CHAPTER V

HUMAN RIGHTS VIOLATIONS BY POLICE

The Police and Rule of law:

Human dignity is the core of the Law of Human rights. The basic effort of the international community to evolve an effective and universal system for the promotion and protection of the dignity of the person is the foundation of it.

The international community has recognized the inherent dignity of the person as the foundation of freedom, justice, and peace. The inherent dignity of the person is the source from which right to life, liberty and the security of the person besides other Human rights, are derived and therefore no person shall be subjected to arbitrary arrest and detention.\(^1\)

The law relating to arrest and detention and its implementation is a challenge to the protection of the dignity of the person. However human dignity cannot be protected in a society confronted with crimes escalating every year. The law relating to arrest and detention is an important component of the criminal justice system and it is one of the first steps in the investigating process and takes the first place of potential abuse and misuse.

\(^1\) Article 9 of Universal Declaration Of Human rights, Article 9 of ICCPR, Article 5 of European Convention on Human right
The arrest and detention of a person has the quality to affect the dignity of the person and the personal liberty of the person is at grave risk. It has the potential to override the presumption of innocence to which every human being is entitled. There should be a balance between the collective interest of the society and the personal liberty of the individual. The law relating to the arrest and detention is in the wrong hands. This important factor has the potential to destroy the balance between the personal liberty of the citizens and the collective interest of the society. There is no doubt that these laws are the essential weapons in the fight against crime but it is subjected to arbitrariness, abuse and misuse. In this context of the personal liberty and collective interest of the society, the law relating to the arrest and detention with reference to the violation of the Human rights has to be analysed and assessed.

The law enforcing agency i.e., the Police are vested with the power to arrest and detain a person, within the framework of law. This agency has got two wings viz., (1) Investigating the crime, (2) The prevention of crime. Police is considered as the integral part of the society and the society depends on this force to secure the peace and order towards the same. Mr.R.DEB in his book states that "Policeman is the axis on which the rule of law rotates, it is he who enforces the law, maintains the public order, keeps the lawless elements in check, brings the offender to book and by his constant vigil, preserves the cohesive and solidarity of the social structure."²

The role of police is closely linked with the personal liberty of the citizens in the unity and integrity of the society. The principles of the establishment of organised Police force for the existence of such force in a free, permissive, and participatory democracy has been summarised as follows.\(^3\)

I. To uphold and protect the Human rights

II. To contribute towards liberty, equality and fraternity in human affairs

III. To help, to uphold the rule of law

IV. Towards winning faith of the public

V. To investigate, detect and activate the prosecution of offenders

VI. To strengthen the security of persons and property

VII. To curb public disorder

VIII. To help those who are in distress

The role of Police, in the light of the above principles, justifies the power of arrest and detention exercised by the police. But the reality reveals that the police are found committing number of violations of Human rights, Some of them are as follows:

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\(^3\) N.V.PARANJAPEE, Criminology and Penology (1993), p.174
1) **Arbitrary arrest and illegal detention in custody** – Violation of Article 22 of Indian constitution and section 56, 57, 58 and 76 of Cr.P.C.

2) Arbitrary and unlawful searches.

3) **Arbitrary and unlawful arrests** - Violation of Article 22 of Indian Constitution – Sec 41, 55 and 151 of Cr.P.C.

4) Denying the right to be informed of the grounds of arrest immediately after the arrest – Violation of Article 22 of Indian constitution and section 50, 55 and 76 of Cr.P.C.

5) Denying the right to consult a lawyer of his own choice – Violation of Article 22(1) of Indian Constitution and section 303 of Cr.P.C.

6) Denying the right of the arrested person not to be subject to unnecessary restraint – Violation of section 49 of Cr.P.C.

7) Denying the right to be produced before a Magistrate within 24 hours of his arrest – violation of Article 22(1) of Indian Constitution and section 57 and 76 of Cr.P.C.

8) Denying the right to not to be a witness against himself – Violation of Article 23 of Indian Constitution.

9) Denying the right to have him medically examined – Violation of Section 54 of Cr.P.C.
These violations occur despite constitutional guarantees under Article 22(1), (2), and statutory safeguards given to the protection of personal liberty. These violations are instances directly affecting the liberty, life, and dignity of the person.

The idea or purpose of arrest of a person is to restrain, the movement of the person connected with the crime, to prevent tampering and destroying of evidence and to protect the injured or the family of victims from being subjected to adverse reactions at the hands of the persons connected with the crime and to prevent such persons from evading the process of law and abscond.

It is the power exercised by the police officer over another person with the intention of confining or restraining his movement that limits the exercise of his personal liberty.

The appreciation of the purpose of exercising the power of arrest and detention would reduce the incidence of violations since any abuse or misuse at this stage of arrest and detention will create a chain reaction and the quality of the investigation which would possibly lead to the actual offender going free, causing a serious blow for the social fabric and not only that an innocent person would be dealt with wrong cause but also his Human rights would be severely violated.
The Chapter V of the code of Criminal procedure 1973 has vested the police with wide discretionary powers particularly under Sec 41,107 and 110 and 151. These are considered as the main factors of the violation of Human rights by the Law enforcing agency, such that the use of words “concerned”, “reasonable suspicion exist”, “If it appears to such officer”, These words of sections create the atmosphere of exercise of discretion and corruption affecting the personal liberty and dignity of the person arrested or detained. It is Submitted that these words have to be replaced with the appropriate words like “Connected to the crime”, “Prima facie evidence” considering the persons to be arrested or detained This would restrict the scope of the discretionary power of the police to reduce the abuse and misuse of the power.

On the other hand, the professionalisation and reliance on scientific methods of investigations and proper training in the context of Human Rights, dignity of the person and personal liberty in particular have to be introduced into the police organisation.

All the power vested with the Police are to be in par with the guarantees and safeguards of International Standards as suggested in the Article 9 of the Universal Declaration Of Human Rights and Article 9(1) to (4) of the ICCPR
The Supreme Court in Jogindar Kumar Vs State of Uttar Pradesh made certain codes to be adhered by the police and subsequently in D.K Basu's case has propounded the 11 commandments as a guidelines for police; provides the scope of reducing the instances of abuse and misuse of the power of arrest and detention exercised by the police.

A detailed study of the following reveals the violation of Human rights by the police and the discretionary powers provided with them.

**PROCESS OF INVESTIGATION**

In the Cr. P.C. the word "Investigation" has been defined in section 2(h) as, "All the proceedings under the code of Criminal Procedure (Cr.P.C) and for the collection of evidence conducted by the police officer or by any other person (other than a Magistrate) who is authorised by a Magistrate on his behalf".

The Apex Court has held that the investigation generally consists of the following steps

1) Proceeding to the Spot

2) Ascertainment of the facts & circumstances of Law

3) Discovery and arrest of the suspected offender

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4 AIR 1994 SC 1349
5 D.K. Basu Vs State of West Bengal AIR 1997 SC 610
4) Collection of evidence

5) Examination of various persons including the accused to record statements

6) Search & seizure

From the above principles it is clearly understood that the powers conferred on the police is vast; if not properly vested in safe hands, it would be misused and abused by them, as it is happening now.

From this point of investigation, starts the violation of Human rights. The police force took the sections of Cr.P.C and other acts in to their hands and played games, showing their supremacy by misusing and abusing the Law towards the public.

In India, where there are no defense investigations; (such as private official as in USA) it becomes a sacred duty of the police to find out the truth by honest and straightforward investigations. Sometimes the machinery of the Criminal Law comes as a handy weapon to the police to wreak the vengeance on the enemy.

Mack and Somasundaram JJ rightly pointed out in remudamma mulla reddy

\[^{6} P261,39,JILI(1997)\]
\[^{7} 1954Cr.LJ67(Mad) P 26\]
"The investigating officer i.e., the Police, are primarily the guardians of the liberty of the innocent persons. A heavy responsibility revolves on them of seeing that the innocent persons are not charged on irresponsible or false implications. This we consider, a duty cast upon the investigating police officer to scrutinize and to refrain from building up a case on its basis unless satisfied of its truth."

The Apex Court also held that, "All the provisions of Sec 161 Cr.P.C. relating to the examination of the witnesses and accused persons are aimed at securing a fair investigation into the facts and circumstances of the Criminal case. Atmost care should be taken in Criminal cases and it should be done with atmost fairness on part of the police officer investigating it and he should not indulge in illegal methods".

The framers of the Cr.P.C, thought that the powers conferred on the police officers are vast and such powers without any grip would make the police abuse or misuse the power. The Criminal procedure code demarcates the crime broadly into two categories.

1) Cognizable

2) Non Cognizable offences.

All the grave offences such as murder, dacoity and which has the capital punishment are termed as cognizable offences. Non cognizable
offences are the offences, which do not fall in the cognizable category. These categories are mentioned in the first schedule of the Cr.P.C.

Secondly, for cognizable offences police officer need not require any warrant from the Magistrate to arrest the accused Sec 156(1) and Sec 157.

The police officer is under legal duty to exercise the above said powers in respect of cognizable offences. Sec 157 of the code 55,22 and 29 of the police act 1861. In the case of the cognizable offences, it appears to be the responsibility of the state (the police) to bring the offender to justice.

In case of a non-cognizable offence ,a police officer cannot arrest without a warrant (Section 2(l) of Cr.P.C). Such an officer has neither the duty nor the power to investigate into the offence without the authority (given by the judicial Magistrate.)

Again the offences are classified into bailable and non-bailable offences. Sec. 2(a) of the Cr.P.C. states that "The bailable offence means, an offence that is shown as bailable in the first schedule of the code" or which is made bailable by any other law for the time being inforce and non-bailable means any other offence. Again it is understood that all the serious crime in nature are non-bailable and less crime in nature is bailable.

If a person accused of a bailable offence is arrested or detained without warrant he has the right to be released on bail. However if the offence is non bailable not that the person shall never be released on bail but his release is
left to the discretion of the concerned Magistrates or Judges. The categorisation of the offences is dealt by the researcher in this Chapter under the sub-heading "Right to Bail".

From the above sections it is clear that the police has vast powers to play in the field of criminal justice system. They have been entrusted with the initial part of investigations with them such that whenever there is a report of an offence, a police officer records the facts of the information usually called as the First Information Report (FIR) and he also records some relevant points in a Government record called the case diary or the Government diary. These two records namely the FIR and the Case diary play a crucial part and have got the high evidentiary value in the Court of law.

**MANIPULATION IN FIR AND CASE DIARIES**

"First Information Report" (known as F.I.R in short), as the phrase itself means, it is an important first document, to be recorded by the police officer incharge of the investigation and it is also a starting point in violation of Human rights.

There is often an attempt to add or interpolate of first hand information, collected at the preliminary stage investigation, into the body of FIR. Such subsequent additions and interpolations create a doubt on the bonofide of investigations in the mind of Court, so that the prosecution case
might be rejected in toto. On the other aspect the police officer may take advantage to concoct the FIR, with false motives, with a malafide intention or vengeance, may arrest or detain a person illegally.

There should also never be any inordinate delay in recording the FIR. If information reveals the commission of cognizable offence, FIR must be recorded without waiting for further details.

CASE DIARY

Another important document on which manipulation can be made is the case diary. The section 172 of Cr.P.C does not require any case diary to be returned on the spot. But many police regulations require it. If there is any delay or gap in the investigation, the investigation officer must give a satisfactory explanation in the case diary so that investigation does not come under the cloud of suspicion.

Another malpractice which is often resorted to it is that F.I.R statements is recorded on unnumbered plain papers which can be conveniently changed by an unscrupulous officer at his sweet will to suit the subsequent development.

1 Ganesh Bhavan Patel Vs State of Maharastra 1979 CR1 51 SC
LEGAL AND ILLEGAL CUSTODY

The Section 57 of the Cr.P.C read as “No police officer shall detain in custody a person arrested without warrant for longer period (not more than 24 hours) and it requires a Magistrate's order under section 167 of the code and a 24 hour time is exclusive of the time necessary for the journey from the place of arrest to Magistrate Court. This is very crucial aspect as the person's human rights are concerned.

It is submitted that the power vested with them may bring an innocent person under the custody of the police. In other words, the police officer can bring a person and detain him in police station without anybody's order for the first 24 hours.

It is true that after 24 hours time limit, the person so detained may fight in the Court of law and get justice. But what happens in the 24 hours is that the dignity of the person is lost in the society. In addition there is a possibility of violation of Human rights in the 24 hours like in-human treatment, torture, cruelty, disturbing the family members of the so called accused. In many instances rape is also reported in several police stations.

The provisions of law notwithstanding, it is a notorious fact that the police often act as in violation of law. The police taking advantage of the powers vested on them may act with malafide intention or vengeance. They can call any person for a preliminary investigation and there is no record in
the police station that the concerned victim is investigated by the police
officer As mentioned earlier under section 57 of the Cr.P.C. a person may not
be detained for more than 24 hours except on a remand order of a competent
Magistrate. Despite this fact, it is a common practice to detain a person
accused of having committed an offence and not to record his detention as an
arrest and to produce such a person before a Magistrate only several days
after the commencement of detention with a record showing the arrest had
happened less than 24 hours before such production. Partially to obviate this
practice section 58 of the Cr.P.C. provides for the Station Officer to report
every case of arrest with out warrant to the district Magistrate or the Sub-
Divisional Magistrate, the idea being that Magistrate can intervene in case of
an illegal arrest. This provision of law is practiced often more in the breach
than in the observance.

It is to be noted that section 52 of Cr.P.C. states "A person arrested if
not before the Magistrate with in 24 hours becomes illegal custody and the
victim has got all the rights to be remedied under the law which includes
compensation". In reality the victim has to go a long way to prove the case to
get compensation. First there is no record to show that they were illegally
detained, second they would have fear that the entire police community
would be against them, third no witness will go against the police for the
obvious reason of fear and danger. Last but not the least, for prosecuting the
police officer the victim has to get a formal sanction from the appropriate
government under section 197 of Cr.P.C., which is not so simple as stated.
REMAND

A person arrested without a warrant cannot be detained by the police for more than 24 hours is what we see in Sec 57 of Cr.P.C. But if the Police officer considers it necessary to detain such a person for a longer period for the purpose of investigation, he can do so only after obtaining a special order of a Magistrate under sec 167 of Cr.P.C. The scheme of the Section is intended to protect the accused from an unscrupulous police officer. The object is to see to that the persons arrested by the police are brought before the Magistrate with the least possible delay so that the Magistrate could decide whether the person produced should further be kept in police custody and to allow them to make representations if they wish to make\(^1\).

An analysis of Sec 167 brings out the following points:

167(1) states that where ever a person is arrested and detained in custody and it appears that the investigations cannot be completed within the period of 24 hours fixed by Sec 57 of Cr.P.C. and there are grounds for believing that the accusation or information is well founded, the officer-in-charge of the police station or the police officer making the investigations shall forward the accused to the nearest Magistrate to have the custody extended.

\(^1\) Chadayam Makki Nandanan Vs State of Kerala 1980 Cr.LJ 1195, 1196
167(2) says the judicial Magistrate to whom an accused person is so forwarded may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused person in such a custody as a Magistrate may think fit, for a term extending for 15 days on the whole.

It is to be noted at this stage that the Magistrate can detain an accused person in police custody or in judicial custody and vice versa but only during the 1st 15 days as mentioned in Sec 167(2). After 15 days the accused can only be kept in judicial custody but not in police custody.

Hence the section clearly states the intention of the makers of this code that they don't want to keep the accused in the hands of the police for a longer duration.

Another important aspect of section 167(2)(b), which states that no, should authorise the detention of the accused in any custody under Section 167 unless the accused is brought before him. The object of requiring the accused to be produced before the Magistrate, is to enable the magistrate to decide judicially whether the remand is necessary and also to enable the accused to make any representations to the Magistrate to controvert the grounds on which the police officer has asked for the remand 10.

10 (a) Ramesh kumar Ravi Vs State of Bihar 1987 Cri. L J 1489(Pat HC)
(b) Raj Kumar Singh Vs State of Bihar 1986(4) SCC 407: 1986 SCC(Cr) 48
The next aspect of Section 167 is that, if the Judicial Magistrate is satisfied for the purposes of Investigation it is necessary to authorise the detention of the accused person beyond and above mentioned period of 15 days, he can authorise further detention of the accused. But in such a case (I) the detention shall be in custody other that of the police. (ii) The total period of detention including the above mentioned period of 15 days and the period during which the detention was authorised by an executive Magistrate under sec 167 (2)-(a) shall not exceed,

(i) Ninety days, When the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for the term not less than 10 years and

(ii) Sixty days when the investigations relates to any other offence.

On expiry of the said period, the accused person shall be released on bail if he is prepared to and does furnish bail, and any person so released on bail shall be deemed to be so released under Chapter XXXIII of the code dealing with the bail bonds.

It has been held by the Supreme Court that it is the duty of the Magistrate to inform the accused that the accused has the right to be released on bail under the provisions of Sec167 (2) 11

Hussaina Khattoon Vs State of Bihar (1980) 1 SCC 108 1980 SCC(Cri) 50,53
The framers of the Cr.P.C. Sec 167 and 57 had created the Checks and counter checks for the power and the action of the police. But in reality, the 15 days police custody once ordered, the police will get an upper hand. So by the name of the interrogation the police may use all third degree methodology, brutal and other inhuman treatment on the detained person to extract the truth and the statement as required by them. The innocent people who has no knowledge about law or his rights will accept whatever the police man says and sign in all papers as shown by the police officer for the fear of torture.

CONFESSION TO POLICE OFFICERS:

Any confession made to a police officer is totally inadmissible as evidence. Sec 25 of Indian evidence Act 1872, states that, even the statements recorded by the police in the course of the investigations cannot be used for any purpose other than those mentioned in Sec 162 of the code. The reason for having such restrictable provisions is obvious, by and large the police is not yet considered trustworthy. It is apprehended that any power given to police officer to record confessions or statements is more likely to be misused and that the over zealous police officers might, in the apparent exercise of such power, extend or fabricate confessions and manipulate statements.
The Cr.P.C provides Sec 164 a special precedence for recording of confessions and statements by the accused persons before competent Judicial Magistrates.

POLICE ATROCITIES:

The police have resorted to more repressive methods as not to leave any scar of police atrocities on the body of the victims. Even minors were not spared at the hands of the police. Is police meant for protecting people or punishing them is a fundamental issue to discuss with.

The police are using several brutal methods to get forced confessions from innocent people. This inhuman torture starts with the beating of the victim and if the victim refuses to confess, then the victim is stripped and made to sit on the top of a sharp bamboo. After this the policeman starts pressing the hands on the victim's shoulders, in order to impale him. The torture is enough to make any victim confess any crime he didn't do. The police have destroyed the lives of several people by using such methods.

After 1970's the deaths in police custody has become very common. These deaths are usually the results of torture to extract information or to teach the person concerned a lesson.

Indian Laws contain adequate provisions for safeguarding Human rights and it sufficiently safeguards against police brutality and torture. It is a common fact that police brutality and torture have long been widespread
throughout India. Such methods are frequently used when the police interrogate people suspected of criminal offences. In order to extract confessions or for purpose of intimidation, the police use extreme type of physical harm to the suspected persons.

The alleged method of torture include hanging people upside down, severe beating such that the victims limbs are broken, burning and applying heavy rollers on the victims leg. In some cases the use of electric shock has been reported. Such methods are common during the investigations of ordinary criminal offence, such as theft and are most widely used against the poorer sections of the society.

In 1980, various methods of torture took place, when 30 suspected criminals in Bugulpur Jail in the state of Bihar were deliberately blinded by the police with their eyes pierced and soaked in acid. In 1981 the Indian press reported detailed accounts of people suspected of ordinary offences whose legs had been broken and twisted by the police in Varanasi and Guazipur in UP.

Cases of torture and death in custody are widely reported by the press. The magisterial enquiry found that deaths in custody were due to police brutality. The only punishment that the guilty officials were given was that they were usually suspended from duty or transferred and after some time the said police officials were reinstated.
Another mode of torture that is described to be more painful consists of stretching the legs apart to an unbearable extent, the detainee is made to sit on a plain surface with one person supporting his back with his knees and pulling his long hairs backwards. The legs are held at the ankle level by different persons and pulled apart. The legs on rotating at a particular angle cause acute pain, which on persistence, result in to swooning.

Some common methods of police torture are:

1) Application of Electric current in the body

2) Beating the feet by stick

3) Hanging upside down from roof

4) Keeping the detainee without food and water

5) Pulling the nails

6) Spraying Chilli powder in eyes and secret parts of the body

7) Rolling of long woods on the legs to rupture the muscle

8) Keeping the victims body on huge ice stone

9) Piercing needle in the eye of the nails

10) Rape
FAKE ENCOUNTERS:

Police with top powers can do anything and make it as if it happened as accident. They will torture a victim even when they escort the victim to produce before the Magistrate and if it is realised by them that the victim might go against them, then they will make the victim run away and shoot him while doing so. And record the statement as if the victim died during the police encounter. This is the most serious offence to be taken into account.

DISTURBING THE FAMILY MEMBERS:

Not only the accused is the victim for police brutality. Whenever the accused does not co-operate or abscond for the fear of torture of police, the police will informally summon the member of the victim’s family and torture them till the accused comes out in their favour. Thus the police went on with all steps to violate the Human rights.

Probably, No other factor has been responsible for damaging the image of the police in this country as much as their alleged involvement in several incidents of brutality. The media everyday reports incidents which are shocking and which show that the police do not hesitate to use unnecessary and excessive force and practice torture against helpless person in their custody.12

12 Report From World Focus By G.P.JOSHI Vol 22 N1 Jan 2001 Hari Sharan Chhabra New Delhi p10
In the wake of rising incidence of police brutality in the country, the Common-Wealth Human rights Initiative (CHRI) an International NGO mandated to ensure and decided to conduct a quick limited media scan on this subject.

They scanned the reports from National Articles Viz, The times of India, The Hindusthan Times, The Hindu, and the Indian express during January and June 2000. The four papers reported numerous instances of alleged police brutality. Brief details of these are given below.

1) Two Policemen allegedly disrobed women in Hyderabad and beat them. The women suffered grievous injuries and were unconscious when brought to the hospital. The victims were taken to the police station on mere suspicion only.\(^{13}\)

2) On suspicion, Darshan singh, a mechanic, was taken to Police station and allegedly kept in illegal confinement and he died in custody at Delhi on March 10, 1992. For this, four Delhi Police constables were sentenced to life imprisonment\(^{14}\).

3) In Uttar Pradesh, the Police had illegally detained a person in connection with a murder investigation. It was also alleged that the victim was ill treated, tortured, and was administered electric shock. The victim's father

\(^{13}\) Report From World Focus By G.P.JOSHI, Vol 22, N1 Jan 2001, Hari Sharan Chhabra(pub), NewDelhi, p.10

\(^{14}\) Ibid
alleged that the victim was totally incapacitated as a result of police torture. The Uttar Pradesh Court ordered to pay Rs.10 lakhs to the victim.\textsuperscript{15}

4) A seventy year old woman and her family members were brutally assaulted by the police in the South West district village of Mitraan. The victim's legs were fractured.\textsuperscript{16}

5) Sakreen alias Netaji owing alliance to the Sheikh Bengali gang died in police custody because of torture after his arrest.\textsuperscript{17}

6) A 15 year old boy was allegedly beaten up mercilessly by two policemen in sultanpuri police station on the night of April 3, for daring to ask them to pay for the food they had eaten.\textsuperscript{18}

7) Srichand, a resident of west Delhi was reportedly picked up by the Moti vagan police regarding several cases of dacoity in the area on April 16. On 26.7.2000, his body was handed over to his family. It reportedly had several torture marks including burns marks on the body. His neighbors remarked that Srichand had no criminal record. His relatives accused that

\textsuperscript{15} THE HINDUSTAN TIMES dated March 6, 2000, p.2
\textsuperscript{16} Report From World Focus By G.P.JOSHI,Vol 22 N1, Jan 2001, Hari Sharan Chhabra(pub), NewDelhi, p.10
\textsuperscript{17} Ibid
\textsuperscript{18} Ibid
the genitals of the deceased were cutoff. They further alleged that the family members of Srichand were kicked and beaten up by the police.19

8) The Delhi High Court issued NBW against Station House Officer and Sub-Inspector for their alleged involvement in a custodial death case.20

9) In Mau, UP a 65 year old woman was killed and two younger women were assaulted by the police. According to the reports, the victims had a baton thrust into their vagina by the police, which caused a vaginal discharge. The victims were manhandled and abused.21

10) Five Punjab Police Officials were convicted by the SC for killing in a cold blood, a couple seven year ago in Calcutta.22

11) 55-year-old man died in a lockup in Hyderabad alleged of police torture.23

19 Ibid
20 Ibid
21 Ibid, p.10-11
22 Times of India June 2, 2000, p.2
23 Report From World Focus By G.P.JOSHI, Vol 22, N1 Jan 2001, Hari Sharan Chhabra(pub), NewDelhi, p.11
CUSTODIAL RAPE

The most cruel part inflicted on women in our country is the offence of rape. The Indian Penal Code (IPC) Sec 375 and 376 mention rape and prescribe punishment for it.

It is clear to see the police taking advantage of the position and power vested with them. The IPC Sec 376(2)(a) specifically says that whoever, being a police officer commits rape within the limits of the police station or in the premises of a station house on the women on his custody is liable to be punished.

The punishment prescribed so is with rigorous imprisonment for a term which shall not be less than 10 years but which may be for life and shall also be liable to be fined.

The police take advantage of the general fear of women who don’t normally express what has happened to her because of the fear of her image in the society. It is so pathetic to note that the victim takes the other course of committing suicide. One such thing that happened in Tamil Nadu was Padmini’s\(^{24}\) case, here the victim was raped when she was in the custody of police at Annamalainagar, chidambaram, in the year 1992, which is a daring example of it. This case had come into the light because of the outcry of the public and saw that the culprits were punished. The general public perception is that the victims of police brutality in most cases are poor, weak and marginalised people. Recently the Division bench of the High Court had

confirmed three years rigorous imprisonment awarded to two sub-inspectors and 10 year RI to four more policemen in the above mentioned case.

Third degree methods are really an extension of police atrocities. The poor, the minorities, the dalits, and the tribal people are the main target. No amount of protest by the voluntary organisations has made any significant difference. The police force’s basic instinct remains the same.

A recent case in UP, A Sub Inspector(SI) of Harva Police station in Banda District committed atrocities upon source of the Dalits at village and at the behest of the biggest landlord of that village. The dalit woman’s husband defeated him. The police beat the woman and the son. The NATIONAL HUMAN RIGHTS COMMISSION inquiry revealed the same. The commission noted that the Law enforcement authorities cannot take law into their own hands and commit atrocities on innocent citizens and get away with mere transfer and the commission ordered state Crime Investigation Department(CID) investigation. But the police retaliated by registering a false case against a local activist who had pleaded on behalf of the dalit woman and her son. The commission had passed yet another order that the case against the local activist to be transferred to the State CID investigation. Even then the police did not give up. They sidelined the case of police atrocities against the dalit woman and her son. The activist blamed the DSP that “if he embarks on a campaign to target upright citizens and good institutions for raising their voice against police atrocity, then he has in fact

set himself up as a dictator, and as well say good bye to democracy and the rule of law”

POLICE TORTURE

The right to life is an evolution from the concept of natural rights. Natural rights are inherently moral rights, which every human being at all times ought to have simply, because of the fact that he is a rational and moral being. So these fundamental and sacred rights can neither be taken away by an individual nor be restricted by any authority.

The right to life and personal liability as mentioned in Act 21 of our constitution that right includes the right to life with human dignity and all that goes along with it. It also includes protection against torture a cruel, inhuman and degrading treatment in any form.

Bhagwathi J held that any act which damages or injures or interferes with the use of any limb or other parts of a person, either permanently or temporarily would be within the inhibition of Article 21 of the Indian Constitution. In democracy, the policeman is a custodian of law. Police is the branch of Government, which is charged with the preservation of public order, tranquility, the promotion of public health, safety and morals and the prevention and detection of crimes. The police while being a visible symbol of the authority of the Government are expected to safeguard the interest of citizen with regard to basic right. But these protectors of these rights have
become the major violators. There are numerous incidents of torture and deaths in police custody. The torture comes into picture during interrogation. Police under a legal duty has a legitimate right to arrest a criminal and interrogate him of an offence. But the law does not permit a policeman to use 3rd degree methods or torture the accused in custody during interrogation with a view to solve a crime.

When a policeman indulges in 3rd degree methods, he only degrades himself to the level of the criminal.\(^{27}\) Torture by police becomes an issue of concern when those who are entrusted with the task of protecting the life and liberty of the people violate it. It further degrades the image of the police.

"Torture" has not been defined in the constitution or in another laws. Torture of human being by another human being is essentially an instrument to impose the will of the "strong" over the weak by suffering\(^ {28}\). Torture includes any harassment that causes suffering, physical or mental redness by word of mouth. Repeatedly calling a man to the police station, and then making him to wait for long hours is also a brutality of a kind\(^ {29}\). Physical assault includes denial of food, drink, sleep and toilet facilities, continuous interrogation over long period. Use of 3rd degree method, stripping of men and women folk, rape of women in police custody, hand cuffing the accused and dragging in the streets are some of the other ways of torture by police.

\(^{27}\) R.Deb principles of criminology criminal law and Investigation (B.R Pub)Vol1 p276(3rd Edition)1991

\(^{28}\) D.K.Basu Vs State of West Bengal AIR 1997 SC 743 at 747

\(^{29}\) M.P.Jain Political Theory (1985) Shaw pub. p.312
Torture in police custody is a daily routine in one part of India or the other, though the type of torture inflicted and the number of deaths in police lock-ups varies from the state to state.

Monitoring of torture and deaths in police custody is very essential. The Government officials are not conscious of the fact that it is a grave trend and needs attention. If there is a torture, it is a crime under IPC. It is very strange, that for all cases of torture and deaths in the custody or a crime under IPC, it is not mentioned anywhere in any of the national institute dealing in crimes e.g. National Bureau of crime and records. The same IPC offences when committed by policemen against suspects and victims become much graver and serious. It should be asked separately like any other offence. Only then its impursuance and necessity to curb will be realised.

What is essential for protecting right to life is a police system and a police force that is efficient and has sufficient scientific techniques which would help in relieving the use of force, torture, third degree methods and other brutal and barbaric acts. The police being the central agency of criminal justice system can’t function in violating the Human rights. It has to function with all other institutions which co-ordinates with it (i.e.) the Judges, Prosecution Advocates and other functionaries of co relational services. All have to come forward and take initiative to eradicate torture in police custody.
LACK OF ACCOUNTABILITY:

The legal system in India highlights the facts that the legal framework of the criminal justice system discriminates excesses of police. One of the main drawbacks of the legal systems is that lack of accountability of police atrocities. Impunity is the other correct word to substitute the lack of accountability. Police personnel commit the excesses on Citizens and sometimes succeed in getting away Scot-free because of the absence of independent effective accountability mechanisms. Public find it very difficult to get redresses and make complaints against the brutal behavior of the police personnel.

There is a provision in Law, which also comes to the rescue of the delinquent police personnel. Sec 197 of Criminal procedure code, under which a public servant cannot be prosecuted without the sanction of the appropriate authorities "while acting or purporting to act on the discharge of his official duties." The purpose of this section is to ensure that frivolous and vexatious complaints are not filed against the police offences to demoralise them and dissuade them from performing their duties. However, it is a fact that this provision of Law has been abused to provide protection to police officers in serious cases of misconduct.

The Law commission of India has already recommended that this provision of Law should be amended to explain that it would not apply to any
offence committed by a public servant, “Being an offence against the human body committed in respect of a person in his custody nor to any other offence constituting any abuse of the authorities”. The National Police Commission has also recommended protection available to the police officers under Section 132,197 of Cr.P.C. 1973 should be withdrawn so that the public is free to press his complaints against erring police officers.

One of the suggestions by the Padmanabhaiah committee which was formed on 5.1.2000 on the police reforms is that “No statutory district police complaints authority and agency will be headed by the district Magistrate and have senior additional sessions judge and district Superintendent of Police and eminent Citizens nominated by district Magistrates as members.”

The credibility of the proposed institution will be reduced to the fact that it has not being provided with an independent investigation agency of this own, it will depend upon the police force to enquire into public complaints against police personnel.

No police accountability mechanism can be considered successful of it facts, if it fails to inspire public confidence and if it fails to give exemplary punishments to those who indulged in excesses.
Analysis of the Reasons and Factors behind the police indulging in violation of Human Rights:

It is submitted that the police force in our country is working under political heads. To know the causes and behaviour of the police, it is better to go in to the root cause of the matter. The reforms should be taken from that level.

Custodial violence by police in India is an undeniable fact, while the difference of opinion can exist on the quantum and frequency of occurrence. The extent of the use of custodial violence / torture by police is authenticated by the newspaper reports as well as by the rate at which directions were issued by NHRC to States for compensation to the helpless victims of police torture.

As the reach of the Commission keep increasing, the number of complaints received by the Commission has also been growing significantly. This growth has not only highlighted the growing awareness of human rights but also has proved the faith and belief, which the public has entrusted upon this Commission. Starting with 496 complaints in the first six months of its existence, the commission received 50,634 complaints in the period April 1999 to March 2000 and a total of 50,676 during 1 April 2000 to 28 December 2000. On an average approximately 257 complaints are registered every day of which about 110 pertain to police atrocities. The Commission has considered 30261 cases starting 1 April 2000 up to 28 December 2000. Complaints have been received from all States and Union Territories of the country, from all segments
of society and from people with different political ideology including militant groups and their leaders. This also illustrates the people's faith in the fairness of this Commission. It is very unfortunate to mention that, Since inception and up to 28 December 2000, the Commission had received a total of 2,17,010 complaints.30

During the 1995-96 the number of custodial deaths have been 444 (including 136 death in police custody and 308 in judicial custody) which doubled its tally to 888 in 1996-97 (includes 188 in Police Custody & 700 in Judicial Custody). The total number of deaths in custody in 1999-2000 was 1093. In the period 2000-2001, ending 31 March 2001, 1037 cases of custodial deaths were reported to the Commission, 910 of which were deaths in judicial custody and 127 in police custody. It may be mentioned that from April 2001 to December 2001, the National Human Rights Commission has received 964 cases of custodial deaths from State Governments and Union Territories. Of these, 131 were in police custody and 833 in judicial custody.31

It may be noted that the National Human Rights Commission has recorded a marginal fall in the total number of custodial deaths reported to it in the period April 2000 to March 2001. In this period, 1037 deaths in custody were reported to NHRC of which 910 were in judicial custody and 127 in police custody. The same year, two deaths in custody of Army personnel were also

Source –http://www.nic.in
reported. However, the NHRC has received overall 71,685 cases of human rights violation reported in 2000-2001 which is alarming.\textsuperscript{32}

Compared to the figures of 1999-2000, the number of deaths in police custody has gone down by 50 and that in judicial custody has gone down by 6. The highest number of deaths in police custody in 2000-2001, was recorded from Maharashtra. 19 such deaths were reported from there. While Maharashtra reported the highest number of deaths last year also, the figure then was 30. In the same period, Punjab reported 13 deaths in police custody; Assam, Gujarat and Madhya Pradesh 11 deaths each, Uttar Pradesh 10 deaths and West Bengal and Delhi reported 9 deaths each. Of the 910 deaths in judicial custody in 2000-2001, the highest number was recorded from Bihar. It reported 137 judicial custody deaths followed 121 from UP, 104 from Maharashtra, 76 from Andhra Pradesh, 55 from Orissa and 48 from Punjab. In the previous year also Bihar had reported the highest number of deaths in judicial custody – 155. Of the total deaths in judicial custody reported to NHRC, more than 90 per cent are not attributable to custodial violence.\textsuperscript{33}

It may be mentioned here that the NHRC had ordered that, all custodial deaths should be reported to NHRC within 24 hours of its occurrence. This information must be followed up by reports of postmortem videograph and magisterial inquiry within two months of the incident.

\textsuperscript{32} Ibid

\textsuperscript{33} Ibid
On the whole the Commission received 71,685 complaints of human rights violation in the year 2000-2001, 41,984 of which were from Uttar Pradesh. This State alone continued to contribute the highest number of complaints to the Commission during a given year. 4895 complaints were received from Bihar, 4,081 from Delhi, 3,105 from Madhya Pradesh, 2,604 from Rajasthan, 2,583 from Haryana, 2,541 from Maharashtra 1,562 from Tamil Nadu. The total number of complaints received showed a significant increase of 41.58 per cent compared to the previous year. Complaints were received from all the States and Union Territories of the country. 39 complaints were also received from persons residing outside India.\textsuperscript{34}

CAUSES OF VIOLATION OF HUMAN RIGHTS BY POLICE

The violation of human rights were increasing day to day and everybody’s wish is to stop this menace by one way or the other. The awareness alone shall certainly not cure the disease. In other words the menace of violation of human rights shall not stop by creating awareness alone but certainly it has to be approached in a different angle. It is to be remembered that the police is also a human being controlled by his/her own thoughts. The police force is a must for every country and why the violation of human rights have been taking place in India in such a vast extent needs to be studied. It is submitted that if the factors and causes behind the menace are controlled, then the violation of human rights can be totally or to certain extent, be minimised. For that it is

\textsuperscript{34} Ibid
relevant here to supply the findings of a Delhi based researcher on the matter of violation of human rights.

The research was done by one Mr. Subasu E. Raina, which involves an in-depth study about the custodial torture in police stations and its causes. Some of the salient points given here would throw some light on what are the real factors behind the police force make them vulnerable to Human Rights.

The rate of custodial deaths has increased in Delhi from 1994-95 to 1996-97 (3 yrs) by 4 times. And from 1997-2001 doubled. Why the Delhi is taken as a place for this research is that it is the seat for two important National level Institutions meant for protection of Human rights of its citizens (Supreme Court & NHRC). The data given under here were taken from Delhi.

### Death in Custody (Delhi)\(^3^7\)

<table>
<thead>
<tr>
<th>Years</th>
<th>Police Custody</th>
<th>Judicial Custody</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994-95</td>
<td>02</td>
<td>21</td>
<td>23</td>
</tr>
<tr>
<td>1995-96</td>
<td>07</td>
<td>33</td>
<td>40</td>
</tr>
<tr>
<td>1996-97</td>
<td>05</td>
<td>19</td>
<td>24</td>
</tr>
<tr>
<td>1997-98</td>
<td>07</td>
<td>23</td>
<td>30</td>
</tr>
<tr>
<td>1998-99</td>
<td>07</td>
<td>24</td>
<td>31</td>
</tr>
<tr>
<td>1999-2000</td>
<td>09</td>
<td>36</td>
<td>45</td>
</tr>
<tr>
<td>2000-2001</td>
<td>09</td>
<td>46</td>
<td>55</td>
</tr>
</tbody>
</table>

\(^{35}\) professor, campus law center, faculty of law, University of Delhi

\(^{36}\) V. NCLJ(2001), Law Centre, New Delhi, pp 1-20.

\(^{37}\) Source: Vigilance Branch, P.H.Q. Delhi Police
The data regarding custodial violence in Delhi by police is further corroborated by the cursory glance over the complaints received by vigilance branch of Delhi police against police officials for various methods they use against the accused mostly during investigations\textsuperscript{38}.

<table>
<thead>
<tr>
<th>Year</th>
<th>Beating</th>
<th>Extortion + Corrupt</th>
<th>Misuse of authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>36</td>
<td>67</td>
<td>47</td>
</tr>
<tr>
<td>1996</td>
<td>40</td>
<td>94</td>
<td>63</td>
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<td>1998</td>
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<td>2000</td>
<td>28</td>
<td>50</td>
<td>48</td>
</tr>
<tr>
<td>2001</td>
<td>32</td>
<td>55</td>
<td>58</td>
</tr>
</tbody>
</table>

Data included complaints both substantiated and not substantiated.

\textsuperscript{38} Ibid
PERCENTAGE OF COMPLAINTS RECEIVED BY NHRC DURING 2000-2001

Source: http://www.nic.in
The above statistics is only a tip of an iceberg and does not depict the real magnitude of the problems because the statistics of torture and death in police custody are mostly suppressed and only a few cases filter through the seize for the consumption of the public.

It is relevant here to quote the words of Shri Upendra Baxi,

"By the very nature of the activity, illegal violence by police is difficult to document scientifically. It is therefore, only through the reports of commission of enquiry, judicial decisions, scholars, analysis, and official reports, work of NGO's, media and lastly through the fearful attitude of the citizens towards police that we learn about the varieties of the police torture".

On the other hand it is to be analysed as what makes the police or law-enforcing agency to act in this way. The same research had concluded that there are so many factors that are responsible for the acts of police. They are under various heads as follows:

(1) Stress due to over burden.

(2) Faith in the efficacy of such inhuman treatment of methods.

(3) Over enthusiasm to show the end results.

(4) To have monetary gain.

(5) professional incompetence.

(6) Power of intoxication.
(A) **The social factors responsible for the act of the police was:-**

(1) Criminalization of politics.

(2) Rampant corruption in society.

(3) Political pressure in police

(4) Negative role of press.

(5) Increase of violence in the society.

(6) Ambivalent attitude of public.

(7) Over expectation of public from police.

(B) **The organisational factors responsible was:-**

(1) Lack of awareness and means to know the health of the accused.

(2) Conditioning with the organisation.

(3) Demand of quick results irrespective of the means.

(4) Show of professional competency by under emphasis on statistics.

(5) Lack of accountability of the officers.

(C) **The Administrative factors responsible was:-**

(1) Reforms of police force and Governmental inaction.

(2) Adversary process of criminal trial

(3) Deficient facilities for orientation in new methods of investigation.

(4) Lack of co-ordination between police and various other organs of justice system.
In view of the above all factors, the following broad Conclusions were made:

1. From the appointment to promotion, the political interference works. This is so deep that policemen's routine work is subject to claims and issues of political power.

2. The anxiety syndrome under the political custody which causes stress due to exercise load leads to fatigue.

3. To show the authority, the policemen always feel intoxicated with power. He also uses his power over enthusiastically against the accused in most barbaric methods.

4. Since no other method is available for the organisation either due to the lack of Government actions or deficient orientation, the police believes in 3rd method as a efficacious method of investigation.

5. The current situation of violence and rampant corruption in the society made the policemen to find out this way and existence by use of their authority.

6. The Press in India to some extent, add the spice and salt to the tone of power groups. Therefore it is not objective with the respect to police.
(7) Demands of quick results by the superiors and undue emphasis on statistics without meaning results to short cut barbaric/violent methods of investigation.

(8) Lack of co-ordination among various organisations of judicial system coupled with disposal of cases results mostly in acquittal. It leaves the police demoralised, dejected with no alternative but to sink in brutality.

(9) No action by the Government to modify the laws relating to the power and procedures of investigations too contribute to the continuity of this situation.

The torture in police stations takes place mostly when an accused or suspect is arrested either for a cognizable or a non-cognizable offence.

The main purpose of the use of torture is to make accused confess his guilt and help the police to build up a case for prosecution. The cop uses this force to dehumanize a human being rather to make him to subject to their will. This, as is evident, is not because of one single solid factor but multiple factors operating that are responsible for the use and continuity of this practice.

In the last two decades, the recommendations of National Police Commission have been gathering dust. The laudable recommendations, which could have yielded better results with respect to police force in general and would have reduced the use of torture in particular have not even been discussed at the Governmental level. Such an in-action or indecisiveness on the
part of the Government is bound to result in demoralising influence on the whole of police force in India. The police due to non-implication of these recommendations is asked to perform functions beyond its capacity and quite opposite to its normal work of assisting in the administration of criminal justice. The basic duty of the police therefore suffers and police always perform this under heavy odds with offended attitude. To reduce this, it is not too late to implement the recommendations in letter and spirit to provide working facilities to the police.

The undue political interference particularly to shield the criminal (criminalisation of politics) creates a demoralising effect on the work of police. Policeman in such crimino-political symbiosis also feels himself free (not accountable) to commit any violation including the torture of the accused. His non-accountability is still existing because of a long hierarchical police system. It is therefore suggested that a policeman guilty of torture should not alone be held liable but his superior officers too should vicariously be held liable for such acts of violence.

Investigating officer due to non-availability of the alternative technique of investigation (which may be scientific and human) feels that the old barbaric method are efficacious and therefore resorts to them. For this purpose, it is suggested that a proper veritable support should be made mandatory by other agencies (forensic lab and other institution) which may help the police to use the scientific methods to avoid barbaric ones. The existing institute provide merely a lip service but it should be provided on a regular basis and to the
extent of constabulary. It should be made mandatory for any further information and promotion. The existing institutes should be equipped fully to provide latest knowledge to police personnel of all ranks. Necessary legislative changes should be made to give proper meaning to provisions of Criminal Procedure Code and Police Act, dealing with investigation under the changing Human rights jurisprudence.

Sensitizing of police with Human rights issue (primary being that dignity of person is supreme and should be respected) should be made part of the curriculum of police training college and the institutions imparting training.

Adversary process of criminal trial, which suited the British, should be reviewed and "Speedy Trial" as envisaged by Supreme Court in number of decisions be taken care of. Time should be stipulated for trial for investigation. Little adjournment and long delay due to non-availability of witnesses be minimised to yield results. So the resonance between police performance and public expectations takes place.

Political appointments should be minimised and a standardised psychological testing of personality be made as a part of the appointment procedure. So the elements with positive aptitude towards fellow human beings get precedence over others.
The Press, as an important organ of the society, should play an objective and a non-partisan role to give a moral boosting to police when it performs well and criticise healthily, not with an aim of profit motive.

Former CBI Director Mr. Joginder Singh in one of his articles \(^{40}\) clearly pointed out some typical situations or matters in which pressure is brought to bear on the police by political executives or other extraneous sources are listed below.

Some typical situations or matters in which pressure is brought to bear on the police by political executives or other extraneous sources are listed below:

1. **Arrest or non-arrest** of a person against whom a case is taken up for investigating.

2. **Deliberate handcuffing** of a person in police custody merely to humiliate him.

3. **Release or non-release** on bail after arrest.

4. **Suppression of material** evidence that becomes available during searches by the police.

\(^{40}\) Police, There For You, Always Or Never? In "The Hindu" dt 28/8/2001, p OB-1
5. Inclusion or non-inclusion in the charge sheet placed in the Court on conclusion of investigation.

6. Posting or non-posting of police force in an area of apprehended trouble to create an effect to the advantage of one party or the other.

7. Foisting of false criminal cases against political functionaries for achieving political ends.

8. Discretionary enforcement of laws, while dealing with public order situations, with emphasis on severity and ruthlessness in regard to persons opposed to the ruling party.

9. Taking persons into preventive custody to immobilise them from legitimate political activity in opposition to the party in power.

10. Maneuvering police intervention by exaggerating a non-cognizable offence, or engineering a false compliant, to gain advantage over any other party in a situation, which lies outside the domain of police action in the normal course.

11. Preparation of malicious and tendentious intelligence reports to facilitate action against an opponent.

The policemen have genuine apprehensions that if they do not yield to the political dictates, they will face adverse consequences for doing even the
right things, which may not be to the liking of the political masters. This affects
the performance of duties on the right lines by the police. The people have their
own grievances against the police. These grievances, which are as under, have a
ring of truth about them.

1. The people believe that police indulge in favouritism. The enforcement of
laws by the police is selective, anti poor and pro-rich. The police function
only when the cases involve influential or powerful people.

2. The police are generally discourteous, even to respectable persons. They
also use abusive language. Even the aggrieved and complainants are not
spared. The result of this perception is that even honest citizens avoid
doing anything to help the law enforcement agencies. They feel that it is
best to avoid the police and keep them at two arms length, even for
redress of their genuine grievances.

3. The people also feel that the complaints of the poor and uninfluential are
ignored by the police. They also feel that the redress of any grievances of
the common man by the police is only an illusion, notwithstanding the
claims of the senior officers or the public relations exercises done.

4. The police officials themselves do not comply with the laws. It can be
seen everyday in the violation of traffic laws by the police officials who
openly demand and accept bribes on the roadside, and especially in the
enforcement of social, local and special laws pertaining to traffic,
hawkers, prostitutes and other weak groups. Policemen are the biggest violators of the laws. It is they who bring all talk of fair law enforcement into ridicule. The police also make out false cases against the public, indulge in illegal methods, like the use of the third degree, beating, torturing, wrongful confinement, and detention of the people, who may have nothing to do with any crime. All this is done in the name of law enforcement, but actually to extort money, as part of their universal corruption. The police do not act speedy even in genuine cases, unless an influential person is involved. The rich can purchase the police to suit their requirements.

The researcher observed the foregoing reasons, causes and factors of police indulging in violation of Human Rights, in conclusion of this thesis made some suggestions and recommendations to overcome these problems.

LAW OF ARREST

Social Justice is the first demand of our constitution. However, nowadays we have been receiving alarming reports about arbitrary arrest and the inhuman treatment of the arrested persons.

The universal declaration of Human rights 1948 in the preamble declares “The recognition of inherent dignity and of the equal and inalienable rights of all members of the human family, is the foundation of freedom justice and peace in the world”.

Article 21 and 22 of the Indian constitution have drawn inspiration only from universal declaration of Human rights. The penal law and criminal procedure code have to necessarily act within the framework of the constitutional law. The constitutional law has been tarnished, strained, and soiled by the executioners. While agreeing that law has to change with time, it is to be highlighted that however perfect the law may be, the perfection needs to be perfected.

Law of arrest should never be shedded in isolation of the remand and other provisions. Our Honourble Courts have developed remand culture under the innovative banner "justice must not only be done but seems to have been done". The Cr.P.C has given extra ordinary powers to police officers with the ultimate aim that crime prevention and crime detection should not suffer by regard and restrictive laws.

However the code also imposed some restrictions whenever necessary on the powers and duties of the police officers. It is well said that "Power corrupts, and absolute power corrupts absolutely" The international code of enforcement ethics speaks out the duties of Law enforcement officers that his fundamental duty is to serve mankind, to safe guard one's property, to protect the innocent against deception, weak against oppression or intimidation, the peaceful against violence and disorder and to respect the constitutional rights of all men, equality and justice.
The police commission of 1902 made the following comment, “The police is far from efficient, defective in training and organisation and inadequately supervised, generally regarded as corrupt and oppressive It has clearly failed to secure the confidence and cordial co-operation of the people”. This observation holds good even today since one find no change in the attitude of the Police.

Arrest means deprivation of a person of his liberty by legal authority. Therefore society never tolerates detention of any person without legal sanctions.

Justice Anand Narayan mulla of Allahabad High Court (in the 1960s) has passed severe strictures on police force of the country as a whole when heabelled them as,

“There is not a single lawless group in the whole of the country whose record of the crime comes anywhere near the record of that organised unit which is known as the Indian Police”

Justice Krishna Iyer came down heavily on the police as he remarked “The Indian Police harbours a band of well organised criminals in uniform” (This remark has been expunged)

The persons accused or suspected or the persons who are on the move to perpetrate the crime have been arrested by the police under the power prescribed in the criminal procedure code for

1) Prevention of crime

2) Investigation of crime

3) For securing attendance and appearance

Police officers can arrest a person with or without warrant. Warrant under sec 204 r/w 2(x) Sec 87,88 and without warrant under section 41(1) and sections 42 and by a police officer in-charge of a station under section 41(2).

i) PROVISIONS OF ARREST IN CRIMINAL PROCEDURE CODE-1973

The concept of arrest is one of the major points where the human rights is often violated by the police. Since by arrest the police had given the vast power to restraint a person against his/her freedom. It is relevant here to deal with some of the provisions of the arrest.

Chapter five of the Code of Criminal Procedure, (Cr.P.C) 1973 deals with the arrest of persons. Section 41 is the main section providing for situations when police may arrest without warrant. It is considered important because, it has given the unfettered power in the hands of police to

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42 Section 41 of Cr.P.C., 1973
arrest a person, when he deems fit to do so. In other words the section leaves the police to analyse the situation and react on his own.

Section 41 of the code states the situations when the police may arrest without warrant, the situations were;

(1) any police officer may without an order from a Magistrate and without a warrant may arrest any person-

a) Who has been concerned in any cognizable offence, (Cognizable offence has been dealt in the next sub heading as Right to Bail) or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or

b) Who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or

c) Who has been proclaimed as an offender either under this Code or by order of the State Government; or

d) In whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or
e) **Who obstructs a police officer** while in the execution of his duty, or who has **escaped, or attempts to escape, from lawful custody; or**

f) **Who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or**

g) **Who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or**

h) **Who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or**

i) **For whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specified the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.**

2. **Any officer in charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the**
categories of persons specified in section 109 or section 110. These sections were dealt in the later part of this chapter.

Section 42 of Cr.P.C specifies yet another situation where a police officer can arrest a person.

This section states that if a person commits an offence in the presence of a police officer or where he has been accused of committing a non-cognizable offence and refuses, on demand being made by a police officer to give his name and residence or gives false name or residence, such person may be arrested but such arrest shall be only for the limited purpose of ascertaining his name and residence. After such ascertaining, he shall be released on executing a bond with or without sureties, to appear before a Magistrate if so required. In case the name and residence of such person cannot be ascertained within 24 hours from the time of arrest or if such person fails to execute a bond as required, he shall be forwarded to the nearest Magistrate having jurisdiction.

ii. **THE ASPECTS OF SECTIONS 41 OF Cr.P.C.**

Reading of the Sections 41 and 42 of the Cr.P.C. shows the width of the discretionary power of arrest vested in police officers.

The clause (a) of Section 41, itself has very wide discretion covering with it. The situations covered by it are:
(i) a person who is "concerned in any cognizable offence",

(ii) a person against whom a reasonable complaint is made that he is "concerned in a cognizable offence",

(iii) a person against whom "credible information" is received showing that he is "concerned in any cognizable offence" and

(iv) a person who is reasonably suspected of being "concerned in any cognizable offence".

The ground in clause (b) of Section 41 empowers a police officer to arrest a person who is in possession of "any implement of house breaking" and the burden is placed upon that person to satisfy that possession of such implement is not without "lawful excuse". Further the implement of house breaking mean, any iron/steel rod or any implement used by wayside repairers of punctured tyres can also be used for house breaking. In clause (d) any person found in possession of stolen property who may be reasonably suspected of having committed an offence with reference to such thing. The generality of language and the consequent wide discretion vested in police officers is indeed enormous and that has been the very source of abuse and misuse. The words "reasonable," "credible" and "reasonably" in the Section mean nothing in practice. They do not have any practical effect.

A glimpse of Section 43 to 60 of the Cr.P.C is given hereunder which gives a picture about the modes and situations of Arrest.
Section 43 speaks of a situation where an arrest can be made by a private person and the procedure to be followed on such arrest.

Section 44 deals with arrest by a Magistrate.

Section 45 protects the members of the Armed Forces from being arrested under sections 41 to 44.

Section 46 sets out the manner in which the arrest should be made.

Section 47 enables the police officer to enter a place if he has reason to believe that the person to be arrested has entered into that place or is within that place.

Section 48 empowers the police officers to peruse the offenders into any place in India beyond their jurisdiction.

Section 49 provides that "the person arrested shall not be subjected to more restraint than is necessary to prevent his escape". Here the words “Shall not be subjected to more restraint” is left with the police officer to decide upon the circumstances.

Section 50 (which corresponds to clause (1) of Article 22 of the Constitution)\(^3\) rests an obligation upon the police officer to disclose the person arrested with full particulars of the offence for which he is arrested or other grounds for such arrest. It also provides that where a person is

\(^3\) Dealt in the next chapter under the sub-heading "Constitutional Safe guards And The Human Rights".
arrested for a bailable offence without a warrant, the police officer shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

Section 51 provides for search of arrested person.

Section 52 empowers the police officer to seize offensive weapons from the arrested person.

Sections 53 and 54 provide for medical examination of the arrested person at the request of the police officer or at the request of the arrested person, as the case may be.

Section 55 prescribes the procedure to be followed when a police officer deputes his subordinate to arrest a person without warrant.

Section 56 (which corresponds to clause (2) of Article 22)\textsuperscript{44} of the Constitution, emphasises that the person arrested shall not be kept in the custody of a police officer for a longer period than is reasonable and that in any event such period shall not exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s Court. The exception given for that section is that, if the Magistrate permits the police officer to keep such person in his custody, he can do so beyond the period of 24 hours.

\textsuperscript{44} Ibid
Section 58 casts an obligation upon the officers in charge of police station to report to the specified authorities of arrests made without warrant within their jurisdiction and of the fact whether such persons have been admitted to bail or not.

Section 59 says that no person arrested by a police officer shall be discharged except on his own bond or bail or under the special order of the Magistrate.

Section 60 empowers the person having the lawful custody to pursue and retake the arrested person if he escapes or is rescued from his custody.

iii. SECTION 151 OF Cr.P.C. AND POWERS OF ARREST

This is the most important section and considered very dangerous in the hands of the police. It deals with the preventive provisions in the Code of Criminal Procedure, which empower the police to arrest persons on the mere suspicion of committing a crime.

Section 151 empowers a police officer to arrest any person, without orders from a Magistrate and without warrant, "if it appears to such officer" that such person is designing to commit a cognizable offence and that the commission of offence cannot be prevented otherwise. It is not necessary to emphasise the width of the power. It may be true that the satisfaction of the police officer contemplated by the expression "if it appears to such officer" is not subjective but is objective. In India, police officers making a wrongful
arrest whether under section 41 or 151, are seldom proceeded against or if proceeded, much less punished.

iv. SECTIONS 107 TO 110 OF Cr.P.C.- sections 107 to 110 of the Code of Criminal Procedure, empower the Magistrate to call upon a person, in situations/circumstances stated therein, to execute a bond to keep peace or to be on good behaviour. These provisions do not empower a police officer to arrest such persons. Yet, the fact remains that large number of persons are arrested under these provisions as well.

The above said principles are, in one or the other form embedded in the UDHR where India is a signatory to it, is as follows;

UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948 in its Article 3 states that everyone has right to live, liberty, and security of the person.

Article 9, specifically points out that no one shall be subjected to any arbitrary arrest, detention or exile.

Article 5 stipulates that no one shall be subjected to torture or cruel, or inhuman, or degrading treatment or punishments.

Article 11 states that everyone charged in penal offence has the right to be presumed to be innocent until proved guilty.
The criminal procedure Code -1973 suffers no infirmity under chapter Five while dealing in the arrest of a person. It is only the abuse of the powers in the hands of police officials that have demanded immediate reform in the arrest law.

v. CONSTITUTIONAL PROTECTION

Clause (1) of Article 22 of the Constitution which is one of the fundamental rights in Part III, declares that "no person who is arrested shall be detained in custody without having informed, as soon as maybe, on the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice." Clause (2) of Article 22 says that every person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding of course the time necessary for the journey from the place of arrest to the Court of Magistrate. The clause further declares that no such person shall be detained in custody beyond the said period without the authority of a Magistrate. Clause (3) of Article 22 however provides that clause (1) and (2) shall not apply to an enemy-alien or to a person who has been arrested under any law providing for preventive detention. This aspects have been dealt in the next chapter.
vi. **UNDER TRAILS**

A person is guilty of an offence only after the trial by the competent criminal Court. It is very pathetic and painful to note that often people languish in prison as under-trials. If the conviction after trial is more than 3 years, the Court convicting readily suspends the sentence and the convicted persons enjoy liberty. When the imprisonment is more, the appellate Courts are ready to grant bail. It is not only the arrest above that is grave concern today but the attitude of the criminal Courts in not releasing the accused persons and detaining them for an intermediate period behind bars. Recent statistical data about the undertrials languishing the prison has hammered us with reality that thousands of undertrials have over Stayed the maximum period of punishment.

Recently the Supreme Court of India took seriousness of the matter of under trials, issued the order throughout the country that all the prisoners who were kept as undertrials for 5 years or more should be released immediately on bail or on acquittal.

vii. **RIGHT TO BAIL**

The Code of Criminal Procedure classifies the offences mentioned in the IPC into four broad categories, namely,

(1) bailable and non-cognizable offences;
(2) bailable and cognizable offences;

(3) Non-bailable-cognizable offences and

(4) non-bailable-non-cognizable offences (e.g., Sections 466, 467 (first part), 476, 477 and 505 (first part) etc.). There is a fifth category of offences e.g., sections 116 to 120, where the cognizability and bailability/non-bailability depends upon the nature of the main crime. This category travels along with the main crime and will be dealt with accordingly.

Cognizable offence means an offence for which the police officer may in accordance with the First Schedule of the Cr.P.C or under any other law, arrest without the warrant. A non-cognizable offence means an offence for which the police officer has no authority to arrest without warrant.

The code has not given any guideline to determine whether a particular offence belongs to one category or other. It all depends upon the offence belongs to the First Schedule of the Cr.P.C or not. The code does not give any reason for the categorizations. However, it is submitted that all the serious offences which has the maximum punishment of three years and more than three years and shown in the First Schedule of the Cr.P.C., had been classified as Cognizable offences. And all the offences with lesser

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45 Section 2(c) of the Cr.P.C, 1973
46 Ibid, Section 2(1)
punishment of less than three years has been classified as less serious and Non-cognizable offences.\textsuperscript{47}

The next aspect of the code on the offences been classified into bailable and non-bailable offences. The bailable offence means an offence which is shown as the bailable in the first schedule of the Cr.P.C or which is made bailable by any other law.\textsuperscript{48} And Non-Bailable offence means an other offence which does not come under the category of bailable offences. The Cr.P.C. does not give any criterion to determine whether any particular offence is Bailable or Non-Bailable and it all depends upon whether it has been coming under the category of Bailable or Non-Bailable in the First Schedule of the Cr.P.C.

It is submitted that as a general proposition all the serious offences which was shown as Cognizable offences under the Cr.P.C. is considered to be Non-Bailable and a less serious offences which was shown as by the Cr.P.C. as Non-Cognizable offences is considered as Bailable offence.\textsuperscript{49}

After the light of the recommendations of the Third Report of National Police Commission and the ratio and the spirit underlying the decisions in the cases of Joginder Kumar\textsuperscript{50} and D.K. Basu\textsuperscript{51} and the decisions of the Supreme Court on the significance of personal liberty guaranteed by

\textsuperscript{47} Lectures on Criminal Procedures, R.V.Kelkar, (2\textsuperscript{nd} Edi) 1994, Eastern Book Company Pub, p.4
\textsuperscript{48} Ibid,Section 2(a)
\textsuperscript{49} Supra,46.
\textsuperscript{50} (1994) 4 SCC 260
\textsuperscript{51} (1996) (1) Crimes (SC) 2497
Article 21, the following points shall be taken into consideration to minimise the abuse of arrest:52

(1) The Court shall not issue an arrest warrant in respect of of the offences which are at present treated as bailable and non-cognizable. This in other way conveys that no person shall be arrested for the above said offences instead, only summons shall be served through a Court process-server or by other means (but not through a policeman). To give effect to the above aspect, the very expression "bailable" may have to be changed. The expression "bailable" implies an arrest and an automatic bail by the police/Court. There appears no reason to arrest a person accused of what is now categorized as bailable- non-cognizable offences. The Court may issue summons to be served in the manner indicated above.

(2) In respect of offences at present treated as bailable and cognizable, no arrest shall be made, but what may be called an "appearance notice" be served upon the person directing him to appear at the Police Station or before the Magistrate as and when called upon to do so, unless there are strong grounds to believe - which should be reduced into writing and communicated to the higher Police officials as well as to the concerned Magistrate - that the accused is likely to disappear and that it would be very difficult to apprehend him or that he is a habitual

52 web site www.law.nic.in/lawcom
offender. (In case of the latter ground, material in support of such ground shall be recorded.) Accordingly, the expression "bailable" shall be omitted in respect of these offences and they should be termed simply as cognizable offences. Section 41 may be amended appropriately to provide that in case of these offences, no arrest shall be made except in the situation mentioned above.

(3) In respect of the offences punishable with seven years imprisonment or less; (offences punishable under sections 124, 152, 216-A, 231, 233, 234, 237, 256, 257, 258, 260, 295 to 298, 403 to 408, 420, 466, 468, 477-A and 489-C, have been excluded) and which are at present treated by the Code of Criminal Procedure as non-bailable-cognizable offences – should be treated as bailable-cognizable offences and dealt with accordingly. So far the offences excluded from this category are concerned (namely, offences punishable under section 124 and others mentioned above), they shall continue to be treated as non-bailable-cognizable, as at present.

(4) In respect of non-bailable-cognizable offences punishable with more than seven years imprisonment, seeing the severity of the offence, no change is proposed in the existing law.

(5) So far as non-bailable-non-cognizable offences punishable up to seven years are concerned, they shall be placed in a separate category of offences.
The judicial decisions in the past have laid down that releasing the person on bail should be the normal practice and refusal to do so, is an exception. The policy accepts the basic principle that there is no justification in depriving a person of his liberty unless his guilt is proved. The amount of bond shall be fixed with due regard to the circumstances of the case and shall not be excessive. In Mothi Ram Vs State of Madhya Pradesh, the Honourable Supreme Court found fault in expecting the poor mason to provide a surety of a sum of Rs.10,000/- from his own district. The Magistrate is expected to hold an enquiry and get satisfied into the condition and background of the accused that he is not likely to abscond, then the accused should be released on order to reappear on obtaining own bond. In his characteristic style, Krishna Iyer, J., observed in this case as "The law, in its majestic equality, forbids the rich as well as the poor to sleep under the bridge, to beg in the streets and to steal bread. The reality of this caricature of equal justice under the law, whereby the poor are priced out of their liberty in the justice market, is the grievance of the petitioner".

Nowadays it is very unfortunate that, there is a collusion between the police and the prosecution that if the case comes for bail, corruption plays a major part and next the vengeance of the police is also added to the situation. As such, if the police is treated with the money then there will be no objection from the prosecution when it was asked by the judge whether there is any objection from the prosecution side for the accused to be released on bail and in the contrary if the police is not treated well then they will fight till the end.

53 Sec 440(1) of Cr.P.C.-1973
and see that the person will not get a bail in such cases. It is so pathetic to see that in the above situations the Magistrate is also reluctant to use the discretionary power to issue the bail. The judicial attitude needs to be corrected for maintaining social justice for securing the liberty of an individual as enshrined in our constitution and for upholding the dignity of human beings. Remand of accused without an enquiry is only a sadistic approach and it is pertinent to point out the Cr.P.C. never intends pre-trial convictions.

The next important and interesting issue is the high drama of arrest before the Court premises. Many such incidents happen commonly in India. A person who is so called accused foresee threat by the police to arrest him, wants to surrender in Court directly to avoid the torture in police custody. But the police, who come to know that the accused might surrender in the Court, will surround the Court premises so that they arrest him before he surrenders in the Court. This is not a healthy practice. A person has the right to the surrender in Court. If he fears the torture in police custody and wants to surrender in Court directly let the police follow the procedure in Court of law and ask for reasonable police custody. Such arrests before entering the Court is a denial of right and a direct violation of Human rights.

Another aspect of arrest by police is that if the police decides to harass a person, degrade him, they will arrest the person and hold him in police custody in odd hours. For example; they will file the First Information Record (FIR) on Friday and arrest the person on Friday night after Court hours, so
the next two days being holidays for the Court, the innocent victim has to spend his time in the police custody with no other way. It is an open secret of the police department. It also can be called as “colourable police action” an appropriate phrase, which means that “one cannot do the thing directly, cannot do the thing indirectly.”

The next cruel thing that was in practice by the police is the hand cuffing of the prisoners and dragging them in to streets and Court halls. The Apex Court held the hand cuffing of the person as a degrading act. Still the practice of hand cuffing is done by the police in many parts of the India.

The Courts of today are deeply analysing the merits of the case when bail applications filed before them. But the bail applications with FIR and statements filed under Sec 161 of Cr.P.C. have often lead the Court to come to an erroneous conclusion that a prima-facie case is made out. Whether there is justification in probing into the merits of the case at this stage and and is it legally right in dismissing the bail applications on the pretext that a prima-facie case, is to be made out. The FIR, the so-called police document is always under suspicion.

The bail provisions in the Cr.P.C is extensive and are interested to release the accused before trial. This gives ample power to the Court to release the accused with the direction that all conditions may be imposed

55 PEOPLE UNION FOR CIVIL LIBERTIES Vs UOI 1997 SCC (Cri) 4343
56 Sec 436, 437,438 and 439 of Cr.P.C..
whenever required. The district and the sessions Court have totally removed Sec 48 (Anticipatory bail) from their book, Even in the High Court, Anticipatory bail are not automatic.

It is to be asserted that the judicial response in regard to the existing Law of arrest is not digestible. By the reasons stated above it is to be asserted that the Courts of law particularly the lower judiciary are in fact acting against the spirit and demands of the UDHR and the protection of Human Rights Act- 1993, which is not an healthy way of creating a society devoid of Human Rights violations.

VIII. THE SUPREME COURT IN THE PROCESS OF ARREST.\textsuperscript{57}

Our honourable Supreme Court over the last two decades has been trying to circumscribe the vast discretionary power vested by law in Police by imposing several safeguards and to regulate it by laying down numerous guidelines and by subjecting the said power to several conditionalities. The effort by our honourable Supreme Court throughout has been to prevent its abuse while leaving it free to discharge the functions entrusted to the Police.

In Joginder Kumar Vs State of Uttar Pradesh\textsuperscript{58}

In this case the Supreme Court has dealt the power of arrest and its exercise with at length. And also the important aspect is striking a right

\textsuperscript{57} Source web site www.law.nic.in/lawcom

\textsuperscript{58} (AIR 1994 SC 1349),
balance between the individual rights and the interest of the society. It would be appropriate here to refer to certain perceptive observations of the judgment:

"The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two? A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand and individual duties, obligations and responsibilities; on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first – the criminal or society, the law violator or the law abider; of meeting the challenge which Mr. Justice Cardozo so forthrightly met when he wrestled with a similar task of balancing individual rights against society's rights and wisely held that the exclusion rule was bad law, that society came first, and that the criminal should not go free because the constable blundered. The quality of a nation's civilisation can be largely measured by the methods it uses in the enforcement of criminal law."
The same Court in Smt. Nandini Satpathy Vs P.L. Dani⁵⁰, quoting Lewis Mayers, stated:

"To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery on the other is a perennial problem of statecraft." The pendulum over the years has swung to the right.

Again in para 21, at page 1033, it has been observed:

"We have earlier spoken of the conflicting claims requiring reconciliation. Speaking pragmatically, there exists a rivalry between societal interest in effecting crime detection and constitutional rights, which accused individuals, possess. Emphasis may shift, depending on circumstances, in balancing these interests as has been happening in America. Since from Miranda's case (1966) 334 US 436) there has been retreat from stress on protection of the accused and gravitation towards society's interest in convicting law-breakers. Currently, the trend in the American jurisdiction according to legal journals is that 'respect for (constitutional) principles is eroded when they leap their proper bounds to interfere with the legitimate interests of society in enforcement of its laws.... (Couch v. United States (1972) 409 US 322, 336). Our constitutional perspective has, therefore, to be relative and cannot afford to be absolutist, especially when torture

⁵⁰ AIR 1978 SC 1025 at page 1032
technology, crime escalation and other social variables affect the application of principles in producing humane justice."

From the foregoing observations it is submitted that the perfect striking balance cannot be obtained between the protection of individual human rights interest and the interest of the society (by giving the power to the law enforcement agency). The balance would be swinging like a pendulum. This pendulum shall swing on the interest of the individual and to the other side of the interest of the society and it shall swing depending upon the situation and circumstances it warrants.

It is submitted that the crime rate is going up in our country for various reasons which need not be recounted here. Terrorism, drugs and organized crime have become so acute that special measures have become necessary to fight them not only at the national level but also at the international level. The fact that quite a number of policemen risk their lives while discharging their duties and that they are specially targeted by the criminal and terrorist gangs. In certain situations e.g., like the one occurring in Kashmir today, a literal compliance with several legal and constitutional safeguards may not be practicable but also take note of and provide for the generality of the situation all over the country and not be deflected by certain specific, temporary situations. The fact is that, very often, it is the poor who suffer most at the hands of Police. Their poverty itself makes them suspects. This was said, though from a different angle, by George Bernard Shaw. He said "poverty is crime". But nowadays, even middle classes and other well-to-
do people, who do not have access to political power-wielders are becoming targets of Police excesses. We recognize that ensuring a balance between societal interest in peace and protection of the rights of the accused is a difficult one but it has to be done. The fundamental significance of the Human rights, which are implicit in Part III of our Constitution and of the necessity to preserve, protect and promote the Rule of Law which constitutes the bedrock of our constitutional system.

The National Police Commission in its Third Report\(^6\) referring to the quality of arrests by the Police in India mentioned power of arrest as one of the chief sources of corruption in the police. The report suggested that, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails. The said Commission in its Third Report at page 31 observed that:

"It is obvious that a major portion of the arrests were connected with very minor prosecutions and cannot, therefore, be regarded as quite necessary from the point of view of crime prevention. Continued detention in jail of the persons so arrested has also meant avoidable expenditure on their maintenance. It was estimated that 43.2 per cent of the expenditure in the connected jails was over such prisoners only who in the ultimate analysis need not have been arrested at all.".... (The figures given in the Report of the National Police Commission are more than two decades old. Today, if anything, the position is worse.)

\(^6\) Supra.57
The Royal Commission\textsuperscript{61} suggested the need for restrictions on the power of arrest on the basis of the 'necessity of principle'. The objectives of this principle are that the police can exercise powers only in those cases in which it was genuinely necessary to enable them to execute their duty to prevent the Commission of offences and to investigate the crime. The Royal Commission was of the view that such restrictions would diminish the use of arrest and produce more uniform use of powers. The Royal Commission Report on Criminal Procedure – Sir Cyril Philips, at page 45 said:

"... We recommend that detention upon arrest for an offence should continue only on one or more of the following criteria;

a) the person's unwillingness to identify himself so that a summons may be served upon him;

b) the need to prevent the continuation or repetition of that offence;

c) the need to protect the arrested person himself or other persons or property;

d) the need to secure or preserve evidence of or relating to that offence or to obtain such evidence from the suspect by questioning him; and

e) the likelihood of the person failing to appear at Court to answer any charge made against him."

\textsuperscript{61} Ibid
The Royal Commission in the above-said Report at page 46 also suggested:

"To help to reduce the use of arrest we would also propose the introduction here of a scheme that is used in Ontario enabling a police officer to issue what is called an ‘appearance notice’. That procedure can be used to obtain attendance at the police station without resorting to arrest provided a power to arrest exists, for example to be finger-printed or to participate in an identification parade. It could also be extended to attendance for interview at a time convenient both to the suspect and to the police officer investigating the case...."

In India, Third Report of the National Police Commission at page 32 also suggested:

"...An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

1) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.

2) The accused is likely to abscond and evade the processes of law."
3) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

4) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

From the foregoing observations it is well understood that if the police acted on the principle of necessity in the matter of arrest or in other words if the police reasonably thought that if there is really a need for the arrest depending upon the circumstances, then the problem of the violation of human rights would drastically come down to certain extent.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines.

The Court further observed that:

"No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a
Police Officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave Station without permission would do.\(^{63}\)

The ultimate directions given by the Supreme Court, contained in paras 26 to 29, which read as follows:\(^{64}\)

"These rights are inherent in Articles 21 and 22(1) of the Constitution and require to be recognized and scrupulously protected. For effective enforcement of these fundamental rights, we issue the following requirements:

1. An arrested person being held in custody is entitled, if he so requests to have one friend relative or other person who is known to him or likely to

\(^{63}\) Ibid

\(^{64}\) Ibid
take an interest in his welfare told as far as is practicable that he has been arrested and where he is being detained.

2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.

3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.

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

The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the rights of the arrested persons found in the various Police Manuals. These requirements are not exhaustive. The Directors General of Police of all the States in India shall issue necessary instructions requiring due observance of these requirements. In addition, departmental instruction shall also be issued that a police officer making an arrest should also record in the case diary, the reasons for making the arrest."

It is submitted that even after the various decisions of the Supreme Court the police agency has not understood the principles of the protection of the Human Rights as the complaints towards the police, to the NHRC and
SHRC were the glaring example of it. Police a law enforcing agency should co-operate with Judiciary in this regard such that to consider with humanity of the so called accused. These two estates of the government should function fairly to see that liberty of an individual is not disturbed unless by due process of law as just and reasonable⁶⁶ and to see that the safeguarding the constitutional rights guaranteed to the common man and ensuring the human dignity as demanded by the Universal declaration of Human Rights-1948.

The next decision which is a recent Landmark case is D.K. Basu v. State of West Bengal (AIR 1997 SC 610). It has been dealt in the next chapter.

IX. Data collected on the relevant aspects of the law of arrest⁶⁶. –

It is necessary here to give the data on the relevant aspects of the law of arrest so that it can form the basis for devising the measures to be recommended by the researcher. The researcher here has the need to give the data collected by the law commission of India through out the country.

Data furnished by various States⁶⁷. A brief reference to the data furnished by the various States would now be in order.

⁶⁵ AIR 1978 SC597
⁶⁷ Ibid.
ANDHRA PRADESH

In the State of AP, the district of Medak was chosen as a test case for study in the State. The Committee constituted for the purpose has made the following relevant observations while furnishing the relevant statistics. They are:

1) Only in about 40% of the cases, charge-sheets are filed within the stipulated time limit of ninety days. Frequently the Investigative Officers (IO) seek extension of judicial remand of the accused. The IO have to be educated in the need for expeditious completion of investigation and filing of charge sheets.

2) A number of accused granted bail by the Courts have not been able to avail the facility since they are unable to produce proper sureties. They continue to languish in judicial remand. No legal aid is being provided to them.

3) Though the number of arrests made without registering cases is of high proportion (3746 out of 8889 of arrests, i.e. roughly 42.14%), as many as 3164 are under preventive sections of law (108, 109, 110 and 151 Cr.P.C). All these accused either were bound over by a Magistrate within the stipulated time or who were released by the police agency itself. Hence, it is difficult to say that the power of arrest is not exercised with circumspection.
4) The daily allowance provided for food etc. to the arrested persons is too meager. Even this amount is not being drawn regularly from the treasury.

5) In 30% of the cases (54 out of 172), the accused are not being produced before the Court for various reasons.

6) On several dates of hearing when the accused were produced before the Court the cases were adjourned, or the accused was not examined or the witnesses were not examined for one or the other reason.

7) "With the present quantum of work load on various Courts in the district, the trial of cases is inordinately delayed (statistics in table 10). Increase in the number of Courts, enhancing the scope of compoundable offences and limit on the number of adjournments could be the solution to the problem."

8) It would be appropriate if the Courts hold their sittings in the jail premises itself, which would solve the problem of insufficiency of escort personnel. Such a measure was experimented within Hyderabad city three years back with considerable amount of success.

9) For serious crimes like dacoities, robberies, economic crimes and gender crimes etc., special Courts may be established to facilitate expeditious disposal of those cases."
So far as the statistics go, they disclose that out of 8889 arrests, 1209 and 418 are under sections 109 and 110/108, Cr.P.C. As already stated, the number of arrests made without registering the crime is 3746. In the IPC offences, the arrests for rioting and hurt cases are the largest being 1052 and 1653 respectively. Arrests under Gambling Acts and Excise and Prohibition Acts are 277 and 151 respectively.

The facts and figures furnished from this State disclose that a large number of arrests were made without registering the crime (more than 42%) and that "preventive arrests" are quite substantial. A special feature of this state is the inability of producing the accused before the Court on the dates of hearing, which has led the police to suggest the venue of trials to jails. The phenomenon of frequent adjournments when the accused is produced and the witnesses are also ready, is also emphasized.

ASSAM

Jorhat district was selected for the purpose of study in this State. Among the IPC offences, the largest number of arrests were made for the offence of theft. It is 239 out of a total of 1,351. The percentage of arrests for bailable offence is not furnished.

BIHAR

The particulars furnished by the DGP Bihar appears to pertain to the district of Muzaffarpur. The total number of arrests during the year 1998 in
the said district for substantive offences was 3,322. The arrests under preventive provisions of law is stated to be 560. The percentage of arrests made in relation to bailable offence is stated to be 34.66%. By a subsequent letter dated 30.5.2000, the DGP, Human rights, Bihar has furnished the particulars with respect to the entire State (?). According to this letter, the total number of arrests is 2,38,613. The particulars of preventive arrests however have not been furnished. It is stated that the percentage of arrests made in relation to bailable offence is 13.90%.

CHANDIGARH

In this Union Territory the preventive arrests are as many as 4,286 as against 2,215 persons arrested for substantive offences (1,856 under IPC and 359 under local and State laws). The percentage of arrests made in relation to bailable offences is 47.35% in respect of IPC offences and 87.18% under local and State laws.

DELHI

South West district of Delhi was selected for the purpose of study by the Delhi Police. According to the information furnished, the total number of persons arrested without warrant during a year is 6,869. A majority of arrests appear to have been made for offences against property like robbery, burglary, and theft. The number of persons arrested for rioting is also substantial. According to another statement furnished, out of 3,772 cases
chargesheeted, 727 ended in conviction. In other words, as against 6,266 persons chargesheeted, 988 were convicted. It is however not clear whether these particulars pertain to one year or on what basis they were tabulated.

GUJARAT

In this State, a committee of eight officials headed by Addl. DGP, CID (Crime), was constituted to gather and supply the relevant information. The total number of accused arrested during the year (1998) is 1,13,489 out of which the persons arrested for causing hurt is 29,226, for rioting 12,823, for theft 8,364 and for house breaking by day and night (put together) 3,147. 42,150 persons were arrested under what is called the miscellaneous offences. The total number of persons arrested by way of preventive action "i.e. under sections 107, 109, 110 of Cr.P.C and sections 56, 57, 122 & 124 of Bombay Police Act and under section 93 of the Prohibition Act" is a total of 1,89,722. In other words, the preventive arrests are far higher in number than the arrests made for committing substantive offences.

HARYANA

The total number of arrests during that year was 2,048. Out of this total number, 248 persons were arrested in connection with crimes against persons, 232 for crimes against property, 160 for crimes against women, 218 in connection with accident cases, 89 for economic offences like cheating and fraud, 223 in connection with other offences under IPC, 672 under the State
Excise Act, 119 for electricity theft and four persons under the Arms Act. The number of arrests in bailable cases, according to this letter, is as high as 94%.

It is evident that a substantial number of persons were arrested for excise offences. The particulars of preventive arrests, if any, are not furnished nor the percentage of arrests in bailable cases.

**HIMACHAL PRADESH**

Kangra district was selected for the purpose of study in the State. The total number of arrests made during the year 1998 is stated to be 3,932. 1,237 arrests were made for petty crimes. The arrests made for rioting (147, 148 and 149) is stated to be 686. The arrests made under the Excise Act are as high as 904. The percentage of arrests made in relation to bailable offences is 63.12%. According to another letter from the DGP, Shimla the percentage of arrests made in relation to bailable offences for the entire State is 65%.

**KARNATAKA**

Belgaum district was selected for the purpose of study as it is stated to be a crime-prone district. The particulars furnished relate to the year 1998. The number of arrests made during the said year without warrant is 10,368. The number of preventive arrests is 2,262. The percentage of arrests made in relation to bailable offences is as high as 84.8%. Towards the end of his letter, the DGP states that police is adhering to the provisions of law strictly and that the enhanced awareness of their rights among the people, the presence
of social and service organisations and the spread of literacy has led the police to obey the laws.

KERALA

According to the letter of the IGP, state Crime Records Bureau, the total number of arrests under cognizable crimes under IPC and SLL is 1,64,035. The number of persons arrested under preventive provisions is 5,884. The percentage of arrests made in relation to bailable offences is 71%.

MAHARASHTRA

In this State, particulars have been furnished in respect of two districts, namely, Pune rural district and Thane rural district. The particulars with respect to Pune rural district are the following:

1. Total no. of persons arrested (no. of persons arrested under substantive offences) – 8943.

2. Total no. of persons arrested under preventive provisions of law – 4933.

3. Out of it, total no. of persons chargesheeted – 8836.

4. Total no. of persons dropped/released without filing chargesheet – 93.
It does not include persons arrested under preventive provisions of law.

5. Total no. of persons ended in conviction – 73.

6. Percentage of arrests made in relation to bailable offences – 72.90%.

The particulars with respect to Thane rural district are to the following effect:

1) Total no. of persons arrested 10,376

2) Total no. of persons arrested under preventive provisions of law

3) Out of it, total no. Of persons chargesheeted - 10,345

4)(A) Total no. of persons dropped/released without filing chargesheets-31

(B) Total no. of persons dropped/released without filing chargesheets who arrested under preventive provisions -Nil

5) How many persons ended in conviction-394

6) Percentage of arrests made in relation to bailable offences-67.73%

It may be noticed that in case of both the said districts, the number of preventive arrests are unusually high. It is more than one-half of the number of arrests for substantial offence in the case of Pune rural and two-thirds in
the case of Thane rural. Then again the arrests made in relation to bailable offences are something understandable. It is 72.90 and 67.73 per cent, respectively.

MANIPUR

In this State, the district of Lunglei was selected for the purpose of study. Very elaborate and individual case-wise particulars have been furnished for this State. From the statements furnished it appears that most of the arrests made were under preventive provisions or under local Acts.

MIZORAM

The percentage of arrests in bailable offences is 50% in this State.

ORISSA

In this State, the district of Khurda was selected for the purpose of study. According to the particulars furnished under the letter dated 15.1.2000, the total number of arrests for substantive offences in the said district for the year 1997 was 4,616. 73 persons were arrested under preventive provisions of law. The number of persons against whom chargesheets have been filed is stated to be 2,299. By a letter dated 1.5.2000, the DIG of Prisons, Orissa has furnished the following particulars with respect to prisoners in the State of Orissa. The total number of prisoners as on 31.3.2000 is 10,765. The total number of under trial prisoners as on the
said date is 7,823. It is also stated that pursuant to the directions of the Supreme Court with respect to release of under-trial prisoners, 44,480 prisoners have been released on bail up to 30.11.1999.

In spite of release of a large number of accused (under-trial prisoners) pursuant to the orders of the Supreme Court, the number of under-trial prisoners is as high as 3/4th of the total number of prisoners. One can only imagine the position before the orders of the Supreme Court.

TRIPURA

In this State also, the preventive arrests are very large compared to the arrests for substantive offences.

UTTAR PRADESH

1(a) Total number of persons arrested (No. of persons arrested under substantive offences is 1,73,634.)

1(b) Total number of persons who surrendered in various Courts is 1,25,268.(substantive offences)

2 Total number of persons arrested under preventive provisions of law is 4,79,404

3 Out of it, total number of persons charge sheeted is 4,48,440. (substantive preventive)
Total number of persons dropped/released without filing chargesheet is 29,124. (Substantive offences only)

How many persons ended in conviction – (Information not available).

Percentage of arrests made in relation to bailable Offences is 45.13%.

From the above figures it appears that while the total number of persons arrested/surrendered is around three lakhs, the number of persons arrested under "preventive provisions of law" is as high as 4,79,404. Obviously, the preventive provisions mean the provisions like sections 151, 109 and 110 Cr.PC and similar other provisions in local police enactments, if any. Another disturbing feature is the percentage of arrests made in relation to bailable offences. It is as high as 45.13%. ⁶⁸

X. BROAD FEATURES ARRIVED THROUGH THE DATA ⁶⁹

The particulars furnished by various States referred to herein above disclose the following broad features with comments:

1. The number of "preventive arrests" is unusually large. Preventive arrests evidently mean arrests made under sections 107 to 110 and 151 Cr.P.C and under local Police enactments containing similar provisions.

⁶⁸ Ibid.
⁶⁹ Ibid
While the break-up between arrests made under section 151 and sections 107 to 110 is not given, we have to recognize that there is a qualitative difference between them.

2. The percentage of arrests in bailable offences is unusually large ranging from 30% to more than 80%.

The material furnished does not show in how many cases of arrest in bailable offences, the accused were immediately released on bail by the Police and in how many cases, they were detained in custody and if detained, for how long. Figures of accused in bailable cases, who remained in custody/bail for their inability to furnish the bail, are also not furnished. Only the State of A.P. refers to this aspect without, of course, furnishing the number of accused so remaining in jails.

3. The percentage of under-trial prisoners in jails is unusually large.

The reasons for this may be the delays in concluding the trials in criminal Courts, the rigidity of the present law of bail and in some cases, the inability of the accused to furnish bail. In this connection, a fact, which has been brought to our notice by a retired DGP, relates to the casualness with which the rights of the prisoners are being dealt with by the jail authorities as well as the criminal Courts. The Supreme Court directed in two cases ‘Common Cause, A Registered Society’ Vs Union Of India70 and ‘Common

70 (1996) 4 SCC 33
Cause, A Registered Society Vs Union Of India\textsuperscript{71} that under-trial prisoners whose cases have been pending beyond a particular period should be enlarged on bail or on personal bond. These directions applied not only to cases pending on the dates of those orders but were also effective prospectively. As and when the case of a particular prisoner fell within one or the other direction given in those cases, he has to be released. For this purpose, both the criminal Courts and the jail authorities should be vigilant and cooperate with each other. They must constantly monitor the facts of each under-trial prisoner. But this is not being done either because jail authorities do not furnish full and relevant particulars or because the Court also does not look into these matters. This may be an additional contributing factor.

4. Many of the under-trial prisoners who were granted bail are unable to avail of the said facility because of their inability to furnish sureties or to comply with the conditions for release.

This is a phenomenon, which is digging the Indian jails since long number of years in spite of a number of judgments of the Supreme Court.

5. The number of arrests for petty offences is substantial, if not more than the arrests made for serious offences.

It is submitted that this is a serious problem which calls for our attention. It is probably this factor which made the Police Commissions to observe that a large number of arrests are unnecessary.

\textsuperscript{71} (1996) (6) SCC 775
6. While there is no clarity about the percentage of convictions in the particulars furnished by various States, it is clear beyond doubt that the percentage of conviction is very low in many of the States.

This is a very grave problem in our country. In some States like U.P., no trial is allowed to take place until one or more important witnesses are won over. Until then, constant adjournments are asked for and the situation is such that the Presiding Officers are not able to do anything to rectify this situation. A murder trial hardly proceeds to trial on the date it is posted.

7. The said material fully bears out the statement made in the Third Report of the National Police Commission to the fact that of the arrests made, 60% were either unnecessary or unjustified and that such unjustified Police action accounted for 43.2% of the expenditure of the jails (referred to in Joginder Kumar Vs State of U.P.).72 And those are 20-year old figures. Position today is not better, if not worse.

The above data depict the intensity of the violation of human rights to certain extent as many of the facts are suppressed and moreover for some states the data is not available. However, even with this available data it is certain to understand the actual situation prevailing in our country. The researcher, to sort out the issue of violation of human rights, in the matter of arrest, had given some recommendations and suggestions at the conclusion of this thesis.

72 [1994] 4SCC260