CHAPTER – IV

NATURE AND MAGNITUDE OF VIOLATION OF HUMAN RIGHTS AND CUSTODIAL VIOLENCE IN INDIA

Custodial violence is an unacceptable abuse of power in civilized society and an abhorrent violation of human rights by the protectors of the law themselves. It not only violates Article 21 of the Constitution of India which guarantees the fundamental right to life and liberty, but also infringes upon Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights, that every person has the right to life, liberty and security and no one shall be arbitrarily deprived of life.¹ Further, Article 5 of the Universal Declaration of Human Rights and Article 7 of the Covenant on Civil and Political Rights lay down explicitly that no one shall be subjected to torture, or cruel or inhuman on degrading treatment or punishment.² Article 9 of the Covenant emphasizes that no one shall be subjected to arbitrary arrest, detention or exile. These provisions also lay down that any one who is arrested shall be informed of the reasons of his arrest and shall be promptly informed of the charges against him. Article 22 of the Constitution protects the right of the individual in cases of arrest and detention and in essence incorporates the principles of these United Nations documents. It is a fundamental right under this Article, that the arrested persons must be produced before the nearest magistrate within twenty-four hours.³

Human Rights Violations that are alleged against the law enforcement agencies are:

4.1 Torture in police custody
4.2 Torture in judicial custody

4.1 Torture in police custody

Analysis of torture suggests the period of highest risk is the first twenty four hours following detention. There are no safeguards to guarantee that a person taken into custody will be recorded or anyone arrested will have prompt access to a lawyer and impartial medical examination upon arrival and release. The lack of an effective system of continued and independent monitoring of all places of detention further facilitates torture.\(^4\) The common types of incidents involving human right abuses under police custody are:

4.1.1 Death in police custody
4.1.2 Custodial rapes
4.1.3 Disappearance
4.1.4 Misuse and abuse of power of arrest
4.1.5 Third degree methodology of investigation
4.1.6 Police remand
4.1.7 Torture of children

4.1.1 Death in police custody

The atrocious Tortures, at times resulting in death of convicts, under trials, prisoners in the custody of police have assumed alarming

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proportions and has become a matter of great concern in modern society, custodial death strikes at the very root of the rule of law and efficient administration of criminal justice system. Custodial deaths assume importance because of the fact that they highlight the disrespect of law by the very persons entrusted with forcing the law, thereby shaking the faith of the citizen in the justice delivery system.5

Death in police custody has become the symbol of the growing tructishners and unchecked power of police. Torture, practical with an almost sadistic malevolence, is used to extort information, to settle scores or to teach the person concerned a lesson. In many cases lock up death are the result of third degree methods adopted by the police during the interrogation of suspect.6 Taking a serious view in case involving custodial death. The Supreme Court of India observed that death in custody tantamount to calculated assault on human dignity. This barbaric practice has prompted the then Chief Justice of India, A.S. Anand, to call it worst form of human rights violation. Many such observation in the part had shamed top police functionaries but nothing much has changed on the ground. This inertia in there perhaps because the police mindset is still stopped into colonial era when the police were supposed to treat every Indian as an enemy of State.7

Most of victims of custodial deaths are criminal suspects, political extremists and social Panahs and sometimes even human rights activities are converted into tortured cadavers. There have been

reports from all over India that arrested people have so severely tortured during interrogation that they have died.⁸ According to survey report sometimes the public or the affected party in case of the robbery demanded that the police thrash the subject. That nearly of the excesses committed by them out of sheer frustration in common knowledge. Then the onus of proving custody death within the four walls of police stations, lock up and prisons is on those challenging such deaths. This is another vulnerable facet of our criminal justice system. Sine there are no witness available to contradict the police version in most of these cases, the accused often goes set fee.⁹

In 1980, Arun Shourie investigated 45 death’s in police custody in seven states. He found, “the pattern the uniform from one death to another, from one state of another that generalizations are possible. The victims were invariably poor. Several of them were hauled in no formal charges at all. Even in the case of persons who were arrested, in an overwhelmingly large number of cases they were all accused of petty offences.” The explanation for these deaths were snake bite, heart failure on the way to hospital, sudden illness etc. Some where said to have died of mysterious reasons, while the rest committed suicide. The account of suicide given have not varied even now by hanging inside the lock-up by using a ‘lungi’ or a belt, jumping out of a building or in front of a bus, or some such indicrous or unbelievable accounts.¹⁰

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⁹ Supra note 6 at 8.
In a study by BPR&D (1992)\textsuperscript{11} on custodial crimes, following causative factors were identified for occurrence of custodial deaths in our country:-

1) Sadism in police  
2) Unrealistic public expectations about crime control.  
3) Failure of criminal justice system  
4) Inadequacy of strength and resource in police  
5) Inadequacy of laws  
6) Lack of scientific tamper and non-availability of facilities

The third report of the National Police Commission in India expressed in deep concern with custodial violence and lock-up deaths. It appreciated the demoralizing effect which custodial torture was creating in the society, it therefore, suggested that “an arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:\textsuperscript{12}

i) 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.

ii) The accused is likely to abscond and evade the process of law.

iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

\textsuperscript{12} \textit{Supra} note 4 at 10.
iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again, it would be desirable to most through departmental instruction that a police officer making an arrest should also record in the case diary the reason for making the arrest, thereby clarifying his conformity to the specified guidelines.

The Supreme Court has emphasized the extremely peculiar character of a situation where policemen who commit atrocities on persons in their custody are not allowed to escape due to paucity or absence of evidence. The police officers alone and none other can give evidence as regard the circumstances in which a person in their custody comes to receive injuries. Bound by their ties of brotherhood, they often prefer to remain silent, and when they choose to speak they put their own glass upon facts and upon the truth. The law on the burden of proof is such that it should be re-examined. The Law Commission of India has recommended that provision (Section 114-B) be inserted in the Indian Evidence Act, 1872, as a rebuttable presumption that injuries sustained by a person police officers. This would shift the burden of proof on the police officer. It is felt that this kind of an amendment will have a restraining effect on the officers indulging in custodial violence and torture.13

In 2006-2007, the NHRC received a total of 1,597 custodial death cases including 118 cases in police custody, 1,477 cases in judicial custody and two cases in the custody of defence and paramilitary forces. In 2005-2006 the NHRC received 1,575 custodial deaths

including 124 in police custody and 1,451 in judicial custody." In 2004-2005, NHRC received 1,493 cases of custodial deaths including 136 deaths in police custody and 1,357 deaths in judicial custody.14

In 2003-2004, there were 1,340 custodial death cases including 183 in police custody and 1,157 in judicial custody. In 2002-2003, NHRC received 1,463 custodial death cases including 162 deaths in police custody and 1,300 deaths in judicial custody, one death in the custody of para-military forces.15

The statistics of NHRC imply that in the last five years 7,468 persons at an average of 1,494 persons per year or four persons in a day died in police and prison custody in India. However, these figures represent only a fraction of the actual cases of torture. Cases of torture not resulting in death are not recorded. They do not differentiate between deaths in custody resulting from legitimate causes, for example old age, and due to the use of torture. Moreover, the NHRC has no mandate to investigate or record human rights violations perpetrated by military and para-military forces. NHRC often reports that there were no custodial deaths resulting from torture in the conflict afflicted state of Manipur or in Jammu and Kashmir. This assertion lies uneasily with the high levels of well documented cases in those states.16 As this report demonstrates, torture is integral to counter-insurgency operations.

16(i) Mr. Vinod Chandorkar was allegedly tortured to death in the custody of Wadala police station in Mumbai, Maharashtra. He was arrested earlier in the day on the basis of a complaint filed by his wife alleging domestic violence. After the opposition parties raised the question in the State Assembly House, Deputy Chief Minister RR
The police routinely cite "suicide" as a cause of death in custody. In 2007, many victims allegedly committed suicide by variety of means. In a reply to the Rajya Sabha, Upper House of Indian Parliament, on 12 March 2008, Home Minister Shivraj Patil cited suicide as one of the primary causes of custodial death. The Home Minister failed to clarify as to why so many accused had committed suicide in police detention, what had led them to act in this manner and how they had accessed the means (knives, poisons and open electric cables) etc. It equally ignores the psychological impact of torture that can inculcate feelings of deep guilt and depression sufficient to cause suicide.

(ii) Mr. Matabur Ali of Brahmangaon village died in the custody of the Kalain police station in Cachar district of Assam. He was arrested on 20 September 2007 following a family feud. A magisterial probe was ordered.

(iii) Mr. Bhaskar Behera (son of Rohit Behera) was beaten to death by a police team headed by Assistant Sub-Inspector NK Das at Rajnagar village under Athgarh police station in Orissa. Mr. Behera was mistakenly identified as a suspect.

(iv) Mr. Sathial Singh alias Bholu of NA Pukuri area in Tinsukia of Assam died in the custody of the Tinsukia police station. He was detained in connection with theft. His family alleged that the deceased died as a result of the torture inflicted while in detention.

(v) Mr. Manoj was illegally detained by the police on the grounds that he was 'found in suspicious circumstances' near Kottanad in Kerala. He was taken to Perumpetty Police Station in Malappally Taluk, the smallest administrative unit, of Pathanamthitta district of Kerala and was allegedly tortured to death.

(vi) Mr. Maqsood Shareef, a resident of Kondappa Badavane under Yelahanka police station in Bangalore, was detained in connection with theft. The police also arrested Ejaz, Asifullah Khan, Nusrath Ali, Shoukath Ali and Khaleel Pasha on related charges. According to Station House Officer of Kengeri police station, KC Asundi, Maqsood Shareef complained of severe pain in the chest one hour after his detention. He was taken to Jayadeva Hospital where he died while undergoing treatment. However, the family of the deceased claim that Mr. Shareef suffered no heart related ailment. Mr. Maqsood Shareef's wife, Ms Shabana Begum alleged that he was tortured to death by the police.

(vii) Mr. Syed Ali, a resident of Parapangadu in Kerala, was allegedly tortured to death in Vadapalani police station in Chennai of Tamil Nadu. The deceased sold tea at 100-Feet Road, Vadapalani. Following information that lottery tickets were being sold in the area, police picked up Mr. Syed Ali and another suspect for interrogation. The police claimed that the victim complained of ill health and was rushed to a private nursing home in the same locality, where he was declared dead. Mr. Syed Ali's son Jamshed and other relatives alleged that he was assaulted by the policemen at the police station, and injuries sustained caused his death.

17. Unseared question No. 1281 answered on 12.03.2008.
In 2007 ACHR documented number of cases where police accused the victims of committing suicide.18

In order to curb the evil of Human Rights violation during police custody, it is submitted that where police action may be causative of the death, a detailed study should be conducted to pin-point the action responsible for death and the policemen who commit custodial violence should be adequately punished and punishment awarded should be given wide publicity and in respect of custodial deaths, Section 176 of Cr.P.C., even after its recent amendment, is little use in finding out whether a death in custody was due to natural cause or to police misdemeanors. The reasons for the inefficacy of Section 176 is that the enquiry under that Section is not preceded by an investigation through an agency independent of the police establishment. Even an efficient judicial officer would find it very difficult to reach a satisfactory conclusion in regard to the cause of custodial death if the necessary evidence is not collected and led before him after a proper or impartial investigation. Therefore, all custodial deaths and other violation of Human Rights should be investigated and dealt with by Human Right Commission.

4.1.2 Custodial Rapes

Custodial excess by the police as well as by other custodians (of prison welfare home etc.) is an impression that has commonly come to say. The status of women in custody drew the attention of a Central Government Ministry enough to set up National expert

committee to go into the problems of custodialized women. Although asked to examine the situation of women prisoners, the committee deliberately chose to extend the scope of its purview to include women in all custodial situations, and mental health asylums. In all facilities visited by the committee, inmate complained particularly of harsh treatment by police including beating, physical torture rough handling, and even sexual indignity or abuse such treatment, unfortunately, was meted out to offenders and with offenders alike. A total disregarded by the police of procedure applicable to current, search, custody, transfer, and the right of the arrestee creates immense hardship for the woman. This is especially no when she has younger children to look after, or if she represents a woman headed household.  

When the inmates of the custody happens to be the women, the vulnerable Section of the society, they face additional and unspeakable mode of torture like pressing lighted cigarettes on delicate parts, inserting iron rods or stick alongwith chili powder in their private part, torturing the children in the presence of mothers. They are subject to the hazard of molestation and rape not only by custodial staff but also by the male inmates of jails.  

Custodial rape is an aggravated form of torture. Custodial rape committed by a police officer or a public servant, or an officer who is in the management of a jail, remand home or hospital on a woman in his custody, it is a crime committed by the custodians of law upon

whom the law vests the cherished duty to protect dignity, integrity and modesty of a woman. Rape is a inhuman, violent and heinous act of sexual aggression against the dignity and modesty of a woman. It is a crime against basic human rights and is also violative of the victim’s most cherished of all the fundamental rights, namely, the right to life contained in Article 21.22

Mathura,23 Maya Tyagi, Suman Rani, Ramezabee, Kakoli Shanetra, Nehar Bano, Kalpana Samathi, Vidya24 etc. are the glaring example of custodial rape, which has sent ripples of shock in the society. The rape and death of Salwinder Kaur and Sarbjit Kaur by the Punjab Police is an extreme example of police atrocities against women.25 However, the figure furnished for custodial rape cases cannot taken as authentic as most of the rape cases go unreported because of humiliating attitude and hostile atmosphere of society against the rape victim.

Women who come into conflict with law face considerable difficulty at all stages of the criminal justice process. At the time of her arrest, the woman suffers from lack of knowledge of her basic rights, and from the virtual absence of a legal support system, frequently, she is handicapped because of her illiteracy, law status and lack of independent capacity to mobilize resource or help. Police handling of the woman can range from casual to callous, occasionally correct, but hardly ever empathetic. Once in prison, women are neglected on account of their small numbers and low security risk.26

26. Supra note 20 at 181-182.
The constitution of India under Article 15(3) allows the Union and State Government to make special provisions in order to safeguard and protect the interests of women. The constitution was amended in 1976 to make it a fundamental duty of every citizen to renounce practices derogatory to women under Article 51(A)(e). There are provisions in the criminal law granting special protection to woman against custodial torture some of which are as follows:

    Section 51(2) and 100 of the Criminal Procedure Code says that if a woman is to be searched by police officer in connection with a crime “the search shall be made by another woman with strict regard to decency.”

The code also lays down that the women must interrogated at her residence, “No male person under the age of 15 years of woman shall be required to attend at any place other than in which such male person or woman resides.” Therefore, woman should not go to the Police Station for interrogation or to give evidence. The concerned police officer must meet her in her house. The amendment to Section 375 of the IPC has made it mandatory that women not be arrested during night.

The position of women prisoner is more pathetic than their male counterparts. One of the predominant reasons from the state of affairs is lack of adequate and separate prisons for women. This is evident from the fact that there are only four separate institutions for women prisoners in the whole country one each in Andhra Pradesh,

28. Supra note 19 at 5-9
Maharashtra, Tamil Nadu and Uttar Pradesh. There are two more prisons for women, one each in Bihar and Rajasthan, but they are part of the Central Prisons, where male prisoners are also kept. Moreover, these prisons are meant for convicted women prisoners only. One important fact responsible for not having adequate and separate prisons for women, is the relatively small numbers of female prisons to be by the system. The expert committee on catered women prisoners 1986-87 on the other hand, observed that the smaller number of women prisoners, in comparison to men, could not be held as a valid factor for limiting the creation of custodial facilities. Besides recommending separate institution / annexures the Jail Committee of 1980-83 recommended that the staff for these institutions and annexures shall comprise women employees only.\textsuperscript{29}

The same approach in reflected in the following recommendation of the committee.\textsuperscript{30}

(i) All police investigation involving women, must be carried out in presence of a relative of the accused or her lawyer and of a lady staff members.

(ii) Police personal should treat women with due courtesy and dignity during investigation and while they are in police custody.

(iii) Women kept in police lock-up should invariably be under the charge of a women official and which in transit they should be accompanied by women escorts

\textsuperscript{29}. Report of the All India Committee on Jail Reforms, 345(1980-83).
\textsuperscript{30}. Id at 187.
(iv) Bail should be liberally granted to women under trial prisoners.

(v) The Probation of Offenders Act should be extensively used for the benefit of women offenders in order to keep them away from prison as far as possible.

(vi) Segregated custody is desirable, as one specialized approach to women, where crimes by or against are endemic, special booth or units should be set up to assist women in conflict or contact with judicial system. However, such booths must be managed by an integrated force of men and women police jointly managing, police stations, police lock ups, escort, community outreach, and other amenities for women.

UN Special Rapporteur on Torture dealt with the issue of torture of women held that:

Custodial violence against women very often includes rape and other forms of sexual violence such as threats of rape, touching, "virginity testing", being stripped naked, invasive body searches, insults and humiliations of a sexual nature, etc. It is widely recognized, including by former Special Rapporteur on torture and by regional jurisprudence that rape constitutes torture when it is carried out by or at the instigation of or with the consent or acquiescence of public officials.31

31. The committee against torture found in its decision V.L. v. Switzerland (CAT/C/37/D/262/2005) that "the sexual abused by police in this case constitute torture even though it was perpetrated outside formal detention facilities", para. 8.10; Meeja v. Peru, Inter-American Commission on Human Rights, Annual Report, 1995, OEA/ser.H/11.getString().replace(/\r\n\r\n/，“)
In a 1997 decision on a case of custodial rape the European Court of Human Rights acknowledged that:

Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of the victim (...) rape leaves deep psychological scars on the victims which do not respond to the passage of time as quickly as other forms of physical and mental violence.\(^{32}\)

Highlighting international criminal law, the Special Rapporteur further stated that the International Criminal Tribunal for the former Yugoslavia decisions in the Celebici and Furundzija cases have contributed to the international recognition of rape as a form of torture.\(^{33}\)

International criminal tribunals, in their jurisprudence, have broadened the scope of crimes of sexual violence that can be prosecuted as rape to include oral sex and vaginal or anal penetration through the use of objects or any part of the aggressor's body. This is crucial because in many countries rape is still defined as "carnal access", reducing it to penetration with the male sexual organ. It is noteworthy that other forms of sexual violence, whether defined as rape or not may constitute torture or ill-treatment and must not be dealt with as minor offences.\(^{34}\)

\(^{32}\) European Court of Human Rights, Aydin v. Turkey (57/1996/676/866)


\(^{34}\) The Inter-American Court of Human Rights resorted to the international jurisprudence on rape to conclude that "The act of sexual violence to which an inmate was submitted under an alleged finger vaginal examination constituted sexual
The Special Rapporteur held that:

When Government officials use rape, the suffering inflicted might go beyond the suffering caused by classic torture, partly because of the intended and often resulting isolation of the survivor. In some cultures a rape victim may be rejected formerly banished from her community or family. This rejection greatly hinders the psychological recovery of the victim and often condemns her to destitution and extreme poverty. Even when rape survivors are not rejected they still face important difficulties in establishing intimate relationships. Furthermore, raped women are often infected with sexually transmitted diseases or may experience unwanted pregnancies, miscarriages, forced abortions or denial of abortion. Because of the stigma attached to sexual violence, official torturers deliberately use rape to humiliate and punish victims but also to destroy entire families and communities. This is particularly clear when State officials force family members to rape their female relatives or to witness their rape. The Akayesu decision, in which the International Criminal Tribunal for Rwanda (ICTR) recognized rape as a form of genocide in the same way as any other act committed with specific intent to destroy a particular group, is a striking acknowledgment of the destructive potential of rape. The ICTR made it explicit that these rapes resulted in the physical and psychological destruction of Tutsi women, their families and their communities.35

Torture of women in custody including rape is reported regularly in India. Custodial rape remains one of the worst forms of torture perpetrated on women by law enforcement personnel. Official reporting is nothing short of appalling. According to National Crime Records Bureau (NCRB), two custodial rape cases were reported in India (one each from Andhra Pradesh and Maharashtra) in 2006, seven custodial rape cases in 2005 and two custodial rape cases in 2004.36

In order to curb the menace of custodial rape, the Criminal Law (Amendment) Act, 1983 amended the IPC providing deterrent punishment in such cases, it states that a public servant convicted on a charge of custodial rape as in police station, jail or hospital will be prosecuted and punished with a ten years or even life. For the protection of women prisoner from cruel, inhuman treatment it is further submitted that effective supervision of prison by impartial authority is vital for the protection of human rights of woman prisoner. Accordingly, the prison Acts and Jail Manual provided for supervision of jails by the superior jail authorities, District Magistrate and other Magistrates. The National Human Rights Commission also visits, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendation thereon.

4.1.3 Disappearances

The International Convention for the Protection of All Persons from Enforced Disappearance, 2006 defines enforced disappearance as follows:

Enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the state or persons or group of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of law, and in cases of enforced disappearance done or perpetrated acquiescence of the state.37

Enforced disappearance is a savage practice adopted by police whereby the person 'wanted' by police are tortured to death and the dead bodies of the victims are disposed of in a clandestine manner so that the whereabouts of the victims could not be traced and the police accomplices the desired object with impunity. According to Amnesty International, 'deprivation of liberty by Government agents or with their consent', followed by an absence of information or refusal to disclose the fate or whereabouts of the protection of law, constitute a forced disappearance. In cases of disappearance the victim is presumed to be dead and the perpetrators of crime destroy

or conceal evidence of the crime. In Harbans Kaur v. Union of India, the Supreme Court directed the inquiry whether, the petitioner was mercilessly beaten to death in police custody. In Afzal v. State of Haryana, habeas corpus petition was filed for the release of two children alleged to have taken away by the police. The police had denied the arrest and detention of the children. The Supreme Court directed in inquiry to ascertain the whereabouts of the children. In Punjab the persons killed due to torture are said to be disposed of in a clandestine manner and most of them were thrown in the waterways or fields.

Enforced disappearance has been a potent weapon of repression and suppression and is generally resorted in situation like terrorism, insurgency, armed conflict, armed rebellion, internal disturbances, political upheaval, military rule etc. Government often use it in silencing their opponents, crushing leaders of insurgency and sometimes to suppress the morale of the people, giving support to their political rival insurgents groups. Enforce disappearance is not a violence of single human right, it is in fact the violation of constellation of basic recognized human rights standards. It entails an arbitrary deprivation of personal freedom, integrity and safety of a person and even the very existence of victim’s life.

41. Supra note 37 at 128.
In 2003, the Jammu and Kashmir Government stated that 3,931 persons had disappeared in the state since the insurgency began in 1990. In September 2005, there were more than 6,000 cases of disappearance remained unresolved in the state. However, according to the Director General of Police in Jammu and Kashmir seven persons disappeared in 2003; three persons in 2004 and two persons in 2005-06. Human rights groups maintained that in Jammu and Kashmir and in the north-eastern states, numerous persons continued to be held by military and paramilitary forces. Human rights activists feared that many of these unacknowledged persons were subjected to torture and that some may have been killed extra judicially. In Punjab, during the year 1995 Jaswant Singh Khalra (Secretary General, Akali Dal Party’s human right cell in Punjab) was allegedly taken from his house by uniformed police. The state police asserted to human rights group and in response to Supreme Court order that they were not holing Khalra. Another Supreme Court order required a report on the abduction. After the State Government failed to respond adequately to previous orders, the Supreme Court in November 1995 ordered the Central Bureau of Investigation to take over the investigation. Human rights activist and lawyers from the state of Punjab reported filing 4,000 disappearance cases. But only 10 to 12 of these cases have been prosecuted. The N.H.R.C. directed to CBI to give the Punjab Government access to documents regarding the illegal killing and cremation of 64 persons by Punjab Police during the counter insurgency in July 2005. On April 3, A.S. Anand, Chairman of N.H.R.C.; stated that Punjab State Government

identified 570 persons who had been cremated secretly. On May 15, the N.H.R.C. directed Punjab authorities to pay Rs. 243,000/- to the survivors of 45 victims. There were credible reports that police throughout the country often failed to file legally required arrest reports, resulting in hundreds of unresolved disappearance in which relatives claimed that an individual was taken into police custody and never heard from again.43

Despite the activist role of judiciary in safeguarding the basic human rights. What is most worrisome and distressing is that violation is often done by those who are protection and guardian of human right under law. Recent amendment in Cr.P.C. is most enough is providing justice to victim of enforced disappearance and their relatives. Therefore, to make the legal system more responsive to the growing manure of enforced disappearance it is submitted that:

(i) The Government of India should make legislature on enforced disappearance.

(ii) There should be custodial safeguards and Government should take prompt action against officials involved in enforced disappearance.

(iii) Enforced disappearance should be a crime under Indian Penal Code and a new provision should be inserted in the Constitution entailing a right not to be subjected to enforced disappearance.

4.1.4 Misuse and abuse of power of arrest

The misuse and abuse of power by some errant police officials is possible either through circumvention of legal provisions or due to loopholes in the existing laws and rules. The paradox has been put sharply by Lewis Mayers as reported in Nandini Sathapathy to strike a 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 perennial problem of statecraft. The pendulum over the years has swing to the right.

In Joginder Kumar v. State of UP, this aspect has been clearly dealt with by the Apex Court. The relevant observation is that:

The arrest need not be in every case... 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. No arrest can be made in a routine manner on a more allegation of commission of an offence made against a person. 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.

46. 1994 SCC (Cri) 1172.
However, there is preventing myth that greater exercise of power of arrest largely contributes towards can effective crime control system. An excellent survey of the pre-trial laws and practice in several countries has appeared in a compilation titled “waiting for trial” which sums up the conclusion about the arrest power as follow:

In most jurisdiction arrest and interrogation is neither an automatic response to the detection of a suspect nor even necessarily the most common way in which suspects are dealt with. Procedures in mercy countries exist for minor offences to dealt with by alternative means, such as the use of summons or for voluntary attendance at a Police Station for questioning in which case, if the accused / suspect in charges with an offence, an arrest is often of formality immediate followed by pre-trial release.\(^48\)

The Human Rights Committee has taken the view that the term “arbitrary arrest” must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability. The term includes the situation of detainees who are kept in detention after their release has been ordered by judicial or other authority and those arrested with no criminal charge against them. It follows from this that not only illegal arrest is arbitrary but even an arrest or detention which is in accordance with law may also be arbitrary. Besides its interpretation upon this wider meaning of the term ‘arbitrary’ a committee established by the Commission on Human Rights defines “arbitrary arrest” as follows:

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An arrest or detention is arbitrary if it is (a) on grounds or in accordance with procedure other than those established by law, or (b) under the provisions of a law the basic purpose of which is incompatible with respect for the right to liberty and security of person.49

Following are some of legal aspects of arrest of person where failure of the police to observe the requirements prescribed by law arresting a person should be made a punishable offence.50

(i) Firstly, misuse of power occurs when under Section 50 of the Criminal Procedure Code requires that every person arrested without warrant shall be given full particulars about the offence for which he is arrested or the ground of such arrest. When a person is arrested in execution of a warrant, Section 75 of the Criminal Procedure Code requires that the arrested person shall be notified the substance of the warrant and if no required, the warrant shall be shown to him and it should also be incumbent to inform the relation or friend should invariably be informed the Police Station where the person was being taken by policemen arresting him, it is a fact that very often the police officer arresting a person with or without a warrant do not follow the procedure laid down under Section 50 and Section 75 of the Criminal Procedure Code.

(ii) Secondly, it is common experience that the police often arrest a person by visiting his residence in the dead of the night. The

arrest is usually made without a warrant and the residence of
the arrested person is also searched without legal authority.
The object of the midnight call is to strike terror in the victim
and his family members. No independent witnesses are,
however, available to witness the illegality committed by the
police on such occasion. Such midnight arrest is misuse of
power in the absence of very exceptional circumstances which
should be clearly defined. The Supreme Court however has
held that at the time of arrest an opportunity should be
available to the accused to contact his counsel through
telephone or otherwise, so that prompt action may in proper
case be taken for a writ of habeas corpus.

(iii) Thirdly, failure to make the necessary entry and the making of
false entries are the instances of misuse of power by police
offices, the prescribed rule is that as soon as person is arrested
an entry with regard to the arrest and the time of the arrest
should be made in the relevant record. It is common
experience that very often such entries are not made for days
or even weeks after the arrest and when entries and made they
are totally false.

(iv) One of the most abused provisions of the Criminal Procedure
Code is Section 151 which enables every police officer
"knowing of a design to commit any cognizable offence" to
arrest any person without orders from Magistrate and without a
warrant. Many innocent persons have been arrested under
this Section either for ulterior motives or under a political
pressure.
While Article 22(2) of the Constitution of India makes it mandatory for production of an arrested / detained person "before the nearest Magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

The law recognize the authority of police to arrest a suspected criminal in certain circumstances for achieving anyone or more of the following four objectives. The first objective of arrest is to make the investigation into offences effective and fruitful. The second major objective in making arrest is to ensure the presence of the accused at the time of his trial. The third objective of arrest is to prevent the commission of serious offences. The fourth objective of arrest is to enable the police to discharge their duties more effectively. The law permits the police to arrest persons who obstruct them in the execution of their duties. But the existence of power to arrest does not mean that the police officer should exercise the power in each and every case. It does not need to be over emphasized that arrest is a serious invasion on the personal liberty of the arrested person and indiscriminate arrests without any justification causes serious violation of human rights, and in calculable harms to the arrested person, but at the same time it may also be necessary for the enforcement of criminal law. In India power of arrest is one of the chief sources of corruption in the police. Moreover, as the Third Report of the National Police Commission suggested nearly 70% of

the arrests were either unnecessary or unjustified and such unjustified police action accounted for expenditure of the jail. But sadly no serious efforts have been made so far to deal with this phenomenon.

In sharp contrast in England the police power of arrest, detention and interrogation have been streamlined by police and Criminal Evidence Act, 1984 based on the report of Sir Cyril Philips Committee (Popularly known as Report of a Royal Commission on Criminal Procedure Command Papers 8092 (1981), it is worth noting that:

The Royal Commission on Criminal Procedure recognized that there is a critically important relationship between the police and the public in the detection and investigation of crime and suggested that public confidence in police power required that these conform to there standards: fairness, openness and workability.

The Royal Commission was of the view that restriction should be imposed on the power of arrest on the basis of the necessity of principle demands that power of arrests should be exercised only in those cases in which it is genuinely necessary to enable them to execute their duty to prevent the Commission of offences, and to investigate crime. The Royal Commission felt that such restriction would diminish the use of arrest and produce more uniform use of powers.

53. Supra note 49 at 91.
54. Ibid.
55. Id at 92.
In India, Third Report of the National Police Commission also suggested:56

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

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

(ii) The accused is likely to abscond and evade the process of law.

(iii) The accused is given to violent behaviour and is likely to commit similar offences again."

The recommendation of the Police Commission reflects the Constitution commitments of the fundamental right to personal liberty and freedom. These recommendation, however, have not required any statutory status so far. In Joginder Kumar's case,57 the court voiced its concern regarding complaints of violation of human rights during and after arrest it said:

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 we are we to strike a balance between the two...? A realistic approach should be made in this

56. Ibid.
direction. The law of arrest is one of balancing individual 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 to emphasis; of deciding which comes first the criminal or society. The law violator or the abider...

While the legal provision to produce suspected criminals before the Courts is an effective protection this is not always the case. Many victims of police torture are produced before the Courts even following the violation. It is difficult to view this as anything other than blatant contempt for the rule of law. Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End can’t justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make investigation effective. By torturing a person and using third degree methods, the police would be accomplishing behind the closed doors what the demands of our forbid. No society can permit it. So how do we check the abuse of police power? In this connection, it is humbly submitted that transparency of action and accountability perhaps are two possible safeguards which the court must insist upon. Attention is also required to be paid to properly develop work culture, training and orientation of the police force consistent with basic human values. Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to
the Constitution ethos. Efforts must be made to change the attitude and approach of the police personal handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable form of interrogation with a view to bring in transparency, the presence of counsel of the arrestee at some point of time, during interrogation may deter the police from using third degree methods during interrogation.

4.1.5 Third degree methodology of investigation

The encyclopedia of social sciences defines “third degree” as:

“The use of brutal methods as an aid to criminal investigation” and adds that, “the third degree is usually charged n the United States, though similar complaints against the police are by no means rare in other countries.”

Charles Franklin, in his famous exposition on the subjected has observed that the term “third degree” originated in the central states, his well documented treaties on the subject of “third degree” has surveyed the police interrogation and has listed a staggering number of events and incident, which makes one realize that the abuse of police power seems a more or less universal malady.

Whatever the protestation of those in authority, that fact that human rights violations do occur in India in a highly malignant form can’t be denied. I am referring here primarily to the “third degree” takes places in police statements with chilling frequency all over the country. The

58. S. Krishnamurthy, Human Rights and Indian Police, 64(1994).
59. Ajit Kumar v. State of Assam, 1976 Cr.LJ 1300 (Gua), H.C.
term 'third degree method' is normally sued when the police resort to use of force or threat while extracting confession from the suspect during investigation or compelling him to disclose facts having bearing on investigation.60

The most discussed and disputed police response occur when they question suspects by use of torture such a malpractice in indulged almost everywhere in India, but none would admit of having use it, as it is illegal and a serious crime too.61 In the well known case of Miranda v. State of Arizona,62 justice Warren of the U.S. Supreme Court observed that when an individual is taken into custody or otherwise deprived of his freedom by the authority in army significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized and the Supreme Court of India in the case of Mrs. Nandini Sathapathy v. P.L. Dani63 and others held that Section 161 of Cr.P.C. enables the police to examine the accused during investigation. Prohibitory sweep of Article 20(3) of the Constitution of India goes back to the stage of investigation, "compelled testimony meant evidence procured not merely by physical threat or violence but by psychic torture, atmospheric pressure, environmental coercion, using interrogation proclivity, overbearing and intimidatory methods and the like.64

Law certainly expects an investigator to unravel the mysteries of a sordid crime, but it does not approve his turning into another criminal

61. Akshay Kumar, Police response as catalyst in police community relations, CBI Bulletin, 7(1994).
63. 1978 SC 1025.
64. Supra note 61 at 6-7.
in order to solve crime.\textsuperscript{65} Whatever may be the wrongs which an individual might have been accused of committing, it is not for the police to punish him, for law does not give it any such power. When a policeman indulges in a third degree method he not only brutalizes himself but also degrades himself to the level of criminal.\textsuperscript{66}

Albert Reiss in his book "The police and the public" has remarked that, "at law, the police in modern democracies possesses a virtual monopoly of the legitimate use of force over the civilians." This mandate of the police to use torture to curb and prevent violence raises the key issue that the police themselves should not indulge in unnecessary violence or excessive use of force.\textsuperscript{67} When a policeman indulges in the heinous third degree methodology he can't furnish argument in favour of such barbaric action that it was done because of expediency, protection of society or the need to bring the wrongdoer to justice.\textsuperscript{68}

Justice Tek Chand, in \textit{Kedarnath v. State of Punjab}\textsuperscript{69} observed that "law does not permit perversion of its process for the purpose of ferreting out crime either by fear of force or by any other means equally objectionable. Despite the difficulty, the detective process must harmonize with fair and human standards, it is the duty of the police to locate violator of law but not by employing violence. "Violation and violence can't co-exist puts the whole issue in proper

\textsuperscript{68} Supra note 65 at 521.
\textsuperscript{69} 1960 Cr.LJ 390 (Pb)
perspective. The police officer should detect crime without committing crime and enforce the law without breaking the law.

The misuse of police authority over persons in legal or ostensible legal custody is different from abuse of police power over those persons who are ill treated while under illegal or unauthorized arrests as such detention or custodial actions are per se beyond the colour of office and are on the face of violations of the law by law enforce.\textsuperscript{70}

In Ramnath v. Saligram Sharma.\textsuperscript{71} The Supreme Court observed the crisis of “third degree” confronting civilized society is really a threat to rule of law and is indeed tantamount to putting in peril the very democratic way of life however, the effect of third degree or the subjugation and harassment of the accused or subjected, directly affect’s his fundamental rights of freedom and is also gross violation of Article 21. The protective sweep of procedure established by law, which necessarily was required to be reasonable, fair and just.

Police officer assault to a witness or an accused to obtain a statement from him is not treat of his duty, it is equally no part of a police duty to put a poison under unlawful restraint in order to extract or extort confession from him. None of these acts can be said to have any connection with the duty of the police.\textsuperscript{72} The obvious outcome of the third degree methods has been the public agony and as its consequence disgrace towards the police.\textsuperscript{73}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{70} J.P. Birdi, \textit{The Art of Investigation}, 149 (2006).
\item \textsuperscript{71} 1967 SC Cr.LJ 1463.
\item \textsuperscript{72} \textit{Supra} note 70 at 150
\item \textsuperscript{73} Rakesh Kumar, \textit{Custodial Torture in Police Station in India}, Journal of Indian Law Institute, Vol. 41:3&4, 522(1999).
\end{itemize}
\end{footnotesize}
Supreme Court in *Raghubir Singh v. State of Haryana*, 74 quoted Abraham Lincoln that:

If you once forfeit the confidence of our fellow citizens you can never regain their respect and esteem, it is trice that you can fool all the people some of the time, and some of the people all the time, but you can't fool the people all the time.

The repeated exposure and virulent criticism of the brutality and third degree methodology of Indian police has casted a public stigma on it. Now the question that arises is why the police use torture. The amnesty international report tried to sort out the rational behind the use of torture by the Indian police. 75

(i) First tacit approval of the society for the use of force against a suspect to detect the crime

(ii) Second, psychological factor's including fear psychosis in the minds of suspects and to exaggerated stories of police brutality.

(iii) Lack of adequate time and pressure to produce quick result which preclude the use of time consuming and painstaking modern methods of crime detection and finally.

(iv) Legal impediments which deny police adequate time to interrogation the suspect. 76

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74. AIR 1980 SC 1088.
75. Supra note 73 at 523.
There are some basic loopholes in the police administration encouraging cops to opt for tortuous methods of investigation. However, inspite of such loopholes nobody can be allowed to practice tortuous measures in order to achieve the desired ends. That's why the Supreme Court of India and the National Human Rights Commission should join hands to wipe out the tears of torture victims.

4.1.6 Police Remand

Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional culture than a State of Official running berserk regardless of human rights. Article 21, with its profound concern for life and limb, will become dysfunctional unless the agencies of the law in police and prison establishments have sympathy for the humanist creed of that article instead of a rough treatment by police for getting information or confession.\textsuperscript{77}

Therefore, another rampant malpractice which is rather common thought the sub-continent is to extort confession after getting the accused in police remand. It is rather unfortunate that in this country the investigating police still feel that a case in hand is solved as soon as they manage to get a confession from the accused and hence is the tendency to extort a confession by adopting torturous methods of investigation. They fail to understand that a confession made under pressure is not at all admissible in evidence under Section 27 of the Indian Evidence Act over if it leads to the discovery of fact in view of

\textsuperscript{77} Kishore Singh v. State of Rajasthan, AIR 1981 SC 625.
the guarantee against testimonial compulsion embodied in Article 20(3) of the Constitution such as confession under pressure even if judicially recorded is often false, often unverifiable and is often retracted in court. And once such a confession is retracted, it is of no value to the prosecution without substantial corroboration from other independent sources.78

Under Section 24 of the Evidence Act of India confessions made under coercion are inadmissible as evidence. It states: "A confession made by an accused person is irrelevant in a criminal proceeding, the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

Under Section 167 of Cr.P.C., 1973 whenever and wherever police makes a request, a police investigation could not completed within 24 hours. The inversely prevalent patent ground put up by the police that the custody of the accused in required by them for "custodial interrogation" or "to elicit information from accused to give direction to the case investigation", and Magistrate acts in ‘routine manner’ and grants removed in police custody.79 The Magistrate may remand the accused either to Magistrate custody or remand the accused to

custody of police, in order to complete the investigation. The Magistrate can remand accused to police custody for a maximum period of 15 days. The lawyers and intellectuals have accepted the procedure of police remand stoically and have accepted on the principle, “use no evil, hear no evil and speak no evil.”

In Jayadeesh case the Kerala High Court has held that to remand an accused to police custody for the purpose of securing a confession is to aid, the police to bring pressure on the accused for extracting information which he voluntary is not prepared to give or bound to give such a prayer for police remand has got to be rejected. Even in the days of the British Ray a prayer for police remand was regarded as a very serious matter in that Rule 324(c) of the Bengal Police Regulation, 1943 even in those days enjoined, “An application for remand to police custody shall not be heated as a matter of routine and of little importance, it shall be made to the sub-divisional Magistrate through the chief police officer of the district or sub-divisional headquarters,” However, inspite of all these guidelines provided in the case-law and Police Regulations, the subject of remand to police custody is just being heated as a “matter of routine and of little importance” without the prayer being made through the senior police offices or sending the case diary to the Magistrate for scrutiny as in enjoined by the law.

In C.B.I. v. Anupam J. Kulkarni Justice K. Jay Chand Reddy laid down:

80. Ibid.
82. (1992)3 SCC 41.
There cannot be any detention in police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a better stage.

Giving the reasons for such a rule court observed:

The proviso to Section 167 is explicit on this aspect. The detention in police custody is generally disfavoured by law. The provision of law lay down that such detention can be allowed only in special circumstances and that can be only by remand granted by a Magistrate for reasons judicially scrutinized and for such limited purpose as the necessities of the case may require. The scheme of Section 167 is obvious and is intended to protect the accused from the methods that may be adopted by some over zealous and unscrupulous police officers.83

Similarly, the Supreme Court in Union of India v. Thamisarasi84 disfavoured the continued remand detention beyond the period of 90 days even in case of arrest under the Narcotics Drugs and Psychotropic Substances Act, 1985. The court relied the NDPS Act applied only in case of bail on merits but not in cases and bail on default in filing complaint within the period specified in Section 167(2) of the Cr.P.C.

The purpose of police remand is only to keep the accused under “duress” and create a fear psychosis by detaining him in the atmosphere of Police Station, by physical / mental torture in keeping

him at tenterhooks, long and continuous custodial interrogation, denying sleep and other necessity for long hours, doling out threats or inducement (banned under Section 163 of Code of Criminal Procedure) all factors resulting in accused crying in expression “I Admit” and ready to sign any statement drafted or dictated by police.\(^8^5\)

Therefore, it is submitted that when Magistrate records reasons for granting police custody he has to keep in mind. The following cautious with regard to remand of accused to police custody.

The Magistrate should observe the distinction between remand to police custody and an ordinary remand to judicial custody under Section 344 of Cr.P.C. and that only be granted in case of real necessity and when it is shown in the application that there is good reason to believe that accused can point out properly or otherwise assist the police in elucidating the care. The Magistrate should discourage tendency of police to take remand to extort confession. Where the object of remand is merely the verification of prisoner’s statement he should be remanded to judicial custody not to police custody.

**4.1.7 Torture of Children**

Though the government of India has not ratified the UN Convention against Torture, it has ratified the United Nations Convention on the Rights of the Child that expressly forbids the use of torture against children.

Article 37(a) of the Convention on the Rights of the Child (CRC) states: "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age. Article 37(b) of CRC forbids illegal detention. It states, no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."

India has made attempts to criminalise these practices in the Juvenile Justice (Care and Protection) Act of 2000 that outlaws illegal detention and torture of children. However while there are clear legal protections for children the reality is very different. Children are regularly subjected to torture, placed in illegal detention and at high risk of further violation.

4.2 Torture in Judicial Custody

The old exploiting the young, the man exploiting the woman, the rich exploiting the poor, and the antisocial exploiting citizen are all aspects of open society. There is another society behind the prison walls where large numbers of human beings are denied human rights. The prisoners are denied the rights of human beings. In the precincts of jail what happens is known to the Jail Administrator. For
fear of facing torture, the ‘principle of silence’ is rule and does not allow the violators to come to the fore.\textsuperscript{88}

The use of torture in Indian penal institutions is routine. For example, Asia’s largest prison and India’s prison reform showcase, Delhi’s Tihar Jail was the subject of media concern in 2007 over the evidence of the use torture against inmates. The use of torture is a matter of documented fact. In June 2007 alone, at least nine prisoners died in the Tihar jail. Postmortem reports confirmed at least three of the deaths were a result of ill treatment that may amount to torture.\textsuperscript{89} Similarly miserable conditions in Indian jails are not a matter of assertion. On IX June 2007, the Delhi High Court criticized the Tihar Jail officials over the "extreme harsh" conditions of the Jail. The treatment of suspects held on suspicion of acts of terrorism is an issue of particular concern. On 30 May 2007, the Asian Age revealed that it had received numerous letters from Tihar Jail inmates, especially those from Jammu and Kashmir, alleging "terrible atrocities". According to the inmates' letters, the excesses included "methodical torture", as well physical and psychological abuse enforced labour.\textsuperscript{90}

However, as with torture in other domains, and despite clear medical evidence, the authorities appear unable to accept the current reality. The reasons generally attributed to these deaths are illness/natural

\textsuperscript{90} Inmates accuse Tihar officials, Delhi Agency of Atrocities, \textit{The Asian Age}, 30 May, 2007.
death, escaping from custody, suicides, attacks by other criminals, riots, due to accidents and during treatment or hospitalization.91

Prison conditions are very poor across India. According to the statistics of the National Human Rights Commission, there were a total of 3,32,112 prisoners against the total capacity of 2,38,855 prisoners in the 1315 jails in India as on 31 December 2004. Out of total prisoners, 2,32,731 inmates were awaiting trial. This equates to 70% of the total prisoners. This included 12,276 women and 1,570 children. The highest overcrowding rate was reported from Jharkhand with 195.2% overcapacity Delhi with 149.7%, Chhattisgarh with 94.5% and Gujarat with 91.5% sanctioned capacity.92

Jail conditions do not conform to international standards and most Jack basic amenities such as adequate food, drinking water, sanitation, and health services, in its 2007-2008 Annual Report, the Ministry of Home Affairs accepted that the deterioration of the condition of prisons, prisoners, and prison staff because of inadequate allocations for the maintenance and upkeep of prisons from the States', They noted the need to increase the capacity in jails to accommodate those awaiting trial and for convicted prisoners as well as the need to improve sanitation in prisons and provide adequate housing to prison personnel.93

Even though there are no many legislation in India like Indian Prison Act, 1894, Civil Jail Act, 1974 and transfer for Prisoners Act, 1950

91. Unstarred question No. 1281 answered on 12.3.2008.
93 To Decongest Tihar Jail, High Court says release 600 inmates immediately, quoted from The Indian Express, 19 June, 2007.
etc., “Prison Administration in India has been of and on, a subject of criticism in the press, the Parliament and Judiciary.” “Over-crowded prisons, prolonged detention of under trial prisoners, unsatisfactory living conditions, lack of treatment programs and allegations of an indifferent and even inhuman approach of prison staff have repeatedly attracted the attention of critics over the year.” Unfortunately, nothing much seems to have changed in the contemporary times and there has been no worthwhile reforms affecting basic issues of great relevance to prison Administration in India.94

The Mulla Committee had noted that a majority of prisoners lodged in prisons consist of people belonging to the unprivileged Sections of society and that the majority of prison population was from a rural and agricultural background. In March, 2004, NHRC report indicated that the country’s prisons are over crowded on average by 38.5 percent. The country’s prisons have a population of 324,852 persons while the authorized capacity is 234,462.95 Over crowded prisons that exceeded the national average include Delhi, Jharkhand and Chhattisgarh. Overcrowding in the most viable problem and yet no long term or short term remedies have been found.96 Further prison in place like Andhra Pradesh, Gujarat, Haryana, Madhya Pradesh, and Maharashtra have prisoners far in excess of their capacity. In Delhi, Tihar Jail holds 8700 prisoners against a stipulated capacity of 2200. The National Police Commission pointed out that 60% of all arrests

94. The Report of the All India Committee on Jail Reforms, 11(1980-83)
were either unnecessary or unjustified. This has resulted in overcrowding and accounts for 43.20% of the expenditure of jails.\textsuperscript{97}

The main reason for prison overcrowding is that over seventy six percent inmate are under trials. The large number of under trials are a composite outcome of powers of arrest and remand under the Indian Law, delay in investigation and trial and unequal administration of right to bail. The reality of overcrowding may be a cause for many other prison problems such as great risk of disease, higher wise levels, denial of conservancy facilities, difficulties in surveillance, consequent danger levels etc. The conditions of overcrowding in certain sub-jail in Bihar and Uttar Pradesh are no acute that, at times, only one dry torture may have to be started by as many as 200 prisoners. The shortage of sleeping space and bedding may require the prisoners to sleep in shifts in some of these prisons.\textsuperscript{98}

In Sunil Batra v. Delhi Administration\textsuperscript{99} the Supreme Court had applied the concept of fair procedure to save the prisoners from prison torture. Mr. Justice Krishna Iyer in this case had observed that “it is imperative as implicit in Act 21 that the right to liberty shall not be kept in suspended animations or congealed into animal existence without the freshing flow of fair procedure.” Thus, Article 20 & 21 of the Constitution deal with the personal liberty against arrest and detention so that human dignity is not violated and human being is treated as human being. Similarly, while acceding the 1994 UN convention against torture and other forms of cruel, inhuman and

\textsuperscript{98} K.L. Vibhute, Criminal Justice, 328(2004).
\textsuperscript{99} AIR 1985 SC 1579
degrading treatment of punishment, the Ministry of External Affairs, in a statement announcing the decision said that India’s determination to uphold the great values of Indian civilization and our policy to work with other members of the international community to protect and promote human rights.\textsuperscript{100}

In \textit{Mohammed Giassudin v. State of Andhra Pradesh},\textsuperscript{101} The Supreme Court emphasized the reformative aspect of prisons. The court said that the “subculture that leads to anti-social behaviour has to be countered not by under cruelty but by the re-culturisation. Supreme Court in \textit{Rama Murthy v. State of Karnataka}\textsuperscript{102} held that there are nine major problems which afflict the prison system and need immediate attention. These are (1) overcrowding (2) delay in trial (3) torture and ill-treatment (4) neglect of health and hygiene (5) unsubstantial food and inadequate clothing (6) prison vices (7) deficiency in communication (8) streamlining of jail visits (9) management of open air prisons. The court further gave specific direction to tackle each nine problem being faced by prison Administration and observed that lot, therefore, resolve to improve our prison system by introducing new technique of management and educating the prison staff with our Constitutional obligation towards prisoners. Rest would follow as day follow the rights.

NHRC had on the basis of complaints received expressed deep concern about overcrowding, lack of sanitation, poor medical facilities and inadequate diet in prisons in the country it has also expressed dismay at reports of the delay in the disposal of cases and

\textsuperscript{100} Reported in Human Rights Newsletter, NHRC, July 1997.
\textsuperscript{101} AIR 1977 SC 1926.
\textsuperscript{102} 1972(2) SCC 642.
mismanagement in the administration of prison. The commission in its third Annual Report 1995-96 again stated that the state of prison in India is generally marked by gross overcrowding, squalor and meet administration and Fourth Annual Report, 1996-97, reaffirmed view that prisons have depressing pattern: overcrowding of sanitation, mistreatment and mismanagement.103

In D. Bhuvan Mohan Patnaik v. State of UP104 Chandrachude J. held, “the security of one’s person against an arbitrary encroachment by the police is basic to a free society and prisoners cannot be thrown at the mercy of policemen as it were a part of an unwritten law of crimes such instruction are against the very essence of a scheme of ordered liberty.”105

The NHRC after extensive consultation with Central / State Governments, experts in jail reforms and NGOs known for their interest in the subject, prepared a model prison bill entitled “The prisons (Administration and treatment of prisoners) Bill, 1998” to replace Indian Prisons Act of 1894. It is learnt that proposed bill is forward to Ministry of Home Affairs for necessary action. On request of Maharashtra Government, the commission had appointed its nominee as ex-officio on non-official visitors to jails in the state, in the light of a writ petition filed in the Bombay High Court. The Commission believes that such a step lead to increased transparency in the administration of jails and also add strength to the Commission’s efforts to improve the conditions of jails in the

104. AIR 1974 SC 2092.
However, the Commission is yet to device appropriate mechanism to take follow up action on the reports submitted by its nominee in Maharashtra jails. In significant move towards prison reforms, the commission during its visits to prison in various state, observed that session judges were not visiting jails in regular manner that is required by prison manuals. The chairperson accordingly wrote to the Chief Justice of High Courts of all States on 25th September, 1996 requesting to direct the session judges to fulfill their duties more diligently.107

In view of the above, there is no doubt the condition in Indian prisons are dismal and fall short of the human rights standards and they are reduced to being penal standards and are reduced to being penal dustbins.

Conclusion

Perpetrators often attempt to justify their acts of torture and ill-treatment by the need to gather information. Such conceptualization obscure of torture and its intended consequence. Most victims of torture do not have any relevant information to reveal, effect of which the torturer is aware. Torture reduces the individual to a position of extreme helplessness and distress and that can lead to deterioration of cognitive, emotional and behavioural function. The aim of torture is to dehumanize the victim, break his or her will and at the same time set horrific examples for those who come in contact with victim. In this way, torturer break or damage the will and coherence of entire communities.
