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## **CUSTODIAL VIOLENCE**

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### **INTRODUCTION**

There is no human society in the civilized world, which can survive without a police force. The police system is, undoubtedly, one of the indispensable systems of human civilization. In fact, the police are the armor of the society, the guardians of public peace, and the custodians of law and order. They are needed even in a society free from criminals. The twofold functions of the police are prevention of crimes and detection of crimes.

They operate the entire law and order machinery for preventing crime. The whole of the pre-trial process is in their control for detection of crime. In the prosecution and punishment of persons caught by the police during the investigation of criminal complaints, the police play a vital role. As the facts of a criminal case do not walk into a criminal court, it is the police who gathers facts and presents them before a court. The police are well aware of the adage that if the constable blunders, the criminal goes free.

Of late, the police are in the news almost every day. Rape or molestation of women in police lock-ups, torture of suspects and deaths of persons in police lock-ups are reported in the press with disturbing regularity. It is, therefore, necessary to focus our attention on the police process to identify the factors responsible for flouting the law and devise a suitable remedy for the malady<sup>1</sup>.

It is a common fact that police atrocities have long been widespread throughout India. In spite of more than 50 years of independence and a democratic form of government the police remain

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<sup>1</sup> Gangoli, Geetanjali. "Controlling Women's Sexuality: Rape Law in India." International Approaches to Rape, edited by Geetanjali Gangoli and Nicole Westmarland, 1st ed., Bristol University Press, 2011, pp. 101–20. JSTOR, <https://doi.org/10.2307/j.ctt9qgkd6.9>. Accessed 1 May 2025.

virtually a terror to the people and almost absolutely unaccountable for its violations of human rights of people in their custody. It is heart rending to note that day in and day out we come across the news of blood-curdling incidents of police brutality and atrocities, alleged to have been committed, in utter disregard and in all breaches of human rights law and universal human rights as well as total negation of the Constitutional guarantees and human decency<sup>2</sup>. The principal reason for the growth of torture in custody is over zealotry of the investigating officer to secure conviction because conviction rate is the yardstick to measure the merit of an investigating officer. The craze for conviction becomes so rampant that the system of investigation itself undergoes a reverse process. Successive governments have persistently refused to investigate the abuses reported in newspapers and in some cases the civil liberties activists were beaten up, threatened and even arrested and detained for reporting cases to press.

Deaths in Police custody, which were mainly the result of torture to extort information or to teach the person concerned a lesson, have become so common after the seventies. Police resorted to torture during Emergency period. Even after the Emergency period, police had resorted to more repressive tactics.

The British had established in India the present-day police system. The Police Act, 1861, the Criminal Procedure Code, and the Indian Evidence Act, which came a little later, gave us this system. Later several efforts were made to review and reform this system at the regional and national levels. The first major effort made at the national level was the constitution of the First Police Commission in 1902 by Curzon. Since then, eleven police commissions have been constituted to reform this system. The Criminal Procedure Code has been reformed. Police Academies and Police Training Colleges have been established<sup>3</sup>.

The dispatch of the Court of Directors of the East India Company dated September 24, 1861, gave a vivid account of the working of the police system:

"That the police system in India has lamentably failed in accomplishing the ends for which it has been established is a notorious fact, that it is all but useless for the prevention and sadly inefficient for the prevention of crime is generally, admitted. Unable to check crime, it is with rare exceptions, unscrupulous as to its mode of wielding the authority with which it is armed

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<sup>2</sup> Kartar Singh V. State of Punjab, (1994) 3 SCC 569

<sup>3</sup> Jefferson, Andrew M., et al. "Amplified Vulnerabilities and Reconfigured Relations: COVID-19, Torture Prevention and Human Rights in the Global South." *State Crime Journal*, vol. 10, no. 1, 2021, pp. 147–69. JSTOR, <https://doi.org/10.13169/statecrime.10.1.0147>. Accessed 1 May 2025.

for the functions which it fails to fulfill and has a very general character for corruption and oppression".

Later the first police commission constituted by Curzon in 1902 reiterated these findings and said after studying the working of the police stations:

"There can be no doubt that the police force throughout the country is in a most unsatisfactory condition, and abuses are common everywhere, which involves great injury to the people and discredit to the Government and that radical reforms are necessary. Anand Swamp Gupta (1978) said that radical reforms were never introduced and that the system had only undergone cosmetic changes. The most significant feature of this period was the enactment of the constitution. The framers of the constitution were well aware of the shortcomings in the police system, which had functioned as the instrument of repression of the Colonial Government. And yet, as Somanath Lahiri said in the Constituent Assembly, the constitution was framed from the point of view of a police constable. The constitution failed to evolve a new crime control model suitable to freedom and democracy and to transform an instrument of free and democratic India. So what we have now, as observed by Anand Swamp Gupta, is "reinforcement" of the 1861 system, albeit with an input of increased strength, equipment and scientific resources." Even a proper system of accountability has not been devised, though the need for it is evident from the possibility of abuse of the extensive coercive power available to the police.

The extent to which human rights are respected and protected within the context of its criminal proceedings is an important measure of society's civilization. In India the inhuman prison conditions, prolonged detention and maltreatment of under trial prisoners have become the subjects of a fierce controversy. One pathetic aspect of criminal justice administration in India has been unduly large number of under trial prisoners languishing in Jails. The statistics of the last few years show that at any given point of time the percentage of under trial prisoners has always exceeded that of convicts. Out of the total Jail population of 1,44,767 as on June, 1981 there were as many as 87,144 under trial prisoners representing 61.5 percent of the total Jail population. These under trial prisoners were herd together in jails where the problem of overcrowding had reached unmanageable proportions and they were living in shockingly horrible conditions. When India is counted among nations where human rights are virtually nonexistent, then all talk of being the largest democracy in the world begins to sound a bit hollow. A sure way of brutalising society as a whole is, to allow the law enforcing machinery

to short-circuit the legal process and let the policeman become the summary executioners. A widely prevalent police practice in the country as is rightly pointed out in the Amnesty International report is to kill innocent people in police custody and encounters by labeling them as dacoits or naxalites. Even in prisons and police lock-ups the subjects are not guaranteed the protection, they deserve<sup>4</sup>

### **SELF-INCRIMINATION**

The principle of immunity from self-incrimination is the outcome of the doctrine of presumption of innocence of the accused. The criminal procedure code, 1898 and the Evidence Act, 1872, had in fact woven these crucial legal covers to the accused since their inception. However, the constitution of India, by the specific provision under Article 20(3) has protected an accused from "self-incrimination" in a criminal case. Thus, the right of the accused in so far as it relates to testimonial compulsion was ensured. This right is generally regarded as a landmark in man's struggle to make him civilized.

Oghad, decided by the Supreme Court of India in 1961 when it was dominated by the law-and-order mood, reduced this right to an empty edifice. It had held that this right was violated only when physical and not psychological, coercion was employed against an accused, (and not a suspect) to compel him to make incriminating statements. The court even suggested that there should be telltale marks on the body of the accused.

The leading verdict on the subject is the case of Nandini Sathpathy v. V.L.Dani<sup>5</sup>, in which the court clarified the scope of Article 20(3) and section 161(2) of the code of criminal procedure, 1973 and its import in relation to the right of protection against self-incrimination and the right of silence of an accused person. The Court, speaking through Justice Krishna Iyer, said that it was manifest from the police manuals that custodial interrogation should always take place in a police station. And it should be communicative. It found that, despite some improvements in the police process, torture tactics have not been transported for life from our land as some recent happenings have regrettably revealed. "It said that the social variables implicit in custodial interrogation involved means-ends relationship and asserted that "the means must be

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<sup>4</sup> World Health Organization. "INSTITUTIONAL ENVIRONMENTS AS FACILITATORS OF VIOLENCE AND NEGLECT." PROMOTING RIGHTS AND COMMUNITY LIVING FOR CHILDREN WITH PSYCHOSOCIAL DISABILITIES, World Health Organization, 2015, pp. 27–38. JSTOR, <http://www.jstor.org/stable/resrep27922.10>. Accessed 1 May 2025.

<sup>5</sup> AIR 1978 SC 3025

as good as the ends of and the dignity of the individual and the freedom of the human person cannot be sacrificed by resort to improper means, however, worthy the ends".

Police reflected the state, the society and that if the Government became a lawbreaker, it would breed contempt for law and invite anarchy, (*Mapp v Ohio*,<sup>6</sup>) It wondered if salt loses its flavour with what should it be salted. Following the American *Mirinda*<sup>7</sup> case and taking into account the increasing employment of third-degree methods during custodial interrogation, the court unfolded from the right against self-incrimination the following propositions

1. Suspects, not yet formally charged were entitled to right to silence during the custodial interrogation.
2. "To be a witness against himself" in Article 20(3) extended beyond the court process to cover any giving of incriminating evidence or information even during police investigation.
3. It points out that Article 20(3) were to be construed as to permit police interrogation, then the protection guaranteed under the Article would be nullified. This is so as it would enable the police to prove such facts so forcibly elicited from the accused by other evidence. Police are expected to secure evidence without the accused being forced to become a party to such an effort.
4. The protection of Art. 20(3) works even from the stage of police investigation.
5. It covers not only such evidence, which actually incriminates a person, as well as the evidence, which may tend to incriminate him.
6. The protection not only is applicable to an instant case but also to other cases which the accused has a reasonable apprehension of implication.
7. The compulsion includes both physical as well as psychological facts.
8. Because of the imbalance between the police officer and the accused, who is poor, illiterate and ignorant, the latter loses the advantages of the adversary process. He cannot also make a rational choice between speech and silence during interrogation. So the presence of a lawyer during interrogation minimizes coercion, ensures accurate recording of statements of the accused and facilitates their faithful transmission to the trial court. It pointed out that the right against self-incrimination in Article 20(3) and

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<sup>6</sup> 367 US. 643-1961

<sup>7</sup> *Miranda V Arizona*, 384 U. 436 (1966)

the right to counsel in Article 2(1) might be telescoped to permit the presence of the advocate of the accused during interrogation.

The facts of this case bring into sharp focus one of the distressing features of police - investigation. At a time when the country was surcharged with democratic liberalism and the Janata Government had ridden to power on the wave of freedom and democracy, the police in Orissa commanded into a police station the former Chief Minister of Orissa for the purposes of interrogation in contravention of section 175(1) BNSS. In such an environment a senior police officer could indulge in lawlessness against a woman who was once a Chief Minister, it is not difficult to imagine the fate of poor woman who fall into the hands of lesser men in the police hierarchy. The court, therefore, said such deviance by a police officer must be visited with prompt punishment.

The word "Investigation" has been defined in the criminal procedure code as all the proceedings under this code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. It primarily consists in ascertainment of facts and circumstances of the case usually after the First Information Report is registered. Though this is the usual way of starting an investigation, yet law nowhere says that investigation cannot be started till a formal FIR is drawn up. Indeed, investigation is a question of fact and can start even without a FIR.

In Bhagawant Kishore's case<sup>8</sup> the Supreme Court has unequivocally held that even the receipt of information is not a condition precedent for investigation. It is clear from section 157 Cr.P.C, that the officer-in-charge of a police station can start investigation either on information or otherwise. Thus, where on receipt of a telephonic message regarding the commission of a murder the Havldar holding charge of the police station had already left for the spot, a subsequent statement made to another Sub-Inspector of police who had, as a matter of fact, reached the spot earlier than the first-mentioned officer, was held to be a statement hit by section 179 BNSS as investigation had already started on the earlier telephonic message<sup>9</sup>.

Police, the key state enforcement agency plays a vital role in the criminal Justice Administration to support, sustain and prove a prosecution case, the police personnel are empowered to conduct criminal investigation, of course, within the realm of legal framework. In this connection, the Indian Evidence Act, 1872 quite comprehensively deals with the rules

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<sup>8</sup> 1964(1) Cr. L.J. 140(SC)

<sup>9</sup> Mehar Vaj'shi Deva v. State of Gujarat, 1965(1) Cr. L. J. 696 (Gujarat); K.K. Das v. State Cr. L.J. 684 (Cal.)

regarding identification, collection and deducing of relevant evidence to prove the charge against the accused. In addition to the other rules of evidence, the provisions pertaining to confessions deserve serious consideration in the context of functional role of police vis-a-vis Human Rights of accused or suspect. In the normal course of investigation, extraction of confessions is not uncommon. In the process, human rights violations in the form of illegal detention, custodial torture, death etc., are likely to take place. Hence the law of evidence has set limits to police powers of interrogation and declared confessions given to police inadmissible in evidence.<sup>10</sup>

The law relating to confessions is to be found generally in sections 24 to 30 of the Evidence Act and sections 162 and 164 of the Code of Criminal procedure. A confession or an admission is an evidence against the maker of it, unless some provision of law excludes its admissibility. Section 24 excludes confessions caused by certain inducements, threats and promises. Section 25 provides: No confession made to a police officer shall be proved as against a person accused of an offence. The terms of section 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investigation that had begun. The expression 'accused of any offence' covers a person accused of an offence at the trial, whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban imposed by section 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by section 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by sections 24, 25 and 26. It provides that when any fact is proved to be discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 162 of the code of criminal procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-section (2). It further provides that nothing in it shall be deemed to affect the provisions of section 27

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<sup>10</sup> Marwah, Sonal. A Heavy Hand: The Use of Force by India's Police. Small Arms Survey, 2012. JSTOR, <http://www.jstor.org/stable/resrep10684>. Accessed 3 May 2025.

of the Evidence Act. The words of section 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under section 164 of the code of criminal procedure, subject to safeguards imposed by the section<sup>11</sup>.

These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted. Therefore, law prohibits its use in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them<sup>12</sup>.

According to section 26 of the Evidence Act, no confession made by any person whilst he is in the custody of a police officer, becomes admissible unless it be made in the immediate presence of the magistrate. The presence of the Magistrate removes the fear and ensures the accused to make a free and frank confession without any fear. The presence of the Magistrate affords some sort of guarantee and removes all sorts of fear from his mind and ensures to make a voluntary confession. Such confession is provable subject to the mandate of section 164 of code of criminal procedure.

In *Paramahansa v. State*<sup>13</sup> it was held that the accused was in police custody for the purpose of this section from the date of his interrogation by the inspector and that he continued to be in police custody, when he was brought and left in the custody of the doctor, when some persons who came with the police van were left there, for there was indirect control and surveillance over the movements of the appellant by the police, which continued till the next day and the Circle Inspector came there and formally arrested him. It is settled that once police custody has commenced the mere fact that for a temporary period, the police discreetly withdraw from the scene and leaves the accused in charge of some other person does not render the confession of the accused before the person in whose charge the accused was left admissible. The "police custody" is deemed to extend when the accused is deemed to have submitted to such custody of a police officer by submitting to the interrogation and by making statement about discovery, and cannot thereafter be said to be a free man.

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<sup>11</sup> *Aghnoo Nagesh v. State of Bihar* AIR 1966, SC 119.

<sup>12</sup> Kumar, Radha. "Routine Coercion: Scarred Bodies, Clean Records." *Police Matters: The Everyday State and Caste Politics in South India, 1900–1975*, Cornell University Press, 2021, pp. 80–112. JSTOR, <http://www.jstor.org/stable/10.7591/j.ctv1q571q3.12>. Accessed 3 May 2025.

<sup>13</sup> AIR 1964 Ori.144.

While elaborating on this aspect, the Supreme Court in "State of Uttar Pradesh vs. Deoman Upadhaya"<sup>14</sup> stated that;

"Section 46 of the code of criminal procedure does not contemplate any formality before a person can be said to be taken in custody, submission to the custody by word or action by a person is sufficient, A person directly giving to a police officer by word-of-mouth information which may be used as evidence against him, may be deemed to have submitted himself to the custody of the police officer".

As a rule, it is to be noted at the outset that the confession made before a judicial officer is admissible and provable in nature. However, this rule is a qualifying one subject to the provisions of section 164 of the criminal procedure code.

In *Gurubarua Praia vs. State of Orissa*<sup>15</sup>, the court held that, every inquiry must be made from the accused as to the custody to which he was to be consigned and the treatment he had been receiving in such custody in order to ensure that there is no scope for any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of the accused person. The accused should be assured, in plain terms, 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 confession.

In this regard, Section 164(3) mandates that if at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate is not to authorize the detention of such a person in police custody. Even in the case in which the confession is made and recorded, the accused person, as a matter of rule, should be sent to judicial lock-up and on no account be returned to police custody.

As per the Section 27 of the Evidence Act, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved<sup>16</sup>.

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<sup>14</sup> AIR 1960 SC 1125

<sup>15</sup> AIR 1994 Ori. 67

<sup>16</sup> Hajjar, Lisa. "The Afterlives of Torture: The Global Implications of Reactionary US Politics." *State Crime Journal*, vol. 8, no. 2, 2019, pp. 164–74. JSTOR, <https://doi.org/10.13169/statecrime.8.2.0164>. Accessed 3 May 2025.

The broad ground for not admitting confessions made under inducement, or to a police officer or by persons whilst in custody is the danger of extracting and admitting false confession. But, the necessity for the exclusion disappears, when the truth of the confession is guaranteed by the discovery of facts in consequence of the information given.

The conditions necessary for application of section 27 are:

- a) There must be discovery of a fact;
- b) The fact must have been discovered in consequence of some information received from accused;
- c) The information must have been given by the accused while he is in police custody; and
- d) The person giving information must be accused of any offence

Under this section the issue which needs to be addressed is, assuming that in a given fact situation, if the accused is subjected to third degree because of which he gives information to a police officer which leads to discovery of a fact, whether 'so much of such information' pertaining to the discovery of fact, is admissible under section 27 or not. In this regard it is quite relevant to examine the following cases.

In *Ramanuja v. Emperor*<sup>17</sup>, the accused was charged with the murder of his mistress and the dead body of the lady was found in a gunny bag left in a railway compartment. The accused was arrested. He pointed out the shop where he had purchased the gunny bag and he also pointed out the Cody whom he had engaged for carrying the gunny bag. This information was held to be inadmissible because it leads only to the discovery of a psychological fact, and not, to the discovery of some physical fact. The word 'discovery' in section 27 has been used in the sense of discovery of some material object.

In another case *Pulukuri Kotayya v. King Emperor*<sup>18</sup>, the accused was charged with murder. Some of them made statements to the police, when arrested, that the 'spear with which I stabbed I hid in a particular place'. As a result of the statements the spears were recovered. The High Court convicted the accused, admitting in evidence, the portion of the statement 'with which I stabbed'. The Privy Council held:

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<sup>17</sup> AIR 1971 SC 1781; 1971 Cr. L.J. 131

<sup>18</sup> (1947) 74 1A 65.

"Section 27, which is not artistically worded provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a police officer must be proved, and there upon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, weapon, or ornaments said to be connected with the crime of which the informant is accused. The information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of murder, or that the ornaments produced were stolen in a dacoit, would all be admissible. If this be the effect of section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect.

It is fallacious to treat the fact "discovered" within the section as equivalent to the object produced and the knowledge of the accused as to this, and the information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that I will produce a knife concealed in the root of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to.

In *Jaffer Hussain Dastagir v. State of Maharashtra*<sup>19</sup> the appellant who was charged with stealing diamonds made statement in the police custody to the effect; "I will point out one Ramsingh at Bombay central Railway station at third class waiting hall to whom I have given a packet containing diamonds more than 200 in number". The appellant led the police party to Bombay central Railway station and pointed out the third accused. The police through Bombay Samachar newspaper already knew the fact relating to the complicity of the third accused and his having the custody of diamonds. The information given by the appellant was held to be inadmissible.

Also, in *Thimma Raju v. State of Mysore*<sup>20</sup> the accused while he was in police custody gave information leading to the discovery of the dead body and other incriminating things. This information relating to the discovery of the dead body and other articles was held to be inadmissible, since the police has already learnt about the dead body and other articles, from the witness to whom the accused had confessed.

In the case of *State of Uttar Pradesh v. Demoman Updhaya*<sup>21</sup>, the constitutionality of Section 27 was challenged. The facts of the case were: the accused Demoman Updhaya was married to one Dulari who was brought up by her cousin, Sukhdi. Sukhdi gifted some of her lands to Dulari and these lands were being cultivated by the accused with the help of his uncle Mahabir. The accused entered into negotiations for the sale of these lands, which was resisted by Sukhdi. The accused slapped Sukhdi and threatened to smash her face. Next day morning Sukhdi was found dead and the accused was reported to have been absconding. Later, the accused was arrested and he gave information that he attacked Sukhdi with a Gandasa and he had thrown the weapon in the tank. He took the police party to the tank, waded into it, took out the Gandasa, and handed it over to the police.

The Allahabad High Court acquitted the accused accepting the contention advanced by the defence lawyer that section 27 is unconstitutional because it makes a discrimination between persons in police custody and persons outside the police custody thus violating Article 14 of the Constitution of India. So, the survival of section 27 was at stake.

An appeal was preferred to the Supreme Court. The Supreme Court was of the opinion that the distinction between persons in police custody and persons outside police custody in the context

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<sup>19</sup> AIR 1970 SC 1934; 1970 Cr L.J. 1659

<sup>20</sup> AIR 1971 SC 1871; 1971 Cr. L.J. 1314.

<sup>21</sup> AIR 1960 SC 1125

of admissibility of evidence is not arbitrary and that section 27 of the Evidence Act does not infringe Article 14 of the Constitution. Although Allahabad High Court acquitted the accused, in this case majority judges of the Supreme Court of India convicted the accused. With reference to the issue raised above, in the light of three mentioned cases, the following propositions would emerge: If section 27 is construed as an exception to section 25, then irrespective of the fact whether the statement is made voluntarily or not, so much of such information leading to the discovery of the fact becomes admissible. The deposition of information may be made to a police officer also.

If section 27 is constructed as an exception to section 26, in such a case the court is expected to look into the voluntary nature of the information deposed to any party whilst in the police custody.

In the interests of justice, it is submitted that it is desirable to construe section 27 as an exception to section 26 only, so that whenever any statement, which is made involuntarily, can be rejected under this section. This is definitely in tune with the legislative policy behind the rules regarding confession<sup>22</sup>.

### **CUSTODIAL VIOLENCE BEFORE TRIAL**

A recent survey reportedly found that "the police are regarded by the public as power drunk, corrupt, immoral, without professional ethics and as agents of the ruling clique" (The Statesman, Delhi 14th January, 1990). An overall majority of people asserted that the police neither prevent nor investigate crime properly and that they are in league with criminals. An interesting finding of the study is that these opinions are not based on personal experience with the police.

More than 90 percent of respondents denied ever having given a bribe to any policeman nor did they ever see a policeman beating an alleged offender. A substantial number of people also said that they knew "some police officials who are really very honest". The adverse image of the police thus regrettably persists despite the fact that it "is rooted neither in reality nor in rationality". In other words, the police may not be as bad as they appear to be.

Torture of persons suspected to have committed offences in the course of investigations and during their detention has come up for severe or several public criticisms in the recent past.

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<sup>22</sup> Gangoli, Geetanjali. "Controlling Women's Sexuality: Rape Law in India." *International Approaches to Rape*, edited by Geetanjali Gangoli and Nicole Westmarland, 1st ed., Bristol University Press, 2011, pp. 101–20. JSTOR, <https://doi.org/10.2307/j.ctt9qgkd6.9>. Accessed 3 May 2025.

According to available information, deaths and custodial violence in police custody have increased day by day. Although little data exists relating to deaths and serious injuries caused by police personnel in the course of (their duties) interrogation, it appears to be the case that they often result while exercising police powers of maintaining order and investigating crimes. The Baghpat incident in Uttar Pradesh (1978), the Mathura rape case, the Bhagalpur blinding case, the Chirala (A.P.) lock-up death case (1985), the Rajan murder case (Kerala) the Rashid murder case (Karnataka), the Nadiad assault case (Gujarat), are few of the increasing number of instances in which police brutality and police use of deadly force have reached unimaginable heights making people wonder whether the existing mechanisms are adequate either to prevent or to review satisfactorily circumstances in which death or grievous hurt result on such occasions.

The Human Rights have drawn much attention as a result of widespread tortures and tyrannies committed during the II World War. Most of the democratic countries, which are also the members of the UNO, have given due consideration to the International Charters on Human Rights. In 1948, a movement was started in the UNO in the form of Universal Declaration of Human Rights. The document provided certain basic principles of law, which should be applied by the Municipal courts in the process of administration of Justice. These principles embodied certain important concepts like equality of treatment, right to life, liberty and security of person and freedom from torture, cruel, inhuman or degrading treatment. Amnesty-International contributed to the human rights movement by prescribing certain standard minimum rules for the treatment of prisoners.

Article 7 of the covenant provides:

"No one shall be subjected to torture or to cruel, in human or degrading treatment or punishment. In particular, no one shall be subject without his free consent to medical or scientific experiment".

The first sentence of Article 7 reproduces the text of Article 5 of the Universal Declaration of Human Rights, which provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". In the Commission of Human Rights, the opening words "No one shall be subjected" were preferred to "It shall be unlawful to subject" with a view to emphasize the right of the individual rather than the obligation of the states.

The terms "torture" and "inhuman" or 'degrading treatment or punishment" are open to a wide latitude of interpretations; and any kind of punishment might be declared "inhuman" or

"degrading" according to some standards. However, in the commission of Human Rights, it was made clear that the word "torture" meant both mental and physical torture and that the word "treatment" was wider in scope than the word "punishment.

#### 1. Torture:

An attempt has been made by the United Nations General Assembly to define the term "torture".

In the Declaration on the Protection of All Persons from Torture and other Cruel, Inhuman or Degrading treatment or Punishment approved by the general Assembly in 1975, the term "torture" has been defined to mean "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions to the extent consistent with the standard of Standard Minimum Rules for the Treatment of Prisoners." And further, "torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment. The Declaration also provides that "any" act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the charter of the United Nations and as a violation of the Human Rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights. States are enjoined not to permit or tolerate such treatment or punishment and exceptional circumstance such as a state of war or threat of war; internal political instability or any other public emergency may not be invoked as Justification for such treatment or punishment.

Although the framers of the constitution were well aware that torture was not an extinct evil either India or in any other country, they did not take a clue from Article 5 of the Universal Declaration of Human Rights against torture to guarantee a right and cruel and unusual punishment. The Supreme Court was confronted with this question in Sunil Batra<sup>23</sup>. Undaunted by the absence of a specific right against torture the court held unanimously that Article 14, 19 and 21 out-lawed torture in India. There was a set-back to this proposition in Bachan Singh<sup>24</sup> when the court relied on the absence of a specific right against torture or cruel or unusual

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<sup>23</sup> Sunil Batra v. Delhi Administration AIR 1978 SC 1675

<sup>24</sup> Bachan Singh v. State of Punjab, AIR 1980 SC 898.

punishment to uphold the validity of capital punishment. But in *Batra*<sup>25</sup> the Supreme Court glossed over *Bachan Singh*<sup>26</sup> to reiterate that Article 14, 19 and 21 rendered torture or cruel or unusual punishment unconstitutional. The court has, thus given us what the framers of the constitution failed to give us.

It is trite to say that a right against torture or cruel or unusual punishment serves as a bulwark against certain cruel forms of lawlessness in law enforcement. In *Sheela Barse*<sup>27</sup>, arising out of a letter written to the court by a reputed Journalist complaining of custodial violence to women in a police lock-up in Bombay, the court gave the following directions after Dr. Desai had given her report to the court about her interview with the women in the lock-up.

1. Lock-ups should be situated in good localities where only female suspects should be kept and they should be guarded by female constables
2. Interrogation of female suspects should be carried out in the presence of female police officers / constables; and
3. The Magistrate, before whom an arrested person is produced, should enquire from that person whether he/she was tortured or maltreated in the police lock-up. And if he/she was so treated, the Magistrate should inform that person that he/she had a right to be medically examined.

In addition to these judgments, there are instructions from the Union Home Ministry, which were issued in a response to the Declaration of the Fifth United Nations Conference on Prevention of Torture of Offenders, that the police should not use the third degree during custodial interrogation.

Deaths in police custody, which were mainly the result of torture to extort information, or to teach the person concerned a lesson has become so common after the seventies. Police not only resorted to torture during Emergency period but even after that. Even after 1980, police had resorted to more repressive tactics. Even minors were not spared at the hands of police.

"Young boys 10 to 14 years" were being "supplied to convicts for their delectation" and a boy Munna was in agony because "after the way he was used, he was unable to sit".<sup>28</sup>

A boy describes the police torture:

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<sup>25</sup> *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579.

<sup>26</sup> *Sheela Barse v. State of Maharashtra*, 1983, 2 SCC 96.

<sup>27</sup> *Sheela Barse v. State of Maharashtra*, 1983, 2 SCC 96.

<sup>28</sup> *Munna v State of U.P.*, AIR 1982 SC 806.

I was taken to Baz Mandi Police Station and beaten up. My feet were swollen. Then they put a bandage around my forehead and passed electric shocks through it.

In *Reghubir Singh v. State of Haryana*<sup>29</sup> Supreme Court held " we are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of law became the violators of human rights". There have been many reports from all over India that arrested people have been so severely tortured during interrogation that they have died. In a democracy, police have to function as agents of Law and also as agents of social change. However, most important and difficult of the police tasks continue to be prevention and detection of crime. Investigation is the tool available to the police to detect crimes. It is during the investigative processes that the police commit a large number of human rights violations. Police custody means placement of the victim with police during any action, which resulted in loss of freedom of movement of the victim. The Supreme Court upheld this position in the case of *Naresh (SO 13, AIR, 1990)*<sup>30</sup>.

The criminal procedure code gives unfettered powers to the police to investigate all cases where they reasonably suspect the commission of a cognizable offence. Even the courts, except when it is abused by a police officer cannot interfere with this statutory power. Section 157 of the criminal procedure code mandates that as soon as the commission of an offence, required to be investigated by the police, is brought to the knowledge of the police, it becomes the duty of the police to investigate the facts and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender. Obviously, the object of investigation is to ascertain the truth as to an offence and the person who committed it and to obtain all evidence in proof of the guilt of the offender. A quest for truth presupposes employment of honest methods and gathering of genuine evidentiary material.

The term "Third Degree Method" is normally used when the police resort to use force or threat in extracting confession from the suspect during investigation or compelling him to disclose facts bearing on investigation. Such type of malpractice has become quite common in India; but none would accept the same as illegal and a serious crime.

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<sup>29</sup> AIR 1980 S.C. 1087.

<sup>30</sup> Jefferson, Andrew M., et al. "Amplified Vulnerabilities and Reconfigured Relations: COVID-19, Torture Prevention and Human Rights in the Global South." *State Crime Journal*, vol. 10, no. 1, 2021, pp. 147–69. JSTOR, <https://doi.org/10.13169/statecrime.10.1.0147>. Accessed 3 May 2025.

Law prohibits misuse of powers by police officials and the application of "Third Degree Method" and confessions under pressure from the suspects and certain statutory provisions are listed below for example:

- i. The Constitution of India gives the Fundamental Right to the citizen not to be compelled to be a witness against himself (Art 20(3)).
- ii. Voluntarily causing hurt to extort confession or to compel restoration of property is an offence u/s. 117(2) BNS.
- iii. Wrongful confinement of a person to extort confession or compel restoration of property is an offence u/s. 127(2) BNS.
- iv. Minimum punishment has been laid down for rape occurring in police custody under Sec. 63 BNS
- v. Offering of threats, promises or inducements to extract information is prohibited under sec. 180 BNSS
- vi. Under the Indian Evidence Act, use of confession made before a police officer or obtained through inducement or threat or promise is prohibited in criminal trial.
- vii. Sec. 29 of the Indian Police Act, 1861 prohibits unwarranted personal violence by police officers to any person in police custody.

Apart from the statutory provisions referred to above, there are many rulings of the Apex Court and various High Courts laying down very strict yardsticks to test the legitimacy or otherwise of the exercise of police powers in the investigative processes. In a landmark judgement in *D.K.Basu v. State of West Bengal*<sup>31</sup> the Supreme Court has laid down detailed guidelines to be followed by the Central and State investigating and Security agencies in all cases of arrest and detention.

As pointed out by Shri.R.Deb, when a policeman, who is an educated person and charged with the duty of upholding the constitution and the law, indulges in Third Degree Method, he degrades himself to a level lower to that of the criminal in his custody. Expediency, protection of society, or the imperative need to bring the offender to Justice is but poor arguments in favour of such an outmoded and barbaric system.

Even though the progress of the human rights programme has resulted in a worldwide arrangement on the enunciation of the prohibition against cruel inhuman or degrading

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<sup>31</sup> AIR, 1997 SC 610.

treatment or punishment, this prohibition remains undefined. Even the implementation of this right contained in Article 3 of the (European) convention for the protection of Human Rights and fundamental freedoms, which is being applied and interpreted, by the European Commission and the European Court of Human Rights has not resulted in any Judicial formula useful in identifying violations without reference to factual situations. A review of the case law of these organs reveals that, except for torture and exceptional case of degradation, the European Commission and the committee of Ministers have been exhibiting a reluctance to enumerate any conduct, which would constitute a violation of provision in question.

In this context, mention may be made of the standard Minimum Rules for the protection of offenders. These rules were adopted in 1955 by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders and approved by the Economic and Social Council in 1957. The United Nations Congress on Crime Prevention and Criminal Justice held in 1975 examined a proposal to implement the Standard Minimum Rules which set out in detail provisions concerning the treatment of prisoners including persons detained under arrest or awaiting trial and ensuring the preservation of their basic human rights. Furthermore, the General Assembly has taken several steps which, in conjunction with the other organs of the United Nations and specialized agencies, will lead to the protection from torture and other cruel, inhuman treatments or punishment<sup>32</sup>.

The organization of American States adopted at its fifteenth regular session on December 9,1985, an Inter - American convention to prevent and punish torture. For the purposes this convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on person for purposes of criminal investigation, as a means of intimidation, as a personal punishment, as a preventive measures, as a penalty, or for any other purpose. Torture shall also be understood as a method upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish (Art-2).

A public servant or employee, who acts in that capacity orders, investigates it or who is able to prevent it, fails to do so, shall be guilty of the crime of torture, (Art.3) the fact of having acted

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<sup>32</sup> World Health Organization. "INSTITUTIONAL ENVIRONMENTS AS FACILITATORS OF VIOLENCE AND NEGLECT." PROMOTING RIGHTS AND COMMUNITY LIVING FOR CHILDREN WITH PSYCHOSOCIAL DISABILITIES, World Health Organization, 2015, pp. 27–38. JSTOR, <http://www.jstor.org/stable/resrep27922.10>. Accessed 3 May 2025.

under orders of a superior shall not provide exemption from the corresponding personal liability (Art.4).

The Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force on 26th June 1987, after being adopted unanimously by the Assembly in 1984, provides that states parties shall outlaw torture in their internal laws. It also explicitly prohibits using "higher orders" or exceptional circumstances as excuses for acts of torture.

### Lock-Up Deaths

What is the impact of these developments on the employment of third degree during custodial interrogation? It is not necessary to go beyond the decisions of the Supreme Court to find clear and convincing answer to this question. Khatri<sup>33</sup> and Yadav<sup>34</sup> arose out of the blinding of undertrials, in Bihar. The police it was alleged, pierced the eyeballs of the petitioners, who were undertrials, with needles and poured acid into them. Later they justified this barbarous act by stating that the people welcomed it, as the blinded undertrials were notorious outlaws. In Yadav<sup>35</sup> the court ordered the prosecution of the police officers responsible for this brutal act.

Reghubir Singh<sup>36</sup> arose out of an appeal filed by an assistant sub-inspector of police, who was sentenced to life imprisonment. One of the suspects held in connection with a theft in a police officer's house had died of torture in the appellants police post. The court dismissed the appeal and said:

We are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of law gore human rights to death, police lock-ups, if reports in newspapers have a streak of credence, are becoming awesome cells.

The incidence of Ramsagar Yadav<sup>37</sup> is more disturbing than Reghubir Singh. The Police tortured to death a person, who had complained to the Superintendent of Police that a police constable had demanded bribe from him. When two hours after his arrest, the person was produced before a Magistrate, he was badly injured and in a serious condition and yet the

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<sup>33</sup> Khatri v. State of Bihar, 1983 (2) SCC 2666

<sup>34</sup> Anil Yadav v. State of Bihar, 1982 (2) SCC 195.

<sup>35</sup> Ibid

<sup>36</sup> Raghubir Singh v. State of Haryana, AIR 1910 SC 1087.

<sup>37</sup> State of U.P. V Ramsagar yadav, AIR 1985 SC 416.

Magistrate remanded him to custody. The prison doctor found that there were injuries on various parts of his body and that he was in a critical condition when he was brought to the prison. This person told the Magistrate in court and the doctor in the premises of the prison that the Darogha and the constables had beaten him up. The Sessions court held that his death had resulted from the injuries and convicted the accused policeman under section 304 of the penal code. While restoring the sentence of life imprisonment awarded by the sessions court the Supreme Court regretted that the sessions Judge had been unduly liberal by convicting the accused under section 304 and not under section 302 of the penal code. The court pleaded for amendment of the law relating to burden of proof.

Police officers alone, and none else, can give evidence as regards the circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by ties of a kind of unity they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and prevent the truth. The result is that persons on whom the police in the sanctum (sanctorum) of the police station perpetrate atrocities are left without any evidence to prove who the offenders are<sup>38</sup>.

Realizing that custodial death is one of the worst crimes in civilized society governed by the Rule of law, their lordships of the apex court have suggested elaborate preventive as well as punitive measures for combating the menace of custodial deaths in *D.K.Basu v. State of West Bengal*<sup>39</sup> Inter alia, these directions of the apex court provide guidelines for the preparation of a memo of arrest to be signed by a witness, the arrested and the arresting officer, the physical examination of the arrested, accused at the time of his arrest for any possible injury on that person, whether major or minor by a trained Doctor.

Thereafter he may be examined for his health condition by a trained Doctor for every 48 hours during his detention in custody, intimating to one of his friends or relatives named by the accused, information about the date and time of his arrest and the place of his detention and recording of such actions in the diary of the police unit concerned. The arresting authority is also required to send copies of all documents along with the memo of arrest to the Magistrate and send intimation about the arrest and the place of detention of the arrested person to the District and State Police control rooms, within 12 hours of effecting the arrest, where all particulars regarding an arrest shall be displayed on conspicuous notice boards. Any violation

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<sup>38</sup> State of U.P. V. Ramsagar Yadav, AIR 1985, SC 416 at 421

<sup>39</sup> 1997 Cr. L.J. 743 (S.C.) paras 22, 36 to 44.

of these directions would render an officer liable to be punished for contempt of court by the concerned State High Court. Besides the directions, the Apex Court has further held that for a case of custodial violence or death, apart from bringing a criminal action and filing a suit for damages, the aggrieved party is entitled to compensation under the public law jurisdiction for the wrong done even by invoking the writ jurisdiction of the court for the failure of the state to protect the fundamental right to life and liberty of a citizen, and in such a proceeding the defense of sovereign immunity is not available to the state for the established violation fundamental rights to life and liberty as guaranteed by Article 21 of the Constitution of India.

In *Nilabati Behera v. State of Orissa*<sup>40</sup> the Supreme Court has laid down the principle on which compensation is to be awarded by the court. In this case, the deceased aged about 22 years was taken into police custody at about 8 a.m. on December 1, 1987, by an Assistant Sub-Inspector of Police in connection with the investigation of an offence of theft in a village and detained at the police outpost. He was handcuffed tied and kept in custody in the police station. His mother went to the police station at about 8 P.M. with food for him, which he ate. The accused, police constable and some other persons were present at the police outpost that night. At about 2 p.m. on December 2 the petitioner came to know that the dead body of her son with a handcuff and multiple injuries was found lying on the railway track. The police reached the spot much later in the day to take charge of the dead body. The mother of the deceased sent a letter to the Supreme Court alleging custodial death of her son and claimed compensation on the ground of violation of Art.21.

The court treated the letter as a writ petition under Art.32 and impleaded the State of Orissa, the police ASI and the concerned constable as respondents in the petition. The defense of the respondents was that deceased managed to escape from police custody at about 3 A.M. by chewing off the rope with which he was tied and thereafter his dead body was found on the railway track which indicated that he was run over by a passing train. On the basis of evidence of the doctor who conducted postmortem and the report of Forensic Science Laboratory the court held that the deceased had died in the police custody and having regard to the age of the deceased and his monthly income between Rs.1200 to Rs.1500 the State was directed to pay Rs. 1,50,000/- as compensation to the deceased mother and a further sum of Rs. 10,000/- as costs to the Supreme Court Legal Aid Committee. The Court however clarified that this will

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<sup>40</sup> (1993) 2 SACC 746; 1993 Cr L. J. 2899 (S.C.): AIR 1993 S.C. 1960.

not affect petitioner's right to claim compensation in other proceedings in which case the amount awarded by the court would be adjusted.

When the Supreme Court's attention was drawn regarding inhuman treatment meted to the accused in police custody, the Court promptly ruled that it is gross violation of human rights. In the absence of any legislative or executive guidelines the court has undertaken an activist role and ruled that 'Custodial death is perhaps one of the worst crimes in civilized society governed by the rule of law'. The rights inherent in Article 21 and 22(1) of the constitution require to be jealously and scrupulously protected. The Court cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Art.21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. The panel on National Commission (2000) to review the working of the Constitution of India recently has considered the inclusion of a clause to ensure "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment under the Article 21, giving a new dimension to the scope of life and personal liberty"<sup>41</sup>.

One important factor, which has tarnished police image throughout the country, is use of the third degree methods. Police is vested with powers to investigate a case. Chapter XII Cr.P.C. deals with the powers vested with police to investigate a case and during investigation the police can call both the accused and witness for examination of the case. But in the name of investigation what takes place within the four walls of police station and interrogation room is a horrible story of abuse of power by police. The Supreme Court expressed its unhappiness over the use of third degree and observed that police believe more in fists than in wits, in torture than in culture. They termed this as a coward act<sup>42</sup>. The Supreme Court directed that this tendency of use of torture be nipped in the bud<sup>43</sup>.

The law does not allow a police man to take law into his own hands and punish the wrongdoer. Some police officers that indulge in torture degrade their positions to the level of ordinary criminals. Torture and third degree by police has a history and we find certain references even in ancient Indian history. Even during the British period this was prevalent and the torture commissions report is witness to it. Though after 1947 some changes were incorporated in the shape of articles 20, 21, 22, of Indian Constitution yet in practice it still continues and is

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<sup>41</sup> Maria Cancian, and Daniel R. Meyer. "Reforming Policy for Single-Parent Families to Reduce Child Poverty." RSF: The Russell Sage Foundation Journal of the Social Sciences, vol. 4, no. 2, 2018, pp. 91–112. JSTOR, <https://doi.org/10.7758/rsf.2018.4.2.05>. Accessed 3 May 2025.

<sup>42</sup> K'ishore Singh Rav'mder Dev & Others State of Rajasthan (1981) 1 Sec. at p.503.

<sup>43</sup> Dogdu v. State of Maharashtra, 1977, Cr.LJ. 1206 (S.C.)

prevalent in country especially in those states where insurgency is on. Deaths in police custody are on an increasing order and a number of cases are pending before various human rights commissions of the Center and States.

### **CUSTODIAL VIOLENCE IN PRISON**

The extent to which human rights are respected and protected within the context of its criminal proceedings is an important measure of society's civilization. In India the inhuman prison conditions, prolonged detention and maltreatment of undertrial prisoners have become the subjects of a fierce controversy. One pathetic aspect of criminal Justice administration in India has been unduly large number of undertrial prisoners languishing in Jails. The statistics of the few years show that at any given point of time the percentage of under trial prisoners has always exceeded that of convicts. Out of the total Jail population of 1,44,767 as on June 1981, there were as many as 87,144 under trail prisoner representing 61.5 percent of the total jail population. Justice J.S.Verma, Chairperson, National Human Rights Commission delivering a lecture on 22nd February 2002 at Tata Institute of Social Sciences, Mumbai said "the inordinate delay in criminal trials is responsible for the large number of undertrials and is the cause of detention of innocents who are acquitted at the end of the trial". According to Verma, over crowding was phenomenal in jails. Against a capacity of about 2.07 lakhs as of June 2001, the jails strength was 2.60 lakhs and of these, about 75 percent were under trials on long stays (The Hindu, Newspaper, 23.2.2002).

These undertrial prisoners were herd together in Jails where the problem of overcrowding had reached unmanageable proportions and they were living in shockingly horrible conditions. When India is counted among nations where human rights are virtually non-existent, then all talk of being the largest democracy in the world begins to sound a bit hollow. A sure way of brutalising society as a whole is, to allow the law enforcing machinery to short - circuit the legal process and let the police man become the summary executioners. A widely spread police practice in the country, as is rightly pointed out in the Amnesty International report is to kill innocent people in police custody and encounters by labeling them as dacoits or naxalites. Even in prisons and police lock-ups the subjects are not guaranteed the protection, they deserve. In this chapter a modest attempt has been made to spell out the minimum rights and protections to which the prisoners are entitled under the existing law. The role of the Supreme Court in interpreting and protecting the constitutional provisions relating to the prisoners is also discussed briefly.

Regarding the treatment of prisoners provisions are made in the International Covenant on Civil and Political Rights. Article 10 of the International Covenant on Civil and Political Rights provides that all the persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. A distinction must be made between the accused persons and convicted persons. Accused persons must be segregated from convicted persons and must be accorded separate treatment appropriate to their status as unconvicted persons. However, exceptions may be made in exceptional circumstances. The essential aim of the Treatment of prisoners should be their reformation and social rehabilitation<sup>44</sup>.

Though there is no specific guarantee of prisoner's rights in the Indian constitution, certain rights, which have been enumerated, in part III of the Constitution are available to the prisoners also, because a prisoner remains a person in the prison. One of the important provisions in the Constitution of India is Article 14 in which principle of equality is embodied. The rule that "like should be treated alike" as provided in Article 14 is a useful guide for the courts to determine the category of prisoners. Some of the freedoms guaranteed under Article 19, such as freedom of speech and expression, freedom to become member of an association, etc., and even the prisoner behind the bars and his imprisonment or sentence has nothing to do with these freedoms, of course within the limitations of the prison rules.

The constitutional rights in the context of criminal jurisprudence are contained in Articles 20, 21 and 22 of the constitution. Article 20(1) protects the persons from ex post facto laws". This clause provides to protect a prisoner from being subjected to any punishment or punishment conditions, which were not authorised by law at the time when he committed the alleged act and for which he was convicted and sentenced after the trial then, provided under the law. In other words, no imprisonment conditions of harsh labour can be enacted and inflicted on him, which were not prescribed by the law at the time he committed the crime for which the imprisonment in question was imposed. According to Article 20(2), no person shall be prosecuted and punished for the same offence more than once. The former prosecution and punishment can be a complete defense for the later prosecution and punishment for the same offence. One of the important safeguards which is useful for undertrials and detenus is provided in Article 20(3) of the Constitution Article 21 of the constitution has been the focused object so far as the prisoner's rights are concerned

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<sup>44</sup> Walby, Sylvia, et al. "Law and the Criminal Justice System." *Stopping Rape: Towards a Comprehensive Policy*, 1st ed., Bristol University Press, 2015, pp. 111–72. JSTOR, <http://www.jstor.org/stable/j.ctv4g1rd0.9>. Accessed 3 May 2025.

Besides the constitution there are certain other statutes like the Prisons Act 1894, Prisoners Act 1900 and Prisoners Act 1955 etc where certain rights are conferred to the prisoners. Prison and police manual has certain rules and safeguards for the prisoners and cast an obligation on the prison authorities to follow these rules.

The Supreme Court of India, by interpreting Article 21 of the constitution, has developed human rights jurisprudence for the preservation and protection of prisoners right to human dignity. Emphasizing the significance of human dignity the Supreme Court in *People's Union of Democratic Rights v Union of India*<sup>45</sup>, observed that the right of life guaranteed under Article 21 is not confined merely to physical existence or to the use of any faculty or limb through which life is enjoyed, it also includes within its scope and ambit the right to live with basic human dignity and the state cannot deprive any one of this precious and invaluable right without just, fair and reasonable procedure established by law.

However, convicts by mere reason of their conviction are deprived of some of their fundamental rights such as right to move freely throughout the territory of India. The Supreme Court has considerably widened the scope of Article 21 and has held that its protection will be available for safeguarding the fundamental rights of prisoners and for effecting prison reforms. Convicts are also human beings and until they are hanged they are entitled to live in jail as human beings and not as slaves. Inhuman and barbarous treatment of prisoners is a constitutional prohibition. So, it has been held that the punishment of solitary confinement, handcuffing, harsh labour, degrading jobs and punishments in jail without judicial approval violate the mandate of Article 21 of the constitution. Speedy trial and legal aid to poor prisoners are constitutional rights available to them and does not depend upon the mercy of the state.

The Supreme Court took a big stride forward on the issue of prison reforms in *Sunil Batra v Delhi Administration*<sup>46</sup>. In this case the court examined the constitutionality of solitary confinement of the prisoners. The petitioner complained that, since 6th July 1976, when he was sentenced to death, he had been kept in solitary confinement till the Supreme Court intervened by an interim order on 24th February 1978. For the first time in the judicial history of this Country, the Chief Justice of India, M.H. Beg and Justice Krishna Iyer and Justice Kailasam visited the Tihar Jail on 23rd Jan. 1978 to ascertain the actual conditions and the memorandum prepared by the Chief Justice served as a basis for discussion in the court. In pursuance of the

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<sup>45</sup> AIR 1982 SC 1473.

<sup>46</sup> AIR 1978 SC 1675

new interpretation of "Personal liberty" and procedure established by law given in Menaka Gandhi's case, the court accepted the broad principle suggested by Justice Desai.

In the Sunil Batra case, the court opposed solitary confinement because it was "gruesome", "revolting" and "anachronistic" and had a "degrading and dehumanizing effect". It held that this specific punishment could be awarded by a court or by a prison administration only for disciplinary reasons. Justice Iyer was more forthright in his denunciation of solitary confinement and described it as "near-strangulation of the slender liberty of locomotion inside a prison" an aspect of "blood thirsty prison behaviour" and "a revolt against society's human essence"<sup>47</sup>. Dealing with the petition of Charles Sobraj<sup>48</sup>, who had challenged the validity of section 56 of the Prison Act on the ground that it conferred arbitrary powers on the Superintendent to confine a prisoner in iron chains and violated Articles 14 and 21 of the Constitution, the Supreme Court held that section 56 was not violative of Articles 14 or 21. But at the same time bar fetters, which curtailed to a very considerable extent the personal liberty of locomotion could not be put on a prisoner unless it was absolutely necessary to do so in view of the dangerous character and propensity of the prisoner.

The Supreme Court in Sunil Batra extensively dealt with the scope of the prisoner's rights<sup>49</sup>. Batra moved the Supreme Court this time to complain against the Jail warden's brutal assault on another prisoner, Premchand. The Supreme Court in its remarkable Judgment, in what is popularly known as the Delhi Torture case, suggested laudable prison reforms. It struck down handcuffing of undertrials except as a last resort and for reasons recorded in writing. On the question of undertrials being kept along with the convicts, the court disapproved of the practice on the plea that the undertrials were presumably innocent until convicted. Therefore, such practice amounted to custodial perversity, which violated the test of reasonableness in Article 21. The problem of handcuffing of prisoners was again taken up in Prem Sankar Shukia v. Delhi Administration<sup>50</sup>. In its judgment, the Supreme Court directed that there would be no handcuffing of prisoner in transit between the prison and the court, except in exceptional circumstances and with judicial permission. The Court pointed out handcuffing was prima facie inhuman and therefore an unreasonable way of preventing the prisoners' escape.

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<sup>47</sup> Sunil Batra I, No.44, pp.1693-95.

<sup>48</sup> Charles Sobraj v. Supdt. Central Jail, Tihar, AIR 1978 SC 1514

<sup>49</sup> Sunil Batra v. Delhi Administration II, AIR 1980 SC 1579.

<sup>50</sup> AIR 1980 SC1535

In *Sunil Gupta V. State of Madhya Pradesh*<sup>51</sup> the petitioners, who were social workers and remanded to judicial custody, were taken to court from jail and back to jail in handcuffs. They were arrested while staging a 'dharna' for a public cause and volunteered themselves for arrest. Practically there was no possibility of their running away. It was held that handcuffing them was violative of Article 21 of the constitution, as reasons for the necessity of handcuffing them were not recorded in writing. In *State of Maharashtra v. Ravikant*<sup>52</sup> the petitioner was an undertrial prisoner. He was handcuffed and paraded in the street by police. The court awarded Rs. 10,000 to the victim to be paid by the State Government.

In *Khetat Mazoor Chetnasangthan V. State of Madhya Pradesh*<sup>53</sup> it was alleged that the members of the Saugthan were brutally beaten and one of them was arrested, handcuffed and paraded throughout the town. The handcuffing was held to be illegal and unconstitutional. Again in *Citizen for Democracy v. State of Assam*<sup>54</sup>, seven TADA detenus who were lodged inside the ward were handcuffed and tied with a long rope to contain their movement. The reasons for keeping the detenus in handcuffs were that they were hardcore ULFA activists accused of terrorist and disruptive activities, murder, extortion, hoarding and smuggling of arms and ammunition etc. It was held by the court that there was nothing on the record to show that the detenus were prone to violence or they were likely to Jump Jail or break out of custody, the general averments that they were hardcore activists of ULFA, accused of serious offences were not sufficient to keep them in handcuffs and tied with ropes while lodged in a closed ward of the hospital as patients. It was observed that the "handcuffing and in addition tying with ropes of the patient prisoners who are lodged in the hospital is inhuman and is utter violation of the human rights guaranteed to an individual under the international law and the law of land". The detenus were directed to be relieved from the fetters and the ropes with immediate effect.

The Supreme Court's liberal approach was most pronounced in the Bihar undertrial cases popularly known as the Hussainara Khatoon cases<sup>55</sup>. In these cases, the undertrial prisoner's right to speedy trial and free legal aid were spelt out in detail. The court was shocked to find in the habeas corpus petition brought before it on behalf of seven undertrial prisoners in Bihar that 30% of the 30,000 undertrial had been languishing in jails without trial for periods ranging

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<sup>51</sup> (1990) 3 SCC 199.

<sup>52</sup> (1992) 2 SCC 373.

<sup>53</sup> (1994) 6 SCC 260.

<sup>54</sup> (1995) 3 SCC 743.

<sup>55</sup> *Hussainara Khatoon v. Home Secretary, State of Bihar*, i to iv AIR 1979

from five to ten years, and that many of them had been in Jail for periods longer than those to which they could be sentenced should they have been found guilty. The Court asked the Bihar Government for a list of such undertrials and ordered an immediate release of all those whose names had appeared in the newspaper articles, on their personal bonds without insisting on monetary obligation. The court unequivocally condemned the practice and thought that it was primarily the result of the manner in which the system of bail, which was heavily weighed against the poor, was administered, and it laid down for the first time new and more liberal norms consistent with human dignity on which the accused persons should be released on bail, pending trial<sup>56</sup>. In *Kedra Pehadiya and others v. State of Bihar*<sup>57</sup>, where four young boys had been in Pakud Sub-jail in Santhal Paraganas, the court reiterated the decision of *Hussainara Khatoon's* case.

In the *Bhagalpur Blinding* case<sup>58</sup> the court condemned the act of blinding in Bhagalpur and described it as a barbaric act and a crime against mankind. It observed that police were there to observe law and not to break it. And it gave the directives that the blinding in Bhagalpur is stopped and relief be provided to those who had been already blinded.

In the case of *Sheela Barse v. State of Maharashtra*, which dealt with the question of treatment of women in police lock-ups the court gave detailed directions with a view to improving the conditions in lock-ups and providing adequate protection to the arrested persons and particularly to women confined in the police lock-ups.

It is observed that girls and women who are entrusted by the Magistrate to the care of protective homes are generally compelled to live in most inhuman conditions. They are ill treated, no medical facility is provided to them. The food served to them is insufficient and of poor quality. The Supreme Court in *Upendra Baxi V. State of Uttar Pradesh*<sup>59</sup> issued certain directions to the Uttar Pradesh. Government that inmates of Agra protective home should be provided with suitable conditions in homes so that they may not be compelled to live in inhuman and degrading conditions. The superintendent of the protective home must enforce provisions and rules regarding human conditions in the home. Comprehensive programme for the welfare and rehabilitation of the inmates of the home must be formulated and enforced. Healthy and decent conditions of living should be ensured to the inmates so that right to live with human dignity

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<sup>56</sup> *Hussainara Khatoon 1*, AIR 1979 SC 1360.

<sup>57</sup> AIR 1981 SC & AIR 1982 SC 1167

<sup>58</sup> *Khatri and others v. State of Bihar and others*, AIR 1981 SC 928.

<sup>59</sup> (1984) 2 SCC 308.

may become a reality for them. Further, the court observed that it must be remembered, "that this is not a litigation of an adversary charter undertaken for the purpose of holding the State Government or its public interest litigation which involves a collaborative and co-operative effort on the part of the state Government and its officers, the lawyers appearing in the case and the bench for the purpose of making human rights meaningful for the weaker section of the community. It marks a step forward in the direction of reaching socioeconomic Justice to the deprived and vulnerable sections of humanity in this country.

The cases discussed above and many others reflect the deep malady our Jails suffer from, but the decisions of the Supreme Court in these cases give hope to the prisoners and detenus. It is now well established that a person preventively detained has right which can be enforced by a court of law.

In its recent decisions one finds extensive references of the Human Rights by the Supreme Court, particularly for protecting prisoners from various inhuman and barbarous treatment. "Today, human rights Jurisprudence in India has constitutional status", says Krishna Iyer, 1., in Sunil Batra's case (No.2).

In 1979, India became a party to the International Covenant on Civil and Political Rights. Article 10 of the International covenant provides that "All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human persons". Article 5 of the UN Declaration of Human Rights, 1948 says, "No one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment". In *Prem Shankar v. Delhi Administration*<sup>60</sup>, Krishna Iyer, J. said that in interpreting constitutional and statutory provisions the court must not forget the core principle found in Article 5 of the UN Declaration of Human Rights, 1948. Thus it would be considered as a homage to human rights, which calls for prisons, prison staff and prisoners' reform, His Lordship declared<sup>61</sup>.

This is a welcome trend. It would certainly be able to inculcate a sense of accountability in public authorities discharging public duties towards the people and particularly towards the weaker sections of society. This new trend of interpreting the provisions of the part III of the Constitution, it is submitted, would go a long way in protecting fundamental rights of citizens,

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<sup>60</sup> AIR 1980 SC 1535.

<sup>61</sup> Loprest, Pamela, et al. "Disconnected Young Adults: Increasing Engagement and Opportunity." *RSF: The Russell Sage Foundation Journal of the Social Sciences*, vol. 5, no. 5, 2019, pp. 221–43. JSTOR, <https://doi.org/10.7758/rsf.2019.5.5.11>. Accessed 3 May 2025.

without and within the prison, and in securing a social order where individual shall be free from inhuman and barbarous treatment.