

"POLICE ACCOUNTABILITY AND CUSTODIAL VIOLENCE"

DISSERTATION

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LIST OF ABBREVIATION

A.I.R.	:	All India Reporter
SCC	:	Supreme court cases
H.C.C	:	High court cases
HC.	:	High court
SC	:	Supreme court
CAPT.	:	Captain
e.g.	:	Example
I.P.C.	:	Indian Penal Code
Prof.	:	Professor
S.	:	Section
U.S.A.	:	United States of America
V.	:	Versus
i.e.,	:	That is
ART	:	Article

LIST OF CASES

laid down in Gopal Dass v. D.M,

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CHAPTER - I

1.1 Introduction

The progress of mankind over the last few decades must be regarded as base for optimism in many respects. The quality of life has improved significantly in terms of increased life expectancy, broadened distribution of wealth, improved social welfare, vastly increased productivity, advances in the standard of living, technological advancement and prosperity unimagined in previous eras. People live longer and the hazards and problems of primitive life such as disease, tribal combat, exposure to extremes of climate, scarcity of food have largely disappeared globally. Although there are undeniable sign of the gradual improvement in the quality of life, at the same time there are rapidly increasing indicator of potential disaster for civilization. Some of these have the power to divide people, communities, and nations, and create tensions that may inevitably lead to great conflict and turmoil in the coming years. War is capable of destroying civilizations within a few hours, and all mankind within weeks. Five other major threats to modern society, which are in many ways interrelated and at the same time potentially dangerous as the precursors to war are modern specters of crime, environmental pollution, exhaustion of natural resources, overpopulation, and social intolerance¹. Crime is a greater immediate threat to life and property than the other issues. The failure of society to diminish criminality imposes great sufferings on people, not only in terms of loss of life and property, but also in terms of fear and suspicion. Economic losses directly attributable to criminal activities are heavy, but nevertheless they are only a part of the total cost of crime.

Casual factors in criminality and social disorders are so numerous and occur in such an infinite variety of combinations that their isolation analysis and evaluation become extremely difficult. Genetic inheritance, behaviour, inspiration during infancy and early childhood, family relationships, social interaction and community and institutional influences has varied effects on the personality and behaviour of individuals. The prevention of criminality therefore cannot be the exclusive task of one community or agency. Whenever crime is discussed, the role of the police is clearly identified. Most observer of the crime phenomena realise that the police have been assigned a disproportionate amount of responsibility for both the present level of crime and

¹ OW Wilson & Roy Cilnton McLaren (1977), "Police Administration", McGraw Hill Book Company, New York.

the efforts to cope with it in the future. Nevertheless, the police role is obviously significant in considering a short-range of solutions to the crime problem. It seems unlikely that criminality will be so diminished in the next few years. As long as there are criminals, the police must attempt to protect society from their destruction.

Police tasks of today differ widely from those of a hundred years ago, although the fundamental purpose remains the same. The primary purpose of the police is the protection of life and property against crime, the preservation of peace and order, the safe movement of traffic, and the provision of emergency services. In carrying out secondary goals, the police render a host of miscellaneous non-criminal services and are charged with the enforcement of a wide variety of state and local laws, ordinances and regulations. Some of the laws are designed to safeguard the morals of the community, and through their enforcement the police have become the principal agent of society to eliminate the immoral conduct. It is quite difficult for the average police officers to be skilled in all the diverse requirements of police service, and consequently the specialist has appeared. The laboratory examiner, evidence technician, polygraph operator, personal identification expert, radio technician, fiscal officer, legal officer, data processing system analyst, police planner, training officer are all specialists who have been brought into police departments since the turn of the century.

At the dawn of the 21st century, with the growing complexity of civilization, availability of faster means of transportation, easy access to global telecommunications and gadgetry; and advancement in technology like computerization² and wireless communications are transforming the ways of crime. E-mail, internet and cellular services have made illegal transaction more and more difficult to trace and have increased the workload of police also. This has posed new challenges³ to the police force to cope up with the changing scenario. The adoption of modern technology by criminals also brings new problems and added threats to the peace, comfort, security, and welfare of citizens. The vastly increased use of the automobile by delinquent youth

² Technology is defined as the application of scientific knowledge for practical purposes to benefit humanity and to meet the wants of the people. It is considered as "specific information necessary for the 'development,' 'production,' or 'use' of a product". Technology involves more than just products; it also encompasses a means to produce and use products in a way as to solve a problem

³ The foremost objective of the police is to protect the society by preventing crime and prosecuting criminals. Other functions of police such as preservation of the nation's unity and integrity, maintenance of public order and implementation of social laws flow from the foremost and main objective. With the changing circumstances in society i.e. social, economic and political changes, the priorities of the police are also changing

as well as by offenders has increased the crime rate. Traffic accidents and congestion requires a large part of police attention. An additional problem faced by the police today is based on the difficulty in overcoming public opposition to police authority even while the public demands protection from criminal elements.

The police today use almost every conceivable means of transportation and communication. The horse patrol and 'night stick on the pavement' have given way to automobiles containing computer terminals, helicopters with television etc. Modern communication centres record both the outgoing and incoming messages, along with time so that if need arises or any message be questioned, the true facts may be established. Police communications now have access to computers based visual display terminals giving identification data, records of wanted persons and property, the call numbers of the nearest available patrol cars, and other information of great tactical value. Automated data processing systems lead to greater speed and accuracy in crime analysis and statistical studies which are so useful in the direction and control of department resources, particularly in the wise deployment of manpower, the most important and expensive of all police resources. Large, progressive departments now use data processing equipment for payroll preparation and daily attendance reports can be reproduced by business machines with great rapidity.

Technologies are expanding globally at an enormous speed and offer tremendous opportunities and means for aiding the police force in crime prevention and crime detection. It has become necessary for the police to not only equip properly to combat criminals, but also to use new technology as efficiently and effectively as possible. So, it is important for police agencies and their officers to understand emerging technologies for several reasons:

- Police officers have to be able to anticipate its use by terrorists and criminals and thereby prevent its use against our nations and communities;
- Police agencies need to understand emerging technologies in order to incorporate their use into police operations when necessary; and
- Police agencies need to understand emerging technologies in the society to be able to effectively deal with the social changes and cultural impacts that inevitably result.

Finally, if the emergence of technologies such as nanotechnology, wireless LAN, artificial intelligence and others is to take place peacefully, openly and ethically it must do so within guidelines that maximises both individual liberty and collective security. It is assumed that the application of these new technologies will enhance the capacity and effectiveness of policing agencies to meet their objectives fairly. However it is quite difficult to analyse the effectiveness of these new technologies in functioning of the police.

Technological advancement has immense importance in public administration and made an impact on its structure and process. Primarily due to the storing and retrieving capability, it made possible the realization of the dream of a paperless, file-less office. It is the best way of pruning the bureaucratic numbers, to provide timely services, to make administration more efficient, effective and transparent. The need of the hour is a continuous and concerted effort to understand these emerging technologies and transformation in the social systems resulting from this rapid change. Failing this will result in an increase in private security services serving a limited community of rich. In the paradigm of New Public Management economy, efficiency and effectiveness was given lot of emphasis. Effectiveness was understood in this paradigm as 'specification of objectives to ensure that resources are targeted on problems.'⁴ Traditionally there has been what may be called, the one dimensional definition of organisational effectiveness: If an organisation has "successfully" achieved its objectives, it was considered effective. Effectiveness was thus a matter of comparing results with intentions. This goal attainment theory has been challenged by organisational researchers on the ground that organisations have multiple goals' some are official (openly announced) goals, and others are operative goals (more realistic short-term goals); in real practice, organisations move in many direction and it is a simplistic notion to talk about one, overriding goal: Model of organisational effectiveness must encompass more than goal attainment and organisational theorist have identified a variety of effectiveness criteria in which the goal achievement approach is one of the several dimension.⁵ Palumbo and Moody have shortlisted the following criteria of effectiveness.

⁴ Public Administration 5th edition (2009) M Lakshmikanth, Tata McGraw-Hill Publication Company Limited New Delhi, p, 41.

⁵ Mohit Bhattacharya, (2007), "New Horizons of Public Administration", Jawahar Publishers and Distributors, New Delhi, p-30

Outcome: Outcome is the traditional performance measurement criteria. For instance, in the case of a primary health centre, an important criterion would be; to find out the number of patients treated at the centre. There are, of course, conceptual problems in regard to measurement of the 'treatment' (whether treating or curing would be acceptable criterion).

Adaptation: According to open system theory achievement of result is linked to the organisation's coping ability with the environment. It is organisational survival and continuity that would be the ultimate criterion of effectiveness. Flexibility and adaptability, not strict adherence to goals, would be the hallmark of effectiveness. Thus conceived organisational effectiveness is the ability of an organisation, in either relative or absolute terms, to exploit its environment in the acquisition of scarce and valued resource

System Health: The open system theory also suggests that organisations have to strike a balance between production goals and maintenance goals. A local police organisation may make an all-out effort to prevent crime by deploying a larger number of police men on patrol duty supported by a fleet of vehicles. It would however be a short term gain, as the good result (crime prevention and detection) need to be sustained on the basis of a longer-term policy. It is important to make sure that the equipments used are maintained regularly and kept in good shape for longer term use. Also, the basic human resource (policemen) should be trained and retrained, and motivated to do job on regular basis as against one time campaign basis, which is very common in police organisations. Thus, the maintenance of infrastructure and human resources development are of crucial significance for maintaining organisational health. Only then can one be sure of organisational effectiveness on sustained basis.

Evaluating the effectiveness of police work is very difficult. If a city has a high crime rate, does it follow that its police department is not effective? If a city has a low crime rate, does it follow that its police is in-effective? Crime in society has several different complex variables. The police cannot control all these variables that might produce crime or aggravate issues such as social disorganisation, anger, poverty, revenge, psychological or biological disorder and the desire to commit crime. Policing agencies are now spending a huge amount on the technology with the hope of improving their efficiency and effectiveness. Consequently, policing agencies around the globe are adopting new technologies such as GPRS, wireless system, forensic science, mobiles, internet, computers, CCTV cameras and so on. The dangers as well as the

benefits associated with the emergence of powerful new technologies need to be balanced for a safe and stable future of the human race. In general terms policing agencies anticipate the consequences of uses of technology in effectiveness in reducing crime or improving services to citizens. However, it is not clear whether the adoption or application of new technologies will improve the effectiveness of police or not. Therefore, it has become essential to examine and understand the manner in which these technologies are affecting the policing as well as society.

1.1 Objectives

- 1) To assess the practice of the police which influence the training, professional life, personal life, ideologies and their impact on the policing.
- 2) To examine the police recruitment, organizational hierarchy, accountability and transparency and their impact on police culture and its ethical issues.
- 3) To evaluate the use of modern technology by the police and its impact on the police culture.
- 4) To explore the impact of police culture on the police public relationship and the role of law in the process.

1.2 Hypotheses

1. Lack of training for police personnel leads to inadequate use of new technologies in Chandigarh Police.
2. With the adoption of new technologies prevention and detection of crime has become easier for the Chandigarh Police.
3. With the use of new technologies, accountability of police personnel and transparency in their working has increased.
4. The usage of new technologies has improved the performance of Chandigarh Police
5. New technologies have ensured better communication within the organization and with other policing agencies.
6. With the use of new technologies, the interaction between police and public is becoming friendly.

1.3 Research Methodology

The study has used both primary and secondary data. For primary data, field visits were made to all the police stations, specialised units and headquarter of Chandigarh police. Formal and informal interviews were conducted to key officials of Chandigarh Police (i.e. IGP, SSP, DSP, and SHO). A survey of police personal and citizens was conducted through a structured questionnaire. The data was collected from 500 respondents including 250 police personnel and 250 citizens, drawn from the city. The questionnaire was earlier pre-tested with a pilot study and accordingly final questionnaire was administered.

1.4 Scope of the Study

Policing is a vast subject and includes various agencies which work for the maintenance of law and order. Due to the dynamism and complexity of its area it is quite difficult to work on the whole subject of policing. Thus, the present study has limited its scope only to the application and effectiveness of new technologies in Chandigarh Police.

1.5 Significance of the Study

It is expected that technologies can enhance the productivity of police in matters ranging from prevention and detection of crimes to traffic regulation. It can also provide tools which make law enforcement safer for both citizens and police. It can increase the effectiveness of police management as it allows greater coordination and make investigator versatile and skilled in administration. The study stimulates thinking about how technologies can take domestic defence from its old model (i.e. bureaucratic, hierarchical and laborintensive) and transform it to a new model (i.e. flexible, networked, and automated).

CHAPTER - II

REVIEW LITERATURE

Police has always been an area of research for the researchers in criminology and has always been a major area of interest in Criminal Justice System. Review of relevant literature has always been a foundation for researchers defining the line of action. After such an endeavour we can focus on the ideas of police literature both in Indian and international works. The literature in the Anglo American studies and the Indian studies on Police has seen some major ideas and research. Police studies have found place in social science but has been an neglected area in works on criminal justice system. The International researchers have focused on the theoretically informed and empirically grounded studies and have made a tremendous effort in the advancement of Police Science for more understanding of the modern police system.

In this research, focus has been made on some of the major relevant areas to understand Police, Policing and the impact of Police Culture on them including its typologies and functions as available from both the Indian and International relevant literature. The review of literature is also important to focus on the background knowledge and also to appropriate research design. The research on the literature is based on Books, Journals, Newspaper Articles, Magazines, Research articles.

Much of the relevant literature of the police, policing and police culture can be seen in many international studies and Indian studies sets into account the institution through which it operates. Some of the major works which has made a foundation to this research has been mentioned, with different idea of police reforms, accountability, transparency, evolution, policing, police culture. Review of available relevant literature is the most fundamental preliminary task that marks the initiation of any research endeavour. After such an exercise in pursuit of this study, an observation can be made, albeit may be debatable depending on one's expectation relevant to the respective interest, that it is scarcely surprising to those cognizant of the available police literature to find a marked generic difference between the Indian and international works. Secondly, striving to initiate a research on any specific topic in police studies would find the literature on the subject in a paradoxical state.

This literature review is done under the following craniums which includes study of both India and abroad.

Firstly, It includes the review of the literatures relating to Police and Policing, regarding eras, recruitment and selection, training, transparency and accountability of police force. It also Includes the police community relationship, police and technology, reforms in policing.

Secondly, It has reviewed the literature regarding the police culture related to discipline, superior-subordinate relationship, leadership, organization structure, corruption, values in the police department, police behavior and attitude, stress among police employees, politics and police.

A survey team of The Times of India (2009) describes that police reforms have been a blind spot for successive government, with the force diminishing in both number and capacity. The survey team found that there has hardly been any change in the strength of police personnel at the time when country reports substantial increase in the number of crimes. The survey team has examined National Crime Records Bureau (NCRB) statistic and it show that the number of crime incidents increased by over two lakh in 2007 as compared to 2002, but the number of cops available per lakh population (police –population ratio) remained the same i.e. around 125 (125 cops per lakh of population) during 2000-2003 and 2004-2007. This means lesser number of cops available to citizen despite growth in crime rate.

Additionally, inadequate number of arms and ammunition, vehicles and other police infrastructure has made the situation worse. Further, the team argues that dismal records of successive government towards police reforms are yet another point which is responsible for poor policing across the country.

Aditya (1997⁶) talks about the image of policemen and puts forth that today police is regarded as the perpetrator of excesses, connected with criminals and one of the most corrupt arms of the government. He discusses that as movies portray that there is a nexus between police and criminals; this actually exists in the society. Favouritism, corruption and casteism play a major role in the process of recruitment. Finally, he suggests that first and foremost reform in our

⁶ Whither Police Reform in India? by C.S. Aditya available at www.cidap.gov.in accessed on 02nd February 2010.

police force should be in recruitment, posting and transfers. Additionally, training of police personnel is a major reform that is urgently required.

Ali (2012⁷) describes that the maintenance of public order is the real litmus test for any police force or service in the world to prove its efficiency. The efficiency of the police force or the government in the maintenance of public order is not in how it quells or solves the disorder, but in being alive to surroundings and identifying the symptoms and reasons for public disorder and taking necessary corrective measures. He puts forth whether it is the police of UK, USA, China or India, the problem faced by them in maintaining the public order is basically the same, as the fundamental element with which they deal in maintaining the public order is the “human being”, whatever society they are in. There may be slight variation between countries due to cultural, political and economic reasons. Controlling a public disorder may no doubt be an easier job than identifying symptoms of disorder and taking necessary preventive measures to curb it. In order to do these both, it is implicit to say that the government and its visible arm “police” should understand the various aspects of human behaviour in society which go a long way into the public disorder.

Further, he suggests that the police should be constantly aware of developments in socio-economic scenario of the area concerned. The police should be able to correlate the crime pattern vis-a-vis the socio-economic scenario and generate useful intelligence for effective maintenance of public order. Additionally, a separate cell would be formed for this purpose.

Bayley & Shearing (1996⁸) examines the restructuring of policing currently taking place in developed democratic societies. They argued that restructuring is occurring under private as well as government auspices and will have profound effects on public safety, equity, human rights, and accountability. These effects are discussed, along with the tradeoffs they represent for public policy. The driving forces behind restructuring are fear of crime, the inability of government to satisfy society's longing for security, the rise of mass private property, and cultural individualism. They concludes with a prediction about the future of policing and suggests policies that are needed to avoid harmful effects.

⁷ K. Saleem Ali (2012), “A New Approach to Maintenance of Public Order”, *The Indian Police Journal*, October - January, Vol. LVIII, No. 4, p. 56-63.

⁸ David H. Bayley & Clifford D. Shearing (1996), “The Future of Policing”, *Law & Society Review*, Vol. 30, No. 3, pp. 585-606

Bharti (2006)¹⁰ opines that police is the foremost agency responsible for creating an ambience of peace, safety and social harmony. To achieve this goal, police needs to prevent and investigate crime, prosecute criminals and maintain law and order. Since these onerous tasks entail people's cooperation, the police cannot achieve the desired results without people's help and support. Although the law binds people to assist the police under certain circumstances; practically, it is not feasible to chase people and compel them to fulfil their legal obligations. Moreover, an extracted and half-hearted cooperation does not fully serve the purpose. The police need a voluntary and whole-hearted cooperation of people to succeed in its endeavours. Though 'fighting crime and maintaining order' is a joint venture between the police and the people and it pre-supposes a happy relationship and mutual understanding between them, yet the hard fact is that both the police and the people still carry a lot of misconceptions about each other. As a result, cases of cold blooded murders committed in full public view ends in acquittals, incidents of law and order problems occur frequently and the security of the State remains under constant threat.

She feels that if the police are well aware of their powers and limitations and scrupulously comply with the legal obligations imposed on them, the people and the Courts will stop suspecting the movements and motives of the police. In the same manner, if the people are awakened to their role and responsibilities in the war against crime, they will change their apathetic attitude towards the police. Once people have faith in police, they will come forward voluntarily and extend all possible cooperation to the police which it badly needs for the most necessary condition to combat crime in society.

Byrne and Marx (2011⁹) described that new technological innovations have been developed to prevent crime and to improve the performance of police, but society knows remarkably little about how and why certain innovations are adopted, and the consequences, both intended and unintended, of technology-driven solutions to the problems of crime. This article provided an examination of a wide range of new technological innovations that have applications in the areas of crime prevention generally, and crime control (by police) in particular. Authors provide a description of recent technological innovations and their adoption in the United States, and then

⁹ 1 James Byrne and Gary Marx (2011), "Technological Innovations in Crime Prevention and Policing. A Review of the Research on Implementation and Impact", *Cahiers Politie Studies*, Jaargang -3, nr. 20, MakluUitgevers, p. 17-40.

review the available research on the impact both intended and unintended, of each form of new technology on crime prevention and police performance. It also discusses three key issues, namely; militarization of crime prevention and policing; coercive vs. non-coercive technology; public vs. private sector control over crime prevention and policing. These issues were raised by both proponents and critics of what has come to be known as the second technology revolution.

Chakraborty (2003¹⁰) discussed that the concept of Community Policing has been in practice since long. The idea has now gained fillip and different countries have been encouraged from the success nation of different community policing schemes. The essence of community policing is to minimize the gap between policemen and citizen to such an extent that the policemen become an integrated part of the community they serve. In other words, the individual policeman should know each member of the community and he should, in turn, be known by them. He opine that one key to the success of any Community Policing Project is the ability of its 'sponsors' to 'sell' the project to its beneficiaries. And for that it is necessary that the beneficiaries are clearly identified and wooed.

Chan, Brereton, Legosz & Doran (2001¹¹) put forth that police have generally responded well to the information technology age. However, this study has shown that, while information technology may have enabled police to do some existing tasks better, it has not yet led to major changes in how the Queensland Police Service (QPS) deals with crime and disorder issues. The conclusion is that information technology has transformed the structural conditions of policing in the service in some important ways, while leaving many cultural assumptions and traditional policing practices unchallenged. The experience of the QPS illustrates the more general point that giving police access to computers, increasing the range and quantity of information that is stored electronically and automating what were previously manual processes will not change how the business of policing is conducted by the agency. If police agencies are to get a better return on their investment in IT, there needs to be a conscious and sustained effort to change the organisational settings into which that technology is being introduced. Thus, it is very important that the focus of planning for information technology is on assisting policing organisations to get

¹⁰ Tapan Chakraborty (2003), "Prospect of Community Policing: An Indian Approach", The Indian Journal of Political Science, Vol. 64, No. 3-4, July-December, pp. 251-62.

¹¹ Janet Chan; David Brereton; Margot Legosz & Sally Doran (2001), "E-policing: The Impact of Information Technology on Police Practices", Criminal Justice Commission, Queensland, Australia.

where they should be, rather than simply on streamlining and thereby entrenching established practices.

Chaturvedi (1982¹²) made an attempt to analyse the basic character of police work in contemporary India and relate it to the community with which it is deeply involved. The subject in this book is not much to provide insights into operational perplexities of the police in a society committed to a democratic order as to turn the focus on the major issues which are sequential to the above commitment and which are bound to be crucial to the evolution of our future polity.

Choudhury (2003¹³) puts forth that social and economic changes are transforming India. Effective policing is a necessary condition for sustaining economic growth and social progress. Scenario planning could help to identify the main forces that will impact on policing to visualize future challenges. In partnership with other sectors, the police need to evolve new models of criminal justice that are appropriate to 21st century in India.

Choudhury (1978¹⁴) describes that the past three decades has been a period of significant police reform in the United States. The President's Commission on Law Enforcement and Administration of Justice (1967) was the starting point for a federal initiative to change the paradigms of policing and look for new ways of dealing with timeless policing challenges like crime rates, image and accountability. Community policing, the impact of preventive patrols, and the benefits of new technology were some of the themes taken up for systematic research. The underlying paradigm of addressing policing problems today is a cross disciplinary approach that involves other fields in government and also nongovernmental sectors like academia and the corporate world.

Corbett (2008¹⁵) argues that roads policing is the public face of the police for many citizens, and thus, enjoys an elevated profile. Yet, the delivery of roads policing services requires urgent care and attention. It is contended that unless great care is taken, such could be the public disaffection

¹² T.N. Chaturvedi (1982), "Police Administration", Indian Institute of Public Administration, Ajanta Art Printers, New Delhi.

¹³ Jayanto N. Choudhury (2003), Policing India in 2025 – Challenges and Issues Ahead, The Indian Police Journal, Vol. L, No.1, January-March.

¹⁴ Jayanto N. Choudhury (1978), Policing in the United States: Issues of interest, Paper for 38th All-India Police Science Congress, Jaipur, Rajasthan, India.

¹⁵ Roads Policing: Current Context and Imminent Dangers by Clare Corbett available at www.policing.oxfordjournals.org accessed on 07th October 2009.

with traffic law enforcement and monitoring policies that the legitimacy of the police itself could be challenged.

Deflem (2002) analyses theoretical and empirical aspects of the role of technology in relation to the internationalization of the police function. Based on historical data of international policing in the period from the middle of the 19th century until World War II, this analysis reveals that technological advances in the areas of communication, transportation, and criminal identification significantly facilitated the internationalization of police operations. At the same time, it is shown, police institutions also held technological developments accountable for an increase in opportunities for cross-border criminality, which in turn justified the planning and implementation of international police strategies. Thus, concluded that with theoretical reflections of technology as a facilitating factor plays a important role in the internationalization of policing.

Egon Bittner (1970¹⁶) in his monograph analysed the basic character of police work and related it to the courts and community with which it is intricately involved. The analysis is comprehensive and insightful. Cultural and historical factors that influence police functions are considered, along with popular conceptions of police work. From these broad perspectives the analysis moved to consider the impact that police organization i.e., the manner in which departments are structured and their position within the framework of city government, as well as their considerable independence exerts upon the policeman's functioning. The quasi-military organization of the police, their esprit de corps and code of secrecy, and their capacity to use force are reviewed and woven into the analysis. The monograph also considers the future of police work. The problems of upgrading police practice, streamlining police organization, and improving the recruitment and training of police are given specific attention. The author faced directly the knotty problem of the police use of force and made specific suggestions to help the police on this matter. Indeed, new models of police practice are projected.

Hari (2008) describes that various new technologies have been found by researchers, by which one can visualize fingerprints even after it has been removed. Moreover, one can get the prints from cartridges after firing of those people who handled the cartridges before it was fired. With

¹⁶ 9 Egon Bittner (1970), "The Functions of The Police in Modern Society", National Institute of Mental Health Center for Studies of Crime and Delinquency, Maryland.

the use of these technologies cases dating back could be reopened because the underlying prints were disappeared.

ICTD Project Newsletter (2007) discusses that the revolutionary advances in Information and Communications Technologies (ICTs) are ushering in change in every aspect of life. Everything from business to governance is undergoing change. In contrast to the galloping advances being made in the application of ICTs in all sectors of governance, one vital sector law enforcement and judiciary is lagging behind. The emergence of Information and Communications Technologies (ICTs) are rapidly transforming the way citizens interact not only with each other but also with private businesses, public service utilities and government institutions. Traditionally citizens went to a government office to transact a government interaction, whether to get a certificate, apply/ renew a passport/driving licence or to pay utility bills. However, now with using ICTs it is possible for the same interaction to take place in a service centre close to the citizen or over the Internet. As India transitions into the new world economy a number of factors are operating to make traditional ways of policing obsolete. In addition to traditional societal problems like crime, mob violence, civil disturbances, terrorism, insurgency, etc. new forms like cyber crime, internationally funded terrorism spanning continents, international crime syndicates, etc. are emerging. Criminals are one step ahead of the police in making use of the latest technology including ICTs in implementing their nefarious designs. This makes it necessary that the police should also evolve to keep pace with the changing times. Some of the newer challenges are rapid urbanisation; expansion of ICTs, growing economic and social inequalities. To meet the challenges of the coming decades it is essential to have a police force which is up-to-date with ICTs in its daily work. This will build the confidence of the public that the police force is effective and can serve the community efficiently. It will help bring more offences to justice through a modern and efficient process. Not only does technology promise to improve police effectiveness and efficiency in controlling crime, but also enhance their professional status and organisational legitimacy.

Iyer (2003¹⁷) says that police has a poor image. Reasons are many including a dual system of control of law and politics. Accountability of the police should be to law and people. Police have

¹⁷ T.G.L. Iyer (2003), "Improving the Police Image", The Indian Police Journal, Vol. L, No.1, January-March.

to be insulated for interference by giving autonomy with sufficient regulatory control. Public pressure points have to be created to make the police people friendly.

James M. (1999¹⁸) focuses on the organizational dynamics peculiar to the criminal justice system, and how the explosion of the technology has added increased complexity to critical decision making process in an unstable environment which includes scarce public resources, community demand and court-mandated initiatives. It develops the current state of Public Safety technology, how the technology reflects dated Criminal Justice Strategies and the current bureaucratic organization structure. It examines current decision making methodology common to most municipal law enforcement organizations, as well as the key elements of community policing as organizational decision support system which will radically change existing criminal justice management information systems so that modern police administrators will make quicker and more focused resource-allocation decisions that will support the agency mission, the organization and the community it serves.

Joshi discusses the subject of police accountability in India. The author describes the main features of the police system established by the British in this country and shows how the idea of making the police accountable to anyone outside the establishment did not fit into the colonial model of policing introduced in this country. It argues that though the post Independence India witnessed changes on many fronts, the police system, in its basic structure, methods of work and lack of public accountability remained more or less unchanged. It also discusses some developments that resulted in strengthening the executive control over police and leading to an increasing abuse of police forces and misuse of police powers. He emphasised about the need to make police accountable, especially in the context of citizens complaints against police personnel and discusses the mechanisms that exist, both within and outside the department, to ensure accountability. He further suggests that the need for police reforms is very important to be neglected and urgent to be delayed.

¹⁸ Impact of New Technologies and Organizational Stress on Public Safety Decision Making” available on www.mellenpress.com accessed on 22nd September 2009.

Kapur (2015¹⁹) described that taking a cue from the Chandigarh and Panchkula police, the Government Railway Police (GRP) is now using the social networking site, WhatsApp to keep a watch on its officials at Chandigarh Railway Station. She put forth that each GRP personnel on duty in or around the station now have to get his or her photograph clicked after reaching the place of duty and send it to the higher officials. Hence, technology has been used to send the attendance report of offices on WhatsApp every morning. Further, those who are not technology savvy are being provided training to use technology. She put forth that special teams had been instructed that if during an inspection, they found any weapon or drugs, they should also send the pictures of the same on the social media for providing immediate information to the department. Further, in future, the public would be asked to share on the social networking site any illegal activity at the station or its adjoining areas and they can send it to the GRP control room for action. Thus, it can be concluded that usage of technology is helping to improve policing.

Kaura (2013²⁰) discusses that the President of India has stressed on the need for transforming the police system and bringing it in tune with the requirements of a modern democratic nation. He argues that the police officers must ensure that grievances of the common man are redressed. "They must, in partnership with other stake-holders, create a peaceful and secure atmosphere conducive to the growth and prosperity of our nation". He expressed his disappointment that the police fail to win adequate confidence of all sections of society. Further, leaders of the security forces must provide good and able leadership through their actions and values. External and internal communication must be strengthened to deal with the worrying increase in communal tension. Communication with people has to be maintained and at the same time, communication within the organisation, right down to the beat level, must be improved.

Additionally, district and local administration must notice communal tensions in their initial stages and take necessary measures to contain them quickly. With growing urbanisation, dimensions of crime have increased. The worst sufferers of this malady are women and children. The President said there is need to ensure that affirmative police action is taken in respect of marginalised sections of society.

¹⁹ Aarti Kapur (2015), "Top Cops in the Tricity are using Social Networking Sites to Improve Policing: GRP Staff post Attendance, Location on WhatsApp", The Tribune, 16th January.

²⁰ Girja Shankar Kaura (2013), "Transform Police System: Prez", The Tribune, 25th November.

Khopde (2010²¹) states that every police station's work is like disaster management. Many policemen are just sitting at the points. They don't act as a fear for criminals. They do their job full day without any results. They are efficient but not effective. Human skills are limited. There is a crisis management. Every day problems are solved on the spot. There is also an absence of decentralization and delegation.

K. Paramasivan & Syed Umarhathab (2012²²) discusses that the Indian Criminal Justice is rated as one of the best in the world. The internal security, crime detection and prevention, enforcement of law and order are maintained by police. Police should be effective as well as prompt and shall maintain good relationship with public for effective policing. The effective policing should carry good police image in democracy, which means effective policing and police image should match. Police are entrusted with maintenance of law and order at State level. Authors argue that the Tamil Nadu Police is one among the best police in India and renowned for investigation worldwide. For smooth functions of the police, it is necessary to check, recheck and understand the police image and public views continuously. When it comes to the image of police, it is a million dollar question in a democratic state. In general, the image of the police depends upon the duties executed by the official versus attitude and positive reception of the public. To understand and estimate the image of police, it is better to understand the police-public relationship. This paper is an empirical attempt to understand police image, police-public relationship and suggest measures to improve the image of police in the city of Tirunelveli.

Lindsay, Cooke & Jackson (2009) in their study investigated the impact of mobile technology on a UK police force and on knowledge sharing processes. An empirical, ethnographic approach to the research was adopted, using a mixed method approach of focus groups, questionnaires, observational 'work shadowing' and interviews with a total of 42 staff involved in a trial of mobile technology. The findings from the various methods are consistent, suggesting that mobile technology has a positive impact on policing and knowledge sharing. The timeliness of information improved, increasing the availability of information for decision-making. Reductions in information overload were apparent due to mobile technology providing greater control over information. There was a positive impact on knowledge sharing in the course of

²¹ Khopde Suresh (2010), "Mumbai Jalali Bhivandi ka nahi?", Sneha Prakashan, Pune

²² K. Paramasivan & Syed Umarhathab (2012), "Public Views of Police and their Performance: A Study to Understand Police Image in Tirunelveli City", The Indian Police Journal, April - June, Vol. LIX, No. 2, p. 47-63.

operational duties. Information and knowledge could be shared more quickly with officers in the field; and mobile technology provided a new avenue for keeping each other up to date with events. The paper contributes towards an understanding of the upcoming concept of 'mobile knowledge management' and offers a set of recommendations to manage the possible long-term risk of mobile technology on knowledge sharing.

Mathieu (2002²³) analyses theoretical and empirical aspects of the role of technology in the internationalization of the police function from the mid 19th century until World War II. The findings indicates that technological advances in communication, transportation, and criminal identification significantly facilitated the internationalization of police operations. At the same time, police institutions also held technological developments accountable for an increase in opportunities for cross-border criminality, which in turn justified the planning and implementation of international police strategies. The article concludes with theoretical reflections on the relative autonomy of technology as a facilitating factor in the internationalization of policing.

Mukherjee (1988) while trying to emphasize on the causes of crime, highlighted that social exploitation, economic disparities, limited scope of employment, resource for livelihood and application of dubious means by the politicians for the fulfilment of their political ends have unleashed a new spate of crime in the prevailing rural-urban environment. To combat this he emphasized on the need to build-up a police force having a high degree of professional excellence, faith in moral values, capability and fearlessness so that it may win over people's confidence and co-operation.

Manning (1992) put forth that the police have long hoped that technology would ease their most vexing problems. The most important recent innovations in technology involve computers and related software. The police are information dependent and rely on the public as a primary source of information; how the police obtain, process, encode, decode, and use information is critical to understanding their functions. There are at least three types of police information (primary, secondary, and tertiary), intelligence (prospective, retrospective, and applied), and operationalist strategies (preventive, prospective, and reactive), each of which interacts in a complex fashion

²³ Mathieu, Deflem (2002), Technology and the Internationalization of Policing: A Comparative-Historical Perspective, Justice Quarterly, Vol.19, No.3, September.

with technology. These processes are importantly patterned by police work, especially the role of the patrol officer, and the occupational cultures of policing. Thus, technology is embedded in social organization; it shapes organizations and is shaped by them.

Nath (1988) has emphasized on the fact that the existing police force was organized by the British masters in a slavish environment as an occupation force. In the post independence period, instead of giving police a welfare form, the political leadership exploited it for parochial and political ends. Instead, with the enforcement of developmental policies and programmes to attain welfare objectives, the police force is overladen with numerous jobs, other than the maintenance of law and order and prevention and detection of crime which affects its proficiency to a great extent. In this context author thinks that the police has got two challenges, that of shedding its mini-army image and delineating its exact functioning. The author suggested that the police should be reorganized and its armed and non-armed (civil) wings should be separated. Instead of receiving order from the political leadership, law should be the guiding force of the day-to-day functioning of the police and their duties should be limited to the maintenance of law and order, the rest of the job should be allocated to specialized agencies. In the rural sector, policing should be entrusted to the local people.

Narayanan (2012²⁴) opines that police likely to be confronted with many serious challenges in the coming years. None perhaps would be more significant than the challenge of change for which patently it is ill prepared. Elements of change are there for all to see. Another potent challenge before the police is that of Technological Innovation. Technological progress in the police has made incremental progress and the necessity to bridge the technological gap cannot be overstated. The police in India need to foster a technological revolution, to make full use of the several technological innovations employed by police forces in other parts of the world. The online analysis of crime patterns and problems is one basic tool which needs to be used extensively by police forces all over. At present, it is confined to a very few elite police units. Cascading technological innovations in areas such as computer networking (especially useful in the detection of white collar crimes and frauds); computer fingerprint identification including DNA identification; enhanced capacity for surveillance and monitoring activities along a broad

²⁴ M.K. Narayanan (2012), "New Challenges to Policing", The Indian Police Journal, October – January, Vol. LVIII, No. 4, p. 4-11.

spectrum utilizing state of the art technical aids are a sine qua non for police survival. He concluded by saying that the challenges before the police are too complex to be met by simplistic solutions or readymade answers. These have to be considered in depth and require concentrated thinking by individuals and groups both within the system and outside it.

Neyroud and Disley (2008) argues that factual questions about the effectiveness of new technologies in detecting and preventing crime should not and cannot be separated from ethical and social questions surrounding the impact which these technologies might have upon civil liberties. This is due to the close inter-relationship between the effectiveness of the police and public perceptions of police legitimacy which may potentially be damaged if new technologies are not deployed carefully. Further, strong, transparent, management and oversight of these technologies is essential and suggested some factors to which a regime of governance should attend.

Nunn (2001) opines that municipal police agencies are major users of information technology, and much remains to be learned about the effects of computerization on police operations. The author in his article examined 188 computerized municipal police agencies in 1993, with populations of 100,000 or more. Areas like relationships among computer hardware, police-file computerization, and police functions were examined. Cities were categorized as slow, medium, and high levels of computerization to uncover differences in expenditures and police-officer allocation.

Nunn (2001) described that advanced technologies were originally developed for the military; however with the changing time these are used to enhance urban public safety. Photonics, thermal imaging, facial and behavioral recognition systems, remote monitoring by satellite, and biometric systems like DNA testing and retinal scans have become new weapons in police agencies. These technologies are being diffused among cities by the Defense Advanced Research Projects Agency (DARPA), NASA, the US military, national research laboratories, the Office of Law Enforcement Technology Commercialization of the National Institute of Justice, and others. As a result, police agencies are changing their methods of handling urban space and the ways such spaces are defined and controlled by police. Police technologies are evolving into, among other things, machine systems that code and decode information embedded in urban spaces, with the ability to track movements of targeted individuals and groups and identify the unseen

remnants left by targets of these surveillance machines. As these systems become more automated and autonomous, critical thought need to be directed to their impact on people and cities.

O'Brien (2012) talked about the future of policing. He reviewed the history of policing and its role when the concept of modern western police forces commenced and states that now there is a need for a unifying role for police forces throughout the world. Only then will new tactics be created and old ones improved to help reduce the increasing crime rate. Also, there is the need for the creation of a new policing organisation that will help prevent international crime. He described that issues need to be addressed then only crime prevention will be more effective in the 21st century.

P. Chidambaram, Union Home Minister (2009) while inaugurating the XX All India Forensic Science Conference held at Rajasthan Police Academy reveals that the police of 21st century in India adopt primitive methods for crime investigation. An article in The Hindu (2009) newspaper reframed the words of Union Home Minister and puts forth that there is necessity of improving the country's crime investigation techniques. and must adopt new technologies which are abundantly available. Mr. Chidambaram, Union Home Minister said that there is a huge gap in the crime investigation methods adopted in the west and India. The "Year 2010" is termed as forensic year and rapid modernization plan is made for the next year. To sum up, he is of the view that the vacant positions in the forensic labs must be filled, suggested up-gradation of the syllabi of forensic science and adoption new crime detection techniques. He stressed on the requirement of new laws for adoption of modern techniques in crime investigation including DNA tests.

Peter and Emma (2008) argued that factual question about the effectiveness of new technologies (DNA evidence, mobile identification technologies, communication tools, surveillance devices and weapon detection etc) in detecting and preventing crime should not, and cannot be separated from ethical and social questions surrounding the impact which these technologies might have upon civil liberties. This is due to the close inter-relationship between the effectiveness of the police and public perceptions of the police legitimacy which may potentially be damaged if new technologies are not deployed carefully. Further, strong,

transparent management and oversight of these technologies are essential, and suggest some factors to which a regime of governance should attend.

Police Executive Research Forum (2012) discussed the biggest and most important challenges facing police chiefs and a challenge that they cannot delegate to subordinates is the need to sort through the variety of new policing technologies that have come on the scene in recent years. He said that technology can make policing more efficient. But technology costs time and money to acquire and deploy, and there are many different technologies to choose from. They put forth that are license plate readers are effective in preventing or solving auto thefts and other crimes? Or do surveillance cameras give you more bangs for the buck? Should technology dollars be spent beefing up computer systems that support Compstat and predictive analytics? The report put forth that social media can be used to develop collaborations with businesses and community groups to fight crime. Technology continues to be advanced and diversified in the future. Thus, the role of technology in policing was a perfect to study for further research.

Raghavan (2003) revealed that India had a substantial terrorist problem, especially in the North-east and in the north-western state of Jammu and Kashmir. Somewhat related to this was tension between the majority Hindu community and the significant Muslim minority. Hindu-Muslim clashes in Gujarat during early 2002 led to open accusations of government connivance and police partisanship. While the Indian Police Service has acquired a professional plan in handling terrorism, its religious neutrality therefore continues to be questioned. This image problem is compounded by a political system that fosters police identification with the ruling political party. The ambience of corruption has also contributed to declining standards of personal rectitude among the higher police echelons. A lack of political will poses the significant.

Raha (2012²⁵) talks about Stanford police department that has set an example of how law enforcement can be both non-adversarial and effective. He opined that policing is in a state of crisis right now. The protests in Delhi and elsewhere bear testimony to the public angst against the police. The police was viewed with the same terror today as they were by our ancestors during the British Raj. The attitude of policing then was that of ruler ship. When someone was picked up by the police, the family did not know if that person would have ever returned home.

²⁵ 3 Somik Raha (2012), "Lessons in Policing, from a University", The Hindu, 28th December

To make matters worse, an unhealthy collusion with the political classes had led to a situation where it was hard to trust the word of the police. Blaming and cornering the police was tempting but unhelpful, for it was just another way of dehumanising them, which was no better than what we often accused the police of doing to us. For any positive change in the situation, a sea change was needed in the perspectives on policing and what might be possible.

The Stanford police department had its modern origins in the violence of the 1960s and 1970s during the civil rights and the Vietnam era. Due to riots on campus and a massive breakdown in law and order, the university recognised the need for a professional police department on campus that went beyond the existing department's function as security guards. Instead of calling in public police who would come in with riot gear, beat up and arrest students, they wanted a more sensitive approach that involved a deeper understanding of students. But professionalising an existing police department was easier said than done.

Rauch (1993)⁴⁴ pointed to the need to empower civil society and build civilian capacity to engage with the police. This requires the state to relinquish some of its traditional control over formal policing in order for the process of transformation to begin. As has already been pointed out, a major obstacle here is the traditional notion of authority which underpins South African policing. He opines that in the same way that "strong, resilient democratic government requires robust civil society", so effective and accountable policing required strong civil society. However, right now, this seemed something of a contradiction in terms - the South African Police was deeply suspicious of strong communities, both for fear of undermining their professional status, and having civilians informed enough to engage with or dictate policy, and because, in the recent historical context, strong communities were "the enemy" against which the police were deployed. Communities were not only disempowered, but reluctant, to engage with the police. Ultimately, only political resolution and social reconciliation would allow this discourse of "enemies" to subside and for policing to become a high priority issue on the community development agenda.

Sareen (2015) informed that technology savvy Chandigarh Police was active on two WhatsApp groups, titled PCR and SSP Group, created by senior police officials to share vital crime information about the city and for maintaining law and order duties among themselves.

She revealed that police officials share information issue directions and post crime updates for better communication and coordination among themselves. Thus, this can be said that communication and coordination became better with usage of information technology.

Sareen (2009²⁶) put forth that vehicle theft seemed to be beyond Chandigarh Police reach. Though the number of vehicle thefts had been steadily increasing every year, the poor recovery rate remained an issue. These vehicles found their way in the thriving second-hand car parts market. A police officer said in most cases, cars were dismantled, their essential and costly parts sold, and the rest abandoned. Most of the vehicles recovered by the police were found in this state. Their stereos, seat covers, battery, air-conditioners and other costly accessories were missing. The police have taken various steps to curb the crime, but they have proved largely ineffective. Steps like motivating people to install security devices; sealing the sectors in night; obtaining data of criminals from neighbouring states; proper parking of vehicles; and maintaining record of parking contractors and their employees haven't been able to deter the thieves.

Sengupta (1995) has elaborated on work culture in police administration in North India covering Delhi, Bihar and Patna. She narrates that an organization has its boundaries, goals and objectives, technological, managerial practices, material and human resources as well as constraints. Its employees have skills, knowledge, needs and expectations. The two sets of factors, organizational and organism, interact, and over a period of time, establish roles, norms and values pertaining to work. It is a totality of various levels of interacting factors around focal concern for work which is labelled as work culture. Sengupta says that work culture may be examined at four levels. Firstly, as organisational goals and objectives and the way they are perceived and related to by the employees. Secondly, as physical facilities provided by an organization, its structure, work force and financial position etc. Thirdly, as social groups, norm, values, power structure, role, relations, etc. Lastly, as work behaviour and other work related activities.

Sarkar (2003) had an extensive discussion on the emerging trends in cyber crime. In last decade or so, Indian Economy has made significant growth in certain sections. Improvement in

²⁶ Aneesha Sareen (2009), "Vehicle-Lifters have a Free Run in Chandigarh", The Indian Express, 9th August.

technology resulted in the era of automation of machines which revolutionized industrial production. Further, advancement occurred through the computer technology that has done wonders in all production processes and even in administrative functioning. Today's era is the era of computer technology, which has not only revolutionized industrial but also increased quality in all walks of life. Computer technology is closely associated with information technology, which has reduced the world to a minitheatre. Despite countries economic sluggishness, the world of IT proves its credibility and accuracy in exchanging information as the key tool for increase in information innovation, creativity and production in the world of development of 21st century.

The interdependency of such has created vulnerability in the security and privacy of life, providing opportunities for criminal vulnerability. Now, the traditional crimes like fraud, pornography etc. are being committed in a new fashion.

Sethi (2013) put forth that crime has become very sophisticated as criminals make use of the very latest technology. To handle this, the police have developed equally sophisticated methods of crime detection and prevention. Legislation has also been updated to allow the police to gather evidence on criminal activity carried out via the internet. Information is the key word in crime detection and this information must be accurate and easily available. ICT has a huge role to play in this. As India transitions into the new world economy a number of factors are operating to make traditional ways of policing obsolete. In addition to traditional societal problems like crime, mob violence, civil disturbances, terrorism, insurgency, etc. new forms like cyber crime, internationally funded terrorism spanning continents, international crime syndicates, etc. are emerging. He finds that criminals are one step ahead of the police in making use of the latest technology including ICTs in implementing their nefarious designs.

Shane and Robert (2000) puts forth that how technologies can take domestic defence from its old economy model (i.e. Bureaucratic, hierarchical and compartmentalized and labour-intensive) to a new economy model (i.e. flexible, networked and automated). He reveals that IT revolution has transformed economy and had given various tools to detect and prevent terrorism. Technology can help to find terrorist in certain ways by using: improved data sharing, smart Identity card with biometric identifiers, smart visas and improved border security, digital surveillance and face recognition technology.

Sharma (2004²⁷) describes that the concept of rule of law and the administration of justice has been known to exist in India ever since the vedas came to be recognised as they were synthesis of Drame. Maintenance of law and order prevention and detention of crime in the society is the prime responsibility of police since ancient times so that selfish elements may not suppress and exploit the weak and harmony could be maintained in the society. The prime characteristics of ancient police system were its community orientation, functional specialisation, decentratism and expertisation. Hence, to a great extent the accountability of police force was towards the masses.

Sharma (2012) discussed a study titled, 'Satisfaction of citizens towards the working of the Chandigarh Police', conducted by the Centre for Police Administration, has revealed that 67.5 per cent of the people are not satisfied with the services provided by the police. It revealed that as far as behaviour is concerned, the survey indicates that there is a sharp decline in behaviour from cordial to rude as interaction between a complainant and police personnel increases. The study further reveals that 40 per cent of the complainants have reported that police officials at the police station ignore them. Ten per cent of the complainants have reported rude behaviour of police personnel while half of the respondents have reported cordial behaviour of officials attending them. Further, the study has been conducted after selecting one police station each from the three Chandigarh zones and 40 cases registered at each police station between March and May, 2011. During the survey, 70 per cent of the respondents have said their complaints have been registered on the first visit to the police station, but the remaining 30 per cent have had to visit again to get their complaints registered. The survey has also revealed that 95 per cent of the complainants have never received any communication after the registration of their complaints. Regarding the behaviour of police officials during the follow-up process, the study has revealed that 32.5 per cent of the respondents have mentioned it as rude, 37.5 per cent ignoring and only 17.5 per cent cordial. "A total of 97.5 per cent of the people reported that after they called up the PCR, the behaviour of the police was cordial. This percentage declined to 77.5 in case of the behaviour of the PCR official at the scene of the crime," he explained. "The percentage further declined to 50 in case of the behaviour of the police at police stations. The

²⁷ Anupam Sharma (2004) "Police in Ancient India", The Indian Journal of Political Science, Vol. 65, No. 1

percentage went shockingly low to 37.5 in case of the behaviour of the police during the follow-up process,” he elaborated.

Sharma and Marwah (2013²⁸) discussed that tackling internal insecurity and preventing crime through increased cooperation within society is considered as the paramount solution to rising security concerns. This can only be achieved through establishing mutual trust through continuous efforts by promoting a culture of dialogue. However this dialogue must start at the community level with community policing initiatives that are mapped and executed with a conscientious and concentrated approach. The present study analyzes and evaluates the strategy and initiatives of the public and community relation practices being carried out by the Chandigarh police. The study finds that these practices have shown remarkable benefits through winning trust and plugging the gaps that exist between the public and the police. However to strengthen the spirit of effective public/police interface issues of corruption, lack of professionalism, low morale and conflict among different strata’s of Chandigarh police need to be dealt on an immediate basis.

Sharma (1998) has viewed organizational inadequacy, personnel inefficiency and procedural lags as the main obstruction in effective police functioning on a developing society like ours. It seems that machine, man, and method, are functioning at cross purposes because no attention has been paid to strengthen the police force, organizationally, procedurally and structurally. The police is standing at the same point where it was a century back. Obviously, a colonial police as a misfit in a democratic and developing society, it is due to this cause that the force has lost its credibility in the eyes of the common man. Delimitating the problematic areas of emerging challenges, Prof. has suggested that meaningful administrative reforms in the police setup so as it may be used as a catalyst for social change before it is too late.

Sheptycki (2007²⁹) considers the nature and practice of high policing in the security control society. It looks at the effects of the new information technologies on the organization of policing-intelligence and argues that a number of ‘organizational pathologies’ have arisen that make the functioning of security-intelligence processes in high policing deeply problematic. He

²⁸ 4P.D. Sharma (1988), Policing a Plural Society: The Challenges Ahead, published in “Police and Emerging Challenges” by S.K Chaturvedi, B.R. Publishing Corporation, Delhi, pp. 119-44.

²⁹ “High Policing in the Security Control Society” by James Sheptycki available at www.policing.oxfordjournals.org accessed on 07th October 2009.

also looks at the changing context of policing and argues that the circuits of the security control society. Seen this way the habits of high policing are not the governance of crisis, but rather governance through crisis. An alternative paradigm is suggested, viz.: the human security paradigm. The paper concludes that unless senior ranking policing officers the police intelligence adopt new ways of thinking the already existing organizational pathologies of the security are likely to continue undermining at fostering security.

Singh (2012³⁰) discussed the importance of police-public relations and every policeman during his training should be made to fully realise it. The author narrates the quotation that the U.P. Police Commission said “That a specific mention should be made in the annual remarks of all Inspectors, Sub-Inspectors and Assistant Inspectors and Head Constables and Constables about the manner they treat the public and whether they are courteous and polite.”

Singh (2002) discussed the issue of amnesty to police officers charged with human rights violations in Punjab during the days of militancy. It became a public issue in the context of the assembly elections in the state. The author opined that developed around it posed human rights and national security as contradicting concepts quite overlooking the fact that there exists a common terrain constituted by norms of constitutional democracy and rule of law.

Singh (2010) says that modern era is century of technologies in which without any delay modern materials and techniques are supplied from major agencies so that criminal having these modern techniques could be challenged and this technical war could be won. Further, historical background of capitalism has been discussed in the light of important role that it has played in the increase of crime. The race for money has ended the difference between good or bad works. People want to earn money doesn't matter from whatever sources and whatever way. He further opine that mobile is the best ever technology that emerged which helped criminals a lot. It helped people to connect across the nations and commit serious and unlawful crimes. Singh has discussed mobile phones worst effect in many cases as in Indonesia (Bali and Jkarta), Pune, India (German Bakery) and Tripura (Agartala) were it has been used as an explosive material that caused destruction. He further told that while Bush, the President of USA visit to UK all mobile networks were banned so that crime could be prevented. He opines that there is lack of

³⁰ Joginder Singh (2012), “Improving Police-Public Relations”, The Indian Police Journal, January - March, Vol. LIX, No. 1, p. 58-60

coordination between security agencies and private mobile company. Finally, he suggested that training should be given for usage of new technology. Each state should have a Cyber Security Unit with IT expert and need to establish coordination with other countries so that criminals can be caught worldwide.

Singhvi (1982) goes straight into the heart of the matter of personnel pathology. He identifies the specific areas in which public distrust of the police is generated and these are not certainly trivial and cannot be wished away. But how can these sources of public dissatisfaction be eliminated except through radical improvement in the tone of police administration which is linked to its organization model and personnel policy. His suggestion for enunciation of a national police policy deserves earnest consideration.

Steve (1978) describes that the developments in military hardware receive critical attention almost as a matter of course, innovations in police technology are only rarely focused upon. In this article an attempt is made to rectify this anomaly by providing a detailed survey of some recent developments in police technologies, as well as directing concern towards the unanticipated consequences associated with their integration into systems of socio-political control. The technology of socio-political control is by definition more or less repressive. Since it appears to offer a flexible solution to many of the problems of internal control, there is a grave danger of its becoming a technological panacea substituted for real political authority when this is absent. Politicians are increasingly prone to hand over their most problematic difficulties to the police or military for solution, only to get them back later in a more intractable form.

Consideration is given to the social implications of the vertical and horizontal proliferation of these technologies and their role in effecting the militarization of the society in which they are deployed. The article concludes that new police technologies facilitate the creation and maintenance of totalitarian societies. They pose a real threat to civil liberties and human rights, a threat likely to increase over time.

Sudha & Gadkary (2010³¹) reveals that science and technology are important tools to fight against crime. With the passage of time as the criminals became more aware technologically, it become vital that police should also become properly equipped to combat the new strain of

³¹ S. Indira Sudha & Ajay Gadkary, Vision for "Police 2010" and "Police 2020", NCRB, New Delhi.

criminals. Additionally, the tools that police uses should be as effective and efficient as possible. Author insures that police service is equipped with the opportunities in science and technology to deliver effective policing.

Sundaram and Rajput (1993³²) have rightly described the work culture as one of the basic determinants of development in the country. There is a need to improve the work culture in India and plenty of scope for it as well. Public Service Institutions have a crucial role to play in serving common people. It has a major influence on motivation, productivity and job satisfaction. Each organization has a unique culture. It is a key area in organization behaviour. It is important to understand the imperatives of work culture and its power influence on the behaviour at work place. The culture endures in every workplace. We need them to justify and rationalize hours spent on our job. The work culture needs to be nurtured and shaped. The positive and cohesive work culture encourages employee loyalty and commitment

³² Sawant, Sundaram and Rajput (1993), "Work Culture in Public Service Institutions", Himalaya Publishing House, Mumbai

CHAPTER - III

HISTORY OF POLICE ACCOUNTABILITY IN INDIA

“Police stations should not be a stall in an exhibition ground. Lathies, boots, lock-ups, canes, handcuffs cannot please people who come there. It is the pleasant behavioural tactics and manners which may make the people happy in a police station”

-James Vadackumchery

The police in this country are the instrument for enforcing the Rule of Law.³³ they are the means by which civilised society maintains order that people may live safely in their homes and go freely about their lawful business. Thus police is the law enforcement agency whose fundamental duty is to serve mankind, safeguard peoples live and property, to protect the innocent against deception, the weak against oppression or intimidation, peaceful against violence and disorder and to respect constitutional rights of all men to liberty, equality and justice. Discussion on police is insufficient without its origin. In a wider sense the word Police was used to connote the management of internal economy and the enforcement of government regulations of a particular country.

The word ‘Police’ is derived from the Greek word ‘Politeia’ or its Latin equivalent ‘politia. The term ‘Police’ connotes a body of Civil servants whose primary duties are preservation of order, prevention and detection of crimes and enforcement of law. In India the great ancient law giver Manu emphasised the need of Police force for maintenance of law and order. He suggested that Police functions could be entrusted to only those who were well acquainted with the local people and were dedicated to the cause of protection of society against law violators. Though it can be traced that in India Police prevailed in the reigns of Hindu rulers and in Mughal rulers but the British Government enacted the codified Police Law and as a result the Police Act, 1861 for India. This Act had been prevailed for whole of India as Bible for Police organisation until the State Police Acts were prepared after the Honourable Supreme Court of India gave directives in **Prakash Singh and others v. Union of India and others**³⁴ case in the year 2006 and central

³³ Royal Commission on the Police in India, 1962

³⁴ (2006) 8 SCC 1

government's Model Police Act (2006). In Assam also the Assam Police Act, 2007 was enacted and enforced for the State of Assam. The study is basically on Implementation of the Assam Police Act, 2007 and to consider whether the provisions of the Act are implemented in its spirit.

3.1 Overview

Constitution of a state is a core document having a special legal sanctity which sets out the frame work and the principal functions of the organs of the Government of the State and declares the principles governing the operation of those organs. Constitution is the foremost law of the country and all the laws of the country are enacted under the constitution and this constitution in its seventh schedule placed police in entry³⁵ of List II- state list. Police as a complete State subject must be governed under State Police Acts and Rules but it is the greatest tragedy of the people that the colonial police Act of 1861 which is for whole India governed the Assam Police also till 2007.

Police was present in India during ancient period, medieval period but systematic police was found to be present during the British rule. The police force in India during the British period was designated under the exigencies of this organisation before and after 1857 provides a clear picture of British thinking and intentions. It also helps in explaining what they intended its role to be. The former was clearly what the police from anywhere in any society and in any state, while the later was governed by their political expediency.

After the grant of Diwani rights in Bengal in 1757 the East India Company found itself in a role that it must never have contemplated. Collection of revenue meant protection of interests, which implied policing functions of sorts. The policing was not taken away from the Zamindars till 1792. The cardinal principle of the administration of criminal justice and the police set up by Lord Cornwallis in 1792-93 was a complete separation of judiciary and executive from revenue functions. Lord Cornwallis pointed out the weakness of policing under the Zamindars and opined for a select committee of parliament in 1812. The shortcomings and inefficiency of this system was clearly visible to the enlightened British opinion. The police commission of 1838

³⁵ Paranjape N.V.- Criminology & Penology with Victimology, CLP, Fifteenth edn, 2011, p 339..

observed that the inefficiency of that system is in a great measure attributable to the inadequate scale on which it has been carried on³⁶.

In 1843, Sir Charles Napier realised that only under a recognised organisation, the police could function properly and produce desired results and he took, as his model, the Royal Irish Constabulary. Napier's Police system was based on principle, the police must be completely separated from the military and they must be an independent body to assist the collectors in discharging their responsibilities for law and order but under their own officer. There was an Inspector General of police for the entire territory, with Superintendent in each district. The Superintendent was responsible to the Inspector General as well as collector. This experiment was successful and its broad framework was used to reorganise police administration. The main principles of Napier's model were not altered even by the Police Commission of 1860, which designed the Police Act of 1861³⁷.

The Police Act of 1861 was legislated by the British after the First War of Independence by the Indians in the year 1857, the Sepoy Mutiny. The purpose was clear that the British wanted a force to crush the voices of Indian who have dissented the British Rule. Making of the Act may be traced from the early stage of Industrial Revolution when England was facing grave crisis due to socioeconomic transformation. Sir Robert Peel, the Prime Minister introduced a bill in the British Parliament for the purpose of an effective organized police service in the year 1829, thus created organized civil police in the nearby London Metropolis. The said police managed to control social disorder and as a result it was expanded to whole Europe and America.

In 1858 the British government took over the control of the Indian Territory and prompted to reform the police system in the sub-continent on the line of the British constabularies after the success of Peels Act of 1829. As a result a Police commission was setup and on the recommendation of the commission, the Police Act (Act V of 1861) was passed by the British Parliament. Under this Act a Police force was created in each province of British India and placed under the control of the provincial government. The administration of the police force of a province was vested upon an officer styled as the Inspector General of Police. The administration of the Police in a district was placed under the Superintendent of Police. The British who ruled

³⁶ Srivastava Aparna- Role of police in a changing society,p 9.

³⁷ Bharti Dalbir Dr.-POLICE AND PEOPLE-Role and Responsibilities, p. 18

this country had a twisted idea of using police as an instrument of coercion for their own interest by subtly branding it as “myrmidon of law”. The Police system introduced during that period was governed more by consideration of maintaining control of dictatorial rule rather than providing service to the people. The Police Act, 1861 enabled to form a well organized and well-structured police force only to serve the interest of the colonial masters.

However, the Police commission of 1860 established the following principle of Police organization to have impact in the Police Act of 1861 –

- 1) Military police were to be eliminated and policing was to be entrusted to a civil constabulary.
- 2) Civil Police were to have their own separate administrative establishment headed by an Inspector General in every province.
- 3) The Inspector General was responsible to the provincial Government as the Superintendent was to civilian collector.
- 4) The Superintendent was to super vice the village police³⁸

Hence, the report was submitted to the Secretary to the Government of India, Home Department by M.H. Court as the President and A.P. Phayre as member, S. Wanchope as member, W. Robinson as member, R. Temple as member and H. Brnce, Lieutenant Colonel and member on behalf of the Police Commission. In the line of contents of the Commission the Police Act, 1861 was passed as the Act No.5 of 1861 on 22nd March, 1861 for the Regulation of Police in the British India.

Preamble which is the key to open the minds of the makers of the Act and the mischief which they intended to redress and the preamble of the Police Act, 1861 says –

WHEREAS it is expedient to re-organize the Police and to make it a more efficient instrument for the prevention and detection of crime.

From the Preamble it is clear that Police have no other societal role to play under this Act except to

³⁸ Ibid p.19.

- i) Obey and execute all orders and warrants lawfully issued by and competent authority;
- ii) Collect and communicate intelligence affecting the public peace;
- iii) Prevent commission of offences and public
- iv) Detect and bring offenders to justice; and
- v) Apprehend all persons whom the officer is legally authorized to apprehend and for whose apprehension sufficient ground exist³⁹.

Therefore, it is clear that the Act is lack in upholding constitutional right specially the Human Rights aspect and in maintaining the Rule of Law.

In analyzing the Police Act, 1861, we find that there are forty-seven sections dealing several aspects but few sections clear the confusion that the Act was legislated for keeping the Police force for the using of the Government.

The Superintendent of Police throughout a general police district shall vest in and shall be exercised by the State Government to which such district is subordinate, and except as authorized under the provisions of this Act, no person, officer or court shall be empowered by the state government to supersede or control any Police functionary⁴⁰.

Where the powers of the Inspector General and exercise of powers are prescribed also says that the powers may be exercised subject to limitation as may, from time to time, be imposed by the State Government. The Police officers have no fixed tenure and subject i.e. dismiss, suspend or reduce in rank at any time.

Thus the Police Act, 1861 lacked in obliged to respect political diversity and guarantee a climate of peace in which people feel secure in exercise of their freedoms. Because these sentiments are not reflected in the legislation governing the police, it has contributed to the police remaining outside the loop of prevailing democratic values. It is also primary reason for the police being perceived by many as the handmaiden of the political elite rather than as an organization that provides essential services through ensuring peace and security to the people.

³⁹ The Police Act, 1861.

⁴⁰ Section 3 of the Police Act, 1861.

Though each and everyone says that the Police Act of 1861 was a colonial one and used the police force for their use but the fact is that the foreign rule ended in the year 1947 but the Police Act is in force for long. Why has no government central or state taken the initiative to replace the Act which would give the country or the state a different police force is to be answered as some state government have enacted new legislation since independent to govern the functioning of their police forces like Bombay Police Act of 1951, Kerala Police Act 1960, Karnataka Police Act of 1963 and the Delhi Police Act of 1978 etc. but the enactment of these laws after independent has not brought about any significant improvement in the organizational structure, performance or behaviour of the Police Forces because the new enactment were patterned on the model of the Police Act of 1861. But it is a fact that the Police Act of 1861 was not a conclusive one and demand was there for replacing the Act for

- i) Insulation from illegitimate political interference.
- ii) Accountability of Police.
- iii) Offences by Police officers.
- iv) Vastly removed from ground realities regarding duties and responsibility.
- v) Lacking in upholding the constitutional rights and maintaining rule of law.
- vi) Growing trust, understanding or consultation between the Police and the people.

The need for a new legislation that reflects the democratic nature of India's policy has grown over the years. The major draw backs of the Act are mentioned below:

1. The Act has made it easier for others to abuse and misuse the Police Organization. It has been possible for people in positions of power to do so because of the following reasons

- a. The Act gives Government, the authority to exercise superintendence over the police, without defining the word 'superintendence' or prescribing some guidelines to ensure that the use of power will be legitimate.
- b. The Act does not establish any institutional or other arrangements to insulate police from undesirable and illegitimate outside control, pressures and in finances.
- c. The Act does not recognize the responsibility of the Government to establish an efficient and effective police force.

d. The Act does not make it necessary to outlines objectives and performance standards nor does it set up independent mechanisms to monitor and inspect the police performance.

2. The Act is antiquated in its charter of duties, which is narrow and limited.

3. The Act does not mandate the police to function as a professional and service oriented organization.

4. The Act does not in consonance with the requirements of democratic policing.

These requirements insist on the existence of a police force that –

- a) Police is subject to rule of law, rather than whims of a powerful leader or party.
- b) Police can intervene in the life of the citizens only under limited and controlled circumstances; and
- c) Publicly accountable.

In short the Police Act of 1861 obstructed the establishment of the rule of law and hence new professional system of policing has been necessitated. Several attempts were made but the actual kick off starts from the land mark Judgement of the Supreme Court in Prakash Sigh and others V. Union of India¹⁰ case where seven directives were suggested for Police reform.

Directive One

Constitute a State Security Commission (SSC) to:

- i) Ensure that the State Government does not exercise unwarranted influence or pressure on the Police.
- ii) Lay down broad Policy guideline and
- iii) Evaluate the performance of the State police.

Directive Two

Ensure that the DGP is appointed through merit based transparent process and secure a minimum tenure of two years.

Directive Three

Ensure that other police officers on operational duties (including Superintendent of Police in-charge of a district and station house officer incharge of a police station) are also provide a minimum tenure of two years.

Directive Four

Separate the investigation and law and order functions of the Police.

Directive Five

Set up a Police Establishment Board (PEB) to decide transfers, posting, promotions and other service related matters of Police Officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers above the rank of Deputy Superintendent of Police.

Directive Six

Set up a Police Complaints Authority (PCA) at State level to inquire into public complaints against police officer of and above the rank of Deputy Superintendent of Police in cases of serious misconduct including custodial death, grievous hurt or rape in Police custody and at district levels to inquire into public complaints against the police personnel below the rank of Deputy Superintendent of Police in cases of serious misconduct.

Directive Seven

Set up a National Security Commission (NSC) at the union level to prepare a panel for selection and placement of Chiefs of the Central Police Organizations (CPO) with a minimum tenure of two years.

Complying with the directives in Assam the Assam Police Act was passed in the year 2007 with the following objectives:-

1. To make the functioning of the Police Force impartial and efficient;
2. To safeguard the interests of people with due regard to the Rule of Law;

3. To organize the functioning of the Police personnel in a professional manner;
4. To make the Police force, service oriented and accountable to Law to make it more efficient instrument for prevention and detection of crime;
5. To redefine the role of the Police taking into account the emerging challenges of police wing and security of State;
6. To make the Police Force function in accordance with good governance and respect for human rights;
7. To empower the Police Force to enable it to function as an efficient, effective, people-friendly and responsive agency⁴¹.

Thus it can be understood that the spectrum of work and expectation from Police has been changed drastically and the existing Police Act needs to be updated in view of the changes that have taken place in recent times. To organise the functioning of the Police personnel manner to enable them to meet the emerging challenges of policing and security of State there is a need for proper implementation of the Assam Police Act, 2007. The Act was enacted keeping in view the directives of the Supreme Court and the Model Police act, 2006 but in some major issues the government of Assam violated the directions and as a result the people are not receiving the fruit of the Act. The researcher wants to emphasis those key issues where the government knowingly violated the directives and not made the Police Act free from nasty Politics. Another major issue that has to be watched is the Implementation of the Assam Police Act, 2007. The Act was enacted and implemented with high hope and ambitions but the ground reality is not seems to be achieved hence it is to be testified. This study is mainly to verify the first hand data collected from three types of sources namely common people, Police personnel and from Judges, Advocates and Law teachers and from the data interp data interpretation to find some concrete assertion which may be used as vital findings.

⁴¹ Nomani A.M.- THE ASSAM POLICE LAWS,2010 by Regional Law House p 10

POLICE ADMINISTRATION IN ANCIENT INDIA.⁴²

Is the book under review deals comprehensively with one of the most complex issues like origin of Police in India. The book describes and analyses in detail the various aspects how the Police came into existence in the earliest period in India. The book is divided into six chapters. The first chapter introduces the subject of Police administration in ancient India. It describes the existence of Police during Vedic period. The author rightly explains the development of Police during Mahabharata and during the period of Kautilya .

The second chapter of the book focuses on the Police organisation in ancient India. The author elaborately discusses the organisation of Police during the Kautilya and mentioned about 18 great officers of the state and calls them Ashtadasa tirthas. It is also mentioned that Kautilya describes the administration of criminal law as kantaka sodhana the cleaning of thorns, which means the eradication of the dangerous elements by criminal laws and Police regulation. The Police organisation during Mauryas and Guptas are also discussed. Thus in the second chapter it is tried to be established that during Hindu rulers Police organisation in India was used not only for political purposes but also for detecting criminals and restraining criminal tendency among people.

The third chapter of the book explains about the relation between Police and Judiciary in ancient India. It states about the Judicial system in ancient India as known primarily from the Dharmasastra is not utopian or merely ideal, but is natural to the extent to suggest that it is the result of actual experience . The tribunals mentioned in the Smritis demonstrate the reality of the institutions designated. Recognition extended to custom of the different regions and social groups rise to divergent views but it actually added to the practical value to the book.

In chapter four the relation between Police and economic life is explained. Analysis is done how Police played an important role in the economic life of ancient India. So far as trade regulations and protection of merchants, the state took great care and interest. There were strict regulations for theft or robbery.

⁴² Mishra K.K -Police administration in ancient India-Mittal Publication, Delhi, 1987.

Chapter five explains about Police and corruption. It clearly depicts the picture of ancient India where the Police officers were assumed to be honest and free from corruption and they were vested the responsibility for controlling corruption as it was thought that if the officers were honest and efficient, free from corruption, the wheel of the State administration moved smoothly, and everything went right and if it is contrary the administration practically collapsed.

In chapter six the author explains about crime and punishment. In this chapter Crime and their punishment during Kautilya were explained. It is worthwhile to penetrate deeper into the nature of different punishment prevalent during the period under review.

Thus this book elaborately discussed Police administration during ancient India and from which one may get idea about Police during ancient India.

POLICE ACCOUNTABILITY AT THE CUTTING EDGE LEVEL.⁴³

Is the book under review deals with the concept of Police accountability book under review deals with the concept of Police accountability.

The book is divided into seven chapters. The first chapter deals with policing in a democratic system. Here the author illustrates the duties of Police and explains that policeman must eschew all temptations to have recourse to short cuts and extra legal methods. He should be absolutely honest, impartial and fair even to the worst legal transgressor. In fact he must be the ideal citizen and a true servant of the people in the performance of his duties under the law.

The second chapter makes a historical appraisal of accountability of Indian Police from its very inception. The accountability in Police during ancient India, medieval period and British period are discussed.

In the third chapter the observations and the recommendations of the various Police commissions of different states of India and the National Police commission has been chronologically analysed.

⁴³ Ghosh Gautm Dr. - police accountability at the cutting edge level, A.P.H. Publishing Corporation, New Delhi, 2007.

In the fourth chapter the Judicial perception about Police accountability at the cutting edge level, a thread bear analysis of leading cases of different High Courts and the Honourable Supreme Court of India has been done.

Chapter five deals with the perception of the beneficiaries of Police service with the public in respect to Police accountability at the cutting edge level. Here data collected are explained and analysed through pictorial diagrams.

Chapter six makes an in-depth analysis of the present state of Police accountability in Kolkata.

In chapter seven the findings and recommendations have been incorporated.

Thus the book in hand is helpful in getting knowledge on Police accountability.

POLICE AND PEOPLE-

Role and Responsibilities⁴⁴.

The book under review discuss about the relation between Police and People. The role and responsibilities assigned to both side to make a cordial relationship between the two is the main theme of the author.

The book is divided into five chapters. The first chapter describes the evolution of Police . In this chapter the development of Police during pre-state situation, Dharma, origin of the state , in ancient India, medieval India and in modern India are explained. The Police commission of 1860, Police commission of 1902-1903 and Police since independence in India are also categorically mentioned.

Second chapter discusses about the functions of Police. Maintenance of order, role of Police in elections, combating terrorism and insurgency including functions assigned in laws are also discussed.

Chapter three explains the powers and obligations of Police. In this chapter the provisions relating to Police as mentioned under the Code of Criminal Procedure are discussed.

⁴⁴ Bharti Dalbir Dr. - POLICE AND PEOPLE-Role and Responsibilities, APH Publishing Corporation, New Delhi, 2006

Chapter four of this book explains the rights and duties of people. Here the rights conferred in the Constitution of India and other Statutes to the people against the arbitrary works of Police are discussed. The Fundamental rights given under Articles 20, 21 and 22 are specifically mentioned.

Chapter five deals with people's participation in Policing. Here methods are assigned to involve people in Policing. Different ways are suggested to have a good relation between Police and people that they may work with the participation of people.

ROLE OF POLICE IN A CHANGING SOCIETY.⁴⁵

The entire work under review has been divided into five chapters. The first chapter 'Introduction' deals with historical perspective followed by the second chapter which deals with the primary functions of the Police.

The first part of the third chapter is a conceptual analysis of the role of Police in a changing society. The main study begins with the second part of the third chapter which is divided into eight segments 1. Crime against women and Police action 2. Police and the problem of Human rights. 3. Role of Police in prevention of Juvenile delinquency in India. 4. Role of Police in combating communalism. 5. Drug trafficking and Narco- terrorism- the Indian scenario. 6. The students and the Police. 7. Police role in the prevention of atrocities against the weaker sections of society. 8. Elections and role of Police in India.

Thus the delicate functions assigned to the Police are discussed. Police community relations have been elaborately dealt with in the fourth chapter and summary and conclusions appear in chapter five.

THE INDIAN POLICE-A STUDY IN FUNDAMENTALS⁴⁶

The book under review tried to find an answer of where something basically wrong with our Police and Police system. Most of this literature deals with either Police administration or the secondary aspects of the Police system without going into a spectroscopic analysis. Need to analyse the whole thing to its first principles in the Indian context and therefore the author

⁴⁵ Bharti Dalbir Dr. - POLICE AND PEOPLE-Role and Responsibilities, APH Publishing Corporation, New Delhi, 2006

⁴⁶ Supra note 4

worked on Police prudence on the lines of Jurisprudence appeared most essential. For the sake of perspective, the applied aspects in the Indian context have been kept in view and hence the work.

The book is divided into eight chapters. In the first chapter the National Police Policy is discussed. Chapter two explains what are the Police-A force or a service or both. In this chapter attempts have been made to find out the functions of Police. It is mentioned that the police are a basic social and legal profession engaged in the cause of humanity, thereby rendering the highest service to society, greatly facilitated by their organisational potential.

In the third chapter stress is given on discipline of the Police as without discipline Police can neither survive nor work properly.

Chapter four deals with control. Here emphasis is given on how Police may be controlled through the law, magistrates and senior officers. The Police service or force may be channelized through proper control and this chapter tries to explain the control mechanism of Police.

Chapter five discusses about attitudes of Police. Here the behavioural aspects of Police are discussed. The third degree and their use comes under the purview of attitude. Mode of selection of this kept a deep mark on the image of Police and thus the attitude of Police is also an important aspect to be kept in mind.

Chapter six explains about work environment of Police whereas chapter seven discusses about personal policy of police and chapter eight gives the conclusion of a jurisprudential aspect of Police and their work.

ENCYCLOPAEDIA OF POLICE IN INDIA.⁴⁷

The book under review is an encyclopaedia on Police and the volume I is basically on the evolution of Police system in India. The work puts the whole picture of the Indian Police in a proper perspective. Anybody who wishes to find out anything about the Police can get good results from the book. Stat wise analysis is also made. One who wants to know about the Assam Police may also get good amount of information. It serves as a bridge between the world of specialists and a wide range of readers who need specific information on Police.

⁴⁷ Ghosh S.K. & Rustamji K.F - ENCYCLOPAEDIA OF POLICE IN INDIA Volume I, Ashish Publishing House, New Delhi, 1993.

The book is divided into sixty nine chapters in six parts. The first part analysed the history of Police administration in India. Second part discusses about the central Police organisation. Police of States and Union- territories are discussed under part three. Part four says about the Police strength in relation to area, population and IPC crimes.

Part five says about Indian Police and Indian Police Service and part six discusses about Police awards and decorations.

Thus the book is very useful in searching any information on Police.

CHAPTER IV

“LAW & ORDER ADMINISTRATION:

THE PROBLEM OF POLICE ACCOUNTABILITY”

The word accountable seems to have come in the English language for the first time in the year 1583, and the context was financial. Even today, financial accountability is an important part of accountability. The concept is a comprehensive one and covers all the activities undertaken by the government. Sorter Oxford English Dictionary defines 'accountable' as 'Liable to be called to account, responsible (to, for).

Accountability means answerability for the proper performance of the assigned task. It means more than mere responsibility to discharge the duties involved in a job and include that the discharge of duties shall be to the satisfaction of the party for whose benefit the duties are being discharged. Therefore accountability presupposes two parties one under obligation to render account for the proper performance of the task assigned and the other having a right to ask for and receive such an account.

In broad terms the issue of accountability arises as part of the process of delegation. There is a need of accountability when a principal seeks to get an agent to do something for him or her. The principal gives the agent resources or delegates power for a purpose and wishes to constrain or incentivise the agent to provide value -for- money in the use of those resources or that power. The flow of resources from principle to agent therefore creates a desire in the principal for a flow of accountability in the opposite direction. In this discussion, the principal is "the one who holds to account" and the agent is the one who "accounts and is held to account.

In the word of Stewart, "The relationship of accountability, involving both the account and the holding to account, can be analyzed as a bond linking the one who accounts and is held to account, to the one who holds to account". Stewart therefore stresses that accountability consists not just of the giving and receiving of information, although this is an important part, but also the action of holding to account.

In a democratic system, the all civil servants work in government, for the welfare of people. There is a problem in a democratic system; accountability becomes acute because of the nature of the job performed and power exercised by the public officials. Today, there is a main role of public administrators in a welfare state, to implementing the policies and to make the policies. They consciously make laws and even adjuscate laws. More often than not laws are made now a days by legislatures in terms of the broad objectives to be pursued or the machinery to be set up, and the task of providing the details of making rules, regulations and bye laws for filling up the gaps left in the legislation, is given to the administrators in order to facilitate the process of executing the laws.

Until recently the basic measurement of administrative accountability has been efficiency meaning the greatest out put from the least input. This meaning is no linger valid. Today efficiency must relate to the satisfactory accomplishment of given programmer goals as attested to by the persons affected by the said programmers. It is because of this expanded meaning that the concept of administrative accountability has acquired multiple dimensions.

The administration in a democratic state is accountable to the political executive in the first instance. India is the best example of political accountability. If accountability of any individual administrator is to be insured the practice is to criticize the political to whom he is insured the chief and no policy decision can be taken with out the concurrence of the political executive. Formally speaking this is a main role of bureaucracy as a adviser to the political executive on matters connected with policy execution and policy formulation. By the training to bureaucracy, the government makes to them a specialized officer.

The dimensions of administration becomes larger if we take into account the parliamentary institution of interpretation. It is the ancient right of the members of parliament to ask the question about the state of public administration. When the minister is asked to answer put any MP, the questions are really directed to the department concerned. Synergy administrator knows that whatever policy- decision his department takes likely to be question in parliament if the matter happens to be serious enough to draw the attention of any member of parliament. The principle function of question in parliament is not to inform ministers of public reaction to policy but to discipline administration. Administrative responsibility, therefore, indirectly means accountability to the parliament.

In a democratic political system citizens are provided with the necessary legal means to challenge the policy decisions as well as administrative decision of the government. In India and other former British colonies before their independence, administration's role was limited. Administration was responsible for taxation and law and order. Today the dimensions of administration has been changed. The role of administration has become very important in social service, provided by the government. If dispute still persists citizens can approach regular courts of law challenging the decisions of the government. In other countries like France, Germany and Sweden, there is the system of administration court to handle disputes concerning public administration and bureaucracy .

In India Supreme Court and the high court can issue a variety of writs challenging the decisions of the government. The public administrator, therefore have to advise on policy formulation and policy implementation keeping in view the probable reaction of the court if and when their policies and/or actions are challenged in a court of law.

An informal way of enforcing administrative accountability is always open to the elected representative of the people. Members of legislature for the purpose of their 'constituency service' often approach public administrator with complaints and request on behalf of their clients.

Another approach to administrative accountability would be to make administrative and policies processes more reflective of citizens desires by making the bureaucracy 'representative' of the significant groups in society. The thesis of representative bureaucracy, first developed by kingsley grew out of a recognition of the inadequacy of the traditional legal-institutional controls for insuring administrative accountability in a modern social services state. The argument runs like this : public administration are not simple neutral tools to carry out policies laid down by the legislature, but they are in fact deeply involved in formulating policies, concerned as much with ultimate results as with efficiency.

Administrative accountability can, therefore be insured only if the bureaucracy could be made representative of all important groups in society through appropriate methods of recruitment

However the pertinent question is which group in the larger society are to be represented? Obviously only those group which are politically significant. But it is easier in a structural society than in a pluralist society to identify the politically significant groups.

While the ultimate accountability is to the people, the police have a proximate accountability the law of the land which is essence is the expression of its will. As the prime law enforcing agency, the activities of the police not only centre around the enforcement of various laws, but their free functioning is also governed by the processes of laws. The action of the police is, therefore confined to the laws of the land while enforcing the same. Every stage of their activity is given governed and judged by provisions of law. In this area of accountability to the law of the land the police activities come under very close scrutiny of the judiciary. In other words, the accountability to the law is ensured by judicial review at several stages.

We would have liked the accountability of the police to the people to be made more direct and visible by vesting the power in the people to ensure accountability directly to the people themselves. But in a representative democracy like ours, we are aware that ensuring such a direct accountability, though desirable, is beset with various difficulties. We are, however, convinced that it is not impossible to introduce a neardirect accountability of the police to the people whom they serve.

In other words, this awareness of accountability to people should not only permeate the system but the officers individually as well as in groups should be sensitized to the idea of the importance of accountability to the people.

The police accountability therefore, is to the law as established by the people in all areas of law enforcement. In the area of investigation they are exclusively governed by the laws, both substantive and procedural. They are not subject to the directions of any authority not recognised by the law. In other areas of law enforcement, the police accountability continues to be to the law as enacted. In the latter areas, however, their functions are subject to such broad policies as may be laiddown under the law by the recognized authorities. Even here the broad policies as may be laid-down under the law by the recognized authorities. Even here the broad policies can be laid down only under the law and not beyond or against it.

Accountability also depends upon the awareness of the people of their rights and their willingness to exercise the same in a responsible manner by activating the mechanism worked out by us. At the same time that awareness should also include clear understanding of the limitations and constraints within which the police has to function. Police on their part should also clearly understand that the ultimate accountability is to the people and to the people alone. Their accountability to law and to their organization are only complementary to the ultimate objective of accountability to the people. If the people are not prepared to assert their rights through the various agencies prescribed by us apart from the Courts, if the State Security Commissions are not established, if the media remains biased and not constructive and inspections continue to be a farce, nothing much can be expected from the mechanism of accountability.

The important institute of police was not academically discussed debated and research by the scholars of social science until early 20th century. If any literature was available, it was only the reminiscences of police officials and other. The first sociological study about Indian police was made by David H. Baley in late half of the 20th century. Before this some analysis in historical perspective about the police system was made by Gourlay in his work in contribution towards the history of police in Bengal (1912), By Gouldsbury in his book "Life in the Indian police" (1916), by Edmund Cox in his work "Police and Crime in India" (1919), and J.C. Curry in his famous study "The India Police" (1932). Two attempts were made by British administration in the form of court's commission (1868) and Frazer commission (1902) Reports.

In post independent India almost all states constituted their respective police commission to study structural and functional set up of the police in this country, but no specific attempt was made to study the socio-culture linkages with police administration. It is only after Baley work "Police and politic in India" (1961), that scholars and administration started to explore this barren academic field of administration. In this context S.C. Mishra's study about "Police administration in India" (1917), However P.D. Sharma made some attempt in this direction in his book "Indian police in a development approach" (1975) and A.S. Gupta "Crime and Police in India" (1974), Mohit Bhattacharya and Vasu Dev Chatterji studied specifically complexities of urban policing.

CHAPTER- V

CONCEPT OF CUSTODIAL VIOLENCE

Whatever views one holds about the penal laws, no one will question its importance to society. This is the Law on which men place their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. By the same token, penal law governs the strongest force that we permit official agencies to bring to bear on individuals. Its promise as an instrument of safety is matched only by its power to destroy⁴⁸.

Criminal Law is absolutely essential in a society for maintaining law and order. Criminal Law has to be strong enough both in its contents as well as in its implementation, without being oppressive. This quality is needed in all branches of law but is too crucial in criminal law since the stakes involved are exceptionally high in terms of social injuries of various kinds⁴⁹. When the rule of law collapses, it is replaced by Matsyanyaya which means the law of jungle. Matsyanyaya means a state of affairs where the big fish devours the smaller one.

The Primary purpose or function of the criminal law is to maintain security and stability. Bentham defines security, as the paramount end of law, in terms of expectation. Without law, there is no security and without security the values of substances abundance and equality can't be pursued through Law.4The Criminal Law however, differs from other branches of law in that a conviction involves censures and it employs stigmatic punishment against those who violates its commands. It attempts to reflect those fundamental social values expressing the way we live and then uses this 'big stick' of punishment as a means of reinforcing those values and securing compliance therewith. In this way, it seeks to protect not only the individual, but also the very structure and fabric of society. Existence and function of society ultimately rest on the efficacy of criminal norm. Function of law is to balance the various interests of society with minimum friction and waste. Society has interest on claim over the general security of its members. It is an interest in the general safety, long recognized legally in the maxim that the safety of the people is the highest law.

⁴⁸ Hari Om Gautam, Victims of Crime and the Law (2001) p.5.

⁴⁹ Ahmad Siddique and Afzal Qadri, Criminology (2007) p.19

Friedman has listed five functions of a State on the basis of its activities. These are, as protector, as provider, as entrepreneur, as economic controller and lastly, as an arbitrator. Out of these, State as protector is the foremost function to be performed. Whereas Joseph Raz has reduced primary function of law to four of which criminal law promotes desirable behavior of human being and prevents undesirable behavior and according to him this function is the most basic and elementary that the law performs⁵⁰.

It was thought that traditional function was the only legitimate function of state which was based on the doctrine of Police State which no more holds the truth. Criminal Law today insists to protect the primary rights of persons against any kind of intentional invasion by others.

4.2 PRIMARY RIGHTS OF A PERSON

Macklin Fleming listed the following as the primary rights of a person.

- i) Every person has a right to life.
- ii) Every person has a right to inviolability of his or her body.
- iii) Every person has a right to freedom of movements.
- iv) Every person has right to security of person.
- v) Every person has a right to security of habitation.
- vi) Every person has a right to security and enjoyment of property

The Central core of criminal law is rights of persons and not rights of social order, or welfare of criminal. The need for government arises from man's need for protection of life, liberty and property. Government acts as a watchdog in discharging its primary obligation of protecting rights of persons whenever it is infringed. This function of government has been recognized by divergent authors like Mill and Stephen, who both agree that origination of effective government, takes priority over liberty in creation of civilized society, because liberty can't exist without the protection of effective government⁵¹.

Another function of criminal law is protection of its member's right known as civil rights or political rights. These are the safeguards made available against their own regime which has the

⁵⁰ Joseph Raz, The Authority of Law (2002) p.169.

⁵¹ K.D.Gaur, Criminal Law Cases and Materials (1985) p.16

responsibility of protecting primary rights of its people. The purpose or object of human rights is to keep the authority within their limitation and not to cross the 'Laxman Rekha' (the boundary line). The devisers are used by the criminal law to prohibit certain human conduct which invades the rights of others, through established enforcing machinery which is vested with well-defined power to adjudicate the guilt and impose punishment in a fair and just manner. The purpose of criminal law is to express a found social condemnation of forbidden conduct, buttressed by sanctions calculated to prevent it⁵².

The Indian history is warranted by the fact that human rights jurisprudence has always occupied a place of prime importance in India's rich legacy of historical tradition and culture. The truth is that what the West has discovered about human rights now, India had embedded the same in its deep-rooted traditions since time immemorial.

In tandem with the Latin phrase "nulla poena sine lege", a person can be punished for an offence only in accordance with the law. Having understood the term 'Police' and the expression 'Human Rights', it is necessary to define the concept of 'Human Rights Violations in Police Custody'. This concept is known in many ways like police brutality, police torture, police excesses, custodial violence and lock-up crimes. The general meaning attributed to this concept is that people in custody are not being treated with the complete dignity and rights, which the citizens in a model democratic state deserve. The practice of causing degradation to the status of an individual, any physical or mental harassment to him, or any deprivation of his personal liberty or fundamental rights of freedom in police custody can be treated as human rights violations in police custody. But ironically this is considered necessary for law enforcement by police and other investigative agencies of the state and central government⁵³.

4.3 MEANING AND DEFINITION OF POLICE, CUSTODY, CUSTODIAL VIOLENCE.

Violence is a mechanism used to assert ones will over another in order to prove or feel a sense of power or superiority. It is generally perpetuated by those in power against the powerless. Violence therefore operates as a means to reinforce subordination. When a person is in duress either because he is held by the investigating agency or other police or allied authority or is

⁵² Wechsler, *The Criteria of Criminal Responsibility* (1955) p.374.

⁵³ S.P.Srivastava, *Human Rights and the Administration of Criminal Justice in India* (1993) p.73; V.V Devasia and Leelamma Devasia, *Human Rights and Victimology* (1998) pp. 6-7.

under the control of the court having been remanded by Judicial Orders, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. This word is of elastic semantics but its core meaning is that the law has taken control of the person.

Pre-conviction custody is known as under trial custody which is chiefly of two types- police and judicial. In police custody, the suspect is detained in the police lock-up by the investigating agency during the period of investigation which can't be more than 24 hrs. Any detention beyond this period has to be with the permission of the magistrate and in total it can't exceed 15 days. In judicial custody there is incarceration of the suspect which is authorized by a magistrate pending investigation or trial in a jail which is distinct from a police lock-up. The investigating agency can have access to such convict in the judicial custody only with the special orders of the court only. There is no statutory upper limit to under trial judicial custody save a provision which is commonly known as 'default bail'. The charge sheet has to be filed by the police and some other agencies who have the power of arrest and investigation like Narcotics Control Bureau, the Directorate of Enforcement and the Central Board of Excise and Customs (unless specifically some provision of CrPC has been ruled out) within 90 days in case the offence is punishable with death, imprisonment for life or imprisonment for a term of ten years or more and within 60 days in other cases. If the charge sheet is not submitted within such stipulated period then the detainee get a right to be released as a matter of right. But if the charge sheet is submitted within time then the under trial custody can continue for months and years, despite several judgments calling for speedy trial. Section 436A of CrPC provides for releasing the under trial on bail if he has been in the custody for more than half of the maximum period prescribed as punishment for which his trial is going on. But in postconviction custody, the whole term of sentence of imprisonment is to be served in the jail.

There are other kinds of custody as well such as protective custody, deportation camps for foreigners whose presence has been declared to be illegal and military custody. The juveniles are housed by a special order in protection homes. For destitute women also, protection homes have been established. Under the Mental Health Act, persons may be committed to mental hospitals. Military custody is subject to the law of armed forces where only military personnel can be taken into custody and not the civilians by them. The paramilitary forces, when they exercise powers of arrest are required by law to hand over the arrested persons to the police.

The Border Security Force also had some powers of the police like that of arrest along with the borders but after making arrest were supposed to hand over the detained to the local police. In November 2010, the Central Government assigned to the Central Paramilitary Forces, the power of arrest, search and seizure under the Arms Act and proposed to grant the BSF, full powers of police in areas affected by Naxalism and insurgency. The constitution of India permits the Central Government to deploy within a State's territory armed forces or other force 'in aid of civil power'. The protection against abuse however extends to all custodial situations flowing as it does from the constitutional right to life and due process. Apart from the problem of custody, there is a perennial problem of illegal detention in lockups and in undisclosed locations or safe-houses.

4.3.1 DICTIONARY MEANING

Torture or violence in simple words or in a layman's language means 'cruelty', 'atrocities', and 'hurt' deliberately causing great pain- physical and mental in order to punish or to get information or to forcibly make one to confess to something. According to the dictionary meaning violence means behavior which harms or damages physically and where a great force or energy is used. Torture means the action of causing great pain either as a punishment or to make him/her say or do something. When the violence or the torture goes beyond the tolerable limits of the victim, it leads to death.¹⁴ However, torture has not been defined in the Constitution of India or in other penal laws. The torture of a human being by another human being is essentially an instrument to impose the will of the strong over the weak by suffering. It is a shadow on civilization⁵⁴. It is one of the worst crimes in the civilized society, governed by rule of law and poses a serious threat to an orderly society. The word 'torture' today has become synonymous with the darker side of human civilization.

The term custody is neither defined in the procedural laws nor in the substantive laws. But it means protective care⁵⁵. According to the dictionary meaning custody is the legal right or duty to take care of somebody. It is the state of being guarded or kept in prison temporarily, especially by the police. Police custody does not necessarily mean formal arrest. It may also include some

⁵⁴ Punjab Police Academy, Phillaur, Custodial Crimes: Some Observations (1997) p.10

⁵⁵ R.E. Allen, Concise Oxford Dictionary of Current English (1990) p.286. Custody according to shorter Oxford Dictionary, means safe keeping, protection, charge, care, guardian ship; M.C.Desai, Venkata Ramaiya's Law Lexicon with Legal Maxims (1996) p.574.

kind of surveillance and restriction on the movement of the person concerned by the police. Custody means a state of affair in which the accused can be said to have come into the hands of the police or have been under some form of police surveillance or restriction. Custody means more than possession, it means care. When a judge grants custody over an offender to the correctional authority, he is at once declaring that the correctional authority has power over the offender and that this must be used to promote the health of the offender. The word custody implies guardianship and protective care. Even when applied to indicate arrest or incarceration, it does not carry any sinister symptoms of violence during custody. No civilized law postulates custodial cruelty- an inhuman trait that springs out of a perverse desire to cause suffering when there is no possibility of any retaliation, a senseless exhibition of superiority and physical power over the one who is overpowered or a collective wrath of hypocritical thinking.

Custodial violence means any kind of violence occurring in the custody whether legal or not, which is not warranted by the law of the land. Violence may be subtle or extreme like abusing, emotional or physical violence, thrashing and beating, rape or even death. The nature of custody may be judicial, police or under any institution obliged to take care of the inmates like hospitals, homes etc. or may be in the hands of terrorist organizations or armed groups or insurgents etc. Custodial violence means torture in police or other kind of custody.

4.3.2 DEFINITION UNDER CUSTODIAL CRIMES (PREVENTION, PROTECTION AND COMPENSATION) BILL, 2006

According to Custodial Crimes (Prevention, Protection and Compensation) Bill, 2006, custodial crime means “an offence caused against any arrested person or a person in custody when that person was in the custody of a police officer or a public servant who has power under any law to arrest and detain a person in custody during that period.

4.3.3 THE PREVENTION OF TORTURE BILL, 2010

The bill was introduced in the Lok Sabha as a measure to ratify the UN Convention against Torture (CAT), 1975. The Bill seeks to classify custodial torture as a punishable offence and defines torture as ‘grievous hurt’ or danger to life, limb and health. It provides that complaints of torture must be made within six months of the occurrence and that courts may take cognizance of such complaints only with the prior permission or sanction of the executive government. There

are certain drawbacks in the bill like the definition is not in accordance or in consonance with the definition given under CAT and is limited to custodial violence done in order to extract a confession; it doesn't include mental pain or suffering and many other acts which may constitute as torture otherwise; it also doesn't provide for minimum punishment to the guilty and doesn't talk about compensation to the victim and there is no independent agency to deal with and to investigate such complaints of torture.

4.3.4 INTERPRETATION GIVEN BY SUPREME COURT OF INDIA

The Supreme Court of India in its landmark judgments⁵⁶ interpreted custodial crimes as a crime occurring during the period when some limitation is placed upon the liberty of the person either directly or indirectly, by the police. It precisely extends the meaning of custodial commission of crimes that it is immaterial whether or not the injury, torture or assault occurs within premises of police station or police post. What really matters is the control of police over the victims. Torture is a wound in the soul so painful that sometimes you can almost touch it, but, it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including you. The detailed interpretations given by the courts regarding the subject are dealt under chapter seven dealing with judicial approach towards the problem of custodial violence.

4.3.5 SPECIAL RAPPORTEUR ON TORTURE

According to United Nations Special Rapporteur on Torture (2008), custodial violence against women very often includes rape and other forms of sexual violence such as threats of rape, touching private parts of a woman, being stripped naked, invasive body searches, insults and humiliations of a sexual nature etc.

People are being brutalized physically and wretched mentally by various organs of the State and Society to achieve one purpose or the other. Violence in three forms- physical, mental and emotional is the most popular instrument to bend and break the person in custody. There are certain types of treatments which most people will instinctively recognize as being unacceptable.

⁵⁶ SAHELI-A Women Resource Centre v. Police Commissioner of Delhi, AIR 1990 SC 513.

But there are others, however, which may depend on cultural factors. Under international mechanism, there is a need to show that the facts constitute custodial violence or ill treatment in legal sense and not merely in opinion.

Apart from custodial deaths and rapes there are other types of violence also committed in custody against human beings which is nowhere defined and various agencies have no fair and accurate data collection on it.

Custodial offences proceed with the arrest and detention of a person in custody. Custody in its strict sense means care, safety and guardianship. The term police custody denotes surveillance or restriction on the movement of the person arrested or detained fully or partially. The arrest may be legal or illegal, formal or informal by words or actions. Every arrest amounts to custody but not vice-versa. A detainee's movement, action and even thinking come under the exclusive control of the custodian under whom he or she is. Hence, the personality of an arrested person becomes subordinate to the person under whose custody he or she is placed. The situation of mastery and domination over body and mind generate various types of abuses in custody.

4.4 TYPES OF CUSTODIAL VIOLENCE

There are different methods to bring or commit custodial violence which are applied to bring the desired results by the government agencies.

4.4.1 PSYCHOLOGICAL VIOLENCE

To break the confidence and morale of the victim following methods are used

- a) By Communication techniques in which the victim is given wrong information and is tortured mentally.
- b) By compulsion or coercion where the victim is compelled or coerced to perform activities or to witness actions that torture him mentally.
 - a. The victim is compelled to choose between two alternatives that are equally bad and cause mental torture. Forcing the victim to violate social taboos or forcing to witness torture of other victims etc.
- c) By depriving the victim the basic needs like water, food, sleep and toilet facilities which results into disorientation and confusion. The sensory deprivation of light and sound,

social deprivation by not allowing the visitors to meet, depriving the following of religious rituals and confining to solitary confinement etc. disorients a victim with reference to time and place.

- d) Pharmacological techniques like use of various drugs to facilitate torture of the victim to mask the effect of torture and also as a means of torture.
- e) Threats and humiliations which are directed towards persons in custody or their family members or friends.

4.4.2 PHYSICAL VIOLENCE

The methods of physical torture are those which inflict pain, discomfort and dysfunction in different parts of the body. Killing the victim is not the aim of torture. The inflictor of torture also takes care that the victim remains undetected by an ordinary examination. But the torturers cannot be trained to do torture in such a way that their detection becomes impossible. Despite precautions, physical torture always leaves a trail that eventually leads to its discovery. The medical science has progressed so much that even after several years of the incident of torture still the internal injuries can be detected. Following are the methods generally adopted to cause physical violence or torture on the victims:

- a) Causing disfiguration and exhaustion.
- b) Causing torture to such an extent that the victim feels fear of immediate death.
- c) Forcing the victims to sleep on damp floor.
- d) Making the children stay naked in extreme cold weather or under the sun in temperature for more than 30 degrees.
- e) Scratches and cuts are made on different parts of the body with sharp objects.
- f) Severe beatings with sharp objects or forcing the victim to walk bare feet over thorny surface or over glass covered floor.
- g) The ligaments in the joints are torn off causing severe pain by twisting and beatings.
- h) The victim is suspended by his legs or arms or by his or her hair. It is usually combined with other forms like falanga, electric shock, heat, cold etc.
- i) Twisting and pricking with pins, fingers, ears and hair, pulling out the nails, hitting ears with both hands simultaneously to impair their hearing.

- j) Use of irritants like chili powder, table salts etc. are applied on delicate parts or on open wounds.

4.4.3 SEXUAL VIOLENCE

Sexual violence has great social and psychological impact in the minds of its victims. It may start with verbal sexual abuse and humiliation targeting victims' dignity. It results into rape or sodomy. The violators or the perpetrators of this crime keep devising new means and methods according to their own mental aptitude and imagination to break the resistance of the subject quickly as well as to satiate his/her own urges.

Law and order means that the police are empowered to maintain order in the society but it must derive its power from the statutes under which it has been formed. It should not take law into its own hands. It gets its power from the law and in turn has to exercise the same lawfully only and not unlawfully. Police has to balance between the rights of the accused, victim and the witnesses. Police has to subscribe to the 'rule of law' which is paramount to any democracy of the world.

In democracy, charter of police is expanded and included to regulate activities of people under social legislation. While democracy speaks of freedoms, police curtails them which result into the conflicts between the people and the police. Like a clergyman a policeman is expected to be better than his fellow citizens. He is the law in action and the gatekeeper of the criminal justice system. He enjoys discretionary powers in the field whether to set the law in motion or not. He should possess and display the best of human values.

The general public need police to act and never expects them to say 'no' and wash off their expectations. Police has to act sympathetically, compassionately, in a civil manner with humane approach. Police stations should be a symbol of 'instant relief' to the grievances of the public as they have been appointed to act as uniformed social workers to the needy people. This can be achieved only when the attitude of respect for the dignity of people, understanding of the human rights, strict adherence to rules and regulations etc. is there.

It can be said that custodial violence, rape and death is that timid form of behavior which changes the whole concept of life of the victim and which has been prevalent in India since the ancient and medieval times. It was quiet popular during the British Raj. The physical violence

paralyses the bodily simulation of the person and the psychological violence break down the victim's personality.

There is a great need to make a conscious endeavor towards bringing about the much needed attitudinal change amongst all sections of the society especially the officials of the government. There is a pressing need to create an overall environment in which the officials can perform their duties with a sense of pride and fulfillment without facing any difficulty on account of hurdles – legal, administrative, financial etc. proper training and orientation needs to be imparted so that the aberrations in the forces is lessened.

4.5 ARMED FORCES AND CUSTODIAL VIOLENCE

Many security legislations also restrict judicial scrutiny. India is one of the few countries whose constitution allows for peacetime preventive detention without the safeguards that are generally considered basic. The ICCPR permits derogation from certain personal liberties during a state of emergency. The government of India has not, however, invoked this privilege, nor could it, as the current internal situation does not meet the standards set forth in article 4 of the convention to justify such a deviation. India's unjustified deviation is well demonstrated by the continued application of the 'extraordinary' Armed Forces (Special Powers) Act, 1958 in some parts of Indian Territory.

The AFSPA contains a blanket protection from prosecution without executive sanction to the paramilitary and military personnel in many parts of India. Besides abridging due process by their express provisions, there is more insidious way in which special laws affect custodial accountability. This is by a discursive management of security by projecting the spectre of a nation in peril. The discourse operates to brutalise the police and also to numb institutional checks on custodial power. Institutional agencies are desensitized as they all become crusaders in the 'national interest'. The medical officers also who are meant to report on the condition of detainees deliberately hide obvious signs of custodial violence.

It is primarily there to defend the territorial integrity and sovereignty of the nation from external aggression. Army is called upon to maintain peace and harmony and to ensure smooth implementation of the principles of democracy and human rights in the larger interests of the people of India. There has been a constant controversy and debate on whether the Armed Forces

Special Powers Act (AFSPA), 1958 be retained or abolished as it gives the army special powers and liberties, such as: arrest and search warrants are not required for any operation, army officers can fire upon and use lethal force on an unlawful assembly of five or more people and for the illegal possession of firearms, if they feel the need, no criminal prosecution is possible against army personnel who have taken action under this Act, unless sanctioned by the central government. Prosecution of armed forces deployed in conflict situations and the police requires the government's prior permission under section 197 of the CrPC, 1973 and section 6 of the AFSPA, 1958 as well as under some other laws. Such immunity provisions which protect state actors at the expense of victims would have to go if the Torture Convention were to be ratified.

AFSPA is known to be draconian precisely because of the power they invest the army with in areas of armed conflict. First, the impunity enjoyed by army personnel protects them from the crimes they commit on civilians and the injurious consequences of the crimes. Secondly, the impunity given to the army implies that women in these areas are being denied of any legal redress that might have been available to them under the Indian legal system, however uphill it might be to access those legal remedies and legal protection. Sometimes, proving a case of sexual assault itself becomes the toughest struggle waged by a community. The methods of torture used by the army in interrogation procedures during detention involve brutal sexual violence on men as well as women. It would be hard to estimate how many women have been raped and killed in the name of implementation of this law in Kashmir and northern states.

Violence is widely used with impunity in the north-eastern states. The state of Manipur in particular, is completely militarized. The paramilitary and the army detachments stationed in the state is notorious for the use of torture and violence as the tool for investigation and collection of information and evidences. In particular cases from Manipur involves the Assam rifles' brutalities.

These 'exceptions', whether constitutional, legislative or administrative, reveal a contradiction inherent in the law's attitude to torture. The complete ban on torture is, thus illusory. The truth about torture is that it is not an exception to the rule; it is sustained and tolerated within the rule itself.

4.6 NHRC AND PROTECTION AGAINST CUSTODIAL VIOLENCE

The National Human Rights Commission is an expression of India's concern for the protection and promotion of human rights. It came into being on 12 October, 1993. The NHRC of India is an autonomous public body constituted under the Protection of Human Rights Ordinance of 28 September 1993. It was given a statutory basis by the Protection of Human Rights Act, 1993. The NHRC is the national human rights institution, responsible for the protection and promotion of human rights, defined by the Act as 'rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants'. 'Human Rights' means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International covenants and enforceable by courts in India. All human beings are born free and equal in dignity and rights known as Human rights, as commonly understood, are the rights that every human being is entitled to enjoy freely irrespective of his religion, race, caste, sex and nationality, etc. Human right means different things to different people. Human Rights are not static. New rights are recognized and enforced from time to time. Only persons fully conversant with the latest development about the expanding horizons of Human Rights can promote their awareness better than others.

NHRC performs functions like proactively or reactively inquiring into violations of human rights or negligence in the prevention of such violation by a public servant; by leave of the court, to intervene in court proceeding relating to human rights to visit any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates and make recommendations; review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation; review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures; to study treaties and other international instruments on human rights and make recommendations for their effective implementation; undertake and promote research in the field of human rights; engage in human rights education among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means; encourage the efforts of NGOs and institutions working in the field of human

rights; such other function as it may consider it necessary for the protection of human rights. Under the NHRC, the data collection system on human rights has been streamlined and now it is mandatory for all district magistrates and deputy superintendent of police to report directly to the NHRC about the custodial deaths whether natural or unnatural. NHRC is playing a positive role in bringing to light the cases of custodial crimes, punishing the offenders and for giving compensation to the victims and their families.

Death due to torture in custody is murder which should be punishable as such offence under the Indian Penal Code. Corruption, irresponsibility, groups and snobbery are the building blocks of custodial crimes. Wrongful detention without formal arrest, negligence with regard to medication and food for the suspects while in custody are the main motives of mental torture to persons in custody. The right not to be tortured is non-negotiable. It is important to guard people from excesses by the State. If upgrading technique is needed to ensure law and order, it cannot find its solution in degrading human beings. Investigating authorities, too have to learn to respect the dignity and inviolability of human life of others⁵⁷. Nevertheless there is a very little evidence of any administrative will to stop such practices⁵⁸. Persons who are not formally accused of any offence are also not without any legal remedy against lawful torture or coercion which may be applied to them by any private person or the officers of the State either during investigation or otherwise.

The two legislative devices relating to the domestic enforcement of international humanitarian and human rights law suffer from serious and debilitating flaws. The Geneva Convention Act, 1960 has a distinct bias towards state-centric, rather than victim-centric, redress. The NHRC, set up under the Protection of Human Rights Act, 1993 has a mere recommendatory role and no mandate to investigate violations by the armed forces. It has earned disapprobation for its uncritical and positive report to the Universal Periodic Review Committee of the UN Human Rights Council on the state of human rights in india. Another concern is NHRC's proneness to do little morethan award interim monetary relief despite having the power to investigate and

⁵⁷ Usha Ramanathan, Inhuman Torture. Indian Express, October 30 (1993) p.8.

⁵⁸ **Sujatha V. Manohar, Judiciary and Human Rights 36 IJLI (1996) p.43.**

recommend prosecution of human rights violators and its tendency to dismiss even clear cases of violence and torture⁵⁹.

A comparison between a criminal and a policeman committing brutality will end where the latter violates the law of the land and tramples upon the human rights of a citizen. The futility of using third degree method is evident from the fact that over the years there has been a steep rise in the criminal activities. It must be understood and remembered that where an innocent person is subjected to custodial violence by the law enforcing agencies or by any other unlawful or illegal group (which is not caught by the concerned officials), he loses faith in the administration of justice. A citizen acquires disdain for law. It is a myth to suppose that crime can be solved if the police subject the suspects to force. Interrogation on scientific lines can be more effective than subjecting a person to physical or mental violence. By torturing, the officials would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it.

4.7 ARMED OPPOSITION GROUPS AND CUSTODIAL VIOLENCE

Under Article 1(1) of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment the involvement of ‘a public official or other person acting in the official capacity’ is a central facet of the definition of torture.

The Committee against Torture in its general comment no. 2 (2007) of 24 January 2008 stated: “the committee has made clear that where state authorities or others acting in official capacity or under color of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by Non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such nonstate officials or private actors consistently with the convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables

⁵⁹ Nitya Ramakrishnan, In Custody- Law, Impunity and Prisoner Abuse in South Asia Sage Publications Ltd. 2013, p.14

non-state actors to commit acts impermissible under the convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission.

In other words, the State is obliged to protect citizens from the abuses of Armed Opposition Groups.

In this context, the State is failing and the failure to hold perpetrators of abuses accountable for their actions whether committed by State, naxalites, terrorists or other armed opposition groups continues to be one of the main human rights issues to be addressed in any meaningful manner.

As with the state, others, including the armed opposition groups, who have been responsible for acts of violence, abuses and deaths, including the police, members of armed opposition groups, have generally enjoyed impunity for their actions. The NHRC has.

The NHRC has no mandate to investigate or record violations by military and para military forces. Most credible human rights groups, however, observe the following trends in India: torture is routine against armed opposition groups; torture is integral to counter- insurgency operations conducted by the military; and torture is used routinely in police and other governmental agencies' detentions. While prison officials apply torture less systematically, their complicity in prisoner gang violence and the ill treatment implicit in appalling prison conditions are serious violations⁶⁰.

4.7.1 ARMED OPPOSITION GROUPS' OBLIGATIONS

The humanitarian law which applies during internal armed conflict gives rise to certain obligations for armed opposition groups. The minimum protection offered by common Article 3 to the four Geneva Conventions of 1949 contains obligations for 'each party to the conflict'.

Common Article 3 to the Geneva conventions expressly forbids violations against:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other

⁶⁰ Nitya Ramakrishnan, *In Custody: Law, Impunity and Prisoner Abuse in South Asia*, Sage Publications Ltd., 2013, p.5.

cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

It expressly forbids the use of illegal detention, torture and ill treatment like

- a. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.
- b. Taking of hostages.
- c. Outrages upon personal dignity, in particular humiliating and degrading treatment

These obligations do not depend upon government acceptance of an internal conflict. The armed opposition groups in India have been responsible for torture and violations of other humanitarian laws. Massacres by armed opposition groups often draw national attention. Many of the abuses are committed in relation to parallel structures- the people's courts and law enforcement activities. These include abuse to the right to life, killing and deaths of abducted individuals, liberty and security (abductions), and physical integrity (ill treatment and torture).

CHAPTER- VI

JUDICIAL APPROACH TOWARDS THE PROBLEM OF CUSTODIAL VIOLENCE

The earlier stand of Indian judiciary on the application of the general norms of international law and India's treaty obligations was that unless specifically incorporated by local statute, treaties do not create rights in municipal or domestic law. The Supreme Court of India has however, substantially altered the law in this regard. It is a settled principle now that if the norms of international law are not contrary to Indian law then are legally enforceable. And the treaty obligations which are rights-enhancing are taken as part of the life, liberty and due process provision of the Constitution. The Supreme Court of India has time and again read the provisions of the UDHR and ICCPR into the fundamental rights chapter of the Indian Constitution⁶¹. Atrocities and torture by governmental agencies especially police in India has always been a subject matter of curiosity, controversy and debate. In view of the provisions of Article 21 of the Constitution, any form of torture or cruel, inhuman or degrading treatment is prohibited.

Supreme Court of India in awarding compensation has relied on Article 9(5) of ICCPR even though India had entered a specific reservation to the same claiming that the Indian legal system did not recognize a right to compensation for victims of unlawful arrest or detention. The courts have leaned in favour of international conventions in interpreting the scope of life, liberty and due process clause of the Indian Constitution under Article 21 in a long line of its judicial precedents.

The National Committee to Review the Working of the Constitution (2002) set up by the Law Ministry specifically recommended for 'prohibition of torture and cruel, inhuman or degrading treatment or punishment' as one of the additions to the fundamental rights chapter as Article

⁶¹ **DM v. Shivakant Shukla**, (1976)2 SCC 521; **Francis Coralie Mullin v. Administrator**, UT of Delhi, (1981)1 SCC 608; **Charan Lal Sahu v. Union of India**, (1990)1 SCC 613; **Jolly George Varghese v. Bank of Cochin**, (1980)2 SCC 360; **Sheela Barse v. Secretary**, Children's Aid Society, (1987)3 SCC 50; **Kubic Darusz v. Union of India**, (1990)1 SCC 568; **Nilabati Behra v. State of Orissa**, (1993)2 SCC 746; **Vishaka v. State of Rajasthan**, (1997)6 SCC 241; **People's Union for Civil Liberties v. Union of India**, (1997)3 SCC 433; **Chairman, Railway Board v. Chandrima Das**, (2000)2 SCC 465; **Bachan Singh v. State**, (1982)3 SCC 24; **Sunil Batra v. Delhi Administration**, (1980)3 SCC 488.

21(2) on the basis of the dicta laid down in various Supreme Court judgments in recognition of torture in our constitutional jurisprudence.

Torture is not permissible whether it occurs during investigation, interrogation or otherwise. The wrong-doer is accountable and the State is responsible if a person in custody of the police or others is deprived of his life except in accordance with the procedure established by law. However, when the matter comes to the court, it has to balance the protection of fundamental rights of an individual and duties of the police. It cannot be gainsaid that freedom of an individual must yield to the security of the State. Latin maxim *salus populi est suprema lex* the safety of the people is supreme law; and *salus reipublicae suprema lex* safety of the State is supreme law, co-exist. However, the doctrine of the welfare of an individual must yield to that of the community. The right to life has rightly been characterised as supreme and basic which includes both so-called negative and positive obligations for the State. The negative obligation means the overall prohibition on arbitrary deprivation of life. In this context, positive obligation requires that State has an overriding obligation to protect the right to life of every person within its territorial jurisdiction.

The obligation requires the State to take administrative and all other measures in order to protect life and investigate all suspicious deaths. The State must protect victims of torture, ill-treatment as well as the human rights defenders fighting for the interests of the victims, giving the issue serious consideration for the reason that victims of torture suffer enormous consequences especially psychologically. The problems of acute stress as well as a post-traumatic stress disorder and many other psychological consequences needs to be understood in correct perspective. Therefore, the State must ensure prohibition of torture, cruel, inhuman and degrading treatment to any person, particularly at the hands of any State agency or police force.

In addition to the protection provided under the Constitution, the Protection of Human Rights Act, 1993, also provide for protection of all rights to every individual. It prohibits illegal detention.

Torture and custodial deaths have always been condemned by the courts in this country. In its 113th report, the Law Commission of India recommended the amendment to the Indian Evidence Act, 1872 to provide that in case of custodial injuries, if there is evidence, the court may presume

that injury was caused by the police having the custody of that person during that period. Onus to prove contrary is on the police authorities. Law requires for adoption of a realistic approach rather than narrow technical approach in cases of custodial crimes.

There is another aspect to the protection of rights of an accused i.e. chemical-induced truth testing of a suspect is deeply problematic and has been touted as a measure that will reduce the temptation for investigators to resort to torture. Aside from the fact that the efficacy of these methods is open to serious doubt, the very thought of attributing a pre-determined truth value to a confession of guilt even before the trial begins, a truth value that will operate as a presumption for the court to follow, can only be viewed as incompatible with due process. There is no thought and discussion of subjecting the witnesses especially the prosecution witnesses and the police witnesses to any such chemical induced truth testing tests. There is a strong temptation to pressurize a suspect to agree to undergo such a test. Therefore, the suggestion that such a test, whatever be its scientific basis would be an anti-dote to torture can never be taken seriously. That apart, such a practice frontally offends the rule against self-incrimination. It is little better than police assertions of 'voluntary confessions'. A disturbing pattern is noticed as to the disjuncture between normative human rights principles laid down in public law and the actual course of criminal prosecutions of officials accused of custodial crimes. The Supreme Court of India has conclusively held that Narco analysis, Polygraph test and Brain Electrical Activation Profile violate the right against self-incrimination⁶².

5.2 VIOLENCE IN POLICE CUSTODY

Article 21 which is one of the luminary provisions in the Constitution of India, 1950 and is a part of the scheme for fundamental rights occupies a place of pride in the Constitution. The article mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. This sacred and cherished right i.e. personal liberty has an important role to play in the life of every citizen. Life or personal liberty includes a right to live with human dignity. There is an inbuilt guarantee against torture or assault by the State or its functionaries. Chapter V of the Code of Criminal Procedure, 1973 deals with the powers of arrest of persons and the safeguards required to be followed by the police to protect the interest of the

⁶² Selvi and others v. State of Karnataka, (2010)7 SCC 263.

arrested person. Articles 20(3) and 22 of the Constitution further manifest the constitutional protection extended to every citizen and the guarantees held out for making life meaningful and not a mere animal existence. It is, therefore, difficult to comprehend how torture and custodial violence can be permitted to defy the rights flowing from the Constitution. The dehumanizing torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of the rule of law and administration of the criminal justice system. The community rightly gets disturbed. The cry for justice becomes louder and warrants immediate remedial measures. This Court has in a large number of cases expressed concern at the atrocities perpetuated by the protectors of law.

Justice Brandeis' observations which have become classic are in the following immortal words: Government as the omnipotent and omnipresent teacher teaches the whole people by its example. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself⁶³.

The diabolic recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because the guardians of law destroy the human rights by custodial violence and torture, invariably resulting in death. The vulnerability of human rights assumes a traumatic torture when functionaries of the State whose paramount duty is to protect the citizens and not to commit gruesome offences against them, in reality perpetrate them⁶⁴.

But at the same time there seems to be a disturbing trend of increase in cases where false accusations of custodial torture are made, trying to take advantage of the serious concern shown and the stern attitude reflected by the courts while dealing with custodial violence. It needs to be carefully examined whether the allegations of custodial violence are genuine or are sham

⁶³ **Olmstead v. United States**, 277 US 438 : 72 L ED 944 (1928), US at p.485, **quoted in Mapp v. Ohio**, 367 US 643 : 6 L Ed 2d 1081 (1961), US at p.659.

⁶⁴ The concern which was shown in **Raghubir Singh v. State of Haryana**, 1980 (3) SCC 70 case more than two decades back seems to have fallen on deaf ears and the situation does not seem to be showing any noticeable change. The anguish expressed in **Gauri Shanker Sharma v. State of U.P.**, 1990 Supp. SCC 656, **Bhagwan Singh v. State of Punjab**, 1992 (3) SCC 249, **Nilabati Behera v. State of Orissa**, 1993 (2) SCC 746, **Pratul Kumar Sinha v. State of Bihar**, 1994 Supp. (3) SCC 100, **Kewal Pati v. State of U.P.**, 1995 (3) SCC 600, **Inder Singh v. State of Punjab**, 1995 (3) SCC 702, **State of M.P. v. Shyamsunder Trivedi**, 1995 (4) SCC 262 and by now a celebrated decision in **D.K. Basu v. State of W.B.**, 1997 (1) SCC 416 seems to have caused not even any softening attitude to the inhuman approach in dealing with persons in custody

attempts to gain undeserved benefit masquerading as victims of custodial violence. Below, some of the cases and the principles laid down by them have been discussed.

In **Raghubir Singh v. State of Haryana**,⁶⁵ while dealing with torture in police custody, the court observed:

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 the law gore human rights to death. The vulnerability of human rights assumes a traumatic, torturous poignancy when the violent violation is perpetrated by the police arm of the State whose function is to protect the citizen and not to commit gruesome offences against them as has happened in this case. Police lock-ups, if reports in newspapers have a streak of credence, are becoming more and more gruesome cells. This development is disastrous to our human rights awareness and humanist constitutional order.

In another case of *Gauri Shanker Sharma etc. v. State of U.P.* 6 , the Court held it is generally difficult in cases of deaths in police custody to secure evidence against the policemen responsible for resorting to third degree methods since they are in charge of police station records which they do not find difficult to manipulate as in this case. The offence is of a serious nature aggravated by the fact that it was committed by a person who is supposed to protect the citizens and not misuse his uniform and authority to brutally assault them while in his custody. Death in police custody must be seriously viewed for otherwise we will help take a stride in the direction of police raj. It must be curbed with a heavy hand. The punishment should be such as would deter others from indulging in such behaviour. There can be no room for leniency.

In **Munshi Singh Gautam and other v. State of M.P.**,⁶⁶ the honorable court held that peculiar type of cases must be looked at from a prism different from that used for ordinary criminal cases for the reason that in a case where the person is alleged to have died in police custody, it is difficult to get any kind of evidence. The Court observed:

⁶⁵ AIR 1980 SC 1087.

⁶⁶ AIR 2005 SC 402.

'Rarely in cases of police torture or custodial death, is direct ocular evidence available of the complicity of the police personnel, who alone can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact situation and the peculiar circumstances of a given case, often results in miscarriage of justice and makes the justice-delivery system suspect and vulnerable. In the ultimate analysis society suffers and a criminal gets encouraged. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crime in a civilized society governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/under trial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in "khaki" to consider themselves to be above the law and sometimes even to become a law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crop, the foundations of the criminal justice-delivery system would be shaken and civilisation itself would risk the consequence of heading towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of the judiciary itself, which if it happens, will be a sad day, for anyone to reckon with.

In **State of U.P. v. Mohd. Naim**,⁶⁷ State of U.P. filed an appeal for expunging the following remarks made by the Allahabad High Court:

That there is not a single lawless group in the whole of the country whose record of crime comes anywhere near the record of that organised unit which is known as the Indian Police Force.

Where every fish barring perhaps a few stinks, it is idle to pick out one or two and say that it stinks.

⁶⁷ AIR 1964 SC 703; Rubabbuddin Sheikh v. State of Gujarat & Ors., (2010)2 SCC 200; Jaywant P.Sankpal v. Suman Gholap & Ors., (2010)11 SCC 208; Narmada Bai v. State of Gujarat & Ors., (2011)5 SCC 79.

These remarks even though later were removed by the court but still shows the gravity of situation which needs to be fought at every level by all of us.

In yet another case of Nilabati Behera alias Lalit v. State of Orissa and ors, recognizing the 'public law' nature of the right to reparation, the court held.

When the court molds the relief of compensation in proceedings under Article 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. The payment of compensation in such cases is not to be understood as a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/ and prosecute the offender under the penal law.

Through a letter dated 14.9.1988 by a mother, Supreme Court of India learnt about the death of her son in custody which was treated as a writ petition under Article 32 of the Constitution. He died as a result of the multiple injuries inflicted to him while he was in police custody and thereafter his dead body was thrown on the railway track. It was prayed in the petition that award of compensation be made to her, for contravention of the fundamental right to life guaranteed under Article 21 of the Constitution. The defence of the respondents was that petitioner's son managed to escape from the police custody at about 3 a.m. on 2.12.1987 from the Police Outpost, where he was detained and that thereafter he could not be apprehended in spite of a search and that his dead body was found on the railway track on 2.12.1987 with multiple injuries, which indicated that he was run over by a train. After hearing the parties and appreciating the evidence it was found that the hands of the deceased were tied by a rope by the police while beating him and later his body was thrown on the railway track to show that the death was caused due to an accident i.e. by collision with the train while escaping from the

police custody. It was a case of custodial death, and the deceased died as a result of the injuries inflicted to him voluntarily while he was in police custody at the Police Outpost.

Court held that award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. The deceased was aged about 22 years and had a monthly income between Rs.1200 to Rs.1500. A total amount of Rs.1,50,000 was held to be appropriate as compensation, to be awarded to the petitioner. The State of Orissa was directed to pay the sum of Rs.1,50,000 to the petitioner as compensation and a further sum of Rs.10,000 as costs to be paid to the Supreme Court Legal Aid Committee.

In *Sebastian M.Hongroy v. Union of India*⁶⁸, a poor man lost his son allegedly killed due to torture by the police officials of Keeraithurai police station, Madurai District who knocked at the doors of the Court for a Mandamus, directing the State and others to pay compensation of Rs.5 lakhs and also prayed for a direction to initiate both disciplinary and criminal prosecution against those responsible for the untimely death of his son. The petitioner's son, aged about 26 years was running a meat shop at Anuppandi, for his livelihood. He was living with his wife, who was 7 month's pregnant, at the time of his death, daughter and two sons, aged 5 and 3 years respectively.

On 04.12.2004 while he was returning from the meat shop around 7 p.m. after he drank liquor near TASMAC wine shop No.5276, the Police Constables, Mr.Marimuthu and Mr.Karuppiah of Keeraithurai Police Station, came there in a motor cycle and questioned him for consuming liquor, in the residential area. On intimation, some other policemen also assembled and took him to Keeraithurai Police Station for enquiry. The same was witnessed by two people. He was tortured brutally by the police.

A complaint was lodged with Avaniyapuram Police Station and they registered a case. According to the petitioner, the police officials under the guise of an enquiry, had tortured his son, which resulted in his death. His son was handed over by the policemen in an unconscious

⁶⁸ AIR 1984 SC 1026.

condition, with injuries on his body and it was a clear case of unlawful confinement, torture, physical assault, illegal treatment resulting in the death of his son. It was also contended that though the police personnel had committed serious offences under Sections 120(B), 166, 302, 307, 325, 329, 342, 347, 352 and 357 of IPC, no action was taken against the violators of law, despite the matter being brought to the notice of the respondents.

On the question whether the petitioner is entitled to compensation for the death of his son when prima facie death is said to have been caused by seven police officials was answered in positive by the court. On the question of payment of compensation to the victims of torture, physical assault, humiliation, rape, custodial death and where there is an infringement of constitutional right to life and liberty under Article 21 of the Constitution of India, the Hon'ble Supreme Court has ordered compensation in cases where investigation is pending and also in cases, after the conclusion of the proceedings taken against the police officials involved.

The Apex Court ordered payment of compensation to the family of the victim who suffered torture, agony and mental oppression.

Bhim Singh v. State of Jammu & Kashmir⁶⁹ is a very famous case in which the Apex Court held as follows:

Orders of remand were obtained from the Executive Magistrate and the SubJudge on the applications of the police officers without the production of Shri Bhim Singh before them. The manner in which the orders were obtained i.e. at the residence of the Magistrate and the Sub-Judge after office hours, indicates the surreptitious nature of the conduct of the police. The Executive Magistrate and the Sub-Judge do not at all seem to have been concerned that the person whom they were remanding to custody had not been produced before them. They acted in a very casual way and we consider it a great pity that they acted without any sense of responsibility or genuine concern for the liberty of the subject. The police officers, of course, acted deliberately and mala fide and the Magistrate and the Sub-Judge aided them either by colluding with them or by their casual attitude. We do not have any doubt that Shri Bhim Singh was not produced either before the Magistrate on 11th or before the Sub-Judge on 13th, though

⁶⁹ 1985 (4) SCC 677; R.S.Sodhi v. State of U.P., AIR 1994; R.K.Anand v. Delhi High Court, 2009(8) SCC 106.

he was arrested in the early hours of the morning of 10th. There certainly was a gross violation of Shri Bhim Singh's constitutional rights under Articles 21 and 22(2).

We can only say that the police officers acted in a most high-handed way. We do not wish to use stronger words to condemn the authoritarian acts of the police. If the personal liberty of a Member of the Legislative Assembly is to be played with in this fashion, one can only wonder what may happen to lesser mortals. Police officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct. However the two police officers, the one who arrested him and the one who obtained the orders of remand, are but minions, in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies elsewhere and with the higher echelons of the Government of Jammu and Kashmir but it is not possible to say precisely where and with whom, on the material now before us. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this Court.

5.3 VIOLENCE IN JUDICIAL CUSTODY

It is axiomatic that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the

State is responsible if the person in custody is deprived of his life except according to the procedure established by law. The defence of “sovereign immunity” in such cases is not available to the State.

The Supreme Court of India issued certain guidelines to be followed by police officers or judicial officers which are as under⁷⁰.

- (a) If a judicial officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.
- (b) If facts and circumstances necessitate the immediate arrest of a judicial officer of the subordinate judiciary, a technical or formal arrest may be affected.
- (c) The fact of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court.
- (d) The judicial officer so arrested shall not be taken to a police station, without the prior order or directions of the District and Sessions Judge of the concerned district, if available.

- (g) There should be no handcuffing of a judicial officer. If, however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be overpowered and handcuffed. In such case, immediate report shall be made to the District and Sessions Judge concerned and also to the Chief Justice of the High Court. But the burden would be on the police to establish the necessity for effecting physical arrest and handcuffing the judicial officer, and if it be established that the physical arrest and handcuffing of the judicial officer was unjustified, the police officers causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally liable for compensation and/or damages as may be summarily determined by the High Court.

It is here necessary to take note of the fact that the question of arrest of Members of Parliament and of Members of Legislature of States is also of some importance. The current practice is that the police officer arresting such member on a criminal charge shall forthwith inform the presiding officer of the legislature through telegram and also by post. This practice should

⁷⁰ Delhi Judicial Service Association v. State of Gujarat, (1991)4 SCC 406.

continue. In Joginder Singh's case⁷¹, the Supreme Court emphasized the need to observe strictly the following norm:

Under rule 229 of the Rules for Procedure and Conduct of Business in Lok Sabha, when a Member is arrested on a criminal charge or is detained under an executive authority or order of the Magistrate, the executive authority must inform without delay such fact to the Speaker. As soon as any arrest, detention, conviction or release is affected, intimation should invariably be sent to the Government concerned concurrently with the intimation sent to the Speaker/Lok Sabha/ Rajya Sabha. This should be sent through telegrams and also by post and the intimation should not be delayed on the ground of holiday.

Below some of the cases have been discussed wherein the Supreme Court of India laid down certain guidelines and made some observations.

To assess compensation for the wrongful death of any person, the principles for assessing compensation under the Motor Vehicles Act, 1988 can be applied. When a person dies in an unnatural manner because of the carelessness of the police officials, the high court in its writ jurisdiction awarded compensation of Rs. 2,00,000/-⁷².

The Supreme Court has expressed concern over the increasing number of cases of custodial violence or torture, custodial rapes and lock-up deaths in the country posing a serious threat to human rights of citizens. The court attributed this to the "devilish devices adopted by those at the helm of affairs who proclaim from rooftops to be the defenders of democracy and protectors of people's rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace loving puritans and saviors of citizens' rights. On a close perusal, it is evident that exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies were themselves fixed in the dock, ignoring the ground realities, has often resulted in miscarriage of justice. Hence, it becomes incumbent on the part of the government and the legislature to give serious thought to bring

⁷¹ Joginder Singh v. State of Punjab JT (1994) 3 SC 423.

⁷² Santosh Kumari v. State of Himachal Pradesh and others, 2008 Cri LJ 556.

about appropriate changes in law not only to curb custodial crime but also to see that such crime “does not go unpunished.

Supreme Court is the crusader of custodial torture and a ray of hope in darkness. Under Article 32 of the Constitution of India, Supreme Court has the power to issue writs for the enforcement of the fundamental rights. The Supreme Court is thus the protector and guarantor of our fundamental rights, the right to life and to live with human dignity being the most important amongst them. The apex court is conscious of its responsibility to protect the poor and helpless from the custodial violence. Such people can approach the court directly to get their grievances heard even by writing an informal letter to the court.

The Supreme Court treats these ordinary letters of inmates as writ petitions and issues notices to the concerned governments, police, jail-authorities or any other detaining authorities authorized to arrest, detain and interrogate an accused under any charge of any offence.

5.4 CUSTODIAL VIOLENCE AGAINST WOMEN AND CHILDREN

There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless the Supreme Court of India has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life.

Award of compensation as a public law remedy for violation of the fundamental rights enshrined in article 21 of the Constitution of India in addition to the private law remedy under the law of torts was evolved in the last three decades.

Article 9(5) of the International Covenant on Civil and Political Rights, 1966 provides that anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation. No one can with impunity set the fundamental rights at naught or circumvent them and the courts power in this regard is as ample as the defense of the Constitution requires⁷³.

In exceptional cases compensation may be awarded in a petition under Article 32. The infringement of the fundamental right must be gross and patent, i.e., incontrovertible and ex-facie glaring and either such infringement should be on a large scale affecting the fundamental

⁷³ Quinn v. Ryan, (1965) IR 70(122).

rights of a large number of persons or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person(s) affected by such infringement to initiate and pursue act in the civil courts⁷⁴.

Relief in exercise of the power under Article 32 or 226 would be granted only when it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible.

A claim in public law for compensation for contravention of human rights and freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to the remedy in private law for damages for the tort resulting from the contravention of the fundamental right⁷⁵.

It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. An action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. In case of assault, battery and false imprisonment the damages are at large and represent a solatium for the mental pain, distress, indignity, loss of liberty and death. Award of compensation against the state is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21 by a public servant.

While assessing the compensation to be paid to the victim or his family, the emphasis should be on the compensatory and not on punitive element. The objective of compensation is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence irrespective of compensation must be left to the criminal courts in which the offender is prosecuted, which the state, in law, is duly bound to do.

⁷⁴ M.C. Mehta v. Union of India, 1987(1) SCC 395.

⁷⁵ People's Union for Democratic Rights v. Union of India, (1997) 3 SCC 433; Bhim Singh v. State of Jammu and Kashmir, 1985(4) SCC 677.

The claim is not a claim in private law for damages for the tort of false imprisonment under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone⁷⁶.

In **People's Union for Civil Liberties v. Union of India & Anr.**⁷⁷, the Court has been entertaining petition after petition involving the allegations of fake encounters and rapes by police personnel of States and in a large number of cases has transferred the investigation itself to other agencies and particularly the CBI. This Court considered a pathetic case of unnatural death of a poor woman in police custody and directed the State Government to pay compensation of Rs.3 lakhs, including Rs.1 lakh already awarded by the order of the State Government to the family of the victim.

No civilised 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. The concept of public interest has changed with structural change in the society. 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 life and property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity of State as a juristic person, propounded in Nineteenth Century as sound sociological basis for State immunity the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. 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 compartmentalization of the functions of the State as 'sovereign and nonsovereign' or 'governmental or non-governmental' is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for sake of society and the people the claim of a common man or ordinary citizen cannot be thrown out merely because it was done by an officer of the State even though it was against law and was done negligently. Needs of the State, duty of its officials and right of the citizens are required to be reconciled so that the rule of law in a welfare State is not shaken. Even in America where this doctrine of sovereignty found its place either because of the financial instability of the infant

⁷⁶ Maharaj v. Attorney General of Trinidad and Tobago, (1978)2 All ER 670

⁷⁷ (1979)2 SCC 143; Prem Chand v. State of Haryana, AIR 1989 SC 937; State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990)1 SCC 550.

American States rather than to the stability of the doctrine theoretical foundation, or because of logical and practical ground, or that there could be no legal right as against the State which made the law gradually gave way to the movement from State irresponsibility to State responsibility. In welfare State, functions of the state are not only defence of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. The demarcating line between sovereign and nonsovereign powers for which no rational basis survives, has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a Constitutional Government, the State cannot claim any immunity.

Such incidents strike at the very foundation of rule of law. Deprivation of life without due process of law is banned and barred under Article 21 of the Constitution. Yet such incidents take place. Those who think that they can detect and eradicate crime by resorting to crime are in fact stoking the fire which they want to extinguish. The police can surely interrogate a person accused of an offence but it cannot torture him to extract information otherwise tyranny will replace law. Despite several judgments by the Apex Court, the force is preferred to scientific methods to elicit information. This must stop. The State cannot claim sovereign immunity for the tortious act of public servants leading to violation of Article 21 of the Constitution. The Supreme Court in the path breaking case of *D. K. Basu v. State of West Bengal*, laid down several safeguards for the detainees. It also considered the question of claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty.

It is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate

punishment for the offence (irrespective of compensation) must be left to the criminal Courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no straitjacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

CHAPTER VII

CONCLUSION AND SUGGESTIONS

Every State has a mechanism known as Criminal Justice Administration which involves mainly three organs, the police, the judiciary and the prison. The police is primary and frontier agency of the Criminal Justice Administration. The most important aspect which is of great concern for every society, in the present times, is human rights viz-a viz police and criminal justice system. It is the protection of these rights which becomes a sole objective of any Criminal Justice System but it is the irony of the situation that this very system, many a times indulges into the violation of the rights. This defeats the basic purposes of Criminal Justice. It not only breaches the trust of the people into the system but it also proves to be a setback to a democratic set up of our country. The police has done a great job as far as the protection of rights and maintaining law and order and containing the crime is concerned particularly in Punjab the Police has rendered a commendable service by successfully containing the insurgency. But all the good work done by police is obliterated because of its dismal record as far as the violation of these rights is concerned. It maligns the image of the police, which further demoralize the force and ultimately leads to inefficiency. Therefore, there is an urgent need to overcome all the problems and discrepancies in the functioning of this system so that the image of the police in particular and the Criminal Justice system in general and the faith of people in democracy can be retained. For this, the present study went into analyzing the organizational set up and the working of the present Criminal Justice System and Police and the causes of the human rights violations. The present study also conducted a field survey among the judicial magistrates, police officers and the jail officials in which their suggestions for reforming the Criminal Justice System and police were sought. Apart from this, the study also went into analyzing various constitutional provisions, statutes, reports, court verdicts and directives regarding police setup and its reforms.

The need of reform in the Criminal Justice System and the police in India and fundamentally the police laws, has long been recognized. There has been almost 30 years of debate and discussions by the government-created committees and commissions on the way forward for police reforms, but India remains saddled with an outdated and old fashioned system, while report after report, gathered dust on governmental book-shelf without implementations. Before independence also,

various National Police Commission Reports came up, to develop an effective police system. The first one was in 1860 and last one in 1902. After independence, the same colonial Model of Policing was adopted and no serious consideration was given to change it to make it relevant for an independent and democratic India. It was the gross misuse of the police power during emergency and the police agitation of 1979, which raised the question of reforming the police system in particular and the Criminal Justice System in general. On the basis of the report of Shah Commission, which analysed the human rights violations and the abuse of power during emergency, on the basis of which, the Janta Government instituted National Police Commission under the chairmanship of Mr. Dharam Veera. The Commission began its sittings in 1979 and produced eight reports including a Model Police Act, between 1979 and 1981. In 1996, two former police officers filed a public interest case with the Supreme Court asking the court to direct the government to implement the recommendations of the National Police Commission. The apex court directed the government to set up a committee to review the recommendations of the Commission. The committee under leadership of Mr. J.F. Ribeiro was formed which submitted its two reports in 1998 and 1999. In 2000, the Government set up a third committee on police reforms under the stewardship of former Union Home Secretary, Mr. Padmanabhaiah. This committee released its report in the same year. In 2005, the Government put together a group to draft a New Police Act which could act as a Model Act for the States. This group was headed by a senior advocate of Supreme Court, Mr. Soli Sorabjee. This Police Act drafting committee submitting a Model Police Act to the Union government in late 2006. Apart from these efforts, the Supreme Court issued further directions in the long running public interest litigation on police reforms. The court directed the government of India to implement the police reforms and provided them with a framework within which to begin the reform process.

From 2001 to 2004 two government committees were also formed which made recommendations regarding Criminal Justice System as a whole. These were, Malimath Committee on Reforms of Criminal Justice System (2001-03) and a review committee on the recommendations of NPC and other commissions/committees (2004-05). Apart from these National level efforts, various commissions and committees regarding police reforms were also formed in different States which made significant recommendations regarding the police reforms. The main amongst these are:

Kerala Police Re-organisation Commission, 1959

- (a) Bengal Police Commission, 1960-61
- (b) Punjab Police Commission, 1961-62
- (c) Delhi Police Commission, 1968
- (d) Tamilnadu Police Commission, 1971

Other committees, which are worth-mentioning here are – M.S Gore Committee on Police Training, A M. Mullah Committee on Jail Reforms, Vohra Committee Report on Nexus between Criminals, Politicians and Bureaucrats, and a report on National expert committee on Women Prisoners. In 2006, in the famous Parkash Singh Vs Union of India case, the Supreme court laid down the directives to accomplish the task of police reforms. The court ruled that given the "gravity of the problem" and "total uncertainty as to when police reforms would be introduced" it would issue "appropriate directions for immediate compliance". These directions are binding upon Central and State governments. The governments were initially required to report to the court on the steps taken to comply with these directions at the end of 2006. But the majority of the States filed applications seeking more time. Some of these applications also sought review of the judgment. The court refused to review its directions and ruled that the governments were required to comply with its direction by the end of March 2007.

In Dec, 1999, National Human Rights Commission also laid down certain guidelines for reforming the working of the police system. The Ministry of Home Affairs in 1997 wrote a letter (No.11018/5/96-PMA, 3 April 1997) to Chief Ministers of the States to bring out urgently needed reforms of police system on the basis of the recommendations of NPC. Many States expressed their inability to introduce reforms in such a short period, while other States had made commendable efforts regarding this. In Punjab the efforts and deliberations were already under way regarding the Police Reforms, in this context Punjab Police Commission was also submitted its report in 1961. Punjab has also enacted the new Police Act 2007 on the basis of framework provided by all the aforesaid commissions and committees. This Act was enforced in 2008. In pursuance of this Act Punjab Police Rules, 2011 are prepared to replace Punjab Police Rules of 1934, though these rules are still to be implemented.

It is generally said that either the system does not exist at all or it is not functional. As far as the police is concerned, one can say that the police system in India not only exists with a comprehensive and well laid legal framework, but it has also been seasoned under different conditions in course of its evolution in about last two centuries. It has faced different situations, from normal conditions to the extraordinary conditions, ridden by the menace of terrorism. It has worked under different political systems of the colonial era, as well as that of a democratic system of independent India. Though, the system exists but the gross violations of human rights and the inefficiency of the present Criminal Justice System in delivering the good has not met the expectations of the citizens of free India. It shows that the system of Criminal Justice and the sub-system of police is not functional. The present study after analyzing the aforesaid reports of the commissions and the committees, the legal provisions regarding criminal justice system, both national and international, and after making a field survey regarding the human rights in criminal justice administration in Punjab, has come up with certain suggestions for reforming and improving the functioning of the police system in particular and criminal justice system in general. The recommendations suggest reforms regarding the external and internal factors of the police system. Just enacting new Police Acts or Rules will not be enough, but the existing system should be made functional and for this, quantitative changes only will not serve the purpose but the focus should be on qualitative changes. Former President of India, Dr. A P J Abdul Kalam, while addressing a function regarding 150th years celebration of Chennai Metropolitan Police, has also called for bringing professionalism and operational efficiency in the police force⁷⁸.

For making qualitative changes in the police system, there is a dire need to change the approach for the way the policing is viewed by the society as well as the police personnel themselves. There is a universal need in this nation for a system of equitable, effective and sensitive civil policing. We have been involved officially in numerous investigations of police-community related problems throughout the nation. This is an important point, for it demonstrates geographically that persons from all walks of life, representing a variety of social and political views, recognized the necessity of policing.

Present Indian Model of policing is facing an organizational crisis which is the manifestation of an approach adopted during the colonial period. This crisis stems from its historical antecedents

⁷⁸ The Times of India, January 5, 2007

in the Irish colonial police structure on which the police is modeled. The Irish colonial police was a paramilitary agency accountable only to the government. Its chief officer was called Inspector General who was supposed to be reporting to the Chief Secretary. The 'political organizational' characteristics of inherited Indian Police structure includes, strict subordination to the civilian administration, unaccountability to the public, cohesive strength and disposition and frequent use of State violence, institutionalization of an armed police within the civilian wing, an 'eyes and ears' functions on behalf of the government, pervasive secrecy and close identification with the propertied interests. These characteristics are not sustainable in a democratic, republican India and must be got rid off. Within these parameters, the requirements of maintaining public order and collection of internal political intelligence, have become the basic thrust of Indian police. Whereas, in a civilized society, the police is seen as an agency for providing human security, protection and service to the people, in addition to maintaining order.

In Independent India also, as the term of reference of Police Act Drafting Committee (PADC) under Mr. Soli Sorabjee shows, the priority is on maintaining law and order in view of growth and spread of insurgency and organized crime, while the social justice concern is the last in the list. The need is to make the police a 'service' in real sense, to meet the expectations of a democratic India. Hence, the police should be made 'service oriented'. In a democratic polity, like in India, the 'service oriented' and 'public oriented' police can better serve the people and for this the 'proactive' and 'community policing' should be adopted as an appropriate means. The 'democratic policing' in which the participation of the public in policing and police-public-interaction is encouraged, can even help the police to win over the people and face the menace of terrorism and insurgency with their help. Some scholars even suggested 'developmental approach' to police administration, in which the police becomes a part of the infrastructure for development administration, as it helps in maintaining law and order, which in turn provides stability for developmental activities. The sustainable development of the society again helps the police by checking the mushrooming of crime. This is high time to decide, whether police should be a tool of governance or an instrument of law. Just treating it as an instrument of law will restrict its role whereas, in the futuristic perspectives, the police should be treated as an important organ which can contribute a lot in good governance and also in a constructive social change. By adopting this philosophical model with the above mentioned parameters, we can

bring drastic qualitative changes both in the behaviour and organizational functioning of the police and in turn the approach of the people towards it.

In view of the above mentioned service oriented policing, one thing is being stressed again and again by many commissions and committees i.e. to make the police more professional and accountable. For bringing professionalism in policing, there is a need to render professional autonomy. But professional autonomy and the accountability both many a times generate a paradoxical situation. As per the original Police Act, the police is accountable to the State through local civil administration headed by the district collector or district magistrate. The National Police Commission emphasized over the significance of the supervision of District Magistrate for effective use of police to achieve the overall objective of public order and peace but the Model Police Act shifted the emphasis a little bit by proclaiming the role of District Magistrate as a coordinator to achieve the policing objectives.

Though, the police is an instrument of State and government in a democratic setup, it is under the representatives of the people or in other words, under the government which is run by the political parties. Hence, the political consideration and the priorities of the government are bound to direct the police also. As far as the ideological priorities are concerned, the police as an administrative unit, should remain neutral and should follow the directives of the government. But as mentioned in various reports of NPC, the problem starts when the parties and the leaders start interfering into the routine working of the police to cater to their vested interests.

The police, under the present situation of increasing workload and expectations, needs administrative autonomy and as a professional unit, it is even more capable to take its own decisions. No doubt, the police is not an isolated agency and it has to work in alliance with other organs of the government and administration, specially the sub system of Criminal Justice System which includes the courts and prisons, only then it can achieve its goals. The present research, after going through the structural and functional aspects of police in Punjab and its impact on human right situation, forwards following recommendations:

SUGGESTION

Agenda of Police Reforms should be vigorously followed. Police being a state subject, the main responsibility for implementing the reforms lies with the states. The Government of India can

undertake several steps by way of pushing forward the agenda of reforms. The directions of the Supreme Court on police reform require immediate implementation by all State Governments. The Model Police Act should be followed to make the desired police reforms. In this regard the Central Government should take the lead. This will give the Centre the moral authority to ask the state governments to follow suit. It will be able to convince the state governments about its genuineness and commitment to reform.

The effective working of the Police force is influenced by internal as well as external factors. The internal factors which influence the just working of the Indian Police can be considered to be the administrative factors and the legal parameters dealing with the routine functioning. These can be overcome by incorporating a robust system of Police Accountability through introduction of a mechanism, solely responsible for insuring the compliance of rules and requisite functioning.

The external factors which adversely influence the working of Indian Police system arise out of a complex politico-legal environment and socio-economic milieu. In order to circumvent these factors, police should be made more people oriented and socially accountable. Orientation of the police towards the welfare of people can be achieved by undertaking extensive training sessions and in view to minimize the political interference, there should be high level of transparency in the police system in India. There is a very significant need in order to improve the image of police among civil society. In view to ensure that the image of police is re-engineered, police should be subjected to skill enhancement training where they should be trained to tackle victims, witnesses, etc. in a specified and sensitive manner.

Invest more time and effort into Community Policing. International practice suggests that community policing is an effective tool for intelligence gathering and it forges a healthier bond with the public.

Involve the Community and Public at large in the Reform Process. Doing so will improve the police public interface.

Campaign and Educate on the Need for Police Reforms. Given the level of dysfunctional policing in India, it is critical that civil society organizations inform the average Indian of their

rights and the sort of policing they should expect from law enforcement agencies. Raising public awareness on these issues will inevitably make the police more cautious and law abiding.

Conduct Social Audits of Police Stations. A social audit is a way of measuring, understanding, reporting and ultimately improving police performance. It can help narrow the gap between a vision and reality.

Adopt the Vision of Democratic Policing. This can be achieved by enacting new Police Act that is designed to ensure that the police at all times act in accordance with the law and transform itself from a force that enforces the law to a service that upholds the law.

While enacting the new Police Act, police at all levels should be invited to make suggestions about the type of police service and police law they would like to be the part of Ensure that New Police Act proactively solicits the input from civil society on drafting police legislation for the State. This can be done in the following ways:

- i. Have civil society involved at the drafting stage. This will ensure that the Bill which emerges from the committee sufficiently addresses the concerns of the public.
 - ii. Hold public forums and meetings to get the public's feedback on potential new legislation.
 - iii. In accordance with Section 4(1)(c) of the Right to Information Act, 2005 (proactive disclosure), ensure that when draft legislation goes before the State Assembly it is also put in the public domain and made available for comment.
- Hold focus groups with police at all levels, particularly at the Deputy Superintendent of Police rank and below.
 - Criminal proceedings have to be an organized, systematic search for truth.

Procedures should not be practiced or interpreted in such a way as to interfere with the search for truth. Criminal courts at all levels should have inherent powers to give such orders for securing the ends of justice as are available to High Courts under Section 482 of the Criminal Procedure Code.

- Without diluting the constitutional rights of every person accused of crime, the law should place positive obligations on accused persons to assist the court in the discovery of truth. Every citizen including those suspected of having committed crime have an obligation to assist administration of justice. This can be done by more liberal use of rebuttable presumptions and shifting the burden of proof in appropriate cases.

- Despite constitutional difficulties, it has become necessary for the Union to be now more actively involved in the fight against crimes, such as terrorism, communal violence and organized crime, which impinge on security of state. This calls for a joint sector organization of Central and State Governments to deal with select crimes threatening the security of the nation or having inter-state ramifications, which require ability to deploy all the resources needed. The National Policy should identify all such crimes affecting the unity and integrity of the country and create a united national agency to undertake prevention, investigation and prosecution of such crimes with the support and co-operation of the State machinery concerned. A federal police agency has already been proposed to be setup in this regard.

- The burden of proof should be passed on to various parties (presiding officer, accused, prosecutor, etc.) in order to complement the existing audience and proof system.

- It shall be the policy of criminal justice to focus on the victim of crime as much as the accused, thus restoring a balance in criminal procedure between the offender, victim and society. Apart from recognizing the right of the victims to implead themselves in criminal judicial proceedings, a speedy and effective scheme of compensation to victims of at least serious crimes to begin with, should be implemented, irrespective of the outcome of such proceedings. For this, a Victim Compensation Fund has to be instituted, to be administered through the Legal Services Authorities.

- Prosecution continues to be the weakest link of the Criminal Justice System.

Selection, training, service conditions and supervision of the prosecutors demand urgent attention to enhance the quality of prosecution and to achieve the synergy between investigation and prosecution essential for effective Criminal Justice Administration. An independent Directorate of Prosecution accountable to the Courts need to be set up, under the control of the

proposed Board of Criminal Justice, with a well-trained, well-paid cadre of prosecutors for delivery of quality justice.

- Crimes need to be classified and organized into five distinct and comprehensive categories, on the basis of gravity of the injury and the appropriateness of the response needed to deal effectively with the same. This five category scheme should include:

a) Firstly, **SOCIAL WELFARE OFFENCES CATEGORY** for the offences which are civil in nature and where the object should be more of reparation and restitution rather than punishment and retribution.

Naturally, arrest and detention are unnecessary in such cases (except when violence is involved) and compensation and community service can better meet the ends of justice rather than incarceration of the offenders. Minor marriage offences, prohibition offences, vagrancy, minor indiscipline in campuses and work places etc. can well be brought under this Category. It is also possible to entrust enforcement of these laws to agencies other than the police. The method of settlement can be more conciliator than adversarial and a lot of public participation is possible for better management of these offences in a cost-efficient and human rightsfriendly manner.

b) A second category of offences more serious than the social welfare offences and which may need police intervention may be brought under another category, to be called the **CORRECTIONAL OFFENCES CATEGORY**. This would include offences punishable upto three years of imprisonment and/or fine. They are usually not accompanied by violence and are, in most cases, liable to fine, probation and short-term imprisonment only. Arrest and detention may be allowed in such cases, ordinarily only with a warrant and all of them could be open to settlement through Lok Adalats, Plea Bargaining and other alternative ways, avoiding prolonged trials. For cases under Ist and IInd Category, it is possible to allow modifications in evidentiary procedures through rebuttable presumptions, shifting of burden and less rigorous standards of proof.

They can be treated as summons cases with provision for summary trials.

c) The third set of offences, to be included in the **PENAL CATEGORY**, are graver offences punishable with imprisonment beyond three years and, in rarest of rare cases, even with death.

These are cases which deserve careful and quick processing under expert supervision, ensuring all the human rights protections guaranteed by the Constitution and the laws, and where the maximum energy, time and resources of the state are to be spent keeping in mind the need for speed, fairness and inexpensiveness. There has to be greater accountability from enforcement agencies in these cases as they create public alarm and insecurity.

d) Thereafter, a fourth category, CYBER CRIME CATEGORY will encompass all the information technology related offences. Officers equipped with sound technical knowledge will lead this category and they will further be able to judge the seriousness of the crime.

e) Finally, an ECONOMIC OFFENCES CATEGORY needs to be created for select offences from the Indian Penal Code and other relevant economic laws including offences which pose a potential threat to the economic security and health of the country. They might require multidisciplinary, inter-state and transnational investigation and demand evidentiary modifications to bring the guilty to book.

The five category scheme of re-organizing criminal law and procedure as above is a desirable policy goal for better management of the crime scenario in future. It will be prudent to incorporate in each of these codes, the respective rules of procedure, the nature of trial and evidence, the types of punishment etc. The idea is to have a self-contained code of law and procedure for each of the five distinct set of offences, based on the gravity of the offences involved and the degree of flexibility the system can afford under the constitutional scheme.

- Criminal Justice System needs greater professionalism and accountability from its stakeholders. The effective use of information technology is the need of the hour in view to ensure robust Criminal Justice Administration system.

- Criminal Courts have the obligation to render speedy justice. For this, they have to speed up the processes through more effective management of dockets and proceedings. Day to day trial has also to be restored. Government should provide better resources and infrastructure to criminal courts to help them speed up trial procedures. Use of technology should be able to achieve the objects less expensively.

- A modern Criminal Court Complex with single window services has to come up initially in at least the district headquarters. It will have a police station and interrogation room on the ground floor; police lock-ups/sub-jail, and magistrate's courts on the first floor; prosecutors' offices, legal aid services, witnesses rooms etc. on the second floor; sessions court in the third floor and the administrative office on the fourth floor.

- Special schemes should be drawn up for protection of witnesses/victims in appropriate cases.

- Criminal legal aid has to be modernized with multiple services needed for the victim as well as the accused. Legal Aid is not to be limited to merely providing a lawyer to indigent accused. The State has to organize psychiatric, medical and rehabilitative services under Legal Aid. Appropriate compensation to the Victim should also be the responsibility of the Legal Services Authority.

- The victim should be provided proper information about the proceedings of his/her case and its record with the police and courts, free of cost, from time to time. This information should also be made available on the internet.

- Training and continuing education of all criminal justice personnel including judges is the key to improving quality, fairness and efficiency of the system. Each segment of criminal justice should progressively upgrade its training capabilities and allot up to 2% of its total budget towards training on modern lines. Intersectoral training is also necessary at middle and higher levels to achieve coordination. A transparent, objective system of performance evaluation should be put in place and career progression linked to it.

- In the Punjab Police Board, there should be provision for including one member from judiciary, equivalent to the status of a justice of high court, atleast three prominent members of civil society and leader of the opposition in the assembly.

This will make the board more balanced and free from undesirable political influence.

- Proper provisions should be made to establish State Security Commission as per the parameters of Model Police Act. This commission is to lay down the broad policy guidelines for the state police; give directions for the performance of the preventive tasks and service oriented functions of the police; and evaluate the performance of the police. It should be of recommendatory nature.

- Undertrial prisoners should be kept in separate institutions. Prisons should not be overcrowded. By liberal use of bail and probation and avoiding short-term imprisonment, the prison population can be kept to reasonable limits.

- The living and service conditions of prison staff should be improved and strict measures, taken to stop corruption in custodial institutions.

- Women and children accompanying them should have special facilities in prisons.

The policy on custodial justice for women recommended by the Expert Committee as early as 1979 should be implemented fully.

- A fair, transparent system of grievance redressal should be in place in all prisons and other custodial centres.

- Remission of sentence and granting of parole should be rationalized according to standard norms and procedures and administered under judicial supervision.

Custodial violence should be looked upon with utmost severity and quick, transparent remedies should be available for victims of such violence. • Statements made to the police should be audio/video recorded and made admissible in evidence provided the accused has had the benefit of consulting his lawyer. • The Modernization of the Police Force Scheme. The MPF scheme focuses on the construction of police buildings, purchase of vehicles, purchase of arms and ammunition, purchase of equipment, enhancement of infrastructure facilities for police training, computerization, purchasing forensic science equipment and developing infrastructural facilities for forensic science laboratories. • Recruitment must be made more transparent and Merit-Based. The Transparent Recruitment Process (TRP) policy introduced by the Centre should be scrupulously followed. At the same time, sanctioned posts that remain vacant need to be filled at the earliest. • Improve Training Facilities. Governments need to realize that the training given to the police today does not make them fit for the purpose. Training methodologies need to shift the stress from the physical, to imparting soft skills and greater sensitization towards the law and constitutional values. Provisions need to be made for periodic in-service refresher training. • Establish an effective Internal Mechanism that permits the public to make complaints against the police. The success of internal accountability mechanisms depends on the effectiveness of police

leadership. Unfortunately, the authority of police leadership has gradually been eroded over a period of time. This has led to loss of discipline in the force and has promoted a tendency at different levels in the police to seek outside patronage for rewards and to be shielded against punishment. Police leadership in the states need to ensure that internal mechanisms are revived to regain the lost faith of the public. This can be achieved by the following: i. Specify a prompt and transparent process of inquiry into complaints against a police officer with complainants informed at every stage of the process and outcomes.

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punishment. Police leadership in the states need to ensure that internal mechanisms are revived to regain the lost faith of the public. This can be achieved by the following:

i. Specify a prompt and transparent process of inquiry into complaints against a police officer with complainants informed at every stage of the process and outcomes.

ii. Place a complaint/suggestion box outside every police station.

iii. Set up complaint cells in each district, range and state headquarters.

- There is a need to improve the status, working and living conditions of the constabulary and treat them as skilled workers and give them responsibility as mentioned by in the NPC, the Ribeiro Committee and the Padmanabhah Committee.

It is the firm view of the present researcher that with the implementation of above recommendations, the police in particular and the Criminal Justice Administration in general, will undergo a positive change. These recommendations will help, on the one hand in making the police more professional and on the other hand these will help it in adopting more 'people friendly' approach. One can hope that this change in approach will also improve its image to be a more 'humane' and 'service oriented' force from that of colonial image of a 'baton wielding' force. This transformation will fulfill the democratic aspirations of the people as well as administrative needs of the Criminal Justice System and ensure an environment in which the human rights and dignity of every citizen is protected, preserved and promoted.

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