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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ANALYSIS OF REPORTED CUSTODIAL VIOLENCE CASES

AUTHORED BY - FARAH KHAN

Prologue

The problem of police atrocities has been with us for a long time. It is an old concept as old as the police force. Nor is it confined to any one country. The police is the first line of defence against the criminals. A distinction must be drawn between the legitimate use of force by the police and its illegal use. The nature of police work is such that sometimes it has to use force in the legitimate discharge of its duties. It is only when force not sanctioned by law is used that one talks of police brutality. Even in the case of legitimate use of force, the police are expected to keep it to a minimum. The use of force can be termed as illegal if, in its use, due care and caution is not exercised and it is more than the required minimum. Unlike its counterpart in many other democracies, the Indian Police has rarely been held in high esteem by its compatriots. Though many in the police may feel deeply distressed when confronted with the late Justice A.N. Mulla's much quoted description of the police as 'a uniformed gang of criminals', they do reluctantly admit that 'no self-respecting person would willingly associate with the police - whether as a witness, a complainant or a defendant.' Why do police officers indulge in brutal and inhuman acts? One answer could be that like every large organization the police force has its quota of rotten eggs, and it is they who indulge in these illegal acts for sadistic reasons or for personal ends. But that is only a part of the answer. If these were the only factors, the solution to the problem would not be that difficult, and the tightening of disciplinary control and punishment of the delinquent police officers would achieve the desired objectives. The gulf separating the police from the public is not a new development.

The descriptions of the village chowkidar, the medieval kotwal, daroga or patil, more often than not, are about their venality and cruelty. Equally, the modern police force which can trace its constitution to the colonial Indian Police Act of 1861, modelled interestingly on the Irish rather than the British framework, was structured more as 'a defender of the establishment' than as

an impartial and professional organisation owing essential accountability to the citizens and the rule of law. Expectations that an independent, democratic India would radically overhaul the inherited colonial legacy-structure, role and function-have been unfortunately belied, and perception about the police as an anti-citizen force continues to hold sway. To argue, as some indeed have done, that alienation from the public is to be expected since the police are mandated to exercise force on behalf of the state smacks of essentialism. It takes away from the need to Institute changes in structure, composition and working style so that the police is experienced more as a friend and protector. There is direct relationship and inter dependence between policing and custodial violence. Police is one of the means by which state seeks to meet its obligations to protect 'Fundamental Rights'- Right to life, liberty and security of persons, Right to fair trial and equal protection of law. Thoughtless and unlawful police on the other hand resort to the custodial violence which can only result in oppression of those 'Fundamental Rights'. It is often witnessed as paradox that those rights are protected by law and are often at risk at the hands of law enforcers.¹

The widespread dissatisfaction with the functioning of the police-both its behavior and efficacy-has led to the setting up of many a commission, the latest being the National Police Commission (NPC). It is a marker of the times that since the NPC submitted its recommendations nearly two decades back, state response, irrespective of the regime, has been one of stonewalling if not active disregard. True, we hear periodic fulmination about police reform; also about the constitution of further expert subcommittees. But concerted action remains a distant cry.

Many of the standard criticisms/suggestions focus on the lack of skills, training, orientation and leadership qualities of the force; a command structure suited more to the armed forces resulting in a perception of the citizen as 'enemy'; a skewed distribution of scarce resources towards high profile activities like VIP security as against strengthening the Thana and the beat constable; whirlwind countrywide and state wide tours of ministers and

provision of bandobast all along the route has become a nightmare for the police; a tendency to create special forces (Rapid Action Force, National Security Guard) while neglecting the main force; and

¹ D.K. Basu, IPS, Discussion on case related to Human Rights and Custodial crime, a paper in Human Rights and Custodial Crimes, a Central Detective Training School, Kolkata Publication at 22

above all, a persistent and unhealthy interference by the bureaucratic and political class. Every scholarly study, reports of official commissions, or accounts by retired police officers highlight the same malaise, come up with similar suggestions.

Citizen ire against the police is, however, insufficiently cognizant of the conditions under which the force operates-poor pay, abysmal housing conditions, tortuously long hours of work etc. Self-esteem and professional pride can hardly be expected to flower in an environment of scarce materialities, further compounded by deep suspicion and hostility. Regardless of these, the standard of police is of paramount importance and should be maintained as high a level as possible, for the peace and happiness of a country depend on a very large extent on the type of police it has and how they do the work.

The Problems That Are Observed During This Research In Relation To Custodial Violence By Police In India Are As Following:

Colonial Legacy

The first problem concerns the composition of the police. The Indian Sepoy Mutiny of 1857 jolts the British into taking steps to consolidate their rule in India, including the establishment of an authoritarian police force to support the colonial government. The British structured the organisation in such a way that the senior positions in the force would be occupied by them and the junior ranks would be kept for “natives.” Hence, the problem lies in the Police Act, 1861 itself which is basic law and it has remained unchanged practically due to non-cooperation by the government to re-define the role and responsibilities of the police officials 233 with recent developments. The British realised that to perpetuate their rule in India they must have a police force that was totally subservient to the executive. Section 3 of the 1861 Police Act vested the superintendence of the state police forces in the state governments. The same law introduced a system of dual control at the district level. It put police forces under the command of the district superintendents of police but subject to the “general control and direction” of district magistrates. This was done deliberately, for the functioning of the district magistrate as the chief officer of the district was considered essential for the maintenance of British rule in India. Under the system of police governance established by the 1861 act, the police forces in India were unaccountable to anyone except their own hierarchy and the colonial political and administrative executive. Making the police accountable to the community or other democratic or local indigenous institutions did not fit into the British colonial model of control.

Section 7 of the Police Act of 1861 uses the words inferior officers for those occupying the lower ranks in the police. Even when the senior posts were indianised, in due course, the elitist bias was not forsaken. One's family background always weighed heavily in picking candidates for senior vacancies. They realised that a system based on the feudal values prevalent in Indian society would work effectively in ensuring that the rank and file, which constituted the bulk of the force, remained loyal, subservient and accountable to their seniors within the police and government. This system gave rise to a managerial philosophy that was based on distrust of the lower ranks in the police. This distrust is reflected in the provisions of the law also. For example, under Section 162 of the Criminal Procedure Code (Cr.P.C), the statement of a witness recorded by the police during an investigation is not to be signed by the person making the statement, and it cannot be used during the trial for any purpose other than to contradict the witness if they differ from it. Similarly, Section 25 of the Indian Evidence Act of 1872, states that confessions recorded by a police officer shall not be admissible as evidence. ²³⁴ Meanwhile, the police were raised on a militaristic and authoritarian pattern. There was tremendous emphasis on the maintenance of a type of discipline, bordering on regimentation that required the lower ranks to blindly obey orders.

The system did not require the constabulary to think while performing their duties. Recruitment to the constabulary stressed brawn and not brains-the taller and heftier the recruit the better. During training, their physical fitness and endurance must improve. Thus, police training programmes were biased heavily in favour of outdoor activities, like drills. Education was not required, but they must have an intimidating presence that should deter, not only criminals, but

also ordinary citizens. In their presence, no one should raise questions or demand answers. The Indian Police Commission appointed in July 1902 under the chairmanship of Sir A. H. L. Fraser concluded: "The police force is far from efficient; it is defective in training and organisation; it is inadequately supervised; it is generally regarded as corrupt and oppressive; and it has utterly failed to secure the confidence and cordial cooperation of the people." Personality traits of aggression in people get developed when there is conducive environment for their development. The more the favourable environment for the development of aggressiveness, the greater will be its development. May be due to the historical disadvantages that the police in India have inherited from the British oppressive police system or may be that the police after independence did not want to deviate from such oppressiveness which guarantee certain amount of physical, psychological, monetary benefits for them, the environment prevailing in police stations or at the cutting edge level of police administration has been one favouring the use of oppression and torture, however little or severe it may be. This has

doubtlessly an adverse effect upon the development of proper police personality in individuals in the right and desirable direction which accepts and appreciates human rights, civil liberties and dignity of a human person.²

The advent of independence changed the political system, but the police system remained more or less unaltered. The Police Act of 1861 continued to govern it. Its managerial philosophy, value system and ethos remained what they were. Powers granted to politicians and bureaucrats to exercise control and superintendence over the police remained the same. They were a ruler- establishment-supportive police force, considerably distant from the community, and they continued to remain so. Although India has been independent for 58 years, no government at either the central or state level has taken the initiative to replace the Police Act of 1861 with new legislation that would be in tune with the requirements of democratic policing. It is not as if no new legislation has been passed. Some State governments have enacted new legislation since independence to govern the functioning of their police forces. For instance, the police forces in the states of Maharashtra and Gujarat are governed by the

Bombay Police Act of 1951, in Kerala by the Kerala Police Act of 1960, in Karnataka by the Karnataka Police Act of 1963 and in Delhi by the Delhi Police Act of 1978. Some state governments have also framed separate legislation to regulate the working of their state-armed police forces. The enactment of these post-independence laws has not brought about any significant improvement in the organisational structure, performance or behaviour of the police forces, however-the reason: the new laws were patterned on the model of the old 1861 legislation.

They are as silent and remiss about the requirements of democratic policing as the colonial legislation. In fact, some state acts, like the Bombay Police Act of 1951, further tightened executive control over the police force without introducing any safeguards to prevent the misuse of the police for partisan purposes and without incorporating effective mechanisms to ensure police accountability. The result was clearly evident during the communal riots in Gujarat in 2002. It will be found that the use of force, a certain degree of violence or brutality is legally built into the role of police and the present organization of police based on the Police Act of 1861 was not intended for rendering courteous service.

The question of brutality, therefore, resolves itself in the question of unnecessary force. This is

² The 264 James Vadackumchery, "Human Rights & Police in India" at 130

very difficult question indeed because how much force was necessary, how much was in excess of the necessary cannot in most cases, be determined in retrospect which means the man on the spot usually has the final word on it. Discussing the extent of brutality the Torture Commission quoted a minute of Sir Thomas Munro which was recorded in 1827: 236 “It is no doubt too certain that many irregularities are used in obtaining confessions and that in some instances atrocities acts are committed, but when we consider the great number of prisoners apprehended, and the habits of the people themselves, always accustomed to compulsion where there is suspicion, how difficult it is to eradicate such habits, and how small the proportion of cases in which violence has been used is to the whole mass, the number of these acts is hardly greater than was to be expected, and is

everyday diminishing³ During the British Raj the police, as an instrument of the Executive, were an instrument of oppression by the rulers; the people were meant to be oppressed, suppressed, beaten up, tortured, lathi-charged and fired upon, particularly if they opposed the sarkar or any instrument of it. After independence they failed to learn that they are not merely the instruments of the Government but also the servants of the people. Our rulers also want to use the police force for protecting their own interests. They do not want to loose control over the police.

Worrisome Women Representation In Police

The representation of women in police is dismal and stands at less than 1%. This is particularly worrisome in view of the increasing custodial crimes against women. It is well recognised that in crimes such as rape, molestation, dowry deaths, kidnapping and so on, victims would be more forthcoming if questioned by women police. The same is true of the representation of religious minorities, SCs, STs, and other weaker sections. It must be our endeavor to ensure that the composition of the police reflects, as closely as possible, that of the society itself. It is unfortunate that no serious effort has been made so far to change the profile of the police to remedy these deficiencies. The employment of women in police establishments reflects not only the socioeconomic advancement, but also changes in the attitude towards the role of women in society. According to

³ Sutherland is known as father of Criminology. He was a great social scientist who propounded theories on criminal behaviour.

some authors, the origin of women police in India may be traced back to Kautilya's Arthashastra. Women were employed mainly as spies and 237 armed women who guarded the harems of kings of Ancient India. There are references also to Mauryan Kings who were guarded by Amazons trained in the use of swords and archery. It is also said that trained tribal women resisted invaders alongside their men folk in the Northern part of India. However, there is no record about the induction of women on a regular basis in the police organisation until the 20th Century. Historical sources mention the use of women police by the British Government to aid the suppression of brothels in 1919, and the need for women police to handle the labour strike in Kanpur in 1938. Police women were appointed in

Kanpur for the first time in India in 1939, but the force was disbanded after the strike was over. The princely state of Travancore also appointed one woman Head Constable and 12 women Special Police Constables, who in 1942, were regularised in the Police force. It is also reported that few women were appointed in the Port cities of Mumbai, Calcutta and Chennai for frisking duty. Women were also inducted in the police force in greater Mumbai in the year 1939, and subsequently in the districts of Sholapur, Kolhapur, and Pune in 1950. It was only after Independence that women were appointed in the police force on regular basis in different states, after the partition of India in 1947, which brought endless misery and degradation to women. It was therefore necessary for the Ministry of Relief and Rehabilitation to appoint women police for recovery of abducted women and girls for rehabilitation. Since then there has been regular induction of women police in the states of India. It is also seen from the available sources that women police were employed in maximum numbers in the lowest subordinate ranks, in keeping with the general universal trend of the police organization. The need for women police increased with the rise in number of women accused, criminals, and victims of crimes such as rape, kidnapping, sexual harassment, dowry deaths, etc. The Indian Police Service (IPS) has been appointing women in the IPS cadre at par with men. These women are expected to have the same qualifications and training as is expected of their male counterparts. Similarly, the other police based services such as the Border Security Force, CRPF, CISF, NSG, Railway Protection Force and the Home Guards all recruit women in various capacities. Today young women are opting for the unconventional career of police service. It is no longer a strange sight to see a group of police women handling a riot situation, and performing other duties along with men.

The main duties expected of women in the regular police force are the following:

1. Attending to complaints as duty officers in the Reporting Rooms of police stations.
2. Escorting female accused or undertrials to the courts or to lock-ups.
3. Interrogating women victims in case of rape, unnatural deaths of women, family disputes, etc.
4. Performing law and order duties.
5. Recording FIRs.
6. Communicating with women victims
7. Traffic regulations
8. Security jobs
9. Supervision
10. Controlling and tackling juvenile delinquents
11. Controlling and supervising women demonstrators
12. Counseling women victims
13. Mediating in Family Disputes and solving family problems related to dowry, etc.
14. Performing miscellaneous jobs.

Though women are expected to work with men on equal terms, in a country like India, people's perception of their role goes beyond the regular routine job of police personnel. Women police can play a major role in social change. It is felt that they need not copy the behavior pattern of their male counterparts, as women police can, in addition, help in sensitizing the police force towards the problems of women in society and family. Women police can help in upholding values, which can

change the public's perception of police as a whole. There have been women in the police service who have gone beyond their job of policing the state alone. One of the most important police officers is Ms. Kiran Bedi, the first woman IPS officer of India. She has not only brought about great changes in the lives of the inmates of the Tihar Jail, but she has become an icon of the new independent woman of India. She

was awarded the prestigious Magsaysay Award for her active role in bringing about social change.⁴

Non-Technical Police

World over, the emphasis within the uniformed services is changing from large manpower to its technology orientation. Even after taking into account the differences in the role of the armed forces and the police, this should be equally applicable to the police. Mere addition of numbers has to give way to making the police more efficient, productive and effective by provision of modern aids and equipment, mobility and communications. As a part of this effort, the minimum educational qualification for recruitment as police constable has to be increased to at least passing the 12th Standard. Advance increments could be given to those possessing higher educational standards. Police constables, particularly in metropolitan areas, should have even higher minimum educational qualifications. But, this will be possible only if the entire gamut of issues such as promotional avenues for constables are looked at afresh. Specific determinants to evaluate police performance should be laid down to replace the current practice of depending on crime statistics. The members of state legislatures and Parliament should be educated about the harm this practice has done to police functioning. The over 100 year old system of maintaining police records of crime and criminals has become non-functional because of a huge increase in crime and the number of criminals. The technological revolution in information and communication technology has opened new vistas for a complete transformation of the system. Computerisation of police records cannot be postponed any longer.

⁴ National Resource Centre for Women, Department of Women and Child Development, Govt. of India: See <http://nrcw.nic.in/index2.asp?sublinkid=459> last visited JULY 2023

Un-Utilized Central Funds Police,

Law and order are subjects which fall in the State list. It is, therefore, the responsibility of the States to provide funds for these requirements. But, due to the repeated demands of the state governments, the central government has implemented a centrally sponsored scheme for modernization of police forces in the States. The scheme is funded equally by the centre and the State concerned. Central funds are made available on the basis of a 50% grant and

50% loan. The amount has to be spent on prescribed items such as mobility, communications, scientific aids to investigation, and crowd control equipment. State wise allocation is based on population, sanctioned strength of police, number of police stations and crime per lakh population. It is seen that the central funds are not being used by a number of States due to a lack of matching funds from the State budget. In several States the budget of the police department is under severe strain and there are shocking news reports that police do not have funds even to buy petrol for their vehicles or ammunition for weapons.

Inadequate Housing Facilities

Yet another sign of the apathy of states is the lack of adequate housing facilities for the police. Ideally, looking to the nature of their responsibilities, all police persons should be provided accommodation by the government. Unfortunately, in a number of cities and towns, police persons have to stay in slums for want of government accommodation. How can a person living in such squalor and filth and in close contact with criminals and the underworld be expected to uphold the rule of law? Unfortunately, even the central government is remiss in its responsibilities towards the central paramilitary forces in this regard. It is amazing to see that the government has prescribed that residential accommodation be provided only to 14% of the constables in these forces. However, in practice, the percentage satisfaction is even lower than 10%. Only in respect of the Indo-Tibetan Border Police, it is marginally higher at about 12%.

This takes us to the image of the police and the respect which the police enjoy in society. As a Parliamentary Standing Committee⁵ report brings out, during one year from 1 July 1995 to 30 June 1996, 200 Delhi police officials-

⁵ Rajya Sabha Secretariat, Department Related Parliamentary Standing Committee on Home Affairs (1996-97),

4 Inspectors, 22 Sub-Inspectors, 19 Assistant Sub-Inspectors, 47 Head- Constables, 106 Constables Thirty Second Report on Demands for Grants 1996- 97, August 1996 241 and one class IV employee - were arrested in 160 criminal cases. Custodial crimes and human rights abuses by the police have continued to cause concern.

The Parliamentary standing committee rightly stressed the importance of improving the image of the police and creating public confidence that it is the saviour and not tormentor of society. But this is easier said than done. For, the police, though a uniformed service, have lost all the characteristics of such a service.

Politicisation Of Police Force

This is not a new development. The Indian Police has a long tradition of being a partisan instrument in the hands of the rulers since colonial times. At the heart of the problem is the fact that a section of police officers instead of fighting crime and criminals decided to join them, because doing so was more profitable and less risky. Organised crime cannot flourish without some police connivance. The increasing politicisation of the police in India has seriously affected its morale and discipline. The resulting polarization in some of the states has been along religious, caste and ethnic lines, eroding its credibility. The emergence of armed senas in Bihar and U.P. was a consequence of this loss of faith in the state police to protect people's life and property. An unholy nexus has developed between corrupt police officers and unscrupulous politicians.

The criminalisation of politics has affected police performance more than the performance of any other state institution. The wholesale transfer of police officers with each change of government has become a routine matter. Officers have to undergo the humiliation and harassment of being transferred again and again, sometimes within 24 hours. How can a police force led by such demoralised officers perform in a fair and effective manner? The genesis of this is to be found in the politicisation of the police and dilution of its disciplinary standards. The command structure has totally broken down. It was not, therefore, surprising to read the lament of an outgoing director general of police (DGP) in Maharashtra that he was head of the police force only in name without the power even to transfer a sub-inspector. According to another news report, the powers to transfer subordinates had been withdrawn from the

242 DGP, Uttar Pradesh, and taken over by the chief minister. The same is the situation in varying degrees in almost all states. In several cases, the DGP s has been summarily shifted to innocuous posts. The situation, in fact, has

become worse since the National Police Commission made its recommendations. Over the last few decades, there has been a large influx of criminals into the Indian polity.

The Election Commission of India estimated in the late 1990s that 40 members of Parliament and 700 members of State legislative assemblies had criminal records. As the nexus between criminals and politicians becomes stronger, it is able to subvert the loyalty of functionaries at different levels in the government, including the police. The criminalisation of politics has gradually led to undermining the authority of the police leadership and consequently the discipline of the force. The police are a hierarchical organisation, and thus, if the effectiveness of the leadership is undermined, the entire force becomes vulnerable to wrong influences with functionaries at different levels looking elsewhere for protection and rewards. In addition to breeding indiscipline in the force, it promotes a climate in which impunity flourishes, and it ultimately shakes the public's confidence in the police. The police under the influence of politicians resort to practice the custodial violence.

The rule of law is the most important component of a democracy and it is the police which is entrusted with its enforcement. It is the weaker sections, which includes women, children, old people, the poor and handicapped, which need the police more than other sections of the society. Ask them what it means to be without police protection. Who is then responsible for the current state of affairs? In our political and criminal justice system there is big gap between what is required to be done under the law and what actually happens. Misconceived ideas about crime prevention and unreal expectations force the police to take recourse to short-cuts. In doing this it has the tacit and, sometimes, open support from its seniors and political rulers. A police system that constantly attempts to cover up its illegal acts will find it difficult to maintain a citizen-friendly image.

The present system of administrative and political supervision over the police suffers from many distortions. After the separation of the executive from the judiciary with the amendment of the Criminal Procedure Code in 1973, the

so-called magisterial control has lost its original motivation. Complete control has now passed on to political rulers. Not surprisingly, the police tend to be the handmaidens of the political rulers of the

day. There is no alternative to creating institutional mechanisms to insulate the police from arbitrary administrative and political control, and to subject it to the control of an agency like a security commission, which functions in a non-partisan manner and holds the rule of law and public interest as the sole criteria for judging police performance.

Failure Of Criminal Justice System

The public is unhappy, not only with the police, but also with the functioning of other agencies of the criminal justice system. The system has not been able to control crime that has increased significantly during the last few decades. The total cognizable crimes registered under the Indian Penal Code (IPC), for example, increased from 6.25 lakhs in 1951 to 55 lakhs in 2003, including 37.8 lakhs registered under local and special laws (one lakh equals 100,000). When there is an upsurge in criminal activities or a particularly heinous crime is committed, the public tends to blame the police. This attitude is reinforced by the manner in which the police react to public criticism. They either quote crime statistics, which are not very impressive, or point out inadequacies of manpower and equipment. Crime statistics, in any case, are not very reliable. A common complaint against the police is that they do not fully register crime. Concealment or suppression of crime is quite common.

One major reason for this deliberate omission is that the police's performance is evaluated on the basis of crime statistics. As a result, the police adopt questionable methods of recording and controlling crime and even resort to illegal acts such as custodial violence. Maurice Punch in a perceptive study called "Conduct Unbecoming" has stated that the roots of police deviance are deep-seated and multi-dimensional. It seems 244 from, as seen in various countries of the world, ambiguous legislation, vulnerability to legal sanctions, occupational culture and a desire to produce quick results. In countries like India, the public expect the police to take laws in their hands because of the working of the criminal justice system at a snail's pace. There is demand for ruthless counter-measures in spite of the price to be paid in terms of human rights. It is responsibility of the police leaders to resist such pressures and check drifts of this kind. They have to keep in mind that in any democratic society order maintained by repression is the worst form of disorder. It establishes a linkage between social order and atrocity.⁶

Failure Of The Judiciary Activism

⁶ Sankar Sen, "Police Accountability and Civilian Oversight"-a paper published in SVP, NPA Journal, Volume 52 No. 2, July-December, 2000 at 75

More than an increase in crime, it is the failure of the judiciary to deal promptly, justly and effectively with those who commit it that has been responsible for the loss of faith and confidence of the public in the effectiveness of the system. When a large number of people are allowed to escape after committing crimes and justice is not provided to the victims or when cases drag on in the courts for an innumerable number of years, it results in an erosion of faith and public confidence in the effectiveness of the legal system. For example, there has been a steep decline in the conviction rate. In 1971, the conviction rate of IPC offences was 62 percent; in 2003, it had declined to about 40 percent. Moreover, justice is being delayed as well as denied. The courts are clogged with a huge backlog of cases. According to the 61st Report of the Parliamentary Standing Committee on Home Affairs, 25 million cases were pending trial in different courts in the country.

The criminal procedure code provides that trials be conducted publicly, except in proceedings involving official secrets, trials in which statements prejudicial to the safety of the state might be made, or under provisions of special security legislation. Sentences must be announced publicly, and defendants have the right to choose counsel independent of the government. There are effective channels for appeal at most levels of the judicial system, and the state provides free legal counsel to indigent defendants.

Defendants were allowed access to relevant government-held evidence in most civil and criminal cases; however, the government had the right to withhold information and did so in cases it considered sensitive. In 2003 the Delhi High Court issued new witness protection guidelines to reduce the number of witnesses who recanted their testimony under threat from defendants. As a result of severe overloading of the courts, thousands of persons awaiting trial spent longer in prison than the maximum sentences for the crimes for which they were charged.

In July 2004 the Ministry of Law and Justice reported that there were 29,622 cases pending before the Supreme Court, and 3,269,224 before the state high courts. The KHRC reported in 2004 that 75 percent of the country's inmates, some 217,659 persons, were in pretrial detention. There are at least 28.6 million cases pending before the courts in India.²⁶⁹ According to Chief Justice of India K.G. Bala krishnan India needs at least 5,000 more courts²⁷⁰ 1,539 more Judges in the High Courts and 18,479 more judges in subordinate courts to clear the backlog of cases within one year. Human rights groups claimed that because of the extensive case backlog and rampant corruption the judicial system no longer met its constitutional mandate. New Trend in the Judicial Approach The decision in the Kasturi Lai's case²⁷¹ has not been followed by the Supreme Court in subsequent decisions and

therefore it is no longer good law. A large number of cases do not refer to *Kasturi Lai*.²⁷² The theory of immunity has been rejected²⁷³ in matters of violations of Fundamental Rights by public officials during the course of the performance of their official duties. In *Kasturi Lai's* case, the Apex Court did not consider the State liability for violation of Fundamental Rights of a citizen. Where on account of tortuous act of State of AP. Vs. *Challa Ramkrishna Reddi*, AIR 2000 SC 2083 246 the servant of a State, a person's Fundamental Right to life and Liberty was violated, the Supreme Court granted damages and compensation to that person. This liability is a new liability, which is not hedged in by any limitations including the doctrine of sovereign immunity.

In *N. Nagendra Rao & Co. Vs. State of A.P.*²⁷⁴, the learned Justice R.M.Sahai in his illuminating judgment observed: "No civilized system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy..... The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government at par with any other juristic legal entity. Any watertight compartmentalisation of the functions of the State as "Sovereign and non-sovereign" or "Governmental or non-governmental" is, not sound. It is contrary to modern judicial thinking."⁷

Judicial Response To Violence In Police Custody

One of the most noteworthy clauses and a cornerstone of the foundation of fundamental rights is Article 21 of the 1950-adopted Indian Constitution. According to this paragraph, no one may be deprived of their life or their personal freedom unless it is done so legally. There are built-in protections against abuse by the state or its representatives, including torture. The police's power to make arrests and the security precautions they must take to safeguard the interests of people they have taken into custody are covered in Chapter 5 of the Code of Criminal Procedure of 1973.

Section 114(B) of the Indian Evidence Act of 1872 must be added in order to provide a rebuttable presumption that injuries sustained by people in police custody were the result of police misconduct. The Supreme Court did so after citing the 135th report of the Judiciary Committee. Such provisions might deter law enforcement from torturing detainees. "Make the necessary revisions to these laws to

⁷ AIR 1994 SC 2663 2

ensure that such offences are not only punished but also to prevent imprisonment. It also required to alter its ideas, methods, conclusions, and attitudes, with experts pointing out that it needed to be more cautious and take a pragmatic approach rather than a narrowly focused technical one.

Judicial Response To Violence In Judicial Custody

When detaining people, police and prison staff have a big obligation to make sure their right to life is respected. I respect his enthusiasm in the limited independence he still has. States are bound by a rigid duty of care that cannot be waived. The state is liable and the criminal is guilty if a detainee is denied life in a way that violates the legal process. States are not permitted to use "sovereign immunity" as a defence in these circumstances.

In order to ascertain how the Supreme Court's guidelines were applied to police arrests and detentions in the Orissan towns of Bhubaneswar and Kutak, the People's Union for Civil Liberties (PUCL) 2003 performed a study. Findings demonstrate that police continue to imprison and mistreat people against their will despite court rulings. Furthermore, there has been a major violation of his right to make an appearance before a judge within 24 hours of his arrest. Although the Supreme Court ordered that they be shown in each police station in turn, none of the police stations had posted the rules on walls or notice boards to educate the public or increase awareness. The police department's chief objects that neither he nor the budgetary allotment got clear instructions from the higher authorities in this regard.

The amount allocated for convicts' meals is really meagre. According to a police officer who was interrogated, captives were given an allowance of two rupees every meal. Police officers apparently pay their own costs to print stationery, and arrest records are preserved in all police stations. However,

irregularities in the issuance of inspection and arrest paperwork were found. He maintains the registration as of May 2002. There didn't seem to be a way for monitoring compliance with the guidelines before. There are no areas set aside for female captives, with the exception of a small number of police stations. Some police stations treat it like a trash can. The list of people detained maintained by police headquarters is not current.

In 1993, in response to an increasing awareness of domestic and international human rights challenges, Parliament established the Human Rights Protection Act. Human rights are described as "the rights to life, liberty, and dignity of a person guaranteed by the Constitution and embodied in international treaties as may be legislated by the courts of India" under Section 2(d) of the Human Rights Protection Act, 1993.

The law calls for the creation of National Human Rights Commissions, State Human Rights Commissions, and Human Rights Courts in order to safeguard the human rights of the nation's citizens. The National Human Rights Commission has concentrated on the problem of violence perpetrated in detention, including as torture, rape, death, and enforced disappearance, from its creation. It became evident that the Commission would assume there had been an attempt to conceal the facts if such a report hadn't been provided.

On December 14, 1993, the Commission delivered instructions to all secretaries of state in every state directing them to direct district judges and police commissioners to send any cases of rape or death in police custody to the Commission within 24 hours. I requested that they send me information on who I should report the incident to (NHRC Annual Report, 1994-95). In response to a Supreme Court of India inquiry, the Committee determined that it was essential to put the Indian Law Commission's (ILC) recommendations in its 113th Report dated 29 July 1985 into practise in order to put a stop to torture. conjuring up.

In order to create a rebuttable presumption that injuries received while a person is in police custody may result in charges being brought against the police, the ILC suggested adding section 114(b) to

the Indian Evidence Act, 1872. did. A clause like that would, in the commission's opinion, discourage the use of torture. We support the Judiciary Commission of India's suggestion to remove the need for administrative clearance when an official is charged with a prison sentence by amending Section 197 of the Code of Criminal Procedure.

The Commission also supports the National Police Commission's stance that every instance of a person dying from rape or suffering a serious injury while detained requires an investigation to be launched by a hearing judge (NHRC year next report, 1995-96). The NHRC suggested that states and federal territories provide autopsy videotapes to the commission in order to stop falsified autopsy results from assisting individuals responsible for major human rights violations.

The Commission went even farther and suggested that the Indian government think about joining the UN (NHRC, Annual Report, 1997-98). The National Human Rights Commission requests criminal prosecution of negligent police personnel and financial compensation for victims or their families in cases of jail violence because the majority of complaints it receives are against the police. (NHRC Annual Report for 2003–2004).

No society that values civility would let cadres to harm others while claiming the right to act in their own best interests. did. Today, no political or legal system can elevate the state above the law. Considering that it is unjust and wrong for citizens to be violently robbed of their lives and property by careless government officials while being denied the chance to defend themselves. Instead of the honesty, efficiency, and dignity of the state as a corporation, which were advanced in the nineteenth century as a solid sociological justification for sovereign immunity, the emphasis today is on liberty, equality, and the rule of law.

The state or government should be treated equally with all other legal bodies in accordance with contemporary sociological theories in contemporary nations and judicial techniques that do away with outmoded state protections. It is no longer appropriate to divide obligations of the state into "state and non-state" or "sovereign and non-state" categories. This is against current legal doctrine. The necessity for excellence in the state is obvious. Public officials must be held vicariously liable for their conduct, and in some cases, the only suitable remedy is monetary or other forms of restitution.

It is generally acknowledged to be an effective therapy in most jurisdictions. The right to life of civil officials is a well-established example of a fundamental right of a person being violated. The strict liability concept, which forbids the use of sovereign immunity as a defence, is the basis of the citizen's claim. Therefore, states must have the authority to hold offenders accountable and provide victims with complete restitution. The emphasis should be on compensating rather than punitive components when assessing compensation. Instead of punishing the offender or offenders, the goal is to soothe the wounds. This is due to the fact that the appropriate sentence for the offence must be determined by the criminal court where the offender is being prosecuted in accordance with the law (regardless of compensation).

other legal actions, like B. State authorities must file victim or civil claims for losses sustained by the heirs of a deceased victim as a result of a tort on the same issue and are not subject to public court rulings about compensation. The amount of compensation will, of course, depend on the specifics of each instance, and there is no exact formula that can be used to calculate it.

