230}

1. employ unfair methods to elicit confession.

2. are not ashamed of stealing things form the scene of crime.

3. concoct evidence in criminal cases.

\textsuperscript{227} Supra note 86.
\textsuperscript{228} N. Sanjaba, Human Rights – Human Rights violation in Nagaland 174(1944).
\textsuperscript{229} Id. at 186-87.
\textsuperscript{230} Supra note 136 at 76.
4. tell lies in courts.
5. tutor witnesses and produce false witnesses.
6. use third degree methods in police lock-ups.
7. resort to unfair means to extort money from the people
8. detain the arrested persons beyond the statutorily permitted twenty-four hours in their custody.
9. refuse the arrested persons to get in touch with legal practitioners of their choice
10. hush up complaints against them,
11. make informal, illegal and arbiter arrest,
12. harass the family members of the arrested.
13. commit custodial torture, rape and murder,
14. speak filthy language and indecent expression,
15. humiliate people and degrade persons in custody
16. make the detainees to starve and make them to resort to an undesirable option of committing suicide.
17. handcuff the arrested and chain them in lock-ups or parade them in public in chains when they are taken to courts etc.

Beating is a most common method of torture and ill-treatment used by State officials today. Reports of beating have been received from more than 150 countries – virtually all the countries from which torture and ill-treatment have been reported electric shocks (more than 40 countries), rape and sexual abuse in custody (more than 30 countries), suffocation (more than 30 countries), mock execution or threat of death (more than 50 countries) and prolonged solitary confinement (more than 50 countries). Other methods included submersion in water, stubbing out of cigarettes on the body, being tied to the back of a car and dragged behind it, sleep deprivation and sensory deprivation231.

India has dubious distinction of being counted among 20 countries in the world where evidence of illegal political killing by the Government forces or officially sanctioned death squads were reported.

Amnesty Report alleges frightful violations; the most persistent allegations of torture of political prisoners have come from Punjab. Prisoners have reported being beaten while suspended from the ceiling with their hands tied behind their backs and, in

some cases being given electrical shocks. They have claimed to have been beaten all over, including on the soles of the feet, and that they had their legs stretched wide apart and chillies struck up the arms\textsuperscript{232}.

Kapoor Commission\textsuperscript{233} appointed by the Government of Haryana to conduct an enquiry about the excesses of the police observed:

“There are references in the fiction relating to the medieval ottoman empire of Bastinado torture being inflicted by the authorities on the helpless victims but it cannot be conceived that this form of torture would be indulged in by the Indian Police in the Post-independence period”.

Wickersham Commission\textsuperscript{234} held, “Third degree brutalizes the police, hardens the prisoner against society and lowers the esteem in which the administration of justice is held by the public”.

In many areas of India beating are reported as torture or ill-treatment because they are so much a part of the arrest and detention process. This is particularly time in areas such as Jammu and Kashmir where detainees are routinely subjected to torture but rarely make complaints for fear of reprisal and because they feel lucky to be alive.

Third degree methods are routinely used by the police to extort confession. Poverty enhances the course and legal process adds injustice to the injury\textsuperscript{235}.

Law certainly expects an investigator to unravel the mysteries of a sordid crime but it does not approve of his turning into another criminal in order to solve a crime.\textsuperscript{236}

\textsuperscript{233} Statesman (New Delhi), 22 October1977.
\textsuperscript{235} M.P. Singh, Police Problems and Dilemmas in India 297(1989).
\textsuperscript{236} Supra note 73 at 69.