CHAPTER - 7

CONCLUDING OBSERVATION AND SUGGESTIONS

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This work provides evidence of the amplitude and complexity of the subject, which some say has grown to 'nightmarish' proportions and other considers to have produced an 'implementation crises. Indeed, there is no denying the fact that states experience increasing difficulties in coping with all the tasks imposed on them by various categories of human rights instruments and by different types of monitoring bodies handling out 'fiats' which enjoy different degrees of authority. The UN has repeatedly warned against duplication on work and overlapping of mandates, and it has also issued guidelines on the need for consistency in standard setting. The winner, though, is the individual, who has been granted a new standing in International law and also been given a variety of routes by which he or she can fight for the upholding of his, or her dignity as a human person.

One of the most important challenges in the years to come will be to achieve a fair balance between the all-important concern for effective protection of the individual against human rights violations and the legitimate concern of states regarding the possible overloading of the system which would lead to increasing indifference and lassitude (already; discernible) towards sustained promotive actions in the human rights field. A plurality of proceedings in the same case before different organs adds to this problem. Some states have tried to avoid this along the lines indicated above; nevertheless it remains the case that they must each time engage in time-consuming procedural representations with the supervisory body concerned, which is the ultimate judge of the admissibility of such cases.

The use of Torture in places of detention and imprisonment is a global phenomenon. Its ever increasing use in areas of armed conflicts and civil strife and

technological developments in the industrialised countries in the field of production of new security equipments also susceptible to use for the purpose of torture have added new dimensions to the abhorrent practice of torture causing worldwide concern about it. The new implements of torture are not only being manufactures but are also being exported and marketed all over the world. Thus an international trade in terror is on increase. In addition to traditional implements like leg- irons, shackles and chains non-lethal technology including electric rods, electric shock batons, CS as in canisters form pepper sprays are being used by the police and security forces against civilians. These implements when misused for non-security purposes because severe pain and consciousness. Regrettably, they have been used invariably in developed well as developing countries. It is a matter of great paradox that the USA, the self-proclaimed champion of human rights, has recently introduced the use of chain gangs and its companies are engaged in manufacture, sale and marketing of the security implements usable for the purposes of torture. These developments call for legal and regulatory interventions both at national and international levels to control the manufacture, sale and use of the increasingly sophisticated technological implements and equipments meant for security forces.

The U.N. Declaration on the Protection of All Persons from Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment defines torture both in terms of physical as well as mental pain intentionally inflicted by or at the instance of a public official on a person for extracting information or confession. It does not include pain or suffering arising only from lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of the Prisoners. As the Convention Against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment also defines torture in the identical terms, it retain the same loopholes as

in the 1975 Declaration, like the Declaration, the Convention allows torture to continue it is prescribed by the law of the land.

When one looks at the practices of torture in India he is not dismayed at the prevalence of this practice in modern times because it exists here ever since the *Vedic Age*. In Ancient India burning of limbs, tearing by wild animals, trampling to death by elephants and bulls, mutilation were the various forms of torture. It was a legally sanctioned method of crime control in the *Mughal* India which saw the application of discriminatory *Shariat* law in which a thief's hands were to be cut off, the adulterers and adulteresses were stoned to death. During that period the Muslim criminal law which sanctions the punishment of life for life, tooth for tooth, if blood, money or any other form of compensation to the next to the kin or the sufferer himself was not acceptable. Although the British were by and large, fair and legal they, in the interest of the *Raj* encouraged police brutality and third degree methods against revolutionaries. During that period the overzealousness of investigation officers to secure conviction was the main reason for the use of torture. The British however, took note of the growing incidents of police torture and took several initiatives on torture prevention. Prominent among teem were the establishment of Torture Commission and the enactment of Indian Penal Code, the Police Act, the Indian Evidence Act and the Code of Criminal Procedure on the recommendations of the former. Sadly, the independence of the country did not bring about any remarkable change in the practice of custodial torture; it is still taken for granted as a routine police practice of interrogation, which is to be tolerated as a necessary evil in the fight against the rising menace of crimes.

Although no part of the country is unaffected by the practice of torture, it has acquired alarming proportion in areas affected by insurgency and terrorism.

Confronted with the problems of militancy, terrorism and insurgency, abetted and financed from across the border, some police and security officers in their over zeal to bring militancy under control sometimes resort to such measures which are morally reprehensible and legally impermissible. Although the adoption of such measures is very often justified by these forces on the pretext of national security and defence of human rights of innocent people but it has wider ramifications both under national and international laws and as such raises many complex and sensitive legal, ethical and political questions. Prominent factors responsible for the prevalence of the practice of custodial torture and related human rights abused include *inter-alia* the negative public image, poor working conditions, political interference, lack of proper training, outdated police organisation, the police psychology, feeling of immunity among policemen that they will not be held accountable even if they kill the victim and even if the truth is revealed, pressure on the investigation officer for quickly solving the problem, difficulties in getting remand from the court for a thorough interrogation of a criminal, virtual collapse of the criminal justice system, and subordination and accountability of the police to political executives and civil services.

Prohibitions of torture have been included in a number of international instruments, in particular the Universal Declaration of Human Rights, 1948, the four Geneva Conventions of 1949 on the humanitarian rules which apply to armed conflicts and the two Additional protocols thereto of 1977, the European Convention for the Protection of Rights and Fundamental Freedoms, 1950, the International Covenant on Civil and Political Rights, 1966,the American Convention on Human Rights, 1969 and the African Charter on Human and People's Rights,1981. In most of

these instruments the prohibition also applies to other cruel, inhuman or degrading treatment or punishment.

Although all these instruments are clear in their condemnation of torture, in none of them an attempt was made to define torture. However, in its Report in the Greek case, adopted on November 5,1969, the European Commission of Human Rights had given certain indications about how it interpreted the term "torture," "inhuman treatment" and "degrading treatment", as they appear in Article 3 of the European Convention. The definition covers only intentional government conduct. It does not cover negligence of the government. Nor does it apply to private individuals not acting on behalf of the government. Such features of the definition, clearly limit the scope and effectiveness of the Convention. The International Convention on the Elimination of All Forms of Racial Discrimination provided for protection against bodily harm whether inflicted by government officials or by any individual, group or institution. The draft Convention of the International Association of Penal Law, which was rejected by the Working Group on the Convention, seems to leave room for the interpretation that it applies to private individuals. Thus the incorporation of the language of the above-mentioned Conventions would strengthen the Torture Convention and the task for improving the Convention requires persuading States to accept the commitments provided for in these conventions.

Furthermore, the definition in the Article did not spell out what constitutes 'inherent in or incidental to lawful sanctions' which are excluded from the application of the Convention. Consequently under the definition any States that is engaged in the practice of torture would be able to shield its conduct from the scope of the Convention by making it a lawful sanction under its legal system of government, and argue that lawful sanctions are excluded from the definition of the prohibited conduct.

The exclusion of lawful sanctions from the application of the Convention is not required to be consistent with certain objective's standards external to the legal systems of the Parties. The exclusion of lawful sanctions therefore enables parties to violate the Convention without being found in breach of it. To close this escape route, the definition should have retained the language borrowed from the U.N. Declaration on Torture. This Declaration specified the criteria to be employed for the exclusion of acts of pain or suffering which are 'inherent in or incidental to lawful sanctions' from the application of the Declaration by requiring that such acts must be consistent with the Standard Minimum Rules for the Treatment of Prisoners.

The failure to grapple with these problems is regrettable and represents an impediment to the success of the Convention. It is therefore, necessary to search for solutions to these problems; that, indeed, is what this commentary has undertaken to achieve .The conclusion of this analysis is that the resolution of some of the difficult problems embedded in the Torture Convention lies in the international standards at hand, contained in the Universal Declaration of Human Rights, regional standards and the applicable norms of the International Labour Organization System.....The international human rights law prohibits torture and ill treatment of the pre-trial detainees and calls upon states to provide remedies, including restitution and/or compensation and necessary national, medical, psychological and social assistance to victims of official human rights abuses. States have an obligation to abolish the practice of extra-legal, arbitrary and summary executions, and unacknowledged detention and enforced disappearance. Since torture is one of the most atrocious violations against human dignity and also constitutes a serious offence against human dignity and also constitutes a serious offence against the life and security, international law requires all states to put an immediate end to the practice of torture

and eradicate this evil for ever through full implementation of the relevant international standards in this area which are set forth in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Code of Conduct for law Enforcement Officials, the Safeguards Guarantying protection of the Rights of Those Facing the Death Penalty, the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and the ;Principle of Medical Ethics relevant to the Role of Health Personnel, particularly physicians, in the protection of prisoners and detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. If human rights law prohibits the act of torture in time of peace, international humanitarian law in time of internal or international disturbances or armed conflicts. The general Standards relating to freedom from torture have been amplified further by the adoption of specific standards. The 1975 Anti-torture Declaration represents the first major attempt to define and declare torture as an offence to human dignity. The Principles contained in that non-binding declaration acquired binding force after the adoption of Convention against Torture of 1984. Although the Convention is binding only on the States ratifying or acceding to it, its provisions are binding on other states as well on account of their being crystallized into important norms of customary international law. Under the Convention States Parties are enjoined to take effective legislative, administrative judicial or other measures to prevent acts of torture within their jurisdictions. It also imposes such important responsibilities as the non-extradition of persons to another state where there are substantial ground for believing that he would be in danger of being subjected to torture, to make all acts of torture offences punishable with appropriate penalty under their criminal laws, to have appropriate procedures to ensure that a person suspected of any act enumerated in the Convention is held for the

time necessary to start criminal or extradition proceedings, mutual assistance in criminal proceedings, systematic review of interrogation rules and procedures, compensation to the victims of torture, inadmissibility of statements procured by torture.

The Convention also establishes a comprehensive system for the implementation and enforcement of its provisions it provides for the establishment of 10 members Committee against Torture and envisages following measures of implementation are: reporting system, inter-state Communication system, and individual petition system. The parallel provisions for European Community are more effective as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment provides for the provision of visit to the places of alleged torture without prior notice.

The Optional Protocol to the Convention against Torture is a recent piece of legislation, which is intended to establish a preventive system of regular visits to places of detention. The mechanism under the Protocol is designed to anticipate problems and prevent abuses of human rights. The Optional Protocol provides for the establishment of a specialist sub-committee of the Committee against Torture to identify practices, which facilitate torture, and then to initiate a confidential dialogue with governments to discuss practical remedial measures to prevent such practices. In addition to these measures the creation of an international criminal court to deal with international crimes including torture is a welcome step.

The study of national standard reveals that India, which is a signatory to the Universal Declaration of Human Rights and has also ratified the International Covenant on Civil and Political Rights, has accorded due importance to the protection of liberty and human dignity of arrested persons by recognizing a set of criminal

rights as an integral part of fundamental rights and by providing procedural safeguards against arbitrary or illegal arrest under her Constitution and criminal law. The presumption of innocence of the accused and fair trial through impartial and independent judiciary in public in which the accused is given sufficient opportunity to defend himself with the help of his counsel are the cardinal principles of the Indian criminal jurisprudence. Here the law requires the prosecution to prove the guilt against the accused beyond reasonable doubt.

Prominent among the rights of arrested or apprehended person, guaranteed and recognized under the Constitution and the Code of Criminal Procedure are the rights to life and personal liberty, to protection against self incrimination, to notification of grounds of arrest, to access to counsel, production before a Magistrate without delay, production of the arrested person before a Magistrate within 24 hours and to protection from handcuffing, legal safeguards against torture are contained in Article 20, 21 and 22 of the Constitution and criminal legislation like the Indian Penal Code, Criminal Procedures Code, Evidence Act and the Police Act. Provisions of law mandating inquiry into the cases of custodial death and providing for medical examination when the suspect complains of custodial torture provides protection to suspects/accused from police high- handedness may be mentioned in this regard. The Indian Republic is ruled by the rule of law and not the "*police raj*". So the police have no immunity from the criminal liability for crimes committed by them. The plea of respondent superior does not apply when the guilty policeman is accused for his illegal acts. The inadmissibility of statements made to the police in evidence is yet another important safeguard against torture. The police, however, misuse Section 27 of the Evidence Act to work out criminal cases. Various police and prison Acts and manuals also carry certain rules and regulations against custodial torture. Victims of

torture have civil, criminal and constitutional remedies. While pursuing a civil claim against the police is like chasing a mirage, private criminal complaints are rarely successful. Jurisprudentially a policeman can be prosecuted and convicted for offences committed by him but it seldom takes place in practice due to certain legally sanctioned impunities and non-legally sanctioned procedural techniques devised by the police. The non-availability of evidence against the accused police personnel and the existence of a nexus among police, executive magistrates, doctors and state officials render their prosecution and conviction a remote possibility. It is a pity that persons with the responsibility of protection of human rights not only turn a blind eye to or tolerate the commission of torture by the police and security forces but also resort to cover-up operations to protect or shield the perpetrators of killings, rapes and torture in the police custody.

Under Articles 32 and 226 of the Constitution the human rights conscious Indian Supreme Court has invented several techniques and approaches to redress the wrongs committed on the poor suspected offender by the police. Besides issuing several useful directions to the law enforcing authorities to prevent the practice of torture it has elevated the right to compensation to the status of a fundamental right under Article 21 of the Constitution. The constitutional remedy of compensation for a violation of Article 21 is based on strict liability principle. As this public law remedy is distinct and in addition to the remedy in private law for damages for the tort committed by a government servant the principle of sovereign immunity is not applicable in this case. Though the judicial initiative of awarding monetary compensation to victims of torture is a step in the right direction it needs to be recognised that judicial activism cannot be a substitute for the inefficiency of the executive. It is humbly submitted that the rule of monetary compensation for victims

of police torture should be provided statutory basis and amount of compensation should be recovered from the guilty policeman.

Recently constituted National Human Rights Commission has focussed its attention on torture committed by the police and security forces and sought to provide much needed relief of torture victim and their kith and kin. During its thirteen years of existence it has entertained thousands of complaints against the police and security forces, enquired and investigated them and made appropriate recommendations to the Central and State Governments. It is reasonably true that the Commission does not have power to investigate the complaints against armed forces. But it can only make recommendations to the Central Government to look into such complaints. Even this kind of monitoring by the Commission has made considerable impact on the working of armed forced in terrorism, militancy and insurgency affected areas.

Combating the practice of torture is a complex problem requiring administrative, legal, financial, psychological and educational inputs. Efforts to eradicate torture should, first and foremost, be concentrated on the creation of framework with emphasis on strengthening of existing legal prescription and mechanism. It should be accompanied by the will and determination on the part of the state to bring the perpetrators to justice. Since the denial of the existence of the practice of torture or its toleration as a necessary evil by the Government is the predominant factor responsible for the prevalence of this practice even after 60 years of the country's independence, the Government should clearly adopt an official anti-torture policy at the earliest and implement it in right earnest. The official's policy should reflect a public commitment to abolish torture or ill treatment and give a clear and loud message to all concerned that those found guilty of human rights abuses including torture would not be spared. Public commitment to prevent torture or ill

treatment can be best expressed through the ratification of the U.N Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which is over due and would be a right step in the affirmation of the country's determination to do away with torture. It will also send correct signals to the public servants, particularly members of the police and security forces not to transgress the rules of international conventions. The reasons put forward by the Central and State Governments for not acceding to the Convention are not convincing and any further delay in this regard will not serve as a convenient handle to India's baiters in international fora to severely indict it. India should also ratify or accede the (first) Optional Protocol to the International Covenant on Civil and Political Rights, which allows individuals to make petitions to the Human Rights Committee for effective remedies after they have exhausted all domestic avenues for redress. Moreover, the reservations India made at the time of accession to the ICCPR withholding from Indian citizens the right to compensation in case of wrongful arrest or detention should be removed. This is all the more necessary because the Supreme Court has already recognised the right to get compensation in such cases.

The Government should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as custodial torture and prosecute such violators thereby providing a firm basis for the rule of law. Special attention should be given to provide access to all relevant documents any evidence including post-mortem reports and police and other official records and legal aid to victims of torture and their representatives. All possible protections should be extended to the witnesses against fear of reprisal from the police and security forces. To this end the police and security personnel should be suspended during their trial or inquiry as the case may be and judicial inquiries into custodial deaths should be made

mandatory. The Judges appointed for this purpose should be provided with all necessary resources and powers to carry out the inquiry effectively. For instance they should have powers to compel witnesses to attend and to obtain documentary evidences. The Government should also take steps to ensure that such inquiries are conducted within a reasonable time framework and their reports are immediately made public and acted upon by the concerned authorities.

The Police should be made accountable for their non-compliance of the provisions of law relating to arrest and detention of the accused persons and wherever possible legal safeguards and protection currently available to persons arrested and detained by the police should also be extended to other places of investigation such as army camps. It has been observed that in some cases the police deliberately fail to record law so requires the arrest of persons detained for interrogation, although doing. In some cases the police have failed to bring detainees before a Magistrate within 24 hours of arrest. Since these acts of omission or commission are responsible for the recurrence of custodial torture and deaths, steps should be taken to ensure the prosecution and conviction of the guilty policemen under Section 220 IPC. Furthermore, the police should be given specific instructions to keep up-to-date record of arrests and to promptly inform relatives of an arrested and the detainees' transfer.

Wide powers conferred on the police and other security forces in respect of arrest and detention is one of the prominent reasons of custodial torture. To deal with this problem a rational and pragmatic arrest and detention policy with the focus on the need to distinguish the power of the police to arrest and the necessity of arrest should be evolved. For this purpose the Supreme Court's guidelines in *Joginder Kumar Singh vs. State of U.P.*, may serve as a starting point.

Pre-trial detention should be used only where non-custodial measures such as bail cannot serve the interests of justice. This is all the more necessary because unwarranted detention takes away a citizen's right to live with dignity and freedom. Sadly, the bail system is archaic causing untold sorrow and miseries to many poor accused, "little Indians", who are forced into long cellular solitude for small offences because of their inability to give bail and bond or for the simple reason that trials do not commence and even if they do they never conclude. Thus there is a need to demonetarise and humanise the bail system and make the right to bail one of the real attributes of the right to life and personal liberty. In other words, bail should not be refused where deprivation of liberty due to denial of bail would be disproportionate in relation to the alleged offences and the expected sentence. To give solace to thousands of under trial prisoners Languishing in different jails for their failure to give bail and bond the Government should exercise its power to grant remissions and commutation of sentences.

The use of handcuff and fetters as a matter of routine is matter of grave concern because it destroys the dignity and impairs the capability of victims to continue their lives and their activities. Although the highest court has issued many sensible directives to minimise the use of handcuff and fetters, they have not percolated down and influenced the working of the police and prison authorities. It is, therefore, necessary that officers of the places of detention are trained in the rights of the detainees under international and national laws and a correctional cure orientation course be designed to inculcate the constitutional values in such officers. They also need to be educated about the therapeutic approaches and techniques of tension free management.

Special attention should be given to the implementation of the recommendations for prison reform of various national committees and commissions established over the years. We should move to prepare a new All-India Jail Manual to serve as a model for the entire country and to enact a new Prison Act on the lines of the recommendation of various National Committees and organisations. In making the new prison legislation efforts should be made to incorporate human rights standards set forth in United Nations Standard Minimum Rules for the Treatment of Prisoners of 1957, Basic Principles for the Treatment of Prisoners, Body of Principles for the Protection of all Persons under any form of Detention on Imprisonment and Basic Principles on the use of Force and Firearms by Law Enforcement Officials, as far as possible. Appropriate corrective measures should be taken to improve the conditions in police lock-ups and rejuvenate the legal aid programmes. If provision is made for providing access to counsel to a person soon after his arrest, it will have positive effect to curb the practice of torture. It is therefore necessary that it should be made obligatory for the police to inform the nearest Legal Aid Committee immediately of an arrest. In the aforesaid direction, some states in our country have taken steps to transform the prison into correctional homes by enacting separate legislation for that purpose incorporating the emerging human rights jurisprudence in the criminal justice system. However, the constituents of the criminal justice system, i.e. the police, prosecution, prison and the court should act in cooperation and coordination as one affects the others. We, therefore, cannot insist restraint upon the police without concentrating upon the welfare of the police as these two are diagonally proportionate which strives for better training and service condition for lower level of constabulary directly facing the public at large. The State Governments should publish pamphlets in local languages describing the rights of arrested persons, which should be placed in

each police cell so as to enable all detainees in police custody to know their rights. All those who believe that human dignity must not be left behind when a person enters the gates of a police lock-up or prison should also come forward to sensitize the general public about the dehumanising aspects of police brutality and highhandedness during interrogation and work for social mobilisation against the practice of torture or ill-treatment. Non-governmental organisations should distribute pamphlets in local languages and prepare video films and bring incidents of torture to the notice of authorities, media judiciary and National and State Human Rights Commissions and Human Rights Courts in districts. It is a well known fact that the police still depends on 'fist and not on wits' and on torture and not on culture' for their investigation mainly because of the Non-availability of the scientific aids of investigation or inability on the part of the investigating officers to use them. What is therefore needed is the revamping of the police force and its modernization. Each police district of the Country should be equipped with its own lie detectors, and at least two trained psychologists. Forensic science laboratories should be set up in every nook and corner of the country to assist the police in obtaining and analysing the collected information and evidence.

Every three to four police stations should among them have a crime team of trained fingerprint and footprint experts, cameramen and videographers, a dog squad and a computerised record of crime, criminals and their modus operandi, looked to both the State and National Master Terminals for quick reference. Every district superintendent of police should have with him a proper interrogation centre with a pool of at least a dozen professional interrogators. Besides equipping the police stations with modern aids of investigation the police force should be trained and encouraged to use these in investigation. A national interrogation school should be

established. There is also need to devise new techniques of interrogation, which should be based on the psychology of criminals.

Detailed guidelines for the interrogation of suspects/ accused need to be formulated in consultation with lawyers, bar association, Civil liberties groups and medical professional groups. Special rules should be drawn up to protect particularly vulnerable groups from custodial torture. Females should be kept separate from male detainees and a female officer should be present during the interrogation of women detainees. Independent bodies should be allowed to make surprise visits of the places of detention. Local judges should make unannounced visits to police stations to check on the treatment of inmates.

Intensive programmes of human rights education as the integral part of training curriculum for all police and security forces personnel should be introduced to re-educate the police and the security forces about India's international commitment to uphold, prohibit the use of torture under any circumstances even in situation of emergency. Such programmes should also aim to weed them out of their sadistic tendencies and inculcate in them the respect for human person. It should be made clear to all enforcement personnel that orders from superior officers are no defences against charges of custodial torture. Incentive should be created for those who so care to protect the rights of detainees and prisoners in their custody.

As rightly suggested by the National Human Rights Commission in insurgency-affected areas the assistance of the local magistrate or police officers should be taken in cordon and search operations in order to allay any misgivings about the conduct of the security personnel. District Magistrates should hold regular meetings involving the security forces in insurgency affected areas. If possible leading non-officials, representations of non-governmental organisations and others should be

associated with such meetings. While use of military and Para-military force is necessary for the restoration of peace in insurgency-affected areas, lasting peace could be re-established there only when it is accompanied by timely and sagacious political measures. Therefore in addition to anti-insurgency operations appropriate political measures and initiatives should be taken in insurgency-affected areas like Jammu and Kashmir, Punjab and North East Regions.

'Kill the killers' approach or the use of State terror may have short-term benefits in combating the menace of insurgency for sometime. But the uses of such dubious methods are morally reprehensible, legally impermissible, and strategically counter productive in the long run. Effort should, therefore, be made to ensure the full respect for human rights during counter militancy or counter insurgency operations. Where violations of human rights occur as a result of the conduct of Armed Forces personnel prompt and effective action should be taken under the law to prosecute these accused of wrongdoings.

As recommended by the Law Commission a new Section 114 B Should be inserted in the Evidence Act to provide a rebut table presumption of guilt of the accused police personnel in cases of custodial torture. If this recommendation is acted upon, it will prompt the police to treat the suspects/accused persons in their custody more humanely and in more accordance with law.

Magistrates before whom detainees appear must enquire whether they have complaints of police torture, and to inform all detainees that they have a right to medical examination under Section 54 of Cr. P. C. Special rules should be enacted to authorise a detainee to request a judge to order a second medical examination. Victims of torture and their legal representative should have the right to obtain the results of any medical examination.

Torture is a symptom of a deep malaise afflicting the police system which is based on the antiquated Police Act of 1861-the primary concern of which was to maintain the hold of the British Empire in the country. Time has come to take necessary steps for the reorganisation of the police itself and to restore to it the skills and the integrity that the country so desperately needs for improving law and order on the one hand and the rising menace of insurgency, terrorism and militancy in different parts of the country on the other. There is need to improve the service conditions of the police and re-define their role and functions in the society. The investigating function of police should be insulated from political pressure and bureaucratic interference. The police should be made accountable to the people, the law and the police organisation by enacting a new police legislation on the lines of the recommendations made by the National Police Commission including those relating to establishment of a Statutory Security Commission at the State level and the mode of appointment and tenure of the chiefs of the Central and States Police organisations.

It does not require much argument to convince one that a sound and pragmatic crime prevention and crime control policy and an effective criminal justice system are categorical imperatives to make our fight against torture successful. Unfortunately, our political leaders and political parties have turned a blind eye to the national and public interest in their overall approach to the problems of law and order and national security and so far looked for ad doc and short term measures and solutions to the problem of security and defence of the nation and its citizens. The end result is, an unduly weak and corrupt criminal justice, which is inadequate to deal with even ordinary cases, let alone extraordinary cases involving terrorism and disruptions.

The need of the hour is a strong State, a strict law and its speedy implementation. If this need is not met and we continue to drag our feet, our security, peace and wellbeing would remain indefinitely in danger from the inimical forces within as well as outside the country. It is, therefore, extremely important that a rational and pragmatic criminal policy reflecting the security and defence concerns of the nation and the precious right to life and personal liberty of its citizens should be evolved by national consensus after a free and fair debate on all aspects of crime control and criminal justice. Suitable amendments reflecting such policy should be made in major criminal statutes. Steps should be taken to make the police force strong, vibrant and dynamic organisation fully equipped to combat the challenges before the country.

Although our higher judiciary has earned wide acclamation for its judicial dynamism, pragmatism and independence and amply shown their sensibilities and concerns for the downtrodden and disadvantaged sections of the society, there is a lot the needs to be done to refine the lower rung of the judicial system. When that happens, we need have no fears about police excesses and misconduct.

As torture is one of the most atrocious violations of human rights its prevention should form an integral part of the national programme of protection and promotion of human rights. While everything possible should be done for the protection of criminal's rights the fact that too much emphasis on human rights of accused persons overlooking victims' concern can also produce social disorder and it should not be overlooked. It would indeed be a sad day if we win the battle on the front of human rights of the criminals and loose the war against the menace of crimes.

Despite the fact that we have detailed provisions to protect and safeguard the human rights of the people, we see that a steady process of devaluation of human

dignity and personality is irresistibly advancing and brutal betrayal of those basic rights, which are enshrined in International Bill of Human Rights, becomes a common scenario. The human rights are daily providing to be a mere teaming illusion and promise of unreality. However, there is a new emerging world legal order. The Indian experiment in enacting the protection of Human Rights Act is a hopeful start. The human rights jurisprudence is gaining judicial reverence in India especially where life and liberty are violated by state violence. Reports from metropolitan cities and various other cities reveal that the nation's custodians of law are among the major perpetrators of crime against humanity. It is almost an unwritten understanding that when an officer asks his subordinates to "thoroughly interrogate a suspect" it would simply mean "torture". Human Right Commission's statistics reveal that no part of India is free from this scourge to spell the list. Excessive and increasing workload of the police is, no doubt, a major factor contributing to this situation. Third degree is generally believed to be a short – cut method of investigation by the police. Inability to cope with the rising crime rate and hierarchical pressures from above often force police to resort to third degree methods to produce quick results. Those subjected to such tortures often breakdown and confess to crimes they may not have committed. No doubt, the media and courts have been instrumental in checking this serious menace but much remains to be done. Even if an inquiry is held, its findings are shelved. Transfer and suspension are routine tricks played by authorities to gain time. There is positive trend of the judicial policy for compensating victims in torture. But compensation was awarded without any basis or principles for quantifying the amount. Judges went by intuition rather than any rational basis.

Increasing use of compensation remedy may also give an impression that the state is ready to compensate if it can purchase the right to continue to inflict

constitutional deprivations on its citizens. Whether a death is deliberate, accidental, suicide or due to neglect or however it is caused, the net result is a custodial death. Then the question is how to compensate for the life that has been lost? How to equate compensation claims of unequal? By doing it are we not justifying the economic inequality?

The award of compensation is the recognition of a fact that state agencies have committed a crime and therefore, the state must pay compensation. The question remains about the prosecution of those officials who have committed the crime. Unless the law of the land is upheld against the guilty law enforcement personnel, custodial death cases will continue to rise.

There are numerous provisions in the Constitution of India and also in other laws, but unfortunately most of the provisions have remained paper tigers without teeth. It is generally the poor, disadvantaged and weaker sections of the society who are victims of custodial crimes because there is no one to care for them and to protect them. It is therefore, for the government and the legislature to give a serious thought to the recommendation of the Law Commission and National Human Rights Commission and bring about appropriate change in the law both to curb custodial crimes and also to ensure that the guilty are punished.

The following remedial measures are suggested to eliminate the custodial torture-ridden society:

1. The recruitment process must focus on the strict screening and objective assessment of the personality traits before a candidate is inducted in the service.
2. The emphasis of the training must be to inculcate the spirit of service among all cadres. The training academics should include courses on human rights.

3. The media should highlight the achievements of the police vis-à-vis portrayal of their dismal performances.

4. The Police Act, 1861 should be amended suitably and the duties of the police in respect of the human rights should be incorporated in the Act.

5. Section 54 of the Criminal Procedure Code should be amended making medical examination of the accused mandatory before and after the police remand.

6. The Evidence Act should be amended in consonance with the 113th Report of the Law Commission of India by inserting a new section in the Act providing for a rebut table presumption against the police officer as to how the person in his custody received injuries or met with his death.

7. Human rights programmes should be taken out by the print and electronic media. People should be well informed of their rights and the remedies available under the law.

8. Human Rights watch groups have played laudable role in monitoring the human rights violations and bringing them to the public attention. These watch groups should be encouraged to organize their operations down to the district and taluka levels in protecting the rights and liberties of the people.

9. High powered vigilance squads comprising judges, medicos, lawyers, journalists and representatives of the human rights observant should be constituted at the district and State level to make surprise visits of the police stations so that early detection of unauthorized detention and custodial torture becomes possible.

10. The policeman who commits custodial violence should be adequately punished and punishment awarded should be given wide publicity. And to

discourage the custodial violence promotion should be denied to the delinquent policemen.

11. The monetary compensation awarded to the victims of torture should be saddled on the erring officials.

12. Police power of arrest in bail able and cognizable offences should be curtailed and arrest on the ground of suspicion should be banned.

13. Last but not least, independent investigative staff should be provided to the NHRC in pursuance of the Protection of the Human Rights Act, 1993, since the NHRC cannot rely upon the State constabulary for the detection and investigation of the Crime, as the professional fraternity prompts the policemen to conceal and destroy the evidence of the crime committed by their brethren.

14. The human Rights Courts set up under the Human Rights Act of 1993 should also be given the power to look into the aspects of victim rights, one strong suggestion for the beginning in this regard be given to amend section 30 of the Act to allow for compensation to be given to the victims for human right violations which would include custodial torture.

15. The entire legal network needs to be trained to be more sensitive to be needs of into all victims. Only amending the law to provide for victim rights will not solve the problem. As it has been noticed in the past it without be difficult to circumvent the law as such. On the other hand training in such matters would reduce the incidence of custodial torture and so pave the way for a better standard of prosecution as being victim oriented would mean that there would be more and improved forms of communication, thus fulfilling the needs of

both the parties the state in that there is crime control and the upholding to the victim's rights.

If suggestions are implemented in their true spirit it would not only contain the growing menace of custodial violence but also revive and straighten the confidence of the people in the rule of law. To eliminate custodial torture the judges, administrators, police, media, NGOs and medicos should join hands and discourage torture. The ethical values expected of a policeman should be revealed through his functional attitude, where he gives utmost importance to the protection and promotion of the human rights so that a social order emerges where the custodial torture becomes a thing of the past.