



Judicial Attitude towards Custodial Violence

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The police in independent India persisted with the colonial frame of mind. In discharge of their duty to maintain law and order and with a view to extracting evidence and gathering information during the course of investigation, the police often use third-degree mechanism which in most of the cases culminates into flagrant violation of human rights law. The executive as well as administrative machinery in past not only been reluctant and negligent but have miserably failed to prevent police from doing this heinous act. In such a situation the ray of hope rests on the judiciary as it has always been considered to have an overriding duty to maintain public confidence and faith in the administration of justice and to vindicate and uphold the 'majesty of law'. Being the custodian and protector of people's rights, the Indian judiciary has, of course, taken serious and prompt action against the wrongdoers and has controlled their unlawful activities of custodial violence to a large extent. The honourable Supreme Court has said police cannot be a law unto themselves expecting others to obey the law. For, if a law enforcer becomes a lawbreaker, it breeds not only contempt for law but also invites everyman to become a law unto himself.¹

According to the Apex Court,² torture in police custody, which of late is on the increase and gets encouragement due to the unrealistic approach at times by the courts as well as the belief of the police that no harm would come to them as there would hardly be any evidence available to the prosecution to directly implicate them with it.

Thus Supreme Court emphasizes the need of stern measures to combat the menace otherwise the people's confidence in the country's criminal justice system will be destroyed. Police excesses and the maltreatment of detainees, under trial prisoners or suspects tarnishes the image of any civilized nation and encourages the men in khaki to consider themselves to be above the law and sometimes even to become a law unto themselves. 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 judiciary itself, which if it happens will be a sad day for anyone to reckon with. In order to assess the role of judiciary in vindicating rights of the helpless and curbing custodial violence some of the important cases decided by Indian courts are undertaken for discussion.

Nandini Satpathy vs. P.L. Dani³ is a leading case. Supreme Court while laying down guidelines ensuring fair investigation clearly held that an investigating officer for obtaining desired information should possess the qualities of patience and perseverance and must avoid the use of third degree as it has become outlawed being reflection of colonial police raj. It is a short-cut method, which unnecessarily brutalizes and makes the police less zealous in searching objective evidence. It does involve not only flagrant violation of law but also involves the danger of false confession.

In Kishore Singh vs. State of Rajasthan,⁴ One of the petitioner, in a telegram to one of the Judges of the Supreme Court complained of insufferable, illegal solitary confinement. He also complained that he was kept in iron fetters for more than eight months along with two other petitioners. Bruises and other sign of injuries were also found on his body. After seeing the facts and circumstances of the case severe instructions were issued against the police force for its gruesome acts of torture. The honourable Court said, "Nothing is more cowardly and unconscionable than a person in a police custody being beaten up and nothing inflicts deeper wound on our constitutional culture than state of officials running berserk regardless of human rights."

In Khatri and Others vs. State of Bihar⁵ is a important case relating to police atrocity in jail. In this case a writ petition was filed under Article 32 of the Constitution. The petitioners are certain under trial prisoners in the state of Bihar they complained that after their arrest, while in police custody they were blinded by the members of the police force. In this case Court emphasizes the importance of the right to free legal aid to a poor



person which is given by our Constitution. The honourable Court held that the right to free legal service is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it is implicit in Article 21. The State Government cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability.

In *Sheela Barse vs. State of Maharashtra*⁶, detailed instructions were issued by the Supreme Court to concerned authorities for ensuring protection against torture and maltreatment of women in police lock-up. Some of these important directions are reproduced below:

1. Court directed that four or five police lock-ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constable.
2. Interrogation of female should be carried out only in the presence of female police officer/constable.
3. Whenever a person is arrested by the police without warrant, he must be immediately informed of the grounds of his arrest and in case of every arrest it must be immediately made known to the arrested person that he is entitled to apply for bail.
4. Magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or maltreatment in police custody. He should be informed that he has a right under Section-54 of the Code of Criminal Procedure.

The above stated directions of the Court are of far reaching significance and if they are carried out both in letter and in spirit, they will certainly afford considerable protection to women in police- lockups.

In *Meja Singh vs. SHO, Police Station. Zira*⁷, Meja Singh, petitioner filed the criminal writ petition and alleged that respondent with few constable of Punjab police came to his house and enquired about his son and taken his son to the police station. Later at 10 am the petitioner with some relative and respectable of the village went to police station and found his son behind the bar he requested but officer said he will be released after inquiry. Later he was not released and petitioner continued made inquiries whereabouts of the detainee. It was held that since it could not be ascertained whether Sukhchain Singh illegally arrested by Sub-inspector of Police was dead or alive, an interim compensation of Rs. 25,000 must be paid. As the illegal arrest was done by Kashmir

Singh, Sub-inspector of Police illegally without any authorization, not in discharge of sovereign function of a state and not in discharge of official duty, he was directed to pay Rs. 25,000 to Neja Singh, the father of the detainee.

*Delhi Judicial Service Association vs. State of Gujrat*⁸ is remarked as the most humiliating episode in the history of Indian judiciary. The cruel act of police authorities deeply derogated their social status and finally led to the conviction of guilty police officers and laying down guidelines for protection of Judicial Officer. The facts of the case is that soon after the posting as C.J.M at Nadiad District in the State of Gujrat in 1988 found that local police was not cooperating with the courts in effective service of summons, warrants and notice on accused persons as a result of this trial of cases were delayed. So he made complaint to the District Superintendent of Police and forwarded a copy to the Director General of Police. On account of these complaints the then police Inspector Nadiad became annoyed and on Sept. 25, 1989 he met the CJM in his chamber to discuss case and during discussion invited CJM to visit police station. When CJM arrived at the chamber of police inspector in the police station, he was forced to consume liquor and on his refusal he was assaulted. He was handcuffed and tied up with the thick rope. This was deliberately done in defiance of police regulations and circular issued by the Gujarat Government. In this case Supreme Court condemned the arbitrary and excessive use of force by the police and observed that:

The main objectives of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect citizen's life and property. The law enjoins the police to be scrupulously fair to the offender and the magistracy is to ensure fair investigation and fair trial to an offender. It is unfortunate that these objectives have remained unfulfilled even after 64 years of our Constitution.

The above discussed case shows that guidelines of honourable Supreme Court and laws on custodial violence are not followed strictly. Police is continuously violating the human rights of accused, detainees even a judicial officer and judiciary is continuously making efforts to prevent this menace.

An example of serious actions taken by the judiciary could be seen in *Joginder Kumar vs. State of U.P*⁹ The facts of the case is that petitioner is a young man of 28 years old has completed L.L.B and enrolled as an advocate. The S.S.P of



Ghaziabad called him for making enquiries. He came with his brother. Later respondent kept him in his custody. When the petitioner brother made enquiries he was told that he will be set free after enquiry. On January 7, 1994 the brother of the petitioner apprehensive of intentions of respondent 4, sent a telegram to the Chief Minister of U.P apprehending his brother's implication in some criminal case and also apprehended that petitioner being shot dead in fake encounter. After observing the fact the Supreme Court held that no arrest could be made unless police officer is, apart from his power to arrest, able to justify it. Considering that the arrest and detention causes' incalculable harm to the reputation and self esteem of an individual, the Court further held that except in heinous offences, an arrest must be avoided. In this case the Supreme Court referred to the observation of the National Police Commission in its third report to the effect that power of arrest was one of the chief sources of corruption in the police and that the 60% arrests were either unnecessary or unjustified. Unjustified police action accounted for 43% expenditures of jails. These unjustified arrests, concoction of cases, and use of third degree methods make the judicial system including constitutional and legal safeguards and human rights guarantees, a ludicrous futility.

State of Madhya Pradesh vs. Shyam Sundar Trivedi¹⁰, in this case one person named Nathu Banjara was brought Police station for interrogation as a suspect in a murder case and he was beaten and tortured by the police constable and Sub Inspector for extraction of confession of guilt in connection with murder of one Harijan woman of Village. As a result of merciless beating and extensive injury he died in police custody. The honourable supreme court convicted the respondents under section 304/34 IPC and sentence to suffer rigorous imprisonment for two years and to pay fine of rupees 50 thousand. The Honourable Supreme Court observed that "it is often seen that when a complaint is made against torture, death or injury in police custody, it is difficult to secure evidence against the policemen responsible for resorting to third degree methods since they are incharge of police station records which they do not find difficult to manipulate. Consequently proceedings against the delinquent officers generally results in acquittal."

D.K. Basu vs. State of West Bengal¹¹ is a leading case on prevention of police atrocity regarding custodial violence. In this case the executive chairman, legal aid services, West Bengal a non political organization August 26, 1986 sent a letter to the chief justice of India drawing his

attention to the news published in The Telegraph dated 20, 21 & 22 July, 1986 regarding death in police lockups and custody. It was requested that this letter should be treated as writ petition under public interest litigation and examine the issue in depth and to develop custody jurisprudence for awarding compensation to the family members for atrocities and death caused in police custody. After seeing the fact and circumstances of the case Supreme Court observed that:

The importance of affirmed rights of every human being needs no emphasis and, therefore, to deter breaches thereof becomes a sacred duty of the Court, as the custodian and protector of the fundamental and the basic human rights of the citizens. Custodial violence, including torture and deaths in the lock-ups, strikes a blow at the rule of law, which demands that the powers of the executive should not only be derived from law but, also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protector of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society.

In Union of India vs. Pannalal¹² the facts of the case is that deceased, the husband of the complainant was arrested on the allegation that he had caused grievous hurt to Sone Bhawas. On 15.10.1983 the complainant found that deceased had not returned home and around 8:30 am she noticed that accused came with some police constable and they were dragging the deceased and he is not sound and even not able to stand up. The complainant was sure that he was assaulted in previous night. Later, accused with hockey stick beaten the deceased and other constable holding the hands of deceased to make him stand and pulled the hair. This incident was continued for more than one hour in front of all the members of family later petitioner met Assistant Commissioner of Police and Sub Inspector and requested for medical assistance. But no cooperation was sought. Later he was admitted in Hospital on 16.10.1983 and on 17.10.1983 he expired. But no action was taken against erring police officials.

After seeing the facts and circumstances of the case the High Court said "the court exists for doing justice to the persons who are affected. The first appellate Court cannot get swayed by abstract technicalities and close their eyes to factors which



need to be positively probed and noticed. The Court is not merely to act as a tape recorder. It has a greater duty and responsibility to render a justice. The Court held that in view of the judgment of the Honourable Supreme Court in *D.K. Basu vs. State of West Bengal*,¹³ the petitioner is entitled to protection of his life and personal liberty and, therefore, he is entitled to the direction that during his interrogation his counsel may remain present for a reasonable time so that if any torture is used by the Investigating Officer against the petitioner, appropriate action for protecting the life and personal liberty of the petitioner may be taken.

A deep concern with regard to the alarming increase in cases of torture, assault and death in police lock-up was shown by the Supreme Court in *Shakila Abdul Gafar Khan vs. Vasant Raghunath Dhoble*¹⁴. In this case Justice Pasayat, pointed out that the vulnerability of human rights assumes a traumatic torture when functionaries of state whose paramount duty is to protect the citizen and not to commit gruesome offences against them, in reality perpetrate them. He further pointed out that very rarely, in case of police torture or custodial death, there is any direct evidence of the complicity of the police personnel. They are bound by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not pervert the truth to save their colleagues. Further, the exaggerated adherence and insistence upon the establishment of proof beyond reasonable doubt by the prosecution, often results in miscarriage of justice and makes the justice delivery system suspect and vulnerable.

In *Sube Singh vs. State of Haryana & Others*,¹⁵ the petitioner sent an undated letter to the Supreme Court and alleged that ASI Dharam Singh along with some police officers came to his house to enquire about his Son Joginder and when he informed he was not aware about him they started beating and taken her daughter and wife to police station and he was again beaten before S.P and D.S.P. his moustache was plucked by them and his wife and daughter were made to sit in an uncomfortable postures as students are made to sit in school by way of punishment. He alleged that in view of such torture he was forced to leave his house. Lastly petitioner made a prayer for a direction to the police to stop the atrocities and torture and sort compensation for himself his wife and daughter for social, physical and financial loss. He also prayed for enquiry to punish guilty officers responsible for the heinous acts. The honourable Court observed that custodial violence requires to be tackled from two ends, that is, by taking

measures that are remedial and preventive. Award of compensation is one of the remedial measures after the event. Effort should be made to remove the very causes, which lead to custodial violence, so as to prevent such occurrences. Following steps, if taken may prove to be effective preventive measures which are as under:

- a) Police training should be reoriented to bring in a change in the mind set and attitude of the police personnel in regard to investigations, so that they will recognize and respect human rights, and adopt thorough and scientific investigation methods.
- b) The functioning of lower level police officers should be continuously monitored and supervised by their superiors to prevent custodial violence. Lawful standard methods of investigation should be adhered to.
- c) Compliance with the eleven requirements enumerated in *D.K Basu*¹⁶ should be ensured in all cases of arrest and detention.
- d) Simple and full-proof procedures should be introduced for prompt registration of First Information Reports relating to all crimes.
- e) Computerization, video-recording and modern methods of record maintenance should be introduced to avoid manipulations, insertions, substitutions and antedating in regard to FIR's, inquest proceedings, post-mortem reports and statement of witnesses etc. and to bring in transparency in action.
- f) An independent investigating agency preferably the respective Human Rights Commission or CBI may be entrusted with adequate power, to investigate the complaints of custodial violence against police personnel and take stern and speedy action followed by prosecution, wherever necessary.
- g) The endeavor should be to achieve a balanced level of functioning, where police respect human rights, adhere to law, and take confidence building measures (CBM's), and at the same time, firmly deal with organized crime, terrorism, white-collar crime, deteriorating law and order situation etc.

In this case, the Court no doubt, laid down important guidelines for effective police functioning but held that there was neither clear or incontrovertible evidence about custodial torture nor any medical report of any injury or disability. The grievances of the petitioner and his relatives were against different officers in different Police stations and at different points of time. More importantly, several of the allegations were proved to be exaggerated and false. Court, therefore, did



not consider this to be a fit case for award of compensation.

In *Raghubir Singh vs. State of Haryana*¹⁷ some persons were brought to the police station on allegations of theft. They were so much beaten in the police stations that one of them died. A sub-Inspector of the police station was prosecuted and sentenced to life imprisonment. The Apex Court held that the society was 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 peril. When the guardians of law gore human rights to death then what other people will do. This development is disastrous to our human right awareness and humanistic constitutional order.

In *State of U.P. vs. Ram Sagar Yadav*,¹ the Supreme Court said it is ironical that, in this case, a person who complained against a policeman for bribery, was put to death by that policeman, his two companions and his superior officer. The honourable Court further observed that "police officials alone and no one else can give evidence as regards to the circumstances in which a person is tortured. It is generally seen that police is bound by ties of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own glass upon facts and pervert the truth. The result is that person on whom atrocities are perpetuated by the police in sanctum Santorum of the police station are left without any evidence to prove who the offenders are. The Supreme Court also emphasized the need that there should be amendment in the general law relating to burden of proof in cases of custodial death and rape.

*Gauri Shankar Sharma vs. State of U.P.*¹⁹ In this case two policemen were sentenced by the Supreme Court for severely beating a suspect for extracting a confessional statement, and his deliberate torture on non payment of bribe, resulting in custodial death. The honourable Court observed that "deaths in Police custody must be seriously viewed for otherwise we will help take a stride in the direction of police raj."

In *people's Union Democratic Rights vs. Police Commissioner*,²⁰ one of the labourers' was taken to the police station for doing some work. On demand for wages he was severely beaten. He ultimately succumbed injuries. It was held that if a person in police custody was beaten to death, then compensation is paid to the family of the deceased and this amount be recovered out of the salaries of guilty officers after giving them opportunity to show cause.

In *SAHELI vs. Delhi Commissioner of*

Police,²¹ a writ petition was filed by the Women's and Civil Rights Organization known as 'SAHELI' on behalf of two women Maya Devi and Kamlesh Kumari. In this case a 9 year old child had died after beating and assault by police officers. The Supreme Court directed the State Government to pay Rs. 75,000/- as compensation to the mother of the victim.

In *Nilabati Behera vs. State of Orissa*,²² one Suman Behera was taken in police custody on December 1, 1987 at 8 a.m. He was found dead next day of his arrest on the railway track near the police post Jeraikela. He was not released from custody and his death was unnatural, caused by multiple injuries sustained by him. The Court held that the obvious inference in this case was that fatal injuries were inflicted on Suman Behera in police custody resulting in his death. Accordingly Court directed the respondent State of Orissa to pay a sum of Rs. 1, 50,000 to the petitioner and further a sum of Rs. 10,000 as a cost to the Supreme Court Legal Aid Committee.

In *Abaj Singh vs. State of U.P.*²³, a writ petition under Article 32 Constitution of India was filed by the parents of one Rishipal who died while in judicial custody on 1st June, 1996. The prayer was made by the appellant that an investigation by the Central Bureau of Investigation be ordered into the circumstances of Rishipal's death and that the respondents, the State of U.P and the police and jail authorities of Meerut, be directed to pay them compensation for his death. The Court after seeing the facts and circumstances of the case held that the State of U.P is responsible in public law for the death of Rishipal and must pay compensation to the petitioners for the same.

*Indrajit Terang vs. State of Assam & ors.*²⁴

This writ petition has been filed by Indrajit Tenang under Article 21 of the Indian Constitution. Alleging that his younger brother Bhupen Singh Terang was picked up by the police from the Home of Orphan and Destitute Children and thereafter has been subjected to torture due to which he died at Hospital. The petitioner brother Bhupen Singh, aged 14 years, was a student of class IX of Rangbongham Higher Secondary School. He was stated to be a brilliant student and a prominent athlete of school and won several medals and prizes to his credit. After investigation and enquiry injuries found on the body of the deceased. Means swelling and bluish coloration of buttock, thighs and calf of legs, distorted muscles fibers was present over free area and dead body of both arms and forearms had also become bluish. On examination, the doctor opined



that the injuries found on the body of the deceased could not have been caused by a fall. The Court held that the respondent undoubtedly acted in an unconstitutional and unlawful manner in performing the public duties resulting in the infringement of indefeasible rights guaranteed under Article 21 of the Constitution of India and directed the respondents to pay compensation of Rs. 3 lacs to the petitioners and parents of the deceased.

Forum for Fact Finding Documentation and Advocacy, Raipur vs. State of Chhattisgarh & Ors.²⁵

In this case a petition was filed under Article 21, 226 of the Constitution of India. The deceased was detained illegally in police station and his arrest was not shown in police record though he was detained for more than 24 hours. He was subjected to merciless beating in police lock-up. Three people saw that Ramkumar had injuries and swelling all over the body and he was not able to walk. A.S.I. Subhash Kumar Pradhan told the villagers that despite being severely beaten by him, Ramkumar was not confessing the guilt. As there is allegation on him that he stole diesel, some packets of Beedi and cigarettes and some articles worth Rs. 972. Thus Ramkumar was detained in the lock-up of P.S. Suhela on 11.08.2004. Later dead body of Ramkumar was seen hanging with a piece of blanket used as a rope, in the toilet attached to the lock-up in police station on the morning of 13.08.2004. It was found that deceased was five feet five inches tall and the ventilator in the toilet was at a height of ten feet three inches. It was also found that deceased could not have gone to the toilet without permission of police officials. Honourable Court held that it is a prima facie case of custodial death and injuries found on his body proved that he can't commit suicide as he can't walk. Court ordered to pay Rs. 10,00,000/- to the widow of the deceased and their minor children.

Rehokanta Deka vs. Union of India²⁶

This case was filed by the petitioner under Article 226 of the Constitution of India for claim of compensation for custodial death of petitioner's brother. In this case brother of petitioner a physically handicapped person was picked up by army authorities and thereafter it is not known whereabouts he is. Evidence on record required drawing an adverse inference that said individual might have been killed by army while in the custody as he was never produced before any police station or before any court as required under provisions of Armed Forces (Assam and Manipur) special powers Act. Finding recorded by District and Sessions Judge on appreciation of evidence on record showed

that it was a clear case of custodial death. The High Court directed guilty authorities to pay compensation of Rs. 1.5 lac to mother of victim after proper identification

Chanambam Menjor Singh vs. Comdt. C.O. 61, C.R.P.F. Mantripukhri and ors.²⁷

In this case petitioner filed a case under Articles. 21, 226 of Constitution for illegal detention and claimed for compensation. Facts of the case is that the Border Security Force personnel alleged to have made dehumanizing assault and tortured victim in custody in order to extract confession about his alleged involvement in insurgency of Manipur. Enquiry report is submitted by District Judge after appreciation of statements of witnesses and also materials available on record. Factual finding recorded by District Judge is in favor of the victim. Court directed respondent and Union of India to pay compensation of Rs. 80000 to the victim.

Premilaben R. Jaishwal and Ors. vs. B.M. Jadeja and Ors.²⁸

The petitioner, a widow, along with her three children, has approached High Court under Article 226 of the Constitution and Section 482 of the Code of Criminal Procedure, 1973 after serving a written complaint upon the Police Commissioner, Vadodara in respect of custodial death of her husband on 17.09.1994 at around 7.00 p.m. after being picked up from their house at around 4.00 p.m. on 16.09.1994. According to the petition, the husband of petitioner No. 1 and father of the other petitioners were aged 42 years, when they were taken to the custody. She and her husband informed respondent No. 4 about his illness at that time, but he was taken to the police station and detained under Section 151 of the Criminal Procedure Code. She afterwards learnt from the persons who were present in the police station that the detainee had requested for medical treatment when he was produced before respondent no. 1, the police inspector, but not only that medical treatment was denied but his requests to call for medicines from home were also turned down. He was kept with more than ten other accused persons in a very small room and tortured physically as well as mentally accord ultimately he died because of first blows and injuries inflicted upon him by the respondents and the postmortem report revealed several ante mortem minor injuries. The Court held that in view of the aforesaid facts and circumstances, considering the loss, shock and suffering and the delay, the respondent State is directed to pay 40,000 to the petitioners, by way of



interim compensation for violation of the fundamental rights of the deceased.

Bachiben Narambha vs. State of Gujarat & Ors²⁹

In this case a petition has been filed under Article 21 of the Indian Constitution. There is allegation against police officials that they took petitioner's daughter to police station, beaten and gang raped and threatened and abetted her to commit suicide. Petitioner's daughter thereafter returned home and committed suicide. There were serious lapses on part of police to commence investigation immediately on basis of statement made on oath by petitioner. But petitioner's complaint was rejected and the manner in which petitioner's complaint was rejected showing ingenuity of respondents in successfully thwarting proper investigation and prosecution. After considering the facts of the case Court directed the respondent – State Government to pay interim compensation of Rs. 1, 50,000/- to petitioner for violation of fundamental rights of petitioner and her daughter and further proper investigation was ordered.

Hamadhar Hazarika vs. Union of India & Others³⁰

In this case a petition was filed before Gauhati High Court by petitioner for custodial death and claimed for compensation. It was alleged that deceased was a young lad of 28 years died at the hands of army when he was in their custody. Army Official after taking deceased into custody did not take any step whatsoever required by law. Plea of army was that deceased died due to bomb explosion found to be concocted and false on its face. Material available on record did not disclose that he was required by police or by army in connection with any criminal case. After seeing facts and circumstances of the case High Court directed the authorities to pay compensation of Rs. 3.5 lacs to the parents of deceased.

Bhopal Singh vs. State of U.P & Others³¹

In this case under Article 21 of the Constitution of India a petition was filed for custodial death and prayed for compensation. Facts of the case are that the deceased was charged for offence of theft and later he was taken into custody by police and next day of his arrest he was found dead in the custody of police. According to viscera report deceased's death was caused due to alcoholic poison. Injuries found on his person did not appear to have been sustained at the hands of public before his arrest. It was found that when he was arrested

and presented before Magistrate he was not under influence of alcohol. Except cloths nothing was recovered from him at the time of arrest. This indicated that poison was administered to him inside jail; consequently a custodial death was occurred. The honourable Court directed to pay Rs. 2, 50,000/- as compensation to the deceased mother.

Shri Dino DG Dympep and Anr. vs. State of Meghalaya & Ors.³²

In this case a writ petition was filed under Article 21 and 226 of the Constitution and under Section-106 of the Evidence Act, 1872. Petitioner filed for compensation for custodial violence and alleging that it is serious violation of human rights and fundamental right. Facts of the case is that the deceased namely, late Phomlin Mawlich, aged about 27 years, a resident of Nangsohma village, West Khari Hills District was summoned in connection with the alleged stealing of six cows belonging to Shri Tret of Mairang as he was suspected to be involved in the stealing of six cows. Village Durbar handed over him to the police station. According to the petitioner, the deceased was in good health without any sign of sickness at the time of his arrest by the police. The brother-in-law of the deceased, visited the police station to enquire about the condition of the deceased but was informed that he had been taken to civil hospital and financial help offered by the concerned officer and when the family members of the deceased visited him they found that he was in semi-coma condition and was subsequently informed that the deceased had expired on 11.09.1998 at the hospital. On enquiry it was found that deceased was admitted on 04.09.1998 and doctor attended him on 07.09.1998 and left unattended for two days and due to negligence on the part of doctors and merciless beating by police leads to death of deceased. The honourable Court after considering the condition and circumstances of the deceased in which he died awarded a compensation of Rs. 3 lacs to kin of the deceased.

Rajammal vs. State of Tamil Nadu, rep. by its Secretary, Home Department, Chennai and others³³

In this case petitioner's husband, who was a pawn broker, was taken for enquiry by police for having dealt with stolen jewels. She alleged that her husband died due to police excess and his dead body was thrown in a reserve forest. Facts reveal that the family of deceased is trenching under financial difficulties due to the sudden loss of head of the family. Further it is also seen that the appellant wife has to give in marriage a daughter and also two



sons, beside looking after her grandson, whose parents committed suicide .After seeing all the facts and circumstances of the case honourable Court observed that in case of custodial death, the family of the deceased needs to be reasonably compensated and held that it is appropriate to enhance the compensation ordered by the learned single judge from Rs. 3 lacs to Rs. 5 lacs as it has been prayed by the petitioners in the writ petition.

M. Kalithai vs. State of Tamil Nadu, rep. by its Secretary (Home), Fort St. George, Chennai and others³⁴

In this case petitioner wife Marisamy filed the writ petition seeking for a compensation of Rs. 10 lacs from the respondents as damages for having caused the death of her husband while he was in the custody of the fourth respondent. An RDO enquiry was conducted against the death of the petitioner's husband under police standing order. In a report it was found that the death was due to suffocation and due to hanging as opined by the Medical Officer and not due to torture by the police personnel. The honourable Court held that the illegal arrest of Late Marisamy and lack of care in saving his life while in police custody are sufficiently proved and respondents are directed to pay a sum of Rs. 2 lacs as compensation towards the death of the petitioner's husband.

In Basant Singh vs. State of Punjab & Ors³⁵ the writ petition was filed under Articles 226 and 21 of the Constitution of India. The fact of the case is that the petitioner's son was died at the age of 35 years while he was in police custody due to fire arm attack. Plea taken by respondents is that the deceased died in attack by unknown persons while he was taken back to custody after recovery of certain weapons in pursuance of disclosure statements by deceased. Whereas in the petition it was alleged that his son Munder Singh has been killed while in judicial custody. He was taken by the police for production to the Court and later on 13th July 1991 in a fake encounter he was killed. During the course of argument it was find that deceased had died in July 1991 and petition preferred in the Court after six years and the case is decided after 19 years of occurrence. After considering all the facts and circumstances Court ordered that Rs. 3, 00,000/ be awarded to the legal heirs of the deceased Munder Singh.

Dr. Ranjit Reang vs. State of Tripura & Ors.³⁶

In this case a writ petition was filed by a Medical Officer govt. dispensary in Dhalai District under Articles 21 and 226 of the Constitution of

India for seeking action against the Tripura Government and the police authorities for the unauthorized detention and physical assault on the petitioner by the police .They took him into custody on 02.07.1998 and till his release the next day without registering any case against him tortured him .From the inquiry report it was proved that police personnel given slaps to the petitioner while taking into custody. In medical evidence it was found that the left ear drum of the petitioner was perforated and petitioner complained of pain and hair loss. The Inquiry Officer found that injury suffered by the petitioner was not very simple but grievous in nature and accordingly concluded that force has been applied on the petitioner. After considering the facts and circumstances of the case, the Court directed the State government to pay compensation Rs. 20,000/- for the humiliation and unauthorized detention and assault.

Chairman, Bar Council of Tamil Nadu, Chennai, vs. State of Tamil Nadu, rep. by its secretary to Govt. (Home Department), Chennai and others³⁷

In this case a writ petition was filed before the High Court of Madras under Article 226 of the Constitution of India. Facts of the case are that four advocates were arrested by police and taken to the police station. Alleged physical and mental assault was applied on the four advocates. But the contention by respondents is that Advocates were not beaten at police station but were beaten by some members of public in a public place. However injuries that Advocates borne on their bodies not mere contusion but there are cane injuries on their bodies. Explanation by police that public inflicted injuries not explained nature of injuries mentioned in wound certificate. It was found that police responsible for injuries on lawyers. The Court held that none of the circumstances detract from the fact that the injuries that the Advocates have borne on their bodies are not mere contusion that could come about by fist fights, but there are cane injuries on their backs, contusion on the ventral aspect of the foot and injuries on the body which could not have been inflicted in a melee .The honourable Court said present case is a fit case where the action of the police officials in causing brutal attacks on the lawyers shall be met with directives for payment of compensation by resort to public law remedy. Writ petition is allowed and the respondents are directed to pay a compensation of Rs. 40,000/- (each Rs. 10,000/-) for the benefit of four advocates. Court further observed that when injuries exist on a person is in the custody of police, it is for the police to explain and when the explanation which the police



gives do not explain the nature of injuries that find mentioned in the wound certificates, it would lead to an obvious inference that it is the police who were responsible for the injuries on that person. In such cases, the state government itself will have to bear vicarious liability for the action of the police officials and the Court has the power under Article 226 of the Constitution to award monetary compensation to the affected person. The said award monetary compensation by the High Court is a remedy available in public law.”

*Smt. Saraswati Devi vs. State of Rajasthan & Ors.*³⁸

This case was filed under Article 21 of the Constitution for custodial deaths and petitioner prayed for compensation. The facts of the case is that deceased was allegedly beaten up by other prisoners and guards of jail while he was in jail custody .As a result of merciless beating he sustained injuries which lead to the death of the deceased. Trial was conducted against accused prisoners and guards. As accused persons were acquitted by the trial court as all witnesses turned hostile. The Court after considering the facts and circumstances of the case observed that it is a paramount duty of the state to protect the people. The state is not only the trustee of the people, but while dealing with the custody of a convicted prisoner, it is the custodian of an inmate’s of the jail. Hence, an onerous duty lies on the custodian to ensure the safety and lives of the inmates. The officers of the jail thus have a constitutional duty to protect and promote the life of the prisoners. Court held that state is liable to pay compensation to petitioner and her children.

*Dalbir Singh vs. State of U.P. & Ors.*³⁹

In this case the deceased was called by his friend Kunwar Pal resident of Sikri District Bulandshahr at about 6.00 p.m. on 1st Sept. 2006. He requested Sonu the deceased to go and show some property to five purchasers. They took him in the car. Since Sonu did not return till 9.00 p.m. On enquiry petitioner was informed that Sonu had been taken by the police officials of sector 20 of Noida police station and he gave the telephone number of one Pradeep constable and asked the petitioner to contact him. The petitioner immediately contacted on the given number and the said constable told him that if he wanted to see Sonu he had to come to sector 31 police stations at 10.00 a.m. They were not given any further information. The petitioner thereafter left the sector 20 and to the utter shock and surprise informed by the police officers from PS Phriza Dehat that Sonu had committed suicide in

sector 20 lock up. It is only then that the family realized that said 5 persons were policemen in plain clothes. On reaching sector 20 the petitioner was informed that the dead body was lying in the mortuary and would be sent for postmortem. The petitioner and his son were taken to Noida where they saw the dead body of Sonu. The body was covered with injuries, black marks and abrasions all over. It was clear that he had been body beaten up. Blood was coming out from the head. In the meantime, the news of Sonu’s killing having reached the village there was public outcry as there was one more death in the hands of Noida police and the matter appeared in the local media mainly in vernacular.

To calm down the tempers of the villagers, an FIR was ultimately registered along with two other FIRs against the deceased. The external injuries all over the body of the deceased were not explained and in fact the postmortem report itself is not accurate as compared with the photographs. The honourable Court observed that 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 judiciary itself, which if it happens, will be a sad day, for anyone to reckon with.

*B. Ammu vs. State of Tamil Nadu, rep. by Chief Secretary, Chennai and others*⁴⁰

In this case a writ petition was filed by a widow of deceased seeking compensation from the government on account of custodial death. Facts show that the police officials were guilty of having allowed the deceased to wear lungi against the rules and provisions contained in police standing order 661, which led to suicide of deceased. Magisterial enquiry report and other records show that the death could have been avoided, if the officers showed some care and seriousness. Even though the policemen against whom action was recommended can’t be prosecuted under section 107 or 306 Indian Penal Code, still there negligence as well as willful omission can be made as basis for awarding compensation to the petitioner. The honourable Supreme Court held that petitioner is entitled for compensation. Such compensation directed to be paid by State based on the Motor Vehicles Act by using multiplier method.

In this case the honourable Court directed the first respondent to pay a sum of Rs. 3, 32,000/- as compensation to the petitioner with interest at 6% from the date of filing the writ petition. Such



payment / deposit shall be made within three months from the date of receipt of a copy of this order.

M.A. Meeran (died) by L.Rs. and Ors. vs. Govt. of Tamil Nadu & Ors.⁴¹

This case was filed under Articles 21, 226 of the Constitution. In this case M.A. Meeran was illegally detained for more than a week and he was harassed by respondent Sub-Inspector of Police. There is a clear violation of fundamental rights guaranteed under Constitution of India. The Court observed that purpose of awarding compensation is not only to compensate the victim but also for 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 citizen. Hence the amount of compensation can't be quantified for the violation of fundamental rights by the officers of the State. After seeing the facts and circumstances of the case Court awarded 3 lacs as compensation to the appellant.

Ravindra Nath Awasthi vs. State of U.P. & Ors.⁴²

A writ petition was filed by petitioner Ravindra Nath Awasthi in the High Court under Articles 21 and 226 of the Constitution of India. In this case S.K. Awasthi advocate was charged with criminal contempt by a Division bench of Allahabad High Court and on 21st November, it directed the contemnor to be taken into custody and punished for period of one month. However; on the intervention of the members of the bar that contemnor would improve, the punishment was suspended to improve his conduct by giving opportunity. Subsequently by judgment and order dated 22nd April, 2008 the order of suspension was revoked and directed to take him in custody and send him in jail for serving sentence. ON 2nd May 2008 an order was passed by Senior Superintendent Central Jail, Naini to keep him in separate jail for one week. On 6th May, 2008 he was admitted in Jail hospital in semi-unconscious state. The jail doctor noted several injuries on the body of S.K.Awasthi. On 8th May, 2008 S.K. Awasthi was brought on stretcher to the High Court for being produced but the bench was not available but his attendance was noted and he was sent back to jail. On 10th May, 2008 he was admitted in S.R.N. Hospital, Allahabad under the reference made by Jail Doctor with the permission of the Chief Medical Officer. In the Jail his legs were tied up with iron chain. On 13th May, 2008 he died in the hospital. On being pointed out by the members of the Bar Council about the death of S.K. Awasthi in mysterious circumstances an order was passed by High Court (D.B.) to hold an inquiry as to find out

under what circumstances death has been caused and what was the reason for shifting him to the hospital and, keeping him chained during the medical treatment.

The Chief Medical Officer, Allahabad was directed to constitute a team consisting of three doctors to conduct the postmortem of S.K. Awasthi. The report showed the death of S.K. Awasthi was a custodial death and jail authorities have violated all statutory instructions contained in Jail Manual, norms of human rights and directions issued from time to time by various courts of law. Court said there has been serious violation of constitutional rights guaranteed to the deceased under Article 21 of the Constitution. Writ petition is allowed and High Court directed to the respondent to pay compensation of Rs. 5,00,000/- to the wife and two daughters of S.K. Awasthi and the state shall deposit the amount of Rs. 5,00,000/- within one month from today in the account of the deceased's wife.

Ahalya Pradhan vs. State of Orissa and ors.⁴³

In this case a writ a petition was filed under Articles 21, 226 of the Constitution of India and under Rule 239-B of Orissa Police Manual. FIR was lodged alleging death of the husband of petitioner had occurred in police station in suspicious circumstances. However inquiry submitted in this case shows that death of the deceased was suicidal and incident occurred inside Police Hazat. In an inquiry report negligence of police official to provide proper watch was found. Court held State Govt. is vicariously liable to compensate petitioner. Considering the age of the deceased and facts and circumstances of the case Court directed the respondent to pay Rs. 3 lacs to the petitioner.

Smt. Chandrapati Debbarma vs. State of Tripura and Ors.⁴⁴

This case was filed under Article 21 of the Constitution. In this case there is allegation that son of petitioner was killed by personnel of TSR while he was in their custody. Fact of the case is that son of petitioner was arrested by personnel of TSR and that he died without having been released from custody due to multiple injuries found on his person particularly, rupture of spleen was admitted. Therefore, burden is clearly on respondents to explain how victim sustained injuries which caused his death. Plea by respondents that deceased died due to injuries caused while making attempt to escape from custody by jumping down not established. Witnesses examined by opposite parties were not present at spot at the time of occurrence. Medical evidence showed that injury on spleen



could be caused if deceased was hit on spleen by boot. It could be said that he was died due to custodial violence and mother entitled to compensation of Rs. 4 lacs.

Court on its own Motion vs. State & Anr.⁴⁵

This case was filed under Article 226 of the Constitution of India. In this case deceased was died in Jail custody. Facts of the case are that due to assault of Jail inmates' death of the deceased was caused. Court held that state has sacrosanct duty to see that people who are in their custody do not meet unnatural death. It can't make a distinction that deceased was a life convict. As deceased was aged 34 years and had hoped to live his span of life. Offer of compensation of Rs. 1 lac by the State government cannot be regarded as adequate in the instant case. The honourable Court held that under circumstances of the case wife of deceased was directed to be compensated with an amount of Rs. 3 lacs.

Thus, "Torture in custody flouts the basic rights of the citizens recognized by the Constitution and the award of compensation against the state is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21 of the Constitution of India. As such, when the family of the deceased is crunching under financial difficulties, presumably because of the sudden loss of the head of the family prematurely, that too in unusual circumstances, which are attributed to the police excesses, it would be appropriate to enhance the compensation granted in a writ petition⁴⁶."

National Human Rights Commission and Custodial Violence

The National Human Rights Commission (NHRC) was set up under the Protection of Human Rights Act, 1993 for protection and promotion of human rights in India. One of the important functions of the Commission, as outlined in section-12A of the Act, is to enquire into the violation of human rights and abetment thereof. Since its inception, the NHRC had started receiving numerous complaints of violation of human rights from all over the country.⁴⁷ A large number of such complaints relate to violation of human rights by police i.e. custodial abuse which includes custodial torture, custodial death and custodial rape are reported to National Human Rights Commission and Commission has decided the cases. Some of the leading decisions of the Commission are discussed here under.

A college Lecturer becomes a Victim of Police Brutality: Kerala.⁴⁸

In this case Commission took suo-moto cognizance of an instance of police brutality, published in the Hindustan Times on 3 September 1998, under the heading "Police brutality again in Kerala". The report stated that a college lecturer was beaten mercilessly by the police as he had dared to question the fare from police demanded by the driver of an auto rickshaw while visiting Kozhikode. When the lecturer became unconscious, his legs and hands were tied up and he was shifted to a mental hospital, and a case was made out that he was a violent mental patient. The mental hospital did not admit him because of his serious condition and he was taken to a medical college. The reporters and photographers, who arrived to obtain a firsthand account of the torture inflicted upon the victim, were also assaulted by the police.

The Commission issued notice to the Chief Secretary and DGP, Government of Kerala to ensure that appropriate steps were being taken against the culprits.

Torture of Dayashankar by Police: Uttar Pradesh⁴⁹

In this case Dayashankar Vidyalkar, a resident of Haridwar, Uttaranchal submitted a complaint alleging that while he was propagating the teachings of Swami Dayanand at Haridwar Railway Station on 29 February 2001, he was beaten and manhandled by a Constable and, as a result, his left ear was badly injured and a bone behind his right ear was broken. The report received from the Superintendent of Police Railway, Muradabad in response to a notice issued, by the Commission indicated that the allegations of the complainant against the constable were found to be correct. The constable was punished by a reduction in his present pay- scale by 3 stages for 3 years, and a case u/s 323/336 IPC and Section 145 of Railways Act, 1989 was also registered against him.

Atrocities on Smt. Usha Kiran Vajpayee by Police Personnel: Uttar Pradesh.⁵⁰

In this case on 10 December 2000, while Smt. Usha Kiran Vajpayee, age 37 years was performing her duties on the pulse polio day, four constables who were in a drunken state misbehaved with her and outraged her modesty. When she protested, she was chased by the four constables who shot at her. The victim was admitted in the Jhansi Medical College Hospital, where her one foot had to be amputated to save her life. The Commission decided, in its proceedings of 13 May 2002, to award Rs. 5, 00,000 as immediate interim



relief to the victim to be paid by the Government of U.P.

Police Beating of Jagdish Kawala Leading to Grievous Injuries: Maharashtra.⁵¹

In this case Commission received a complaint dated 8 November 2001 from Shri Sudhir T. Dhurwey, an advocate, alleging that Shri Jagdish Kawale, a resident of Pauni District Bhandara, Maharashtra was mercilessly beaten by the police on 2nd March 2001. The victim suffered grievous injuries resulting in a fracture to one leg and he also had to spend a considerable amount of money for his treatment in the Bhandara Government Hospital.

In view of the strong prime-facie case against the Assistant Sub Inspector, the Commission on 12 September 2002 issued a show-cause notice to the Government of Maharashtra and directed for the grant of immediate interim relief. In response, the Home Department, Government of Maharashtra stated that it would not be appropriate to grant immediate relief until the decision were known in respect of two cases pending in Court, one filed by police and the other by the complainant.

Custodial Death of Ram Kishore-Complaint by Uttar Pradesh Parjapati Samaj Vikas Parishad.⁵²

The fact of the case is that the Commission received a complaint from the Uttar Pradesh Parjapati Samaj Vikas Parishad alleging that one Ram Kishore, a driver employed by M/s Goodwill Enterprise, Mohan Nagar, Ghaziabad had been killed while in police custody. The complaint stated that Ram Kishore had realized an amount of 15 Lakh from certain parties in Meerut on behalf of his employees on 15 July 1993. However, later that day he had been the victim of an armed robbery in Modi Nagar in which incident all the money had been taken away from him.

Despite this, he was handed over to the police by his employers for interrogation, in the course of which he was tortured in the police station. He was not released despite approaches being made to the District Magistrate. He died on the night of 23 July 1993. Thereafter, in order to hush-up the case, the dead body was taken to the District Hospital, Ghaziabad and the post-mortem report was manipulated as to cause of death, the evidence of torture being destroyed. In this case the Commission proceeded to order the payment of Rs. 3 Lakhs as compensation by way of immediate interim relief to the next of kin of the deceased.

Torture in Police Custody Results in the Death of Kartik Mehto: Bihar⁵³

In this case Commission received a complaint from Smt. Munewa Devi alleging that her husband, Kartik Mehto, had been illegally detained by the police on 27 September 1995, brutally tortured and that this led to his death in Police custody on 4 October 1995. In the light of the report received, the Commission directed the Government of Bihar to pay immediate interim compensation of Rs. 2 Lakhs to the family of deceased and to recover this amount from the accused.

Illegal Detention, Torture and Death of Shah Mohammad in Police Custody and Negligence on the part of Doctor for not Conducting a thorough Post Mortem: Madhya Pradesh.⁵⁴

In this case Commission initiated proceedings upon receipt of a wireless message from the Superintendent of Police, Drug which indicated that the custodial death has occurred of one Shah Mohammad, a resident of Bhilai of Madhya Pradesh. It was alleged that Shah Mohammad had been picked up by the police on the night of 16 July 1996, illegally detained and brutally tortured to death. The petition added that the wife of the deceased had not been informed of what had occurred.

After consideration of reports, the Commission concluded that Shah Mohammad was picked up by the police and brutally tortured during the period of his illegal detention and this led to his death. Commission recommended paying a sum of Rs. 2.5 Lakhs as compensation to the next- of-kin of the deceased.

Death of Punjabhai Somabhai Thakor Due to Police Beating: Gujarat.⁵⁵

In this case deceased, Shri Punjabhai Thakor aged 55, was a suspect in a case of theft of an article worth Rs. 14,695/- from the house of a resident of Napa. An offence was registered under Sections 457 and 380 of IPC. The deceased and two other suspects were alleged to have voluntarily presented themselves on 13 November 1995 for interrogation. During the course of investigation, the deceased suddenly complained of giddiness and lay down. The PSO instructed that he be admitted in the hospital but doctor was not available. The Head Constable checked his pulse and found him dead. They left the body there and returned to the police station to report the death.

The inquest panchnama report stated that there were dark spots of beating on the back, buttocks and the back of the thighs and legs. It was also reported that the body was left in the 'dead body room' without proper care and rats had bitten



the body. The Commission, in this case directed the State Government to pay a compensation of Rs. 2 Lakhs to the dependant of the deceased.

Reference from Human Rights Court, Kanpur Nagar, In Respect of Death of Jasveer Singh in Judicial Custody.⁵⁶

In this case Commission received a reference from the Human Rights Court, Kanpur Nagar, relating to the death in judicial custody. The Court had come to the conclusion that the deceased had been denied proper and timely medical attention while in custody, on account of which he had died of acute intestinal obstruction. The Court further held that the death in custody of the said under-trial was the result of gross negligence and carelessness. An amount of Rs. 2,70,000 was determined by the Court as an appropriate compensation to be paid to the dependants.

Custodial Death of Mohammad Irshad Khan.⁵⁷

In this case Commission received information from the Deputy Commissioner of Police (DCP), North East District Delhi about the death of Mohammad Irshad Khan. A complaint was also received from Shri Acchan Khan, father of the deceased alleging that his son had died as a result of brutal beating by the police. He added that the family of the victim had not been informed of the circumstances of the death. A magisterial inquiry had been conducted by the SDM, Seelampur. After seeing the facts and circumstances of the case, the Commission directed to the Government of National Capital Territory of Delhi to pay Rs. 3 lakhs to the dependants of the deceased.

Death of Shibu- Delay in Providing Timely Medical Aid: Kerala.⁵⁸

In this case Commission received a complaint dated 24 June 2000 from Shri M Unnikrishnan Namboodri a resident of Palakkad, Kerala alleging that Shibu expired in jail, Kotlayam while in judicial custody. The petition alleged that Shibu suffered from a pain in his chest but the Prison Superintendent and a Police Constable on duty delayed his admission in hospital which led to his death. The Commission accordingly directed the Government of Kerala to initiate departmental proceedings against the Jail Superintendent and to pay 50000/- to the dependents of the deceased. However, the High Court of Kerala requested the Commission to defer its decision until a final decision was arrived at on the basis of the inquiry report to be

submitted by the CBI before the Court.

Death of Karan Singh in Police Custody Due to Violence: Madhya Pradesh.⁵⁹

In this case Commission received a communication dated 24 October 2000 from the Collector and District Magistrate, Morena, Madhya Pradesh stating that, on the basis of information received, police personnel from the Ambah Police Station had conducted a raid and arrested persons involved in gambling on 24 October 2000. It was further stated that one of them, Karan Singh, who was in an intoxicated condition, was admitted in the Ambah hospital where he expired. On 26 February 2002, the Commission directed to take action against the delinquent police personnel and to pay Rs. 200000/- as compensation to the widow of deceased.

Death caused by Police, the Victim an extremely old age widow: Uttar Pradesh.⁶⁰

In this case on 19 May 2004, 80 year old widow, Mangla Devi, allegedly died due to brutal beating by four constables headed by Sub Inspector who raided her Kanghi Tola residence in Sarai Maali area of Thakurganj, Lucknow. The police team had gone to arrest Mangla Devi's son Suresh, an accused in a robbery case. But not finding Suresh in the house, the cops vent their ire on the weak & frail woman. An inquiry report submitted by Additional Superintendent of Police (Rural) found the charges against the cops were prima facie true.

Death of Rajiv Sharma in Police Custody: Uttar Pradesh.⁶¹

In this case on 7 July 2004, a 35 years old mechanic identified as Rajiv Sharma S/o Vishnu Avtar Sharma allegedly died in the police custody of the Sardar Police Station of Meerut. He was picked up from his house at 10 am on 6 July 2004 by the police for interrogation in connection with his alleged involvement in a theft case of 12 grams of gold ornament in June 2004. During Interrogation the police had allegedly brutally beaten him and resorted to third degree torture. After his death, the police allegedly tried to give the incident a suicidal colour and sent his body to the hospital. However, the doctor on duty refused. Later the police claimed that Sharma's body was found hanging from a ventilation window inside the toilet of the police lock-up room. In this case seven erring police officials were suspended after a preliminary enquiry.

Death of Bhanumati Due to Police Torture: U. P.⁶²



In this case on the night of 3 August 2004, Bhanumati, a pregnant Dalit, was allegedly brutally beaten by Policemen at Simra Village in Pilibhit District. She died the next day of the beating. The husband of the deceased, Rameswar Jatav lodged a complaint against the Police. Case is still pending.

Suicide by a dalit Woman following Rape by Eight Persons Including Four Constables

In this case a complaint dated 10 April 1996 was received from Hasan Mansur, President, PUCL-Karnataka, that ABC (name withheld to protect identify), a dalit woman, was raped by eight persons, of whom some were constables, and she had subsequently committed suicide. The complaint further mentioned that one Ganga had also allegedly been killed by the Police.

The Commission directed the State to pay a sum of Rs. 2 lakhs to the next of kin within six weeks. In addition, the Commission recommended that disciplinary action against all erring police personnel should be taken and concluded as expeditiously as possible.

Custodial Rape of a Disabled Girl Lodged in Observation Home: Maharashtra.⁶⁴

In this case District Women and Child Welfare Officer, Mumbai informed the Commission that a girl suffering from hearing and speech disabilities was lodged in the Observation (Remand) Home, Umarkhadi, Mumbai was raped by the Court cook employed in that home on 21 September 1977. A police report had also been lodged with the Dongri Police Station about the incident. Having regard to the facts and circumstances of the case, the Commission was of the view that this is a fit case in which it should invoke jurisdiction u/s 18(3) of the Protection of Human Rights Act, 1993. The Commission therefore made the following recommendations.

1. To pay a sum of Rs. 50,000 to the victim of rape within a period of one month.
2. To intimate to the commission the outcome of the criminal prosecution.

Rape of a Minor Girl by the Protectors of law: Uttar Pradesh.⁶⁵

In this case Shri Chandradhas Maurya, a member of Samita Sainik Dal and a resident of District Bulandshahr, Uttar Pradesh, in a complaint to the Commission, alleged the kidnapping, rape and suicide of a 15-years old girl ABC (name withheld to protect identify). He stated that two firemen, along with a police constable, enticed ABC away on 14 August 1998, and took her to their rented premises in front of the police station, where they raped her repeatedly. She was allowed to go away the next morning with the threat she would be killed

if she reported the incident to anyone. The girl disclosed the incident to her family members, and she, along with her family members, went to the police station and met the Sub-Inspector and Fire Station Officer. Both of them instead of taking cognizance of the case abused the girl and threatened them with implication in false cases. Upon returning home, ABC committed suicide.

On consideration of all the facts and circumstances of the case the Commission recommended to the Government of U.P. that investigation in this case should be conducted by state C.I.D. and a sum of Rs. 1 lakh should be paid to the grandfather of ABC.

The National Commission for Women reportedly received as many as 2,580 complaints from the State of U.P. out of 5,160 complaints of atrocities and harassment against women across the country in 2003. There were reports of honour killing and custodial rape. Dalit women become easy targets due to inability of their husbands to pay debts.⁶⁶

Rape of Munni and Shabnam: Women Protection Home, Agra⁶⁷

In this case on 7 July 2004, a police constable, Arjun Singh was suspended and sent to jail for allegedly raping Munni and Shabnam, inmates of the Women Protection Home, Agra.

Rape and Torture of Woman: District Court Hamirpur⁶⁸

In this case on 15 September 2004, a woman under-trial prisoner, was attempted with rape and later brutally beaten up by four constables at a transit lock-up at Hamirpur District Court compound. The two women inside the cell as well as few under trials at the men's lock up corroborated her allegations. She was, however, sent back to transit lock up where she was brutally beaten up, leaving her with a fractured hand and a bleeding head. A medical report, which was sent to the Court, confirmed her injuries due to severe beating. The authorities concerned, however, did not even order an inquiry into the incident.

Detention and Molestation of Woman: Alambagh Police Station Lucknow⁶⁹

In this case on 27 November 2004, two constables identified as Gajbe Alam and Ram Ratna posted at Alambagh Police Station in Lucknow allegedly illegally detained a young woman along with a friend of her for two hours and extorted Rs. 7000 and mobile phone from her. The woman also accused the constables of molesting her. On receiving a complaint from the victim, the police arrested the accused.



Custodial Death of Jagdish in the custody of Lucknow police, U.P.⁷⁰

In this case Superintendent of Prison, Lucknow informed the Commission that under trial prisoner (UTP) Jagdish, who was admitted in the Jail in the evening of January 17, 1997 had many fresh injuries on his head and body and lastly he died in the night of January 17, 1997 in Medical College Hospital, Lucknow during the course of treatment.

Upon perusal, the Commission directed for a detailed report in the matter. The report of the Superintendent Jail, Lucknow brought out that the deceased was admitted in District Jail, Lucknow on January 17, 1997 at about 1700 hrs and at that time there were a number of bleeding injuries on his body. As the condition of the UTP became serious, he was taken to medical college hospital, and got admitted in the emergency ward where he died on the same day. The post mortem examination report showed as many as 12 ante-mortem injuries on the body of the deceased including a number of incised wounds on his head and face. After seeing the facts and circumstances of the case Commission observed that an attempt was made by the concerned police officers responsible for the arrest of the deceased to wash off their hands by lodging him in the jail. The fact that the MLC recorded at Primary Health Centre showed only six injuries and the post mortem examination report showed 12 injuries is also indicative of the fact that further violence was perpetrated on the deceased, while he was in police custody. The Commission, therefore, concluded that there has been gross violation of human rights of the deceased and recommended to State Government of U.P to pay a sum of Rupees Two lakhs to the next of kin of the deceased within a period of one month from the date of communication of this order.

Death of Ram Udit Narayan Singh in custody of police at Begusarai Bihar⁷¹

In this case District Magistrate, Begusarai, Bihar intimated the Commission that on April 8, 1999, accused Ram Udit Narayan Singh, arrested in a criminal case was committed suicide by hanging himself, while in custody of the police. After taking cognizance Commission considered these reports on May 18, 2004. According to the reports, Ram Udit Narayan Singh was arrested on April 28, 1999 and he committed suicide by hanging himself while in police custody on April 29, 1999. Post mortem report of the deceased indicated as many as 11 (external) injuries and that the death was attributed to shock due to injury caused by blunt and hard substance. The postmortem report also disclosed the mark over the neck was grave in nature. The

Magisterial Inquiry was conducted into the death of the deceased and came to the conclusion that death had been caused due to external injuries. The Commission observed that;

“Convicts, prisoner or under-trials are not denuded of their fundamental rights under Article 21 of the Constitution. The precious right guaranteed by Article 21 of the Constitution cannot be denied to under-trials or other prisoners, including convicts in custody, except according to procedure established by law. There is a great responsibility on the police and prison authorities to ensure that the citizen in its custody is not deprived of his right to life. Death in police custody is, perhaps, one of the worst crimes in a civilized society.

The Government of Bihar has sanctioned a sum of Rs. 50,000/- by way of interim relief to the next of kin of the deceased Ram Udit Narayan Singh.

Illegal detention and torture by Maharashtra Police⁷²

In this case Commission received a complaint from Shri M.P. Shetty of Wadala, Mumbai, Maharashtra, along with a copy of a press report that appeared in a Marathi Daily newspaper regarding police atrocities. It was alleged that on September 18, 1999 Shri Ramachandra Pujari and Damodar Shetty were picked up by the police from a restaurant and taken to Dharavi Police Station where they were beaten up and Shri Pujari was sexually abused in the filthiest and beastly manner.

The Commission, on November 22, 2000 after considering a report received in this regard from the office of Deputy Commissioner of Police, Zone-VIII Bandra (E), Mumbai directed to issue a notice to Director General of Police, Maharashtra to show cause as to why a sum of Rs. 50,000/- to each of the two victims be not paid as immediate interim relief u/s 18(3) of the Protection of Human Rights Act, 1993. Government of Maharashtra intimated that State Government has decided to pay compensation of Rs. 50,000/- to each of the two victims as per the recommendation dated November 22, 2000 of the Commission.

Unlawful detention and torture by police in Karnataka⁷³

In this case People's Democratic Forum (PDF), through its Convener on May 17, 2000 referred a case relating to illegal detention and subsequent death of one Mohan on February 7, 2000 due to torture in police custody in Malleshwaram Police Station in State of Karnataka. It was alleged that the victim was picked up in the morning of February 6, 2000 coming back from K.C. General Hospital after serving breakfast to his hospitalized



father and taken to Malleshwaram Police Station, where he was subjected to severe torture. After his release, he was admitted to K.C. General Hospital and shifted to Victoria Hospital where he expired on February 7, 2000. A prayer was made for registration of a case against the delinquent police officials and compensation of at least Rupees Two lakhs to the family as well as government job for the wife and free education for the two daughters.

The Commission considered the matter and recommended a sum of Rs. 25000/- as interim relief to the family of the deceased. Since the State Government has already paid a sum of Rs. 10,000/- to the family of the deceased, the Commission recommended that the balance amount of Rs. 15,000/- be paid to the family of the deceased within six weeks and called for compliance report together with the proof of payment.

Illegal detention torture and false implication by Jehanabad police in Bihar⁷⁴

In this case Commission received a complaint dated September 3, 2002 from one Mohd. Harun Khan, R/o Village Dharnai, District Jehanabad, Bihar stating that his brother Hasmi Khan, a driver was picked up on August 8, 2002 by Amarendra Kumar Jha, Officer Incharge, Kurtha Bazar Police Station on the allegation that he was carrying a dead body of an unknown lady in his jeep. He has further stated that his brother was allegedly subjected to torture for six days by the said police officer and later on falsely implicated in crime case No. 299/2002 u/s 302/201/34 IPC on August 8, 2002.

The Commission received report indicated that the victim was brought to the Police Station Kurtha Bazar on August 3, 2002 and was produced in the court on August 6-7, 2002. The Investigating Officer of the case was suspended for negligence in producing the accused (brother of the complainant) without case diary and the memo of evidence resulting in his illegal confinement in the police lock-up. The police officer was also punished under the service rules for dereliction of his official duty. The Commission received communication from Government of Bihar in which the State Government recommended/suggested for payment of Rs. 25,000/- as interim relief.

Illegal detention and torture of a minor by Haryana Police⁷⁵

In this case a news report, published in the Chandigarh 'Dainik Tribune' (Hindi) captioned 'Bachon ko Yatnay: CID Jaanch ke Aadesh' (Torture of Children: CID Enquiry ordered), wherein it was reported that a 12 year old child, namely, Mukesh, resident of Jhugi colony, situated

in the compound of Mansa Devi was picked up and tortured by the Police. More reports that appeared on the TV channel, had shown that both hands of the victim were tied and he was hanged from a tree and beaten up by two Policemen.

As the news item prima facie disclosed violation of rights of children, the Commission through proceedings dated October 13, 2005 took cognizance and observed that no civilized state could allow such brutalities to go unpunished. It directed to Director General of Police, Government of Haryana to look into the matter and send his report within three weeks.

Gang rape by security forces in the tribal State of Chhatisgarh⁷⁶

In this case on February 3rd 2007, while returning from market at 5 p.m a young tribal woman (name withheld) was dragged into the forest by 4 members of the Mizo Security forces deployed in Dantewada, and gang raped. The men of the Mizo Security force gagged her to prevent her from shouting and then she lost consciousness. When she regained consciousness, she was alone and naked in the woods. Her back was badly injured and her arms and legs were scratched and bruised from rocks and branches in the forest and now she can hardly move. A group of Mizo Security force went to her village and threatened her and her family. The case was registered at Kuakonda police station in Dantewada of Chhatisgarh.

Rape in Karnal police custody in Chandigarh⁷⁷

In this case on November 28th 2006 a slum dweller woman (name withheld) from Shiv Colony in Karnal was falsely arrested and raped in police custody by constable Ram Kumar and detained for 14 days. The Chandigarh Police recommended a regular departmental inquiry, and placed the head constable under suspension. The police denied her allegations without any investigation.

Rape in Sundarpur police station of Jharkhand⁷⁸

In this case three women were illegally detained at Sundarpur police station on January 9th 2007, where they were brutally beaten and raped. The victims claim that they were stripped and paraded naked round the police station, and that police stole Rs. 120 from them. They identified the perpetrators as the officer-in-charge, Dipnarayan Mandel and another officer, Mahadev Oraon. Member of Parliament Hemlal Murmu visited the women in jail and alleges to have seen marks of violence on their bodies. A doctor from Godda sadar hospital who examined the women also confirmed that the bleeding of one of the victims had not yet



stopped. The Godda police officer, Biglal Oraon denied these allegations; however the Deputy Commissioner, S.S. Meena has constituted a three-member inquiry committee to look into the allegations. Although an inquiry is now underway, justice for the rape victims is in jeopardy as the reliability of the report may be questionable.

A close analysis of the above mentioned cases which came up before the Courts and National Human Rights Commission reveals the sad story of the practice of custodial violence in India. This practice has resulted in severe injuries, rapes and ultimate deaths of the detainees. The payment of compensation to the next of kin of the victim appears to be an inappropriate remedy under the circumstances and there is an urgent need to award deterrent punishment to the erring police personnel. This fact should be kept in mind that the cases of custodial violence instead of being falsely reported are not reported at all. The complainant always has a fear that his life may become hell and there may be his continuous harassment by the interested men in power. So whenever such cases resulting in grave violation of human rights of detainees are reported, it should be viewed as an opportunity to bring the corrupt, arrogant, perverted and vicious policemen to justice. They deserve maximum possible punishment prescribed by law so that others may also deter.

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