CHAPTER – 9
CUSTODIAL DEATH AND JUDICIAL RESPONSE IN
INDIA

9.1 Introduction

Complaints of police excess and torture of suspects in police custody have been made in the past. Of late, such complaints have assumed wider dimensions, as the incidents of torture, assault and deaths in police custody have increased in alarming proportions. The Union Home Minister has in a written reply in Parliament on December 6th, 1999, declared that 535 persons died in police lockups during the past three years. The Honorable Minister stated that the figure was supplied to the Government by national human rights commission. This means that on an average each year 178 persons die in police custody, the rising human rights consciousness of the community, the role of press, human rights activists, NGOs – have all resulted in increasing attention being paid to custodial deaths than it was in the past. In last decade in the state of
Andhra Pradesh, widespread public protest against custodial deaths was witnessed. The public protest was sometimes violent in the form of spontaneous mob attack on the police stations forcing the police to flee away from the station leaving the police station to be burnt down by the irate mob or else stand up and open fire on the mob in defense of the police station and themselves.

The word custody implies guardianship and protective care. Even when applied to indicate arrest or incarceration, it does not carry any sinister symptoms of violence during custody. No civilized law postulates custodial cruelty – an inhuman trait that springs out of a perverse desire to cause suffering when there is no possibility of any retaliation; a senseless exhibition of superiority and physical power over the one who is overpowered or a collective wrath of hypocritical thinking. It is one of the worst crime in the civilized society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens and is an affront to human dignity.
Prisoners have human rights and prison torture is the confession of the failure to do justice to living man. For a prisoner, all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. Simply stated, the death of a person in custody whether of the Police or Judicial will amount to Custodial Death. No doubt, the police plays vital role in safeguarding our life, liberty and freedoms. But the police must act properly, showing full respect to the human rights of the people, remembering that they are also beneath the law, not above it and can be held liable for the violation of human rights. One can always argue that prisons formed islands of lawless discretion in a society guided by the values and often the practice of the rule of law, where the authorities exercised arbitrary power over the prisoner's lives. The charge of brutal custodial violence by the police often resulting in the death of the arrestees is not new. The figures of Amnesty International in 1992 show the number of deaths in police custody in India during the year 1985 to 1991 was 415. Figures compiled by the National Crime Records Bureau show that during the year 1990-92, as many as 258 rapes and 197 deaths
in police custody were reported from all over the country. Needless to say, a large number of custodial violence incidents go unreported. Arun Shourie once observed: The victims were invariably poor. Several of them hauled in on 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 in fact, the victims of custodial violence are people from poor and backward sections of the society with little political or financial power to back them. Personal enmity, caste and political considerations and at times pecuniary benefits become important considerations for custodial deaths rather than investigation of cases.

9.1.1 Conceptual aspect regarding custodial death

Law has always discouraged the acts or omissions which in general can affect right in rem and violators have always been punished with strict sanctions but the crime rate is not falling and State is in regular quest to preserve social solidarity and peace in society. Whenever death occurs in custody, it raises the public interest and attracts media attention. Not that
at each time the death is due to violent causes but at times may
be due to natural causes or due to inadequate medical facilities
or medical attention and diagnosis, or negligent behavior of
authorities or may be due to physical abuse and torture. Since
time immemorial man has been attempting to subjugate his
fellow human beings.\(^1\) Those in power are used to twisting and
turning the people through violence and torture, and torture
under custody has become a global phenomenon. Men, women
and even children are subjected to torture in many of the
world’s countries, even though in most of these countries, the
use of torture is prohibited by law and by the international
declarations signed by their respective representatives. A
problem of increasing occurrence and repugnance had been
the methods of interrogation and torture perpetrated upon
prisoners and detainees. Persons held in custody, by police or
by prison authorities, retain their basic constitutional right
except for their right to liberty and a qualified right to privacy.
The Magistrate inquest is mandatory for any death of a person

Lucknow, p 827-854
in custody to ensure examination of the circumstances leading to death. Beyond Magistrate's inquest and in recent year's information to Human Right Commission, however, there is no formal public scrutiny of in-prison deaths and under such situations many avoidable factors leading to death remains unexplored.²

9.2 Constitutional Scheme

From judicial perspective' the right to life and personal liberty' contained in Article 21 of Indian Constitution encompasses all basic conditions for a life with dignity and liberty. Such an approach allows it to come down heavily on the system of administration of criminal justice; custodial justice in particular, and law enforcement. It also brings into the fold of Article 21, all those directive principles of State policy that are essential for a 'life with dignity'. The right to life guaranteed by Article 21 of the Constitution of India is not merely a fundamental right but is the basic human right from which all

² Constituent Assembly Debates. Vol. VII, 953
other human rights stem. It is basic in the sense that the enjoyment of the right to life is a necessary condition for the enjoyment of all other human rights. The right existed even prior to the commencement of Indian Constitution. In *A.D.M. Jabalpur Vs. Shivakant Shukla* case, Justice H.R. Khanna rightly observed, '... sanctity of life and liberty was not something new when the Constitution was drafted. It represented a facet of higher values which mankind began to cherish in its evolution from a state of tooth and claw to a civilised existence. Likewise, the principle that no one shall be deprived of his life and liberty arbitrarily without the authority of law was not the gift of the Constitution. It was a necessary corollary of the concept relating to the sanctity of life and liberty which existed and was in force before the coming into force of the Constitution ... "

The Court adopted an annotation of Article 21, in *Kharak Singh Vs. State of U.P.*\(^3\) and expanded the connotation of the term 'life' and said "... life is something more than mere animal existence. The inhibition against its deprivation extends to all

\(^3\) AIR 1963 SC 83
those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, of the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world...". In Maneka Gandhi Vs. Union of India, Bhagawati. J. opined that "the fundamental right of life and personal liberty has many attributes and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19" and in the same case it was held that the procedure contemplated under Article 21 is a right, just and fair procedure, not an arbitrary or oppressive procedures." The procedure which is reasonable and fair must now be in conformity with the rest of Article 14. In other words, the Supreme Court while considering the ambit of Article 21 in a number of cases established that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure

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4 Supra note 1
5 (1978) 1 SCC 248
6 Ibid
for depriving a person of personal liberty' and there is consequently no infringement of the fundamental right conferred by Article 21, such law in so far as it abridges or takes away any fundamental right under Article 19 would have to meet the requirements of that Article. Further any procedure contemplated by State to curtail 'life and personal liberty' of an individual should meet the requirement of Article 14.

In an another case of Sunil Batra II, the Supreme Court held that: the Prison administration will be liable in a case where the breisioner breaks down because of mental torture, physchic pressure or physical infliction beyond the licit limits of lawful imprisonment."

Thus, the said case gave the opportunity for the court to condemn torture. In case of Khatri vs. State of Bihar, the Supreme Court in a public Interest /litigation case ordered to investigate and punish the guilty Police officers who barbarically blinded about 30 prisoners by piercing their eyes with needles and pouring acid into their eyes. Futher, Supreme Court

7 AIR 1980 SC 1579
8 AIR 1981 SC 928
condemned this barbaric torture as violative of Art. 21 and awarded compensation to the victims.

A telegram sent by a under trial prisoner was treated as writ petition in Prem Shankar Shukla vs. Delhi Administration, when an under trial prisoner was handcuffed ans chained, he sent a telegram to the court which was treated as writ petition, The Supreme Court specifically referred Art. 5 of Universal Declaration of Human Rights and Article 10 of the Covenant on civil and Political Rights and held that handcuffing as under Trail is impermissible torture ans in violative of Article 21. The Court examined the relevant Act, Rules and Standing orders and hled that:

"Handcuffing is prima facie inhuman and therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absence of fair procedure of fair procedure and objective monitoring, to inflict 'irons' is to resort to zoological strategies repugnant to Article. 21. Thus, we must critically examine the justification offered by the State for this mode to restraint. Surely, the competing claims for securing the prisoner and

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9 AIR 1980 SC 1535
protecting his personally from barbarity have to be harmonized. To prevent the escape of an undertrial is in public interest, reasonable, just and cannot, be itself, be castigated. But to bind a man hand and foot, fetter his limbs with hoops of steel, shuffle him along in the streets and stand him for hours in the courts is to torture him, defile his dignity, vulgarise society and fool the soul of our constitutional culture. Where then do we draw the human line and how far do the rules err in print and practice?"

Thus, in Premshanker,\textsuperscript{10} the supreme Court specifically referred to the right against torture in Article 5 of the Universal Declaration of Human Rights and interpreted in Article 21 to include right against torture.

\textbf{9.2.1 Death Penalty}

India has not abolished death penalty, but as a rule laid down by the Supreme Court, it is to be awarded by the competent courts only in the rarest of the rare cases, in which the crime committed is so heinous that it shook the conscience of mankind'. Under the present criminal law, imposition of death

\textsuperscript{10} (1980) 3 SCC 526
sentence is an exception rather than the rule. Even in those exceptional cases, special reasons have to be given in justification of the imposition of death penalty. Section 416 of Cr. P.C. requires the High Court to postpone the execution of a capital sentence on pregnant women and may, if it thinks fit, commute the sentence to imprisonment for life.\textsuperscript{11} In Rajendra Prasad Vs. State of U. P. Krishna Ayer J. expressed his view by stating that the Criminal law of Raj vintage has lost some of its vitality, notwithstanding its formal persistence in print of the Penal Code so far as Section 302 of IPC is concerned. In the post Constitution period, Section 302 of IPC and Section 354(3) of Cr.P.C. have to be read in the light of Parts III and IV of the Constitution. He further went ahead in saying that the death sentence would not be justified unless it was shown that the criminal was dangerous to the society.\textsuperscript{12} In Bachan Singh's case the Supreme Court elaborated 'special reasons' for awarding capital punishment and established, that

\textsuperscript{11} Ratanlal & Dhirajlal, The code of Criminal Procedure, Wadhwa & company, 17\textsuperscript{th} ed, reprint 2007, Nagpur, p - 836
when the conviction is for an offence punishable with death, the judgment should state the special reasons for such a sentence. Constitutional provisions apart, the Supreme Court has evolved a number of safeguards to protect the dignity and personal liberty of persons awarded life sentence while waiting for execution of the sentence. These include their right to worship, right to see family members, right to remorse etc. In Attorney General of India Vs. Lachman Devi case the Court opined that the execution of death sentence by public hanging is barbaric and violative of Article 21 of the Constitution. The Court held that although the crime of which the accused have been found to be guilty was barbaric, however, a barbaric crime does not have to be visited with a barbaric penalty such as public hanging.

9.2.2 Torture

Convention against Torture explicitly states that "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as justification of torture". The Supreme Court

13 Supra note 1, p. 164
of India and the National Human Rights Commission have upheld this view in their various judgments/recommendations and have jointly and individually established that the prohibition of torture is absolute and may not be suspended no matter how heinous the crime for which someone has been arrested. It is a right from which the Government is not permitted to derogate, even in situations of emergency. 44th amendment of the Indian Constitution declares Article 20 and 21 as non derogable even in emergency situations. The term 'torture' is defined in the Convention against torture and other cruel, inhuman or degrading treatment or punishment. Article 1.1 of the same defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person"
acting in an official capacity. It does not include pain or suffering arising from, inherent in or incidental to lawful sanctions". Article 21 of Constitution only provides" no person shall be deprived of his life or personal liberty except according to procedure established by law". The term 'life' or personal liberty has been held to include the right to live with human dignity and, therefore, includes within its ambit a guarantee against torture and assaults by the state or its functionaries. Any person subjected to torture or to cruel, inhuman or degrading treatment or punishment can move the higher Courts for various judicial remedies under Article 32 and 226 of the Constitution.\textsuperscript{14}

\textbf{9.2.3 Arrest and Detention}

The Supreme Court initiated the development of "Custodial Jurisprudence" in\textit{ D.K. Basu Vs. State aWest Bengal}.\textsuperscript{15} The case came up before the Court through a writ petition under Article 32 of the Constitution by an NGO. In this case the Chief Justice of India's notice was drawn to a news published in

\textsuperscript{14} ibid. p-277 & 542
\textsuperscript{15} AIR 1997 SC 3017
The Telegraph regarding deaths in police lock-ups and in jail in the State of West Bengal. It was requested in this petition to examine in depth and to develop custodial jurisprudence. In this case the Court outlined the following requirements which should be followed in all cases of arrest or detention as preventive measures:

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designation. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

2. The police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be
countersigned by the arrestee and shall contain the time and date of arrest.

3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the arresting witness of the memo of the arrest is himself such a friend or relative of the arrestee.

4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the Police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

5. The person arrested must be made aware of his right to have one informed of his arrest or detention as soon as he is put under arrest or is detained.

6. An entry must be made in the diary at the place of detention
regarding the arrest of the person which shall also disclose the
name of the next friend of arrestee and the name and
particulars of the police officials in whose custody the arrestee
is.

7. The arrestee should, where he so requests, be also examined
at the time of his arrest and major and minor injuries, if any
present on his/her body, must be recorded at that time. The
"Inspection Memo" must be signed both by the arrestee and the
police officer effecting the arrest and its copy provided to the
arrestee.

8. The arrestee should be subjected to medical examination by
a trained doctor every 48 hours during his detention in custody
by a doctor on the panel of approved doctors appointed by
Director, Health Services of the concerned State or Union
Territory. Director, Health Services should prepare such a panel
for all Tehsils and Districts as well.

9. Copies of all the documents including the memo of arrest,
referred to above, should be sent to the Magistrate for his
record.

10. The arrestee may be permitted to meet his lawyer during
interrogation, though not throughout the interrogation.

11. A police control room should be provided to all district and State Headquarters, where information regarding the arrest and place off custody of the arrestee shall be communicated by the officer causing the arrest. Within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous board.

The Court observed that the requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. In *Nilabati Behera Vs. State of Orissa*, the Court observed that prisoners and detainees are not denuded of their fundamental rights under Article 21 and that it is only such restrictions as are permitted by law, which can be imposed on the enjoyment of the fundamental rights of the arrestees and detainees. It was further observed "... there is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the fact of his confinement and

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16 (1993) 2 SCC 746
therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to procedure established by law ... " In this case Court awarded a sum of Rs. 1.5 lakhs to the mother as her son had died in police custody. The Court's judgment also referred to Article 9(5) of the International Covenant on Civil and Political Rights, which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

9.2.4 Human Dignity

The Latin maxims salus populi est suprema lex (the safety of the people is the supreme law) and salus republicae est suprema lex (safety of the State is the supreme law) co-exist and are not only important but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community.
However, the action of the State must be "right, just and fair". Practising any form of torture for extracting any kind of information would neither be right nor just nor fair and therefore would be impermissible, being offensive to Article 21. The Court noted in the *Basu* case that 'there is no express provision in the Constitution of India for the grant of compensation for violation of a fundamental right to life, in spite of this lacuna the Court has judiciously evolved a right to compensation in case of established unconstitutional deprivation of personal liberty' . In *Sunil Batra Vs. Delhi Administration*\(^7\), the Court was called upon to determine the validity of solitary confinement and keeping a prisoner in fetters. Justice Desai, speaking for the majority, admitted that there was no provision in the Indian Constitution like the Eighth Amendment of American Constitution which forbids cruel and unusual punishment. But, he pointed out that conviction did not degrade the convict to be non-person, vulnerable to major punishments imposed by the jail authorities without observance of due procedural safeguards. He also emphasised a Court's duty towards a prisoner as he was in

\(^7\) Supra note 7
prison under its order and direction. He held "We cannot be oblivious to the fact that the treatment of a human being which offends human dignity imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14". In the same case another fact was brought to the notice of the Court that undertrials were kept alongwith the convicts. Justice lyer observed: "The undertrials who are presumably innocent until convicted are being sent to jail, by contamination, made criminals - a custodial perversity which violates the test of reasonableness in Article 19 and of fairness in Article 21. How cruel would it be if one went to a hospital for a check-up and by being kept along with contagious cases came home with a new disease". The learned judge drew the picture of Tihar prison thus: "Tihar prison is an arena of tension, trauma, tantrums and crimes of violence, vulgarity and corruption. And to cap it all, there occurs the contamination of pre-trial accused with habitual, and 'injurious prisoners of international gangs'. The crowning piece is that the jail officials themselves are allegedly in league with the criminals in the cell. That is, there is a large network of
criminals, officials, and non-officials, in the house of correction. Drug racket, alcoholism, smuggling, violence, theft, unconstitutional punishment by way of solitary cellular life, and transfer to other jails are not uncommon.

The Court held in this case that personal liberty of the person who is incarcerated is to a great extent curtailed by punitive detention. The liberty to move, mix, mingle, talk, share company with co-prisoners, if substantially curtailed would be a violation of Article 21 unless the curtailment has the backing of law. In another important judgment delivered by the Supreme Court in Francis Corallie Mullin Vs. the Administrator, Union Territory of Delhi, Bhagawati J. observed the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving out and mixing and comingling.

\[18 (1981) 1 SCC 608\]
with fellow human beings". In a number of cases the Supreme Court held that handcuffing of prisoners is against human dignity and violative of Article 21. In Prem Shankar Shukla Vs. Delhi Administration, while delivering the judgment Justice Krishna Iyer drew attention to Article 5 of the Universal Declaration of Human Rights and held that handcuffing of a prisoner was unconstitutional if there was any other reasonable way of preventing the escape of the prisoner. He reiterated the Article 21, now the sanctuary of human values, prescribes fair procedure and forbids barbarities, punitive as well as procedural. In State of Maharashtra Vs. Ravikanl, the Court came down heavily on the Government for handcuffing an under trial prisoner and making him parade in streets in a procession by the police. In this case the Court directed the Government for paying a sum of Rs. 10,000 to the victim for the humiliation he had suffered.

19 (1980) 3 SCC 302
9.2.5 Interrogation

Provisions innumerate in Chapter XII of Criminal Procedure Code confers power on the Police to examine accused person and witnesses. However, while carrying out such job it is of utmost importance to follow all other provisions of the code as well as Constitution to ensure human dignity and personal liberty of the person under examination. While examining an accused/witness for the purposes of fact finding the following legal provisions should be paid heed to:

(i) Section 54 of the Cr. P.c. confers upon an arrested person the right to have himself medically examined.

(ii) A confession made to police officer is not admissible in evidence under Section 25 and 26 of the Indian Evidence Act.

(iii) Section 162 of Cr.P.C., also provides that no statement of a witness recorded by a police officer can be used for any purpose other than that of contradicting his statement before the Court.

(iv) Section 24 of Indian Evidence Act also provides that

20 Supra note 11, p 239
when admissible, confession must be made voluntarily. If it is made under any inducement, threat or promise, it is inadmissible in criminal proceedings.

(v) An additional safeguard is that under Section 164 of the Cr.P.c., it is for the Magistrate to ensure that a confession or statement being made by an accused person is voluntary.

There are a few constitutional safeguards provided to a person to protect his personal liberty against any unjustified assault by the State. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Article 22(2) directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of the arrest to the Court of the Magistrate. Article 20(3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. Manner
in which examination of accused should be conducted is elaborated under the head 'confession'.

9.2.6 Confession

Article 20(3) of the Constitution provides that no person accused of any offence shall be compelled to be a witness against himself; and Section 161(2) Cr.P.C. enjoins that any person supposed to be acquainted with the facts and circumstances of the case shall be bound to answer truly all questions relating to such case put to him by any police officer making an investigation under Chapter XII of the Code, other than questions the answers to which would have the tendency to expose him to a criminal charge or to a penalty or forfeiture. Case of Nandini Satpathy Vs. P.L. Danis, is the classic example in this context, wherein the Supreme Court held that Section 161 of Cr.P.C. enables the police to examine the accused during investigation. The prohibitive sweep of Article 20(3) goes back to the stage of police interrogation-not, as contended, commencing in Court only. In our judgment, the provisions of article 20(3) and Section 161(1) substantially covers the same
area, so far as police investigations are concerned. The ban on self-accusation and the right to silence, while one investigation or trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent, which may deter him from voluntary disclosure of criminatory matter.21 We are disposed to read compelled testimony as evidence procured not merely by physical threats or violence but psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods and the like - not legal penalty for violation. So, the legal perils following upon refusal to answer, or answer truthfully, cannot be regarded as compulsion within the meaning of Article 20(3). The prospect of prosecution may lead to legal tension in the exercise of a constitutional right, but then, a stance of silence is running a calculated risk. On the other hand, if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect, but sufficiently substantial, applied by the policemen for obtaining information from an accused strongly suggestive of

21 Art. 21 states: No person shall be deprived of his life or personal liberty except according to procedure established by law. The procedure established by law has to be just, fair and reasonable, as held by Indian Supreme Court. See e.g. Maneka Gandhi v. Union of India, AIR 1978 S.C.596
guilt, it becomes 'compelled testimony', violative of Article 20(3). Legal penalty for refusing to answer or answer truthfully may by itself not amount to duress. It cannot be regarded as compulsion under Article 20(3). But frequent threats of prosecution if there is failure to answer may take on the complexion of undue pressure violating Article 20(3). The manner of mentioning it to the victim of interrogation may introduce an element of tension and tone of command perilously hovering near compulsion. Lawyer's presence is a constitutional claim in some circumstances in our country also, and, in the context of Article 20(3), is an assurance of awareness and observance of the right to silence. The *Miranda* decision has insisted that if a med accused person asks for a lawyer's assistance, at the stage of interrogation, it shall be granted before commencing or continuing with the questioning. We think that Article 20(3) and Article 22(1) may, in a way, be telescoped by making it prudent for the police to permit the advocate of the accused, if there be one, to be present at the time he is examined. Overreaching Article 20(3) and Section 161(2) will be obviated by this requirement. In the same case it
was categorically stated that if an accused person expresses the wish to have his lawyer by his side when his examination goes on, this facility shall not be denied, without being exposed to the serious reproof that involuntary self-incrimination secured in secrecy and by coercing the will. The police need not wait more than for a reasonable while for an advocate’s arrival. But they must invariably warn-and record that fact-about the right to silence against self-incrimination; and where the accused is literate take his written acknowledgement. The symbiotic need to preserve the immunity without stifling legitimate investigation persuaded the court to indicate that after an examination of the accused, where lawyer of his choice is not available, the police official must take him to a magistrate, doctor or other willing and responsible non-partisan official or non-official and allow a secluded audience where he may unburden himself beyond the view of the police and tell whether he has suffered duress, which should be followed by judicial or some other custody for him where the police cannot reach him. That collocutor may briefly record the relevant conversation and communicate it- not to the police-but to the nearest magistrate.
Pilot projects on this pattern to guide the practical processes of implementing Article 20(3) were strongly suggested in the case.\textsuperscript{22} It was further observed that: above all, long run recipes must be innovated whereby fists are replaced by wits, ignorance by awareness, 'third degree' by civilised tools and technology. Special training, special legal courses, technological and other detective updating are important. An aware policemen is the best social asset towards crimelessness. The consciousness of the official as much as of the community is the healing hope for a crime-ridden society. Judge-centered remedies don't work in the absence of community-centered rights. Investigatory personnel must be separated from the general mass and given in-service specialisation on a scientific basis. The policeman must be released from addiction to coercion and sensitized to constitutional values. Considering the statutory safeguards to protect this right in Saroan Singh Vs. State of Punjab, the Court held that" act of recording confession under Section 164 Cr.Pc. is very solemn act and, in discharging his duties under the said

\textsuperscript{22} Supra note 1
Section, the Magistrate must take care to see that the requirements of sub-section (3) of Section 164 are fully satisfied. It would of course be necessary in every case to put the questions prescribed by the High Court circulars but the questions intended to be put under sub-section (3) of Section 164 should not be allowed to become a matter of mere mechanical enquiry. No element of casualness should be allowed to creep in and the Magistrate should be fully satisfied that the confessional statement which the accused wants to make is in fact and in substance voluntary. Emphasising the importance of Section 164 of the Cr.Pc. the court observed that: "the whole object of putting questions to an accused person who offers to confess is to obtain an assurance of the fact that the confession is not caused by any inducement, threat or promise having reference to the charge against the accused person as mentioned in Section 24 of the Indian Evidence Act. There can be no doubt that, when an accused person is produced before the Magistrate by the investigating officer, it is of utmost importance that the mind of the accused person should be completely freed from any possible influence of the
police and the effective way of securing such freedom from fear to the accused person is to send him to jail custody and give him adequate time to consider whether he should make a confession at all. It would naturally be difficult to lay down any hard and fast rule as to the time which should be allowed to an accused person in any given case. However, speaking generally, it would, we think, be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession. Where there may be reason to suspect that the accused has been persuaded or coerced to make a confession, even longer period may have to be given to him before his statement is recorded. In the same case it was further held that even if the confession is held to be voluntary, it must also be established that the confession is true and for the purpose of dealing with this question it would be necessary to examine the confession and compare it with the rest of the prosecution evidence and probabilities in the case”. The Court reiterated its view in Davendra Prasad Vs. State of UP, 23 by saying that before a confessional statement made under S. 164 of the

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23 1978 Cr LJ 1614; AIR 1978 SC 1544
Code of Criminal Procedure can be acted upon, it must be shown to be voluntary and free from police influence. While determining the Magistrate's role, Supreme Court in *Shivappa Vs. State of Kamataka* held: From the plain language of Section 164 of Cr.P.c. and the rules and guidelines framed by the High Court regarding the recording of confessional statements of an accused under Section 164 Cr.P.c., it is manifest that the said provision emphasise an inquiry by the Magistrate to ascertain the involuntary nature of the confession. This inquiry appears to be the most significant and important part of the duty of the Magistrate recording the confessional statement of an accused under Section 164 Cr.P.c. the failure of the Magistrate to put such questions from which he could ascertain the voluntary nature of the confession detracts so materially from the evidentiary value the confession of an accused that it would not be safe to act upon the same.\(^{24}\) Full and adequate compliance not merely in form but in essence with the provisions of Section 164 of Cr. P.c. and the rules framed by the High Court is imperative and its non-compliance goes to the root of the

\(^{24}\) Supra note 11, p 289
Magistrate's jurisdiction to record the confession and render the confession unworthy of credence. Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused. In case the Magistrate discovers on such enquiry that there is ground for such supposition he she rid give the accused sufficient time for reflection before he is asked to make his statement and should assure himself that during the time of reflection, he is completely out of police influence. An accused should particularly be asked the reason why he wants to make a statement which would surely go against his self-interest in course of the trial, even if he contrives subsequently to retract the confession. Besides administrating the caution, warning specifically provided for in the first part of sub-section (2) of Section 164 namely, that the accused is not bound to make a statement and that if he makes one it may be used against him
as evidence in relation to his complicity in the offence at the trial, that is to follow, he should also, in plain language, be assured of protection from any sort of apprehended torture or pressure from such extraneous agents as the police or the like in case he declines to make a statement and be given the assurance that even if he declined to make the confession, he shall not be remanded to police custody. The Magistrate who is entrusted with the duty of recording confession of an accused coming from police custody of jail custody must appreciate his function in that behalf as one of a judicial officer and he must apply his judicial mind to ascertain and satisfy his conscience that the statement accused makes is not on account of any extraneous influence on him. That indeed is the essence of a 'voluntary' statement within the meaning of the provisions of Section 164 Cr.P.C. and the rules framed by the High Court for the guidance of the subordinate courts. Moreover, the Magistrate must not only be satisfied as to the voluntary character of the statement, he should also make and leave such material on record in proof of the compliance with the imperative requirements of the statutory provisions, as would
satisfy the court that sits in judgment in the case, that the confessional statements was made by the accused voluntarily and the statutory provisions were strictly complied with. Even though an accused makes a confession and pleads guilty, the Magistrate should examine him under Section 313 Cr.P.c. to enable him to explain the circumstances under which the offence was committed. The confession of a co-accused is not substantive evidence. It can be used in service when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of his conclusion deductible from other evidence. When there is no substantive evidence about a fact or circumstance, the previous statement of the accused to prove the fact or circumstances cannot be relied upon, and no conviction can be based solely on such a statement.

9.2.7 Information Leading to Discovery

While investigating into an offence, it is obvious for the investigative agency to seek information related to weapons of
offence, stolen property, dead body of the victim and other similar vital constituents of the offence from the accused suspect.

However, it is very important to remember that while eliciting such information from the accused, the investigating official should not resort to torture or any other similar methods. All requirements elaborated under head 'confession' is equally applicable while seeking information from the accused for the purposes of discovery.

9.2.8 Bail

The innovative interpretations of constitutional provisions by the Supreme Court and High Courts have developed bail as a human right. The Code of Criminal Procedure contains provisions for bail.

Section 57 of the Code provides:

"No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall

Supra note 11, p 71
not, in the absence of a special order of a Magistrate under Section 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court." The Supreme Court observed that the right to bail is an invaluable right available to a person and that this right should not be denied arbitrarily, and that denial of this contravenes the fundamental right to personal liberty. As it is established in the Indian Judicial system, law presumes and accused to be innocent until his guilt is established, and as an innocent person he is entitled to defend his freedom. Relying on this principle in *Vidya Sagar Vs. State of Punjab*, the Court observed: "though the stage for raising the presumption of innocence in favour of the accused person does not arise till the conclusion of the trial and appreciation of entire evidence on the record, yet the matter of granting bail has to be, considered in the background of the fact that in the criminal jurisprudence, which guides the Courts, there is a presumption in favour of the accused". In *Kashmira Singh Vs. State of Punjab*, Justice Bhagwati observed: "it would be indeed a travesty of justice to keep a person in jail for a period of five to six years for an offence
which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified?". Krishna Iyer J. expressing his view in *Godikanti Vs. Public Prosecutor* case observed: "Bail or Jail? At the pretrial or post conviction stage belongs to the blurred area of the criminal justice system and largely hangs on the hunch of the bench, otherwise called judicial discretion".

In the same judgment it was emphasised that "personal liberty, deprived when bail is refused, is too precious a value of our Constitution recognised under Article 21 and that the crucial powered to negate it is a great trust exercisable, not casually but judicially, with likely concern for the cost to individual and the community. To glamorize impressionistic orders as discretionary may, on occasions, make a limitative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of 'procedure established by law'. The last four words of Article 21 are the life of that human right". In another case Krishna Iyer, J. stressed, "reasonableness postulates intelligent care and predicates the deprivation of
freedom by refusal of bail is not for punitive purpose but for the bi-focal interest of justice to the individual involved and society affected". It has been notified in several cases that an accused is not able to furnish bail bond because of his poverty. This important aspect was dealt in Mati Ram Vs. State of Madhya Pradesh. In this case the Court held that there is a need for liberal interpretation of social justice, individual freedom and indigent's rights and while awarding bail covers release on one's own bond, with or without surities. When surities should be demanded and what sum should be insisted on are dependent on variables. In Hussainara Khaitoon Vs. State of Bihar26, Bhagawati J., while effectively raising the inherent weaknesses of monetary bond said: "the bail system, as we see it administered in the criminal courts today, is extremely unsatisfactory and needs drastic change. In the first place it is virtually impossible to translate risk of non-appearance by the accused into precise monetary terms and even its basic premise that risk of financial loss is necessary to prevent the accused from fleeing is of doubtful validity. There are several

26 (1980) 1 SCC 91
considerations which deter an accused from running away from justice and risk of financial loss is only one of them and that too not a major one. The experience of enlightened projects in the United States such as Manhattan Bail Project and D.C. Bail Project shows that even without monetary bail it has been possible to secure the presence of the accused at the trial in quite a large number of cases. Moreover, the bail system causes discrimination against the poor would not be able to furnish bail on account of their poverty while the wealthier persons otherwise in similar situation would be able to secure their freedom because they can afford to furnish bail. This discrimination arises even if the amount of the bail as fixed by the Magistrate is not high, for a large majority of those who are brought before the courts in criminal cases are so poor that they would find it difficult to furnish bail even in a small amount”. Justice Bhagawati suggested that, under the law as it stands today the Court must abandon the antiquated concept under which pre-trial release is ordered only against bail with sureties. The concept is outdated and experience has shown that it has done more harm than good. The new insight into the subject of
pre-trial release which has been developed in socially advanced countries and particularly the United States should now inform the decisions of our Courts in regard to pre-trial release. If the Court is satisfied, after taking into account, on the basis of information placed before the Court, that the accused has his roots in the community and is not likely to abscond, the Court can safely release the accused on his personal bond. To determine whether the accused has his roots in the community which would deter him from fleeing, the Court should take into account the following factors concerning the accused:

(i) The length of his residence in the community.

(ii) His employment status, history and his financial condition.

(iii) His family ties and relationships.

(iv) His reputation, character and monetary condition.

(v) His prior criminal record including any record of prior release on recognisance or on bail.

(vi) The identity of responsible members of the community who would vouch for his reliability.

(vii) The nature of the offence charged and the apparent probability of conviction and the likely sentence in so far as
these factors are relevant to the risk of non-appearance, and (viii) Any other factors indicating the ties of the accused to the community or bearing on the risk of wilful failure to appeal.

**Guidelines**

1. Arrests without substantial grounds need to be avoided.
2. While recording First Information Report it should be ensured that the same is in accordance with established procedures and names of innocent uninvolved persons are not unnecessarily placed in the report.
3. If 'caution', 'fine' or anything similar will serve the purpose
4. Then the same. Should be used instead of arrest.
5. Procedures of arrest need to be followed meticulously; offenders being duly informed of their rights and their relatives being informed of the offender's arrest and whereabouts.
6. Procedures carried out at the Police stations should be transparent.
7. Women arrestees should be handled with special care and attention to their gender.
8. Proper records of cases brought before each police station
should be maintained and should be readily available for examination by those who are entitled to examine the same.

8. Officers who are in charge of the investigation of cases should not be part of the prosecuting agency to avoid tough stances against arrested person to justify arrest.

9. Where police have the power to grant bail the power should be exercised.

10. Extension of remand should not be sought for automatically or mechanically.

**Standards particularly applicable to pre-trial detainees**

Detention pending trial should be an exception rather than the rule. There are several issues to be considered to assess pre-trial detention is necessary in a given case, including:

- Are there reasonable grounds to believe that the person has committed the offence?
- Would the deprivation of liberty be disproportionate to the alleged offence and expected sentence?
- Is there a danger of that the suspect will abscond?
- Is there a danger that the suspect will commit further offence?
- Is there a danger of serious interference with the course of
justice if the suspect is released?

Would bail or release on condition be sufficient?

9.2.9 Trial

Trial is the process through which judiciary determines criminal liability of an accused. During trial it is the duty/burden of the prosecution to prove charges against the accused beyond any reasonable doubt. It is established criminal law that a person shall be presumed innocent till finally convicted by a competent court. It is the duty of all concerned with 'custodial justice system' to conduct themselves in accordance with the Criminal Procedure Code.

(a) Fair Trial

In the determination of any criminal charge, every person shall be equally entitled to the following minimum guarantees necessary for defence.

(1) To be informed promptly of any charges upon arrest; to be brought promptly before a judicial officer for an assessment of the legality of an arrest;

(2) To equal treatment before courts; to a fair and usually public...
hearing by a competent, independent and impartial court established by law; to be presumed innocent;

(3) To be informed promptly and in detail in a language one understands the nature of charges; to have adequate time and facilities for the preparation of a defence; to communicate with counsel of one's own choice;

(4) To be tried without undue delay;

(5) To be tried in one's presence;

(6) To defend one's self in person or through legal assistance of one's choice;

(7) To be informed that counsel will be appointed if one does not have sufficient funds and the interests of justice require such appointment;

(8) To examine or have examined witnesses;

(9) To obtain the attendance and examination of witnesses on the same conditions as adverse witnesses;

(10) To have the assistance of an interpreter if one cannot understand the language used in court;

(11) Not to be compelled to testify against one's self or to confess guilt;
(12) To have a conviction reviewed by a higher court according to law.

(13) To be compensated for any punishment this is conclusively shown to be a miscarriage of justice;

(14) Not to be convicted for any offence for which one has been finally convicted or acquitted (double-jeopardy);

(15) Not to be convicted for any act which did not constitute a criminal offence under criminal law at the time of the conduct (retrospective application of criminal law); and

(16) To benefit from any subsequent decrease in punishment.

(b) Remand and Custody

The whole spirit of the Constitution and the Criminal Procedure Code is that the custody and liberty of the accused detainee is entirely governed by the authority and sanction of a court of law beyond the initial 24 hours between the first arrest and production before the Magistrate thereafter. By no twisted interpretation can this power in actual fact and practice be passed on into the mere discretion of the investigating agency. Once an accused is produced before the court, it is the Court's
responsibility
and power as to whether he is to be remanded to further
custody or granted bail or released altogether. To seek remand
the investigation agency has to prefer an application stating
therein weighty reasons for the same. Under no circumstances
remand order can be passed mechanically and the Magistrate
passing an order of the remand ought, as far as possible, to
see that the detainee is produced before the court when
remand order is passed.

(d) Speedy Trial

Article 14(3)(c) of the International Covenant for Civil and
Political Rights provides for the right "to be tried without undue
delay". The right to speedy trial is incorporated under the
Indian Constitution as part of personal liberty. However, there is
no specific provision under the Indian Constitution which deals
specifically with speedy trial. In spite of this, there is no dearth
of judicial decisions which have given new dimensions to speed

27 UDHR, para. 2. Elena though UN Declaration did not provide for easily discernible enforcement
mechanism, yet over the years, UN has served the cause of human rights objectives in many ways. See
y trial, and made it almost a fundamental right. The landmark case is *Hussainara Khatoon Vs. State of Bihar.*\(^{28}\) Justice Bhagawati observed in this case that although speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21. The Supreme Court had held in *Maneka Gandhi Vs. Union of India*\(^ {29}\) that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law. If a person is deprived of his liberty under a procedure which is not 'reasonable, fair or just', such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Obviously a procedure established by law for depriving a person of his liberty cannot be reasonable, fair or just unless that procedure ensures a speedy trial for determination of the guilt of such person. "Any procedure which does not ensure a reasonably quick trial cannot be regarded 'reasonable, fair or just' and would fall foul of Article 21". Therefore, by speedy trial we mean reasonable

\(^{28}\) Supra note 26  
\(^{29}\) Supra note 5
expeditious trial which is an intrinsic and essential part of the fundamental right to life and liberty enshrined in Article 21. The Supreme Court further observed that speedy trial was the essence of criminal justice system and delay in trial by itself constitutes a denial of justice. In Kadra Pahadiya Vs. State of Bihar, four young boys who were designated as petitioners who were lodged in Pakur sub-jail in Santhal Parganas for a period of eight years without trial. They all belonged to the Paharia tribe, a backward tribe. Out of four, two of them were arrested on 26th November 1978 while the other two, on 19th December 1972. The jail record showed the ages of the petitioners being between 18 to 22 years at the time of their arrest, but the writ petition stated that they could not have been more than 9 to 11 years old when they were arrested. Bhagawati J. said, on behalf of the Court, "We hoped that after the anguish expressed and the severe strictures passed by us, the justice system in the State of Bihar would improve and no one shall be allowed to be confined in jail for more than a reasonable period of time, which we think cannot and should
not exceed one year for a sessions trial. but we find that the situation has remained unchanged and these four petitioners, who entered the jail as young lads of 12 to 13 have been languishing in jail for over eight years for a crime which perhaps ultimately they may be found not to have committed". The position continues to be very disappointing and still a large number of prisoners languish in jail without their trial having commenced. This issues related to speedy trial again came before the Supreme Court in Raghuvir Singh Vs. State of Bihar31, wherein the Court held" ... the Constitutional position is now well settled that the right to speedy trial is one of the dimensions of the fundamental right to life and liberty ... " In Madhu Mehta Vs. Union of India32, the Supreme Court reiterated that speedy trial is implicit in the broad sweep and content of Article 21. This principle has no less importance for the disposal of mercy petitions than to trial in the Court.

31 (1986) 4 SCC 481
32 (1989) 1 SCC 62
9.2.10 Appeal

In a number of cases the Supreme Court upheld the right to appeal. Considering the difficulties of the prisoners in exercising this invaluable right in *M.H. Hoskot Vs. State of Maharashtra*\(^{33}\), the Court declared that the Constitutional mandates under Article 21 read with Article 19(1)(d) prescribes:

(a) Courts shall forthwith furnish a free transcript of the judgment when sentencing a person to a prison term.

(b) In the event of any such copy being sent to the jail authorities for delivery to the prisoner by the-appellate, revisional or other court, the official concerned shall, with quick despatch, get it delivered to the sentencee and obtain written acknowledgement thereof from him.

(c) Where the prisoner seeks to file an appeal or revision, every facility for exercise of that right shall be made available by the jail administration.

(d) where the prisoner is disabled from engaging a lawyer on reasonable grounds such as indigence or because of difficulty

\(^{33}\) (1978) 3 SCC 544
in communication with outsiders, the court shall, if circumstances of the case, or the gravity of the sentence and the ends of justice so require, assign competent counsel for the prisoner's defence provided the party does not object to that lawyer.

(e) The State which prosecuted the prisoner and set in motion the process so to deprive him of his liberty shall pay to the assigned counsel such sum as the court may equitably fix.

(f) These benign prescriptions operate from the lowest to the highest court where a deprivation of life and personal liberty is in substantial peril.

Under Article 21 no person shall be deprived of his life or personal liberty except according to procedure established by law. 'Procedure established by law' are words of deep meaning for all lovers of liberty and judicial sentinels. Amplified activist fashion 'procedure' means 'fair and reasonable procedure' which confirms with civilised norms like natural justice rooted firm in community consciousness - not primitive procession barbarity nor legislated normative mockery. Generally speaking, and subject to just exceptions at least a single right of appeal
on facts where criminal conviction is fraught with long loss of liberty, is basic to civilised jurisprudence. It is integral to fair procedure, natural justice and normative universality save in special cases like the Original Tribunal being a high bench sitting on a collegiate basis. Every step that makes a right of appeal fruitful is obligatory and every action or inaction which stultifies it is unfair and hence unconstitutional. In a sense, Article 19 joins hand with Article 21 necessitating the two requirements:

(1) Service of a copy of the judgment in time to the prisoner intending to file an appeal, and

(2) Provision for the free legal services to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service. With the aforesaid guidelines the Court directed that the jail manuals will have to be suitably amended to ensure that the prisoner receives the copy of the judgment in time.

The Indian socio-legal milieu makes free legal service at trial and higher levels an imperative procession piece of criminal justice where deprivation of life or personal liberties
hangs in the judicial balance. If a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal inclusive of special appeal to appeal for want of legal assistance, there is implicit in the Supreme Court under Article 142 read with Articles 21 and 39 A, power to assign counsel for such imprisoned individuals for doing 'complete justice'. It is State's duty and not merely Government's charity. Equally affirmative is the implication that while legal services must be free to the beneficiary, the lawyer himself has to be reasonably remunerated for his services. There is a right to counsel, not in the permissive sense of Article 22(1), but in its wider amplitude in the peremptory sense of Article 21.

**9.2.11 Release on Probation**

Granting of probation is a discretionary power with the court. Such powers of the court are governed under Section 360\textsuperscript{34} and 361\textsuperscript{35} of Cr.P.c. These provisions state under what circumstances probation can be granted. Generally when the

\textsuperscript{34} Supra note 11, p 696

\textsuperscript{35} Ibid
accused is neither a habitual offender nor a previous convict, courts grant probation. Under Section 562(1), Cr.P.c. an offender can be released on probation only before he is sentenced to any punishment. If the court convicts the accused and sentences him to any punishment, it's power to make an alternative order is exhausted. While granting probation the court has to take the age, character, nature of the offence, mental and physical condition and antecedents of the accused/ofterner and all other extenuating circumstances associated with the offence into consideration apart from other conditions stipulated in the aforesaid provisions.

9.2.12 Health and Well-Being

Good health is important to everyone. It affects how people behave and their ability to function as members of the community. It has a particular significance in the closed community of a prison. By its nature the condition of imprisonment can have a damaging effect on both the physical and mental wellbeing of prisoners. Prison administrations have
a responsibility, therefore, not simply to provide medical care but also to establish conditions which promote the wellbeing of both prisoners and prison staff. Prisoners should not leave prison in a worse condition than how they entered. This applies to all aspects of prison life, but especially to health care. Those who are imprisoned retain their fundamental right to enjoy good health, both physical and mental, and they retain their entitlement to a standard of medical care which is at least the equivalent of that provided in the wider community. Alongside these fundamental rights of all human persons, prisoners have additional safeguards as a result of their status. When a state deprives people of their liberty it takes on a responsibility to look after their health in terms both of the conditions under which it detains them and of the individual treatment which may be necessary as a result of those conditions. While dealing with this aspect special attention should be given to factors like age, gender, mental condition, etc, of a prisoner. It is unethical to classify prisoners as a single group for proving medical facilities. Each prisoner should be given adequate medical care as his/her body demands.
Whenever possible prisoners should have full access to the medical facilities which are available to the public at large. However, for management reasons presently this access is limited to specialist care while general medical care is provided within the individual prison or in specific prison medical facilities. Any medical treatment or nursing care provided by the prison administration should be at least comparable to what is available in the outside community.

There is an absolute obligation on the State to preserve and, if necessary, restore the health of those individuals for whom it takes responsibility by depriving them of their liberty. The conditions under which prisoners are detained will have a major impact on their health and well-being. In order to meet their responsibilities therefore, prison administration should ensure appropriate standards in all those areas which may affect the health and hygiene of prisoners. The physical conditions of the accommodation, the food and the arrangement for hygiene and sanitation should all be designated in such a way as to help those who are unwell to recover and to prevent the spread of infection to the healthy.
The conditions of imprisonment will have a serious impact on the mental well-being of prisoners. Prison administrations should seek to reduce the extent of that impact and should also establish procedures to monitor its effects on individual prisoners, steps should be taken to identify those prisoners who might be at risk of self-harm or suicide. Staff should be properly trained in recognising the indicators of potential self-harm. Health care staff have an important role in establishing the concept that health care embraces not simply treatment but all aspects of creating a healthy environment and that this requires the cooperation of everyone in the prison. This will be particularly challenging when resources are limited. The foregone requirements apart there are a number of issues in which medical staff need to distinguish between the demands of the prison administration and the ethics of professional health care. Prisoners' right to privacy and confidentiality are amongst such considerations, which have to be adequately taken care of by the prison medical staff.
Guidelines for medical care in prisons

As a minimum, the prison administration should provide in each prison:

1. Initial medical screening on admission to the prison;
2. Regular out-patient consultations;
3. Emergency treatment;
4. Suitably equipped premises for consultation with and the treatment of prisoners;
5. An adequate supply of appropriate medicines dispensed by qualified pharmacists;
6. Facilities for physiotherapy and post-treatment rehabilitation;
7. Any special diets which may be identified as medically necessary;
8. Prison administration will need to ensure that access to general medical care is available at any time without delay in cases of urgency;
9. Necessary medical care and treatment should be provided free of charge.
10. Where prisoners are diagnosed as mentally ill they should not be held in prison but should be transferred to a suitably
equipped psychiatric facility;

11. The treatment provided as a result of consultation and diagnosis should be that which is in the best interests of the individual prisoner. Decisions should not be based on the relative cost or convenience to the prison administration.

12. Any diagnosis made or advice offered by prison medical staff should be based on professional judgment and in the best interests of the prisoner.

9.2.13 Wages in Prison

The Supreme Court in the case of State of Gujarat Vs. Hon'ble Court of Gujarat examined the question of minimum wages of prisoners and in its order dated 24th September 1998 held that it was 'lawful to employ prisoners sentences to rigorous imprisonment whether he consents to do it or not'. The apex court also held:

- it is open to the jail officials to permit other prisoners also to do the work which they chose to do, provided such prisoners make a request for the purpose;

36 (1998) 7 SCC 392
it is imperative that the prisoners should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to prisoners the State concerned shall constitute a wage fixation body for making recommendations. Each State is directed to do so as early as possible;

until the State Government takes any decision on such recommendations every prisoner must be paid wages for work done by him at such rates or revised rates as the Government concerned fixes in the light of the observations made above. For this purpose all the State Governments are directed to fix the rate of such interim wages within six weeks (from 24th September 1998) and report to the Court compliance with the direction.

This direction of the Supreme Court was reiterated by the National Human Rights Commission, which insisted strict implementation of the same at the earliest possibility. Following such directions, most of the State Governments have made upward revision of the paltry wages being paid to the prisoners. However, it is important to take the health of the prisoner in to
consideration while assigning him/her works. Health is of paramount importance and under no circumstances a prisoner can be forced to do work that is not permitted by his/her health.

9.2.14 Preventive Detention

After the commencement of the Constitution, the liberty of a citizen of India has to be zealously guarded and preserved. Article 21 of the Constitution enjoins 'no person shall be deprived of his life or personal liberty except according to procedure established by law. Once a person is arrested and detained the executive has to justify its action in the sense that the detention is either for violation of some law or for preventive purpose: as prescribed by law. In both the cases, the justification for detention has to be only under the authority of law. It is an established principle that before a person is deprived of his liberty the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected. Preventive detention differs from imprisonment on conviction or during investigation of the crime of an accused which permits separate classification
of the detainees under preventive detention. Preventive detention is to prevent breach of law while imprisonment or conviction or during investigation subsequent to the commission of the crime. The executive derives its authority to resort to preventive detention from specific legislations like National Security Act specifically designed with an object like 'to cope with situations of communal disharmony, social tensions, extremist activities, industrial unrest and increasing tendency on the part of various interested parties to engineer agitations on different issues. It is imperative to follow the law meticulously while resorting to preventive detention. The executive cannot exercise such powers unless the same is clearly and expressly stipulated in the respective legislation. Further, it is very important to facilitate review of the order of detention. The detainee should be provided with all relevant information so as to enable him/her to prepare an effective representation against his/her detention. And such representation should be processed and considered expeditiously. While a detainee is under preventive detention he/ she is entitled to all rights corresponding to his/her human
9.3 Custodial Death

9.3.1 Worst kind of crime in a civilized society.-

Death in police custody is one of the worst kind of crimes in a civilized society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens and is an affront to human dignity.' In *Bhajan Kaur v. Delhi Administration through the Lt. Governor* the Delhi High Court while determining the scope and width of Article 21 of the constitution held as follows:

"Personal liberty is fundamental to the functioning of our democracy. The lofty purpose of Article 21 of the Constitution would be defeated if, the State does not take adequate measures for securing compliance with the same. The State has to control and curb the *mala fide* propensities of those who threaten life and liberty of others. It must shape the society so that the life and

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37 Supra note 1, p 161
liberty of an individual is safe and is given supreme importance and value. It is for the State to ensure that persons live and behave like and are treated as human beings. Article 21 of the Constitution is a great landmark of human liberty and it should serve its purpose of ensuring the human dignity, human survival and human development. The State must strive to give a new vision and peaceful future to its people where they can co-operate, co-ordinate and co-exist with each other so that full protection of Article 21 of the Constitution is ensured and realised. Article 21 is not a 'mere platitude or dead letter lying dormant, decomposed, dissipated and inert. It is rather a pulsating reality throbbing with life and spirit of liberty, and it must be made to reach out to every Individual within the country. It is the duty and obligation of the State to enforce law and order and to maintain public order so that the fruits of democracy can be enjoyed by all sections of the society irrespective of their religion, caste, creed, colour, region and language. Article 21 of the Constitution is an instrument and a device to
attain the goal of freedom of an individual from deprivation and oppression and its violation cannot and must not be tolerated or condoned. Preamble to the Constitution clearly indicates that justice, liberty and equality must be secured to all citizens. Besides, it mandates the State to promote fraternity among the people, ensuring the dignity of the individual and the unity and integrity of the nation. Article 38 of the Constitution also requires the State to promote welfare of the people by securing and protecting, as effectively as it may, a social order in which justice social, economic and political, shall inform all institutions of the national life. These are the goals set by the Constitution, and Article 21 and other fundamental rights are the means by which those goals are to be attained. Therefore, it becomes the responsibility and avowed duty of the State to adopt means and methods in order to realise the cherished aims..... The conduct of any person or groups of persons has to be controlled by the State for the lofty purpose enshrined in Article 21 of the Constitution"
In *Nilabati Behera v. State of Onssa*. the Supreme Court observed that it is axiomatic that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with procedure established by law, while the citizen is in its custody, whether he be a suspect. Under trial or convict. His liberty is in the very nature of things circumscribed by the very fact of his confinement and, therefore, his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrong doer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law. The defence of "sovereign immunity"
in such cases is not available to the State. Therefore award of compensation would be a remedy available in a proceeding under Article 32 or Article 226 of the Constitution of India based on a strict liability or violation of fundamental rights.

A person in jail does not lose his fundamental rights under Article 21 of the Constitution which requires a person to be treated with dignity. It seems that most of the jails in our country are jungles where the security people often behave like animals in mal-treating the prisoners. It is the prime’ duty of the Jail authority being custodian to provide security and safety to the life of prisoners while in jail custody, even though he is a criminal or an accused in a criminal case.

9.3.2 Death In police custody-Entitled for monetary compensation under articles 32 and 226 of the Constitution of India.-
In Nilabati Behera (Smt.) alias Lalita Behera v. State of Orissa\textsuperscript{39}

It was pointed out by the Apex Court as under:

"A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in Private law for damages for the tort resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental right, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of

\textsuperscript{39} Ibid
the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution."

It was further observed:

"Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortuous act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the Courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the Courts have, therefore, to evolve 'new tools' to give-relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law."
In *D.K. Basu v. State of West Bengal*\(^{40}\), it has been held by the Apex Court that compensation can be granted under the public law by the Supreme Court and the High Courts in addition to private law remedy for tortuous action and punishment to wrong doers under criminal law for established breach of fundamental rights.

In *Bhim Singh vs. State of Jammu and Kashmir*\(^{41}\), an MLA was arrested and illegally detained by the police. The Court after due examination of all the facts ordered for payment of Rs. 50,000/- as compensation. The Court referred to *Rudal Shah*\(^{42}\) and *Sebastin M Hongray vs. UOI*\(^{43}\) cases and observed:

"However the two police officers, the one who arrested him and the one who obtained the orders of remand, are but minions in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies else where and with the higher echelons of the Government of Jammu and Kashmir but it is not possible to say precisely where and with whom, on the material now before us. We have no doubt that the

\(^{40}\) *AIR 1997 SC 3017*

\(^{41}\) *(1985) 4 SCC 677*

\(^{42}\) *(1983) 4 SCC 141*

\(^{43}\) *(1984) 3 SCC 82*
Constitutional rights of Mr. Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this Court in *Rudal Shah vs. State of Bihar*[^44] and *Sebastian M. Hongary vs. Union of India*[^45]. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the first respondent, the State of Jammu and Kashmir to pay to Mr. Bhim Singh a sum of Rs. 50,000/- within two months from today. The amount will be deposited with the Registrar of this court and paid to Mr. Bhim Singh.”

[^44]: Supra note 42
[^45]: Supra note 43
In case of PUDR vs. Police Commissioner\textsuperscript{46}, Delhi police head Quarters and another, is a case of laborers who were forced to work in police station without any wages. When the labourers demanded the wages they were beaten up and the women labourer's were stripped of their clothes and thrashes in the police station. In this atrocity one labourer by name Rama Swarup succumbed to the injuries. On these facts the Supreme Court ordered for payment of Rs. 50,000/- to the dependents of the deceased and the women whose clothes were stripped off was awarded Rs. 5,000/- as compensation. Eight other labourers who were forced to work were paid Rs. 25 per day as wages.

In, a similar case of Saheli vs. Commissioner of Police\textsuperscript{47}, Delhi police Head Quarters and others, the police raided the house of one Mrs. Kamalesh Kumari. The victim was staying in a house with her three children wage 13, 9 and 7 years. The landlord of that house took the help of police to forcibly evict them from the house. During the police raid the police trampled

\textsuperscript{46} (1989) 4 SCC 730
\textsuperscript{47} (1990) 1 SCC 422
upon the nine years child of Kamalesh Kumari resulting in the death of the child. On these facts the Supreme Court ordered for payment of Rs. 75,000/- as compensation to the mother of the deceased child.

In both above mentioned case the similar fact was that the Supreme Court ordered to recover the amount of compensation from the concerned police officers.

In charanjit Kaur vs. Union of India, The court awarded Rs. 6 lakhs compensation to the wife of an army officer who died due to the negligence of any authorities.

9.3.3 Immunity of State In cases of custodial deaths.

Barring the functions such as administration of justice, Maintenance of law and order and repression of crimes. etc., which are among the primary and inalienable functions of a constitutional Government the State cannot claim any immunity.

48 (1994) ACJ 499
9.3.4 Police atrocities and compensation by Apex Court.

For a long time after independence the Courts in India continued to give primacy to the doctrine of "sovereign functions" and rarely granted relief in petitions filed against the State for vicarious liability for excesses. The turning point came in 1978 in Maneka Gandhi's case when the Supreme Court held that any State action affecting life and liberty of the people assured under Article 21 of the Constitution has to be "right, just and fair and not arbitrary fanciful and oppressive". Thereafter, there was progressive judicial activism for protection of human rights.

In the first phase, the Supreme Court in Nandini Satpathi v. P.L. Deni upheld the right of an accused to secure the services of a lawyer of his choice at the time of police interrogation. In first Sunil Batra case putting bar-fetters on, and handcuffing, of prisoners was regarded a kind of torture, cruel or degrading treatment in terms of Article 5 of the Universal Declaration of Human Rights and prescribed procedural safeguards. In the second Sunil Batra's case. the

\footnote{(1978) 2 SCC 424}
Supreme Court considered solitary confinement of prisoners as a human perversity which should be avoided and issued suitable guidelines. In Hussainara Khetoon's cases, the Supreme Court made provision of legal aid at State cost compulsory in cases of poor and indigent accused under trial in criminal cases, for seeking bail and also for defence at the time of trial.

As the impact of Supreme Court's decisions did not produce the desired effect. In the second phase the Court ordered the State to pay compensation for wrongful detention excessive torture and custodial deaths. In Rudul Shah v. State of Bihar. The petitioner was kept in jail for nearly 14 years after his acquittal on the ground of insanity. The Supreme Court ordered the petitioner's immediate release and directed the State to pay him Rs. 35,000 as compensation for deprivation of his liberty. In Gauri Shankar Sharma v. State of U.P. two police-men were sentenced by the Supreme Court for severely beating a suspect for extracting a confessional statement, and his deliberate torture on non-payment of bribe resulting in

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30 (1994) 1 SCC 92
custodial death. Expressing their deep concern on custody deaths the Court observed: "Deaths in police custody must be seriously viewed for otherwise we will help take a stride in the direction of police raj." In Nilebeti Behera (Smt.) v. State of Orissa\textsuperscript{51} the Supreme Court while ordering compensation of Rs. 1.5 lakh by the State to the petitioner for custodial death of her son aged 22 years. reiterated that compensation for contravention of human rights and fundamental freedoms as guaranteed in the Constitution is an acknowledged remedy for enforcement and protection of such rights. In the third phase the Supreme Court directed that besides recovering the compensation amount from erring police officials, they should also be prosecuted. In Arvinder Singh Bagga v. State of U.P.\textsuperscript{52} the Supreme Court ordered that compensation of Rs. 10,000 each to be paid to the lady and her husband be recovered from the concerned police officers and the SHO, SI and the 10 be prosecuted for illegal arrest causing humiliation and torture of the petitioners in police station for no fault of theirs.

\textsuperscript{51} Supra note 39
\textsuperscript{52} 1995 supp (3) SCC 716

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53 (1994) 6 SCC 260
54 AIR 1963 Punj 158
Punjab to pay Rupees 10 lakhs as compensation to the parents for abduction and murder of an Advocate his wife and two years' old child and falsely implicating an innocent person and also pay Rs. 2 lakhs to the latter as compensation for the suffering caused to him due to false implication and remaining in jail since 1993.

In spite of severe strictures passed fines imposed and imprisonment ordered by the Supreme Court on police personnel for violation of human rights there is no abatement in reports about illegal detention of innocent people at police stations harassment of complainants by non-registration of FIRs. extortions of bribe and indiscriminate use of third degree methods during interrogation of suspects leading to custody deaths.

9.3.5 Monetary compensation for Infringement of fundamental rights.

The importance of affirmed rights of every human being needs no emphasis and therefore to deter breaches thereof becomes a sacred duty of the Court as
the custodian and protector of the fundamental and the basic human rights of the citizens Custodial violence including torture and death in the lock-ups strikes a blow at the Rule of Law.\textsuperscript{55} which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up the victim being totally helpless the protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society. The award of compensation in the public law administration is without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim for the tortious acts committed by the functionaries of the State.

\textsuperscript{55} Supra note 1
9.3.6 Death in police custody and compensation.

In *Herbens Kaur v. Union of India*, that was a case where one person was called to the Police Station through the constable and thereafter. his whereabouts was not known. A *habeas corpus* petition was filed and the claim for compensation was made and the Supreme Court directed an enquiry to find out whether the petitioner was mercilessly beaten in police custody which ultimately led to his death.

9.3.7 Death in police custody—

Manipulation of Police Records deprecated.—

On a critical appreciation of the testimony available on record, the High Court held- "the conclusion is irresistible that the truth has been attempted to be obliterated in such a manner so as to screen the real offender or create doubt about the persons put in the dock as accused and, therefore, challan of the accused was eyewash for the general public".
The High Court made a strong observation in this regard and directed the record of the police station to be thoroughly examined by holding a part-mental enquiry so as to bring to book such of the police personnel who may be found guilty of misconduct or negligence or dereliction of duty resulting into the death of the deceased while he was in the custody of the police.

9.3.8 Torture and death in other departments apart from police-liable compensation.

Apart from the police there are several other governmental authorities also like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, Central Reserve Police Force (C.R.P.F.) Border security Force (B.S.F.), the Central Industrial Security Force (C.I.S.F.) the State armed Police Intelligence Agencies like the Intelligence Bureau. R.A.W., Central bureau of Investigation (C.B.I.), C.I.D. Traffic Police, Mounted Police and I.T.B.P., which have the power to detain a person and to interrogate him in
connection with the investigation of economic offences, offences under the Essential commodities Act, Excise and Customs Act. Foreign Exchange Regulation Act, etc. there are instances of torture and death in custody of these authorities as well. In sawinder Singh Grover, Death of. In re. the Supreme Court took suo- motu notice of the death of Sawinder Singh Grover during his custody with the Directorate of Enforcement. After getting an enquiry conducted by the Additional district Judge, which disclosed a *prima facie* case for investigation and prosecution, the Supreme Court directed the C.B.1. to lodge a F.I.R. and initiate criminal proceedings against all persons named in the report of the Additional district Judge and proceed against them. The Union of India/Directorate of Enforcement was also directed to pay sum of Rs. 2 lacs to the widow of the deceased by way of ex gratia payment at the Interim stage. Amendment of the relevant provisions of law to protect the Interest of arrested persons in such cases too is a genuine need.
9.3.9 Grant of Anticipatory Bail to Police Officer responsible for custodial death.

The statements of the eye-witnesses clearly implicated the petitioner and some of his associates for their involvement in the confinement torture and murder of the deceased and ultimately in the disposal of his dead body.

It is true that the petitioner is a responsible police officer a member of Indian Police Service and hence he may not abscond but on this ground alone his prayer for anticipatory bail cannot be allowed. At this stage in an application for anticipatory bail the Court cannot rule out the possibility that perhaps it was this position of the petitioner as the highest police officer of the district that gave him the opportunity to manipulate things so that no FIR could be registered within a reasonable time. The Court further found that neither the dead body of the deceased nor the concerned General Diaries of the Police Station could yet be recovered and, therefore. It may not be proper to grant anticipatory bail to the petitioner as his release on bail may prevent the police from recovering the aforesaid General Diaries as well as the dead body of the
deceased. There are also other allegations that the petitioner interfered with investigation.\textsuperscript{56}

9.3.10 Compliance of non-bailable warrant against police personnel in case of custodial death.

The perusal of the case diary disclosed that there were prima facie materials in the form of circumstantial evidence to enable the Magistrate to take cognizance of the offences as against the petitioners and issue the non-bailable warrant. The murky feature which the Court could see in the case is that during the course of investigation there was no attempt by the respondent-police to arrest the petitioners. Even after the issuance of non-bailable warrant no genuine attempts were made by the respondent-police to arrest the petitioners probably because the respondent would have thought that the petitioners need not be arrested as they belong to police force. The respondent-police have given scant respect to the orders of the Magistrate Issuing non-bailable warrant against the

police force for the best reasons known to them. If this is the attitude of the police, then there would be a situation where the public would lose confidence in the police force. The Tamil Nadu Police force is known for its integrity, courage and efficiency. But, in the instant case the recalcitrant attitude shown by the police by not taking effective steps to arrest the petitioners from 1992 to 1995 pending investigation and from 1995 till date after issuance of warrant has caused considerable concern in the mind of the Court. Therefore, while dismissing the application for anticipatory bail, as the petitioners were not entitled to, the Court directed the Director General of Police to take immediate steps to execute the warrant issued by the learned Magistrate.

9.4 Custodial death and compensation.

There are a series of cases relating to custodial deaths, illegal detention, suicide, rape and medical negligence in which the Apex Court and various High Courts have awarded compensation.
Judgment 1: Custodial death of Kewal Singh

The Punjab and Haryana High Court took *suo motu* action based on report of *the Times of India* on 22 April 2007 about the custodial death of Mr. Kewal Singh on 20 April 2007.

The deceased Kewal Singh alias Gola (son of Buta Singh) of Bukkanwala village in Ferozepur district of Punjab was facing trial in case FIR No. 27 dated 5 April 2007 registered at Police Station Sadar, Moga under Sections 382, 506, 148, 149 Indian Penal Code (IPC). He was also arrested on FIR No. 34 dated 12.4.2007 registered at Police Station Sadar, Moga under Sections 307, 324, 323, 382, 341 and 506 IPC read with Section 34 IPC. He was first arrested by the police on 14 April 2007. He was produced in the Court on 15 April 2007 and was remanded to police custody. On 16 April 2007, he was again produced before the *illaqa* (area) Magistrate and he was remanded to judicial custody. In judicial custody he was detained in Sub Jail, Moga. On 20 April 2007 he was transferred to the Central Jail, Ferozepur on administrative

57 Supra note 11, p 567
grounds. In the evening of 20 April 2007, Kewal Singh died in custody.

He was allegedly beaten with sticks and iron rods by Head Warden Major Singh, Warden Baldev Singh and Chakkar Havaldar Shinder Singh. The post mortem report revealed 13 injuries on his body. Jail officials claim that the Kewal was taken from his cell to take a bath. Kewal became violent and ran towards the prison wards where he began jumping from one wall to another. In the process he injured his hand. His condition deteriorated and he was declared dead on arrival at the Civil Hospital, Ferozepur. The inquiry by the Additional Sessions Judge stated:

"But as per post-mortem report at page 93 there are 13 injuries mark on the body of Kewal Singh. The nature of injuries raises many questions. Even if his hand had got injured due to glass on the wall, there is no explanation for the injuries on the body of Sh.Kewal Singh specially head, back and lower part of back. It appears that excessive force was used and he was given a severe beating by the jail staff. The Superintendent of Jail both Moga and Ferozepur has not shown any justification for shifting
the prisoner Kewal Singh. The Superintendent, Central Jail, Ferozepur, did not even bother to get the medical examination of Sh.Kewal Singh done before admitting him in the Ferozepur Jail".

On 15 February 2008, the Division Bench of Chief Justice Vijender Jain and Justice Kanwaljit Singh of the Punjab and Haryana High Court *Court on its own Motion Vs. State of Punjab* directed the State Government of Punjab to pay compensation of Rs 10 lakh to the next of kin. The Court observed that: "The instrumentalities of State, and the jail authorities, who are responsible to provide adequate facilities for the persons cannot deprive a person of his life. Nothing can be more serious than custodial death of an inmate in a jail. The whole concept of human rights, life and liberty will be put to naught if this Court does not come down heavily on the State and its officers for taking out the life of an under-trial without the authority of law."
Judgement 2: Custodial death of Natarajan Chettiar

Rajammal Vs. State of Tamil Nadu

On 5 February 2007, two-Judge Bench of the Madras High Court admitted the writ appeal petition (Writ Appeal No. 1018 of 2006) filed by Rajammal, the widow of a custodial death victim, for enhancement of compensation. The appellant’s husband Natarajan Chettiar died in the custody of Tiruvannamalai Police Station on 11 September 1993. He was arrested in an alleged case of theft in Criminal Complaint No. 417 of 1993 for offences under Sections 457 (house trespass or house breaking by night in order to commit offence) and 380 (theft in dwelling house etc) of the IPC.

In her Writ of Mandamus petition (W.P. No. 22366 of 1993), his widow, Ms Rajammal pleaded for appropriate action against the perpetrator involved in Natarajan Chettiar’s custodial death and compensation of Rs. 5,00,000 (US$ 12,500) In its order G.O.Ms. No. 741 Public (Law and Order-A) Department dated 8 July 1996, the state government ordered the initiation of a criminal prosecution against the accused

58 Writ Appeal No. 1018 of 2006
police officers, thereby admitting to the custodial death. But the Single Judge directed the state authorities to pay only Rs 3,00,000 (US$ 7,500) as compensation. Ms Rajammal appealed for greater compensation on the grounds that she had to look after her sons who were aged 23, 20 and 15 years and daughters aged 22, 18 and 17 years at the time of death of her husband. The two-Judge Bench ruled in her favour stating that it was:

"appropriate to enhance the compensation ordered by the learned single Judge from Rs. 300,000 to Rs. 500,000 as has been prayed for by the petitioner in the writ petition."

> **Judgement 3: Custodial death of Rajmohan the Government of Tamil Nadu and Ors. Vs. R. Dhanalakshmi**

In the case of the Government of Tamil Nadu and Ors. Vs. R. Dhanalakshmi (Writ Appeal No. 1169 of 2004 and WAMP No. 2198 of 2004) on 11 April 2007 a two-Judge Bench of the Madras High Court held that "justice would be met" by awarding compensation of Rs 5,00,000 (US$ 12,5000) to the

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59 Writ Appeal No. 1169 of 2004 and WAMP No. 2198 of 2004
family of Mr Rajmohan who had died as a result of torture in police custody. The State government of Tamil Nadu challenged the order of the Single Judge of the Madras High Court 29 October 2003 (W.P. No. 13577 of 1996) which directed the state government of Tamil Nadu to pay Rs 9,00,000 (US$ 22,500) to the petitioner Ms R. Dhanaakshmi (husband of Rajmohan). The government did not dispute the custodial death and even awarded Rs 100,000 (US$ 2,500) to the deceased's family from the Chief Minister's Relief Fund as compensation.

Ms R. Dhanaakshmi filed a Writ of Mandamus stating that on 23 March 1995 at about 05.00 hours, her husband Rajmohan was taken into police custody by Mr R. Eswaran, Sub Inspector of Police of Karur Police Station, from his house at Veeramalai Palayam, Kaniyalampatti Post, Chinthamanipatti. He was tortured to death by the Sub Inspector of Police, Karur Police Station. The post-mortem report issued by the Medical Officer, Government Hospital, Karur, revealed that the victim died of Neurogenic shock due to the pain caused by injuries to his chest 10-14 hours prior to autopsy.
The writ petitioner stated that the deceased was about 29 years old when he died. He ran a successful business which earned Rs 6,000 per month after deducting all expenses. The deceased was the only wage earner and had left behind two children and his wife. But the two-Judge bench contended that:

"except mere statement in the affidavit that her husband was a fleet owner, operating a lorry, she has not furnished or enclosed the required materials such as registration certificate of the lorry or lories, model, make, details regarding payment of income tax, information regarding continuance of lorry business"

The Bench then reduced compensation from Rs 9,00,000 to Rs 5,00,000 stating that this was enough to provide "justice" to the deceased's family.

Judgement 4: Custodial death of Rasiklal Jaiswal
(Premilaben R. Jaishwal and
Ors. Vs. Respondent: B.M. Jadeja and Ors\(^{60}\))

On 3 May 2007, the High Court of Gujarat in the case of Premilaben R. Jaishwal and Ors. Vs. Respondent: B.M. Jadeja

\(^{60}\) Spl. Cri. Appln. No. 328 of 1998
and Ors (Spl. Cri. Appln. No. 328 of 1998) ordered the state
government of Gujarat to provide interim compensation of Rs.
40,000 (US$ 1,000) each to the petitioners. The court ruled that
the compensation should be recovered from the guilty police
personnel "Considering the loss, shock and suffering and the
delay". The Court also ordered for an investigation into the case
by "an independent and competent police officer of a higher
rank".

The petition was filed pertaining to the custodial death of
the husband of the petitioner Premilaben, Rasiklal Jaiswal, who
was detained by the police at around 16.00 on 16 September
1994. The petitioner alleged that Rasiklal Jaiswal was tortured
at Makarpura Police Station in Vadodara. The police denied the
victim access to medical treatment despite suffering from a
number of medical conditions. The post mortem report revealed
several ante mortem minor injuries. But an inquiry by Assistant
Commissioner of Police, "A" Division, Vadodara City found that
the deceased had died of a "heart attack" and exonerated the
accused police officials. However, an inquiry by the Sub-
Divisional Magistrate under Section 176 of the Criminal
Procedure Code in its report (submitted on 4 August 1998) found several disturbing facts.

As the court noted from the report of the Sub-Divisional Magistrate:

"the time of arrest shown at the police station of 00.15 hours on 17-9-1994 was wrong and the arrest appeared to have been effected in the evening of 16-9-1994; that 27 accused persons appeared to have been detained in a small room at the police station; that the deceased was not produced before the Court till the end of normal working hours of the Court, i.e. 18:10 hours, and thereafter at 19.10 hours, the deceased had expired; that instruction of Police Commissioner, Vadodara not to produce before the Magistrate the detainees within 24 hours of their arrest was exactly against the settled position of law and non-production before the Magistrate of the deceased for 19 hours indicated negligence on the part of the police; that the deceased appeared to have been unwell since the time of his arrest; that the allegations of beating of the deceased by the police were substantiated by the ante mortem injuries found on the body of the deceased; that despite the complaints of the
deceased, the police had failed to make any attempt at providing proper medical aid to the deceased; that even the requests of the deceased to call for necessary medicines from his house or call a doctor were not heeded; that the police officers and personnel concerned were required to be proceeded against; that the post mortem examination was also not properly and expeditiously done and there was obvious negligence of the authorities of the medical college in preparation and signing of the post mortem report; that the post mortem report revealed blockage of 70% in the coronary arteries and the final cause of death was cardiac failure as a result of pathology in coronary arteries. It is finally reported by the Sub-Divisional Magistrate that, in the facts of the case, the deceased appeared to have died due to congestion of 27 persons in a small room, the atmosphere of the police station, the apprehension of being beaten by the police and the mental stress caused by non-supply of water and medicines at the proper time which precipitated the heart attack".

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The High Court further observed that:

"The departmental enquiry and its conclusion appear to be an eye-wash insofar as the version of the police officers concerned appears to have been accepted in to without reference to the statements of the eye witnesses who were examined at the magisterial inquiry."

The High Court stated:

"Rarely, in cases of police torture or custodial death is there direct ocular evidence of the complicity of the police personnel who alone could explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and maltreatment of detainees/under trial prisoners or suspects tarnishes the image of any civilized nation and encourages the men in "khaki" to consider themselves to be above the law and sometimes even to become a law unto themselves. Unless
stern measures are taken to check the malady of the very fence eating the crops', the foundations of the criminal justice delivery system would be shaken and civilization itself would risk the consequence of barbarism".

The High Court apart from awarding interim compensation further ordered that:

"Since the State Police Complaints Authority required to be constituted under the judgment of the Hon’ble Supreme Court in Prakash Singh v. Union of India61 is stated to have still not been constituted, the original complaint of the petitioner addressed to the Police Commissioner shall be registered as an FIR which, he original complaint of the petitioner addressed to the Police Commissioner shall be registered as an FIR which, in the peculiar facts of requirement of investigation against the police officers, one of whom is stated to have been promoted to the rank of Police Inspector, shall be investigated by an independent and competent police officer of a higher rank and report of such investigation shall be submitted to the

61 (2006) 3 SCC (Cri) 417 : 2006 AIR SCW 5233
appropriate Court in accordance with law. It is clarified that the above order to pay compensation is without prejudice to the right of the petitioner to claim further compensation is appropriate civil or criminal proceedings and the conclusions drawn for awarding the interim compensation are restricted to the consideration of violation of fundamental rights and shall not influence the investigation”.

- **Judgement 5: Ill-treatment and torture of Mr K.S. Venkatesh and his sister Ms Rukmini**

  On 19 April 2007, the Bangalore Division Bench of the Karnataka High Court in the case of S. Srinidhi Vs. State by K.G. Nagar Police Station and Anr (Writ Petition No. 3 of 2007) stated:

  "We are of the view that a sum of Rs. 50,000/- would be an adequate amount of compensation payable by the State for the illegal detention/torture on 7-1-2007 by the Police."

  The petition relates to illegal detention and torture of Mr K.S. Venkatesh and his sister Ms Rukmini, who were taken into custody by the police of KG. Nagar Police Station in order to
force Mr Venkatesh to withdraw a complaint (P.C.R. No. 180 of 2007) he had submitted against Vishweshwara Teertha Swamiji of Pejawara Mutt for an offence punishable under Sections 307 (attempt to murder), 326 (grievous hurt), 340 (wrongful confinement) and 506 (criminal intimidation) read with Section 34 (common intention) of Indian Penal Code, 1860. They were allegedly illegally detained from 4-6 January 2007. During this detention it is alleged that they were tortured. They were then released, but on 7 January 2007, the Assistant Commissioner of Police re-detained them and in detention assaulted Mr Venkatesh and his sister. On 23 January 2007, the police produced Mr K.S. Venkatesh and Ms Rukmini as directed by the Karnataka High Court and the Court released them. The Court directed the Registrar Vigilance to hold an enquiry into the allegation of illegal detention from 7 January 2007 and torture from 4 January 2007. While the Registrar Vigilance found that there was no torture or ill-treatment by the respondent/Police to K.S. Venkatesh and Smt. Rukmini from 4-6 January 2007 but found that they were tortured during the second illegal detention. The Court while noted in its ruling:
"Unfortunately, of late, on account of some officials in the Police Department, the entire Police Department is getting a bad name despite their good work. To arrest this bad name to the Police Department and to see that the guilty are properly punished, we deem it proper to direct the Director General of Police to get hold of the entire records and conduct an independent enquiry to decide the (sic) hold that the person who is with regard to illegal detention/torture in the case on hand. In the event of any finding in terms of this order, the Director General of Police may proceed against such erring official in accordance with law".

Judgement 6: Custodial death of Phomlin Mawlieh (Shri Dino DG Dympep and Anr. Vs. State of Meghalaya and Ors (Civil Rule No. 130(SH) of 1998)

On 2 September 1998, Phomlin Mawlieh (27), a resident of Nangsohma village in West Khasi Hills district of Meghalaya was handed over to the police of Mairang police station in connection with theft. He was illegally detained and tortured
before transferal to the District Jail, Shillong on 4 September 1998. On 10 September 1998, the deceased was admitted to the Civil Hospital, Shillong in a critical condition. He died on 11 September 1998 at the Civil Hospital. The jail authorities claimed that he died of malaria. But the District and Sessions Judge, Shillong, in his inquiry report stated that there had been 'foul play' on the part of the police and jail authority; that the evidence adduced by the respondents was contradictory. He concluded that the cause of death could not be attributed to malaria. The Guwahati High Court did not "find any perversity in the findings so recorded by the District & Sessions Judge, Shillong". All witnesses for the prosecution supported the view that injuries inflicted during detention caused the death. One of the prosecution witness stated that at the time the victim was taken in police custody, she saw the police personnel beating him with sticks. The wife of the deceased stated that when she bathed her husband, in preparation for his funeral rites, she saw injuries on his face, chest, legs and hands. His shirt was torn and bloodstained. On 29 June 2007, the Shillong Bench of the Gauhati High Court in the case of Shri Dino DG Dympep
and Anr. Vs. State of Meghalaya and Ors (Civil Rule No. 130(SH) of 1998) pertaining to death of Phomlin Mawlieh due to torture in police custody, stated that:

"Rarely in cases of police torture or custodial death, is direct ocular evidence available of the complicity of the police personnel, who alone can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues - and the present case is an apt illustration - as to how one after the other police witnesses feigned ignorance about the whole matter."

The Court further added that:

"It is true that Section 106 of the Indian Evidence Act cannot be used to shift the onus of proving the evidence from the prosecution to the accused, but when there is satisfactory evidence which fastens or conclusively fixes the liability for the death of the inmates of the house present at the relevant time, in the absence of any other explanation, the only possible inference which can be drawn by this Court will be that all the
accused inmates participated in the crime. If any one of them claims to the contrary then under Section 106, the burden of proving that fact would be upon him since that is within his special knowledge”.

The deceased at the time of death was 27 years old, employed and survived by his wife and two young children. Yet, the Court ordered the state government to pay only Rs 3,00,000 (US$ 7,500) which the Court stated "will meet the ends of justice". The Court asked the state government to hold an enquiry into the police personnel involved in the custodial death of the deceased and further stated that:

"the amount of compensation paid to the petitioner No. 2 may be realized by the State-respondents from the police personnel found to be involved in the custodial death of the deceased”.

➢ **Judgement 7:Torture to death of Benudhar Daimary**

Mr Benudhar Daimary was arrested with three other persons by a police team headed by Officer-in-Charge of Rowta Out Post, Sub Inspector Manzoor Ahmed, from Gangumakha
village under Udalgari police station in Darang district of Assam on 20 December 2000. On 21 December 2000, the victim's brother and others went to the police post to enquire after his brother. The Officer-in-Charge stated that Benudhar and others had been sent to jail custody. However on 22 December 2000, the police handed over the body of Benudhar Daimary to the family claiming that it was found near the railway track. The autopsy report found 11 injuries on the body of Benudhar Daimary inflicted prior to the death. The High Court vide order dated 02 February 2001 directed the Superintendent of Police, Darrang, Mangaldoi to appear before the court on 19 February 2001. He was instructed to explain why the police case has not been registered despite the complaint dated 22 December 2000 pertaining to the custodial death of deceased Mr Daimary.

Following the hearing on 19 February the High Court passed an order directing the District and Sessions Judge, Darrang, Mangaldoi to conduct an enquiry. The inquiry found that Benudhar Daimary, died in police custody as a result of physical torture inflicted by the then Officer-in-Charge of Rowta Out Post. On 19 December 2007, the Guahati High Court, in
the case of *Khangra Daimary Vs. State of Assam and Ors.*, ordered the state government of Assam to pay compensation of Rs 3,00,000 (US$ 7,500) to the wife and child of custodial death victim Benudhar Daimary. The court stated:

"it is open for the State respondents to recover the said amount form the person responsible for the custodial torture and death of Benuddhar Daimary".

**Judgement 8: Custodial death of Mr Pancharaju**

On 20 December 2007, a two-Judge bench of the Madras High Court dismissed the appeal petition (W.A. No. 1328 of 2001) filed by the State of Tamil Nadu against the order of the Single Judge of the Madras High Court of 8 December 2000 (W.P.No.11231 of 1997) asking the state government to pay Rs.2,00,000 (US$ 5,000) as compensation to Ms Pulliammal, the writ petitioner for the death of her husband, Mr Pancharaju in the custody of Central Jail, Madurai. On 9 October 1996, Mr Pancharaju was arrested by the police under Section 4(1)(a) of Tamil Nadu Prohibition Act and Section 328 (poisoning) of the Indian Penal Code. On 9 October 1996, the Court remanded
him to judicial custody for 15 days but the victim was illegally detained at the Periyakulam Police Station overnight. During detention the victim was tortured. On 10 October 1996, he was transferred to Central Jail Madurai and almost immediately sent to Rajaji General Hospital, Madurai in a serious condition. On 2 November 1996 at about 12.20 p.m, Ms Pulliammal received a telegram from the jail authorities saying that her husband was being transferred to Government Rajaji General Hospital, Madurai. Another telegram arrived on the same day at 19.00 stating that the victim had died at the hospital. Later, she was informed by Casualty Mortuary Card that her husband had arrived already dead to the hospital at 08.35 on 2 November 1996.

The High Court held that:

"It is a fact not in dispute that the deceased Pancharaju was arrested on 09.10.1996 by the police and produced before the Judicial Magistrate, Periyakulam for remand in Crime No.547 of 1996 for an alleged prohibition offence and was remanded for 15 days. However, he was taken to the Central Prison, Madurai on 10.10.1996. At the time of admission into the Central Jail
itself, he was found unwell and hence, the Prison Medical officer referred him to Government Rajaji General Hospital, Madurai. The referral O.P. chit contains the following particulars noted by the Medical Officer: "Unable to walk" ... "alleged to have been assaulted by police people". The chit for readmission in the jail hospital contains the following particulars: "Treated as an in-patient in our jail hospital from 19.10.1996 to 30.10.1996." From 10.10.1996 to 19.10.1996 admittedly the deceased Pancharaju was given treatment in Government Rajaji General Hospital, Madurai as an in-patient. It is also obvious that he had not recovered at the time of his discharge from Government Rajaji General Hospital, Madurai on 19.10.1996. He was discharged with an observation that the patient was "ambulant", meaning capable of being removed. The same is obvious from a copy of the discharge summary available in the typed-set of papers. Even after being removed from the Government Rajaji General Hospital, Madurai to the prison hospital, he was treated there as an in-patient. Whether he was discharged on 30.10.1996 as inpatient of the jail hospital? What type of treatment was given on 31.10.1996 and
01.11.1996 - the appellants/respondents have not explained. No document is available in this regard. One undisputable fact emerging from the above said materials is that prior to 30.10.1996 during which period Pancharaju is alleged to have written letters to his wife and brother's son, he was taking treatment as an in-patient either in Government Rajaji General Hospital, Madurai or in the prison hospital. Therefore, it is quite unnatural and improbable that Pancharaju would have written those letters."

The High Court "discounted" the contention raised by the appellants that there was no custodial violence and that the death was due to natural causes. The Court cited the following facts:

"After getting Pancharaju remanded for 15 days on 09.10.1996, he was not taken to the jail immediately. Throughout the night on 09.10.1996 he was kept in the police station and was taken to the Central Jail, Madurai only on 10.10.1996, that too, to be admitted and sent to the Government Rajaji General Hospital, Madurai for treatment immediately after admission in the prison. Why the accused was kept in the police station for the whole
night when the Magistrate had not authorised police custody? There is no answer forthcoming from the appellants. At the same time, the submission made by the learned Counsel for the respondent/writ petitioner in this regard, seems to have substance in it. According to the respondent, the accused (deceased Pancharaju) had been beaten up by the police and he was found with injuries and hence, the officer in-charge of the local sub-jail refused to admit him in the sub-jail when the police took him to the sub-jail and demanded that he be referred to the hospital and then brought to sub-jail with a certificate of Medical Officer. But the police instead of doing it kept the accused under their custody in the police station for the whole night and in the morning took him straight away to the central prison, Madurai. The said contention of the respondent/writ petitioner seems to be quite probable in the light of the fact that no sooner Pancharaju was admitted in the central prison, Madurai, then he was referred to the Government Rajaji General Hospital, Madurai where he was admitted as inpatient on 10.10.1996 itself. As pointed out supra, the referral O.P. chit itself makes it patent that the accused was
not able to walk and he alleged that he had been assaulted by police. The same gives a clear picture that the accused had been assaulted by police and the injuries caused to the internal organs had led to his ultimate death”.

The Court also rejected the post-mortem certificate, final opinion of the doctors who conducted autopsy and the report of the Revenue Divisional Officer that the deceased had pulmonary tuberculosis and he died out of the said disease. The Court observed:

"It is true that the medical officers have certified as contended on behalf of the appellants. But the following facts will make the opinion of the doctors and report of the Revenue Divisional Officer questionable. Right from the date of admission in the Central Jail, Pancharaju was given treatment as inpatient. During the said period (10.10.1996 to 30.10.1996), the respondent/writ petitioner was not informed. Only on 02.11.996 the jail authorities chose to send two successive telegrams - one informing the writ petitioner that Pancharaju was being taken to Government Rajaji General Hospital, Madurai as he vomitted blood and the other informing her of the death of her
husband. It is obvious that Pancharaju was brought dead to the Government Rajaji General Hospital, Madurai. Despite the fact that writ petitioner had been informed by the telegram on 02.11.1996 itself and that the writ petitioner was present in the hospital on 03.11.1996, Revenue Divisional Officer did not conduct inquest till 05.11.1996. As such, autopsy was conducted only on 06.11.1996 after allowing the dead body to decompose.

While dismissing the appeal petition of the state authorities, the Court stated:

"Further more, it is not disputed that the appellants are liable to pay compensation if at all the death was the result of custodial violence. Therefore, the finding of the learned Single Judge regarding the fixation of liability to pay compensation for the death of Pancharaju due to custodial violence cannot be interfered with".
Judgement 9: Suicide of Pandian as a result of harassment and torture

(Jayalakshmi Vs. The State of Tamil Nadu represented by its Secretary, Public Department and Ors\textsuperscript{63} and WP. No. 24160 of 2006)

The petitioner, Jayalakshmi filed the writ petition before the Division Bench against the order of the single Judge dated 01 June 2006 W.P.No.24160 of 2006 who had dismissed the petition pertaining to the death of her brother Pandian. Pandian, (estimated around 18 years old) is alleged to have committed suicide as a result of torture inflicted by the police. On 1 May 2006 at around 23.00 police personnel came to Pandian’s residence at New Merginpuram at Vyasarpadi, Tamilnadu. The police were searching for Pandian in connection with a theft by another person. The police said that Pandian would be released once they had located the other person. The police produced Pandian along with the said Saranraj before the Metropolitan Magistrate on 04.05.2006, who remanded them to judicial custody. On 19 May 2006, Pandian was released on

\textsuperscript{63} W.A. No. 1130 of 2006
bail on condition that he should report to Inspector of Police, Vyasarpadi Police Station, every day at 10:00. Pandian complied with the bail condition but harassment and torture continued.

A Sub-Inspector of Police tortured Pandian by inserting *lathi* inside his anus. Other police personnel forced him to have oral sex. The torture continued for about two weeks. Unable to tolerate the ill-treatment Pandian bought kerosene and went to the Police Station on 12 June 2006. He informed the police that if they would not stop he would burn himself. The police laughed at and told him that if he died, no one will be bothered. Pandian poured kerosene and set fire to himself.

When Pandian was still taking treatment, the police at least two times sought to compel him to sign blank confession papers but were prevented by doctors. On 29 June 2006, around 02.00 Pandian succumbed to burn injuries and died in Kilpauk Government Medical College Hospital. His statement recorded by the Metropolitan Magistrate, Pandian stated for the past one month he was harassed by the police, that they had threatened him with false charges and these actions forced his
suicide. Pending appeal, the High Court appointed the Registrar (Vigilance), High Court, to conduct an enquiry. She submitted her report dated 16 February 2007. As the Court noted,

"The Commissioner appointed by the Court has found that the entries relating to non-appearance of Pandian between 09.06.2006 to 11.06.2006 are unnatural and abnormal comparing the G.D. Entries relating to 09.06.2006, 10.06.2006, 11.06.2006 and 12.06.2006 and therefore, the entries create suspicious circumstances in the commission of suicide by the deceased Pandian.

(i) The Commissioner found that Dr. Megajabin, the Doctor who first admitted the said Pandian in the hospital gave a copy of the Accident Register marked as Document No. 18 and in the document it is stated that the said deceased has burnt himself by setting fire in P.3 Police Station at 8.30 AM, and in the said document the Commissioner found the word "in" before P.3 police station was struck off and instead, the words, "near P.3 police station and near S.M. Road" were inserted.
The Court was "prima facie satisfied that excesses have been committed by the respondents" and arrived at the conclusion that "the suicide committed by Pandian was only in consequence of the conduct of the accused police personnel".

On 10 July 2007, in the case of Jayalakshmi Vs. The State of Tamil Nadu represented by its Secretary, Public Department and Ors, the High Court of Madras while partly allowing the writ appeal and writ petition (W.A. No. 1130 of 2006 and WP. No. 24160 of 2006) directed the state government of Tamil Nadu to provide a compensation of Rs. 5,00,000 (US$ 12,500) to the petitioner which the State Government is at liberty "to take appropriate steps to recover the amount directed to be paid to the petitioner" from the accused police officers. The Court also directed the State government and the Commissioner of Police, Chennai to initiate disciplinary action against the accused police personnel.
Judgement 10: Illegal detention and torture of S. Krishnamoorthy and K. Palani

(Crl. O.P. No. 8543 of 2006 and M.P. No. 1 of 2006, S. Krishnamoorthy and K. Palani Vs. The State of Tamilnadu and Ors)

Mr S. Krishnamoorthy and K. Palani were subjected to illegal detention and torture. The petitioners were kept in judicial detention for 90 days after they were framed for the murder of a girl named Sujatha who was actually abducted but still alive. On 26 April 1997, the father of the girl, Sevugan (son of Karuppan) lodged a complaint with Pattanam Police Station under Ramanathapuram district stating that his daughter had been abducted. On the basis of the complaint, Karmegam (son of Karuppaiah) was arrested by the police. The police later arrested the petitioners on the basis of the alleged confession by Karmegam without proper investigation. The petitioners were tortured to extract a confession. The case collapsed after the girl re-appeared and stated she did not know the petitioners. They filed a petition before the Madras High Court under Section 482 of the Code of Criminal Procedure. On 20
November 2007, the court ruled that the petitioners - S. Krishnamoorthy and K. Palani were "innocent" and they have been "falsely implicated" in Sessions Case No. 117 of 2002 and ordered the state government of Tamil Nadu to pay Rs. 1,00,000 (US$ 2,500) to each petitioner as compensation. The Court also ordered:

"To entrust the investigation to an efficient Officer not below the rank of Deputy Superintendent of Police to investigate the violation of Human Rights of the petitioners and others". "Of course, it is true that the Police are, no doubt, under a legal duty and have legitimate right to arrest a criminal and to interrogate him during the

189. (a) to declare that the petitioners are innocent persons and they have been falsely implicated in the Sessions Case No. 117 of 2002; (b) to direct the respondents 1 & 2 to register the First Information Report with regard to illegal confinement, torture, violation of human rights and malicious prosecution meted out by the petitioners; (c) to direct the fifth respondent to entrust the investigation to an efficient Officer not below the rank of Deputy Superintendent of Police under the direct supervision of Joint Director, Chennai
to investigate the alleged violation of human rights; (d) to direct the first respondent to pay fair and adequate compensation to the petitioners for having been falsely implicated them in Sessions Case No. 117 of 2002; (e) to direct the first respondent to pay reasonable amount to the affected victims; and (f) to pass such other and further reliefs as the Court may deem fit and proper in the circumstances of the present case.

"investigation of an offence but 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 cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the 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 legal order forbid. No society can permit it".

The Court further held that:

"in the instant case, as pointed out in many places the Investigating Agency has simply acted only on the basis of confession statements alleged to have been given by the prime
accused as well as the first petitioner without probing into the matter properly and thereby the Investigating Agency has done a gargantuan mistake and consequently, the innocent petitioners have faced unnecessary torture, troubles and tribulations, and also prison life for a period of 90 days. Since the Investigating Agency has done a stupendous mistake and due to that the innocent petitioners have faced untold miseries, definitely, the petitioners should adequately be compensated".

Judgement 11: Illegal detention and torture of Mohd Ayoub Dar [Abdul Rehman Dar Vs. State and Ors]54

Mohd Ayoub Dar (son of Shri Ab. Rehman Dar, petitioner) was detained by members of the Rajputana Rifles from his house on the charge of being involved in militant activities on 10 April 1990. The victim was illegally detained for 45 days. He was released from custody after the intervention of the then Governor of the State. The Superintendent of Police City South Srinagar and Superintendent of Police Criminal Investigation Department indicated that Dhar was not involved in

54 2007(1)JKJ557
subversive/militant activities. During his illegal detention he was tortured. As a result he suffered psychological damage and rendered unable to work.

However, the State awarded Rs 30,000 from the Chief Minister's Relief Fund. However the court observed that this payment would not be a substitute for requisite compensation to which the petitioner's son was entitled for depriving him of his fundamental rights. On 27 November 2006, the High Court of Jammu and Kashmir ordered the state government of Jammu and Kashmir to provide compensation of Rs 2,00,000 (US$ 5,000) to Addul Rehman Dar within a one month for illegal detention.

Judgement 12: Torture of Congress leader Prafull Thaker

On 14 July 2008, the Gujarat High Court directed the Deputy Inspector General of Police Rajan Priyadarshi to pay Rs 8 lakh as compensation to Congress leader, Prafull Thaker for injury caused during an assault over 20 years ago. The victim had complained to the then Chief Minister that the police were not doing enough to stop liquor sales in Ahmedabad. Following the
complaint, Rajan Priyadarsini (then DCP in the North Zone) along with Inspector RJ Yadav, went to the victim's house and beat him up. As a result, the victim lost his right eye and was hospitalized for over a month. The victim lodged a criminal complaint against Priyadarshini and Yadav in the Metropolitan Court and filed a suit for compensation in the Civil and Sessions Court in Ahmedabad. In July 2007, Judge DT Soni directed the IPS officer to pay Rs 2 lakh with 9 per cent interest within three months towards the compensation of damages. However, the accused approached the High Court seeking a stay on the payment. But, Justice KS Jhaveri of the High Court asked the officers to deposit Rs 8 lakh with the registry within three months.

Judgement 13: Extrajudicial killing of Thangjam Binoy Singh

On 20 May 2008, the Imphal bench of Gawahati High Court comprising Justice T Nandkumar Singh and Justice B D Agarwal ordered the Assam Rifles (AR) to pay Rs 3 lakh as compensation for killing a youth identified as Thangjam Binoy
Singh after he was arrested from his house at Lamding Khumanthem Leikai in Thoubal district of Manipur on the night of 7 March 2004. According to the information received, a team of 28 AR personnel went to the victim's house and arrested him without warrant. AR personnel later killed him. The AR personnel then claimed the victim had been killed in an encounter at Thoubal Charangpat road near Kshetri Leikai crossing.

The Guwahati High Court directed the Additional District Judge of Manipur West to establish an enquiry. On 1 July 2007, the Judge submitted her report to the High Court. Subsequently, the Guwahati High Court directed the respondents, the AR and the Centre, to pay compensation of Rs 3 lakh within five months. 158. Top cop told to pay Rs 8L for blinding a man, The Times of India, 16 July 2008 The Writ Petition was filed at the initiative of the Human Rights Law Network, Manipur.
Judgement 14: Rape of Elangbam Ongbi Ahanjaobi

On 12 August 2008, the Imphal bench of Guwahati High Court directed the Army and the Central government to pay Rs 2 lakhs to a rape victim identified as Elangbam Ongbi Ahanjaobi of Takyel Khongbal Khumanthem Leikai in Manipur on 1 August 1996. The victim was raped by two havildars of the 2nd Mahar Regiment identified as Apparao Mariba Waghmare and Vithal Domaji Kalane in front of her physically handicapped son at her home during a army combing operation in the Takyel area. The accused havildars, Apparao Mariba Waghmare and Vithal Domaji Kalane were sentenced to 10 years' rigorous imprisonment through a summary court martial on 5 June 1997. However, no compensation was awarded to the victim. After the conviction, Ahanjaobi submitted an application to the army authorities seeking compensation of Rs 10 lakh. However, the army turned down the request. The victim than filed a writ appeal with the Imphal bench of Gawahati High Court on 28 April 2003 seeking compensation. The High Court initiated the hearings on 2 May 2003.160 While delivering the judgement, the Guwahati High Court observed that:
“Defiling the chastity of a woman by personnel of the Indian army amounts to violation of the basic fundamental rights and as such the Union of India is liable to pay compensation to the victim.”

Accordingly, the Court directed the Union of India represented by the Defence Secretary to the Government of India, the General-officer-commanding (GOC), 57th Mountain Division, the brigade commander, 44th Mount Brigade and commanding officer, 2nd Mahar Regiment to pay compensation of Rs. 200,000 to the victim within four months.

➢ Judgement 15: Illegal detention of Rambahadur Chetri, Deependra Limbu and Tarabahadur Gurung

On 13 June 2008, a bench headed by Justice J Chelamshwar and Anima Hazarika of the Guwahati High Court directed the State Government of Meghalaya to pay compensation of Rs 100,000 each to three persons identified as Rambahadur Chetri, Deependra Limbu and Tarabahadur Gurung who were illegally detained for over eight months. The victims were arrested by Meghalaya Police from Langpih area.
159. HC orders AR to give Rs 3 lakh as compensation, The Sentinel, 22 May 2008
Compensation for rape victim - Gauhati High court orders Centre & army to pay Ahanjaobi Rs 2 lakh, The Telegraph, 13 August 2008
HC orders compensation for rape victim after 12 yrs, The Imphal Free Press, 13 August 2008
on 14 May 2004 for “residing in Meghalaya illegally”. They were not produced before court. Following their release the victims moved the Guwahati High Court challenging their detention. The High Court found the detention to be illegal and violation of Article 21 of the Constitution of India (protection of life and personal liberty

Judgement 16: Illegal detention of Keshav Kumar

On 25 February 2008, the Delhi High Court directed the Delhi Police Commissioner to initiate departmental proceedings against police officers for detaining the petitioner, Keshav Kumar illegally and sending him to Tihar Jail. The Court also asked the State to pay Rs 50,000 to Keshav Kumar as compensation. In his order Justice Shiv Narayan Dhingra criticised the Assistant Commissioner of Police (ACP) who was
acting as Special Executive Magistrate (SEM) for not granting bail to Mr Kumar. The order read, "He (ACP) is supposed to apply his mind, which God has given him and not act blindly on the report of his subordinates and juniors."

The court further observed:

"Police cannot act as an agent of those who do unauthorised construction and cannot be an accomplice of those who try to swallow their neighbours rights. The proceedings initiated against the petitioner reconfirm the league between the criminals and the police and also shows that the life and liberty of innocent persons is at stake at the hands of such police officials."

Judgement 17: Custodial death of Munder Singh

On 4 July 2008, Justice Kanwaljit Singh Ahluwalia of the Punjab and Haryana Court in the case of Basant Singh Vs. State of Punjab and Ors. Directed the State Government of Punjab to pay a compensation of Rs 3 lakh to the legal heir of Munder Singh who was killed in a fake encounter while in judicial custody in 1991.
The deceased's father Basant Singh had approached the High Court for a CBI probe into the death of his son in police custody and for adequate compensation. The petitioner had contended that his son Munder Singh was falsely implicated in two cases (FIR No. 125 dated 4-12-1990 and in FIR No. 27 dated 10-3-1991). Both the cases were registered at Police Station Jaito. Munder Singh was arrested and was sent to Central Jail, Ferozepur on 4 June 1991. On 13 July 1991, Munder Singh was taken out from the Central Jail, Ferozepur for production in the Court at Bathinda. Thereafter his whereabouts was not known. The petitioner had alleged that his son was killed in a fake encounter while in judicial custody on 13 July 1991. Court asks Meghalaya to pay Langpih men for illegal detention, The Assam Tribune, 16 June 2008, HC raps cops for illegal detention, fines Rs 50,000, The Pioneer, 26 February 2008, In response to the petition, the State of Punjab had filed an affidavit stating that a police party while returning with Munder Singh after the recovery of a weapon was fired upon by unidentified persons 13 July 1991. Munder Singh was caught in the crossfire while trying to escape and died on the
spot. A police constable too was injured in the attack. The High Court held that the State version on the death of Munder Singh was 'not inspiring confidence'. In his order, Justice Ahluwalia further observed that:

"After Munder Singh was taken from Central Jail, Ferozepore and the court at Bathinda had remanded his custody to the police, it was the duty of the police to secure his life. His custody has been granted to the police under the orders of the court. To say that he died in crossfire by some unknown persons, especially when Munder Singh was involved in various cases, which had overtones of terrorist crime, such version is to be accepted with a pinch of salt". "It is ordered that Rs 3 lakh be awarded as compensation to the legal heirs of deceased Munder Singh. The amount shall be deposited in the court of Chief Judicial Magistrate, Faridkot, within three months after the receipt of the copy of the order."

However, Justice Ahluwalia rejected the petitioner's prayer for a CBI probe into the death stating that CBI probe will be meaningless after more than 15 years of the incident. Justice Ahluwalia observed that:
“Six years' delay and laches on the part of petitioner to approach this Court and thirteen years thereafter to decide the case, is a period during which, all documents, from which it could be inferred whether the version set out by the police was true or false, would have been destroyed. All incriminating pieces of evidence, from which lead could have been taken, as to how the occurrence took place, would have withered.”

Judgement 18: Custodial death of Natarajan Chettiar

On 5 February 2008, the Madras High Court in Appellants: Rajammal Vs Respondent: State of Tamil Nadu, rep. by its Secretary, Home Department and Ors (Writ Appeal No. 1018 of 2006) increased the amount of compensation from Rs 3 lakhs to Rs 5 lakhs to the petitioner, Rajammal whose husband Natarajan Chettiar died due to torture in police custody in 1993. In September 1993, the petitioner’s husband Natarajan Chettiar, who dealt with buying and selling of artificial diamonds and jewels on commission basis, was arrested and detained at Tiruvannamalai police station on the charge of buying alleged stolen jewels. The police allegedly demanded huge amount as
bribe. The petitioner alleged that her husband was tortured to death on 11 September 1993 and that the dead body was thrown in Thachambattu Reserve Forest. She further submitted that she is a poor widow having a large family insisting of three daughters and three sons. The initial inquiry conducted by the RDO of Tiruvannamalai, cleared the police of any foul play. However, later, another enquiry conducted by another RDO of Tiruvannamalai held the police department responsible for the death of Mr Chettiar. The state government issued G.O.Ms. No. 741 Public (Law and Order-A) Department, dated 8.7.1996, ordering to launch criminal prosecution against the accused police officers. The single Judge of the Madras High Court has held that by virtue of the above G.O. it is clear that the state government has accepted that the deceased had died due to the torture by the police. The single Judge has ordered the respondents to pay a sum of Rs. 3 lakhs as compensation to the petitioner. The petitioner filed an appeal for enhancement of

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65 Even though Preamble does not grant any power but it gives a direction and purpose to the Constitution. It contains the fundamentals of the Constitution, and therefore the Supreme Court has many times referred to it while interpreting the Constitutional provisions. See e.g. Kesavananda Bharati v. State of Kerala, AIR 1973 S.C.1461, In Re Kerala Education Bill, 1957, AIR 1958 S.C.956
the compensation amount. The double bench consisting of Elipe Dharma Rao and S.R. Singharavelu of the Madras High Court stated –

"It is now a well settled law that the award of compensation against the State; is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant."

The double bench, considering the economic status and size of the family, ordered the respondents to pay Rs 5 lakh to the petitioner.

➢ Judgement 19: Award of compensation to five appellants by High Court of Punjab and Haryana

On 23 September 2010, the High Court of Punjab and Haryana, in the case Appellants: Nachhattar Singh alias Khanda and Ors Vs Respondent: State of Punjab, directed the state government of Punjab to pay compensation of Rs 20 lakhs to each of the appellants namely Nachhattar Singh alias Khanda, son of Bant Singh; Amarjit Singh, son of Kaula Singh; Nikka Singh, son of Bawa Singh; Surjit Singh, son of Jang
Singh; and the legal heirs of Sira alias Jagsir Singh, son of Nachhattar Singh (dead) for false prosecution, illegal detention and torture for the last 13 years. The High Court also directed the trial court to initiate prosecutions against the accused, including two police officials who investigated the case that led to the conviction of the appellants by the trial court in 1998. In its judgement dated 18 July 1998, Additional Sessions Judge, Barnala (the trial court) convicted Nachhattar Singh alias Khanda, son of Bant Singh; Sira alias Jagsir Singh, son of Nachhattar Singh; Amarjit Singh, son of Kaula Singh; Nikka Singh, son of Bawa Singh; Surjit Singh, son of Jang Singh under Sections 364/302, 148/149, 201 Indian Penal Code (IPC) and sentenced them to undergo rigorous imprisonment (RI) for five years, RI for life, R.I. for one year and R.I. for five years respectively. They were directed to pay a fine of Rs. 1,000/-each under Sections 302 and 201 IPC, in default to undergo three months R.I. They were found guilty of murdering Jagsir Singh, son of Sukhdev Singh, resident of Village Tallewal. Jagsir Singh was in fact alive when the FIR under Sections 364/201 IPC was filed against the appellants!
They appealed in the High Court of Punjab and Haryana at Chandigarh against the judgement of the trial court. The counsel for the appellants argued in the High Court that they were torturd in police custody and their blood was planted on the murder weapons. The Appellants had been in custody for five years and were released on bail by the High Court on the basis of the law laid down in Dharam Pal vs. State of Haryana 1999 (4) R.C.R. (Criminal) 600. Jagsir Singh son of Nachhattar Singh, one of the accused, committed suicide after he was released on bail.

The High Court found that

"it is clear that false and fabricated evidence both oral and documentary was created by Amar Singh PW2, Gurdev Singh PW3, Mukhtiar Singh PW4, Karnail Singh PW5, Sukhdev Singh PW7, Surjit Kaur PW8, Bikkar Singh PW9, ASI Darshan Singh PW13, SI Sarabjit Rai PW14 and Jeet Singh son of Chuhar Singh. Both Darshan Singh PW13 and Sarabjit Rai PW14 investigated the case with a bent of mind, to falsely implicate
the appellants. This was done for extraneous considerations. Darshan Singh DSP and Madan Gopal S.P., the supervisory officers, also did not scrutinize the case diary and the investigation in a professional manner.”

The High Court concluded that perjury has been committed by the complainant party and the Investigating Officers as they lied before the trial Court to get a conviction.

‘The High Court also found that FIR No. 171, dated 18.12.2008 under Sections 420, 195, 211, 465,467, 468, 471 and 120B IPC registered at Police Station Raikot had been “registered to save the skin of a few private persons and police officials, especially the investigating officers. Witnesses who gave false evidence on oath have also been left out.”

The High Court rejected FIR No. 171, dated 18.12.2008 and the directed the authorities to reinvestigate the case based on a new FIR. The High Court acquitted all the appellants of all charges.

In its order the High Court stated:

“It is not only the private respondents, who are responsible for falsely implicating the appellants, but a major part of the
responsibility falls on the shoulders of four police officials i.e. the Investigating Officer Sarabjit Rai PW14, ASI Darshan Singh PW13, Darshan Singh DSP and Madan Gopal SP. It is the solemn and sovereign function of the State to prosecute criminals but not the innocent. State is duty bound to do a fair and truthful investigation and thereafter present the challan before the competent Court. Such was the meticulous falsehood presented before the trial Court that the trial Court also believed the evidence which was brought before it. The trial Court did not have any alternative but to convict the appellants."

The High Court ordered the state government of Punjab to pay Rs. 20 lakhs each to all the appellants after taking into consideration all the circumstances including five years rigorous imprisonment, physical torture and the humiliation suffered. The High Court also directed the trial court to initiate proceedings under Section 340 of the Criminal Procedure Code against Assistant Sub Inspector Darshan Singh, Sub Inspector Sarabjit Rai, Amar Singh, Gurdev Singh, Mukhtiar Singh, Karnail Singh, Sukhdev Singh, Surjit Kaur, Bikkar Singh; Jeet Singh, son of
Chuhar Singh; Jagsir Singh, son of Sukhdev Singh; Balwinder Singh alias Binder, son of Sukhdev Singh; Gurdev Kaur, wife of Sukhdev Singh and Jagir Singh, son of Harnam Singh.

Judgement 20: Orissa High Court orders Rs 300,000 compensation to widow of custodial death victim

On 6 January 2009, a Division Bench comprising of Justice B. P. Das and Justice R. N. Biswal of the High Court of Orissa in the case of Ahalya Pradhan Vs. State of Orissa and Ors directed the state government of Orissa to pay compensation of Rs. 300,000/- to the family of Bhalu alias Pitambar Pradhan who died in police custody at Mahanga Police Station in Cuttack district on 1 February 2003. On 30 January 2003, the victim, Pitambar Pradhan, a resident of Bhakuda village was arrested in connection with theft (Mahanga Police Station Case No.12 of 2003). He was detained at the police lock-up. He was not produced before the local Magistrate. On 1 February 2003, Pitambar Pradhan was found hanging from the fan in the lock-up of Mahanga police station. The police claimed he had committed suicide. Later, the
police officials forced Mrs Ahalya Pradhan, the victim’s wife and
Sudhir Mishra, a Ward Member, to sign documents and blank
papers. The victim’s body was transferred to Cuttack for post-
mortem. Mrs Ahalya Pradhan and residents of Bhakuda village
asked the police to hand over the body for cremation. But the
police refused and instead cremated it at the Khannagar
Crematorium without consent.

First Information Reports (FIRs), including by the victim’s
wife, Mrs Ahalya Pradhan, were held in two police stations -
Balichandrapur and Mahanga Police Stations, but the police
failed to act. Consequently, Mrs Ahalya Pradhan filed a Writ
Petition seeking compensation for the death of her husband.
On 10 May 2004, the High Court of Orissa appointed Justice C.
R. Pal, a retired judge, to investigate and submit a report. In his
investigation report Justice C. R. Pal concluded that it would not
have been possible for victim Pitambar Pradhan to commit
suicide had been guarded. Justice Pal found that the police had
violated the provisions of rules framed under the Police Act,
Orissa as the police had not provided a sentry to guard
Pitambar Pradhan. While hearing Mrs. Ahalya Pradhan's
petition, the two-judge bench of Justice B. P. Das and Justice R. N. Biswal of the High Court Orissa said the failure of the Judgment of High Court of Orissa dated 6 January 2009 in the case of Ahalya Pradhan Vs. State of Orissa and Ors police to prevent the deceased from committing suicide in police custody had been clearly established in the report of the Judicial Inquiry Commission.

The High Court of Orissa said:

"it is crystal clear that the death was as a result of negligence on the part of the Officers concerned to provide proper watch, which led to loss of a human life."

In its order, the High Court while directing the state government of Orissa to pay compensation of Rs. 300,000/- to Mrs Ahalya Pradhan ruled:

"The irresistible conclusion would be that the State Government is vicariously liable to compensate the petitioner because the victim has lost his life and the petitioner has lost her husband as a result of negligent act of the concerned Police Officers. Had they acted properly as per the provision of law and bit
diligent in their duties, such untoward incident could not have occurred”.

Judgement 21: Madras High Court orders Rs 200,000 compensation to a widow of custodial death victim

On 14 March 2009, a Division Bench comprising Justice P. K. Mishra and K. Chandru of the High Court of Madras in the case of M. Kalithai Vs. State of Tamil Nadu rep. by its Secretary (Home), The Collector, The Inspector General of Police and The Inspector of Police (W.P. No. 11569 of 1999) directed the state government of Tamil Nadu to pay compensation of Rs. 200,000/- to the family of Marisamy who died in police custody at Sankarankoil police station on 16 September 1998.

The Writ Petition was filed by Mrs M. Kalithai (victim’s wife) of Nelkattumseval in Tiruneveli district seeking compensation of Rs. 10,00,000. According to the First Information Report, on 16 September 1998 at about 6.30 am, Marisamy was arrested along with two others, Ramar and Murugaiah by the Inspector of Police, Vasudevanallur from Nelkattumseval. They were brought to Sankarankoil police station at about 9.30 a.m.
Marisamy was detained in the lock-up of the police station while the two others were kept in the Writer's room for interrogation. At about 12 o’clock, the police claimed that Marisami tried to commit suicide by hanging himself with a lungi from the window of the toilet. The police rushed Marisami to a nursing home where the doctor declared him dead.

The Revenue Divisional Officer (RDO), Tirunelveli conducted an enquiry. In its enquiry report dated 12 March 1999, the RDO stated that victim, Marisamy must Judgment of Madras High Court dated 14 March 2009 in the case of M. Kalithai Vs. State of Tamil Nadu rep. by its Secretary (Home), The Collector, The Inspector General of Police and The Inspector of Police (W.P. No. 11569 of 1999) have committed suicide after an argument with his father. However, the RDO did not record the evidence of the two others, Ramar and Murugaiah on the plea that they were the relatives of the victim. Based on the post-mortem report and the final medical opinion, the RDO concluded that the death was as a result of suffocation and as a result of hanging and not as a result of torture by the police. The RDO enquiry report was submitted to the State government in
The state government held Inspector Vijayaraghavan of Vasudevanallur police station, who was In-Charge of Sankarankoil police station, guilty of detaining Marisamy without recording the arrest in the station register. The government imposed punishments on the Inspector, a Sub-Inspector and four constables for allowing Marisamy to have a lungi and thereby facilitating suicide. However, the government refused to pay the financial relief of Rs. 100,000/- as provided under the Government Order (G.O.Ms. No.153, Public (Law and Order-B) Department, dated 31.1.1998) on the plea that the death was a suicide. As per the existing norms in G.O.Ms. No. 153, Public (Law and Order-B) Department, dated 31.1.1998, financial relief of Rs. 100,000/- will be sanctioned by the Government in respect of the following categories:

1. (a) Death in caste/communal clashes
(b) Death as a result of police torture
(c) Death as a result of police firing
(d) Rape by police.

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2. Permanent incapacitation In its order, the Division Bench found that the arrest of Marisamy was not recorded which was enough to hold that the authorities guilty of violating the Constitution and the Supreme Court judgment in the D.K.Basu case, with regard to compensation for human rights abuse.

The Bench while rejecting the RDO enquiry report said “On the strength of the dictum laid down by the Supreme Court, the report of the Revenue Divisional Officer deserves to be discarded......... the illegal arrest of Late Marisamy and lack of care in saving his life while in police custody are sufficiently proved.”

Judgement 22: Award of Rs. 800,000 compensation by Madras High Court to a widow of custodial death victim

On 19 January 2009, Justice K. Chandru of the High Court of Madras directed the state government of Tamil Nadu to pay compensation of Rs. 800,000/- to 198. Judgement of Madras High Court dated 19 January 2009 in Writ Petition No.6195 of
2000 and Writ Petition No.9269 of 2000 petitioner Mrs. Krishnammal, wife of Thiru Vincent, who was tortured to death by police at Thalamuthu Nagar Police Station, Thoothukudi District on 18 September 1999. The High Court also directed the state government to take action against the guilty police officials.

The Writ Petition (W.P.No.6195 of 2000 and W.P.M.P.No.9269 of 2000) was filed by Mrs Krishnammal seeking for investigation by Special Investigation Team into the death of her husband, Thiru Vincent in police custody, appropriate disciplinary action against the guilty police personnel and grant of adequate compensation. On 17 September 1999, the victim Thiru Vincent, a Ward Member of West Alangarathattu village panchayat, had gone to a local temple to attend a festival. Thiru Vincent was arrested by the police attached to Thalamuthu Nagar Police Station on the same day. Mrs Krishnammal, wife of Thiru Vincent became aware of the arrest on 18 September 1999. On the morning of the same day (around 7 am), she went to the police station to enquire about her husband. However, she found that Thiru
Vincent was chained by his leg and was not able to speak properly. She also noticed injuries on his feet. Mrs Krishnammal begged the Sub-Inspector of Police not to torture her husband. However, she was told that her husband would be beaten to death and she should visit the police station in a white saree the next day (meaning she will become a widow). Later, she was driven away from the police station. On the evening of 18 September 1999, Thiru Vincent was taken to the Government General Hospital, Thoothukudi where the doctors declared him dead on arrival. The police registered a First Investigation Report (FIR) on 18 September 1999 (Crime No.170 of 1999). On 4 October 1999, the Revenue Divisional Officer (RDO) conducted an enquiry. The postmortem was conducted by Dr. A. J. Balakrishna Rao and Dr. S. Vellai Pandian. The postmortem report noted 38 injuries on the body. They concluded that the death was as a result of the injuries and breathing problems. The RDO in his enquiry report dated 9 April 2000, recommended action against all the police present in the police station on 17 and 18 September 1999 for causing the death of Thiru Vincent. The report was forwarded to
the state government. The state government agreed with the report and passed a Government Order (G.O. Ms.No.1284, Public (Law & Order) Department, dated 20.9.2000) directing the RDO, Thoothukudi to begin criminal proceedings against 10 police personnel. The victim's wife, Mrs Krishnammal unsuccessfully requested copies of the documents. She also sent a letter dated 29.9.1999 seeking proper action against the accused and for adequate compensation. The High Court held that the request for compensation was justified. The High Court observed:

"it will be out of place to mention that the citizens of this country cannot be left in the lurch without being granted relief in case of their fundamental right being deprived at the instance of the police personnel who are supposed to protect the person and property of the Indian citizens. If such acts are found uncontrolled by the State, the citizens of this country are not helpless and the long arm of Article 226 vests power on this court to order suitable compensation".
The High Court further observed:

"The petitioner lost her only breadwinner by the gruesome act committed by the policemen functioning under the control of the third respondent. At the time of filing of the writ petition, she had five minor children and she would have suffered to bring them up in life".

Judgement 23: Gujarat High Court awards compensation to widow of custodial death victim in Gujarat

In July 2009, the widow of a victim of custodial death was granted Rs 200,000 by the state government of Gujarat at the order of the Gujarat High Court 19 years after her husband who died as a result of torture in Jamnagar district in Gujarat. In 1990, the Bharatiya Janata Party and the Vishwa Hindu Parishad call a strike to protest the arrest of their leader L K Advani. The administration imposed a curfew and the police arrested 100 people who were subjected to custodial torture. One of the arrested persons, Prabhudas Vaishnani died after he was released on bail. Following mass protest against the death of Vaishnani, the government appointed a commission of
enquiry under the chairmanship of Retired Principal Judge of Small Causes Court, B B Desai. The government immediately gave Rs 50,000 in compensation to the widow of the victim. However, Vaishnani’s widow moved a petition in the High Court in 1994, demanding a compensation of Rs 5 lakh. In its report, the Inquiry Commission of Retired Principal Judge of Small Causes Court concluded that the police had abused their power and subjected the people to torture.

The matter had been pending before the Court since then because of the failure of the state government to file a reply. When the government finally produced an order for the payment of Rs 1.50 lakh to the petitioner the High Court observed that the government has absolute liability to compensate the victim of police abuse and cannot shift responsibility onto the police.
Judgement 24: Compensation awarded by Orissa High Court to aged parents of custodial death victim in Orissa

On 27 August 2009, the High Court of Orissa directed the state government of Orissa to pay compensation of Rs. 3,000 per month to the parents of Krushna Chandra Behera who was allegedly murdered by a fellow convict in Choudwar Circle jail in August 2008. After hearing the writ petition filed by the mother of the victim, the Bench of Acting Chief Justice I.M. Quddusi and Justice Kumari Sanju Panda observed that the death of the convict in custody was as a result of utter negligence of the jail authorities and that “The State government should pay compensation.

Judgement 25: Interim compensation awarded to the father of custodial death victim in Punjab

On 28 January 2009, the Punjab and Haryana High Court directed the state government of Punjab to pay an interim compensation of Rs 200,000 to Swaranjeet Singh after two years of the death of his son in judicial custody. Following the custodial death of his 25-year-old son Harinder Singh in
Amritsar Central Jail in October 2006, Swaranjeet Singh moved a petition in the court seeking an investigation by the Central Bureau of Investigation (CBI). The petitioner alleged that his son was tortured to death in Amritsar central jail. The petitioner stated that his son was in "good health and sound physique" when he was produced before a magistrate on 26 October 2006 but the next day at 5:22 pm he was brought to civil hospital and declared dead at 6:30 pm. In the postmortem report external injuries on the body were found by the Department of Forensic Medicine, Government Medical College, Amritsar. The Punjab and Haryana High Court took cognizance of a letter written to the Court by the victim's father and an inquiry by the Sub Divisional Magistrate (SDM) of Amritsar was ordered. On the basis of the report of the SDM of Amritsar, the High Court passed a detailed order directing Senior Superintendent of Police (SSP) of Amritsar to register a First Information Report (FIR) against the police and to investigate. The SSP was also directed to file a status report after three months from receiving the certified copy of the order. Pursuant to the Court order an FIR dated 13 July 2007 was
registered under Section 302 of the Indian Penal Code at Sadar police station against the jail officials. But the Additional Chief Judicial Magistrate returned the challan, with concerns over the conduct of the investigating agency. The petitioner filed contempt HC orders compensation to kin of custodial death victim, Custodial Death - Compensation for kin; probe ordered, The Tribune, 29 January 2009 petition stating that he was “running from pillar to post for almost two years for justice, but he has neither been given any monetary compensation, nor proper investigation is being carried out.” This resulted in the interim order of Justice Surya Kant of the High Court to pay interim compensation of Rs 200,000 to the petitioner.

Judgement 26: Allahabad High Court orders Rs. 500,000 to family of custodial death victim

On 1 April 2009 the Allahabad High Court directed the State Government of Uttar Pradesh to pay compensation of Rs. 5,00,000 to the wife and two daughters of the victim dS.K. Awasthi who was beaten up and ill-treated at Naini Central by the jail authorities during his detention from 22 April – 10 May
2008. The court also directed the State to recover the amount of compensation from employees and officials of the Central Jail, Naini and to expedite the disciplinary proceedings.

Pursuant to an order by a Division Bench of the Allahabad High Court Advocate S.K. Awasthi was taken into custody and was held in Central Jail, Naini on 22 April 2008 to serve a one month imprisonment for contempt of court. On 10 May 2008 S.K. Awasthi was admitted to S.R.N. Hospital, Allahabad. His legs were shackled while at the hospital. On 13 May 2008 S.K. Awasthi died in the hospital.

On 13 May 2008 a Division Bench of the Allahabad High Court passed an order requesting the District Judge to hold an inquiry to find out- (a) as to under what circumstances the death of S.K. Awasthi has been caused, (b) whether S.K. Awasthi during his confinement in jail was manhandled or ill-treated either by the jail authorities or by the jail mates, and (c) what was the reason for shifting him to the hospital and keeping him chained during medical treatment. On 23 June 2008 the District Judge submitted a detail report. In his report the District Judge concluded that –
1. The cause of death of Sri S.K. Awasthi was as a result of a coma caused by an ante-mortem head injury. The head injury was caused by external force and not as a result of any disease.

2. Shri S.K. Awasthi was assaulted and ill-treated on 2.5.2008 in Circle No. 4 of the Central Jail, Naini by Bandi Rakchhak Sri Chandra Shekher but he was not sent to the Jail Hospital either for treatment or for medico legal examination on 2.5.2008. Bandi Rakchhak Sri Chandra Shekhar concealed the incident of assault and torture in his report prepared on the History Ticket.

3. Neither the Deputy Jailer Sri R.S. Yadav nor the Senior Superintendent, Central Jail, Naini, Sri S.K. Sharma, required physical production of Sri S.K. Awasthi on receiving the report of Bandi Rakchhak Chandra Shekhar.

4. Sri S.K. Awasthi was assaulted and tortured in Circle No. 1, Barrack No. 4, Cell No. 6, during the period of his separate confinement and this is where the head injury was inflicted on any day after 8th or 9th May, 2008 or any time within two or three days prior to his death. The jail authorities as also Jail doctors attempted to conceal the injuries.
5. The Senior Superintendent, Central Jail, Naini, the Jailor, the Deputy Jailer Sri Shivji Singh Yadav, and other jail employees posted in Barrack No. 4 of Circle No. 1 on 8-9 May, 2008, were held responsible for the assault and torture.


7. The jail doctors as well as the Senior Superintendent, Central Jail, Naini and the Jailer did not promptly refer Sri S.K. Awasthi to S.R.N. and delayed the matter for about two days without justification.

8. Sri S.K. Awasthi was sent to the S.R.N. Hospital in shackles, and so while hospitalised in the S.R.N. Hospital, in violation of para 798 (b) of the U. P. Jail Manual, Article 21 of the Constitution of India and various decisions of the Hon'ble Supreme Court. The Senior Superintendent, Central Jail, Naini, the Jailer Sri Shobh Nath Yadav, Deputy Jailers Suresh Kumar Maurya, Shivji Singh Yadav and Ravi Kant and Bandi Rakchhaks Subhash Chandra Maurya, Vijai Singh, Surendra Pratap, Krishna Bihari, Akhilesh Dwivedi, Ram Naresh Yadav,
Suresh Chandra Tiwari, Dev Nath and Surendra Kumar Patel are responsible for such handcuffing and chaining.  

9. Sri S.K. Awasthi was neither handcuffed nor chained nor fettered in any way at the time of his production before the Joint Registrar (Criminal) of the Hon'ble High Court on 8.5.2008 and was also not escorted in the handcuffed and chained condition from the Central Jail, Naini to the Hon'ble High Court and also from the Hon'ble High Court back to the Central Jail, Naini.  

10. Sri S.K. Awasthi had no external injury on his head or forehead, and was also not found, by the Doctors of the Hon'ble High Court dispensary, clinically abnormal or unfit at the time of his production before the Joint Registrar (Criminal) of the Hon'ble High Court on 8.5.2008.

9.5 Conclusion

Over the years, it has become clear that Courts are heavily relying on the Constitution, Bill of rights, and even international norms to protect and enforce rule of law. They are

67 (1997) 1 SCC 416, Also See In Re Death of Sawinder Singh Grover 1995 Supp(4) SCC 450 wherein the deceased died in the custody of Directorate of Enforcement and the Union of India was made to pay ex-gratia payment of Rupees 200,000/ to the widow of the deceased as an interim measure.
equally using their powers and new strategies and tools to restrict parliamentary and executive autonomy, so that it conforms to constitutional norms, particularly relating to fundamental human rights. The interdependence between judicial conscience and reasoning has equally led to greater concerns being shown about rights by the Courts. The Supreme Court of India is not an exception to this legal compass.

The Supreme Court has enlarged the scope and protection of the fundamental human rights guaranteed under the Constitution, as analysed above. It has devised new tools to promote a right-based administration. The Public Interest Litigation has been an important strategy towards increasing access of people to the Court. It has also helped the Court to address violations of fundamental human rights in India and give appropriate relief. The Court has visualised the award of compensation as an important methodology not only to redress the violation but also as a deterrent. Consequently, it has awarded compensation to the victims of violation of Fundamental Right to life and liberty. This is so even though the
Constitution of India does not expressly provide for a right to compensation unlike other legal systems. Nor is there any legislation, which deals with such compensatory relief in case of infringement of Fundamental Rights, unlike other common law and continental jurisdictions. Despite this the Court has awarded compensation, exercising its inherent power to do complete justice and awarding appropriate relief under Art.32. In the initial phase of evolution of compensatory relief, the Court did not offer any firm jurisprudential basis for such a remedy. It used different terminology like exemplary costs, and exemplary damages. However, the Court later relied on Constitutional tort theory to justify the award of compensation. The Supreme Court has taken a view that a claim in public law for compensation is distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the contravention of Fundamental Rights. The Court has also relied on Art.9 (5) of international Covenant on Civil and Political Rights, 1966, while justifying the award of compensation under Art.32 of the Constitution. This is despite
India having put a reservation to Art.9 of the Covenant, stating that the reservation has lost its importance.

In a welfare state the State must strive to establish just relations between the rights of the individual and the responsibilities of the state. The award of compensation as a remedial measure has been established by interpretative techniques of the Supreme Court, even though the Court has not been consistent in awarding the same. The award of compensation by the Court has evolved as a discretionary relief, even though it has emphasized justifications for such a relief. In our submission, the compensatory relief serves both deterrent as well as restitutive purposes. It is pertinent to note that despite many objections to the Courts awarding compensation as a remedy for violation of fundamental human rights, the Courts have leaned in favour of compensating the individuals for injuries suffered at the hands of State and its employees. It is submitted that preventing and remedying injury to an individual is the bedrock of many constitutional protections. Also the Court's attention is focussed towards establishing constitutional rights so that individuals are
protected from State lawlessness. Such an approach is warranted for establishment of astute constitutionalism and rights conscious and accountable executive. Indeed, such individual protection would have been considerably enhanced, had this right to compensation been made an enforceable right in India also. Rather, in series of cases on compensation delivered by the Supreme Court and various High Courts during the last decade also given an impression that life can be put down with monetary compensation give rise to a sad note of fixing rates for the various atrocities. Hence, it is submitted that the Supreme Court should give equal priority to punishing the guilty police along with payment of compensation to the victim. It is further submitted that the compensation also should be punitive and exemplary and not normal.