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Custodial Violence: Horrendous Crime in a Civilised Society

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ABSTRACT

*Custodial violence, perhaps one of the worst crimes in a civilized society is a matter of concern for many reasons. Custodial violence, including torture and death in the lock-ups, strikes a heavy blow at the rule of law, which demands that the powers of the executive should not only be derived from law but also that they should be limited by law. The law of arrest expects both individual rights and the state's collective responsibility toward society. In most scenarios, it becomes a challenge to strike a perfect balance between both. Transparency of action and accountability are possible safeguards to prevent abuse of power to arrest a citizen. Custodial violence broadly includes custodial deaths, torture, and as per the new trend in the crime pattern, even custodial rapes. Custodial Violence in India is widespread, unaccounted for, and rarely prosecuted. It contributes to the state of anarchy and lawlessness in many parts of the country. Violence is used as a cheap and easy method of investigation and also as a tool for oppression. It is almost an unwritten understanding that when an officer asks his subordinates to 'thoroughly interrogate a suspect' it would simply mean 'torture'. In the case of *D. K Basu V State of West Bengal*, the highest body of justice, the Supreme Court, had clearly stated, "Custodial torture is a naked violation of human dignity. The situation is aggravated when violence occurs within the four walls of a police station by those who are supposed to protect citizens", also paying consideration to the tediousness of police task in yielding control over its civil population. Human Dignity is the highest form of fundamental right respected even by our most powerful and prestigious statute book, the Indian Constitution. When an individual is taken under custody, it means that he/ she becomes the legal property of the state, which also means the state and its missionaries become their legal guardians and all its institutions are at their disposal to reprimand them as well as guard them. But the idea of state custody has become so alarming that society fears cooperation and even the notion of police and police stations.*

Keywords: *Custodial violence, Torture, Human Dignity, Constitution, Police, and fake encounters.*

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I. CUSTODIAL VIOLENCE

‘When tortures, custodial violence, and fake encounters are equated with justice, the constitution becomes a victim too.’

Some officers feel that threatening and violence is the only key to taking someone’s confession. Therefore, they use every possible vicious trick to dig the information out of the convicted minds.

Torture methods- beating on bare soles of feet, beating on spine, lying the victim nude on ice slabs, the forcible extraction of teeth, etc. Chief justice of India N.V. Ramana expressed concern at the degree of human rights violations in police stations in the country. He said that “the threat to human rights and bodily integrity is the highest in police stations”.

Despite the huge number of legislations, custodial violence continues to take place not only in India but all around the world.

As per National Crime Records Bureau- Last 20 years, 1888 custodial deaths have been reported. But on, 26 police personnel have been convicted of custodial deaths.²

News that made everyone’s heart cry out loud!!³

(A) Thoothukudi in Tamil Nadu case-

The hideous incident of the custodial death of a father-son duo named **JEYARAJ-BENIKS** . They were alleged for keeping their shop open after the curfew hours for fifteen minutes. They were taken into custody for three days and were tortured pathetically over a minor violation. On the third day of the lock-up, they took their last breath.

(B) Minneapolis police officers-

Another breath-taking case that spread like fire across the world was the death of a 46-year-old African-American black man, **GEORGE FLOYD**. On 25th may 2020 in minnesota, a white policeman crouched on his neck for nine minutes straight which resulted in his death. George was accused of using a counterfeit \$20 note at a store. He was forcefully taken out of the car, his hands were handcuffed, and he was made to lie on the road and a white officer named Derek Chauvin kneeled on his neck despite George conveyed ‘I can’t breathe’ and he repeatedly gasped and told the officer to stop, the officer continued to do so in the same position when

² Custodial Violence - Civildaily, <https://www.civildaily.com/news/towards-a-more-humane-police-force/> (last visited Sep 14, 2022).

³ Why Police Brutality and Torture Are Endemic in India, <https://thewire.in/government/why-police-brutality-and-torture-are-endemic-in-india> (last visited Sep 14, 2022).

taken to the hospital, he was declared dead by the doctors.

II. POLICE BRUTALITY AN ENDEMIC IN INDIA

The institutionalization of police brutality, as an unofficial policy of the State, poses a serious challenge to every modern civilization. It doesn't just raise obvious questions around respect for human rights and the rule of law but is also a serious threat to the survival of democracy in a state where the Constitution is supreme. This threat stares in our faces today.

While the debate around police reforms across the globe has slowly intensified, there is a lack of any meaningful discourse on the same in India. There is very little public outrage and, in many cases, strong public support for police misconduct. It is the failure of the citizenry to meaningfully engage with the State on critical and key issues that have led to such an unfortunate development. Let us critically analyse key issues with the help of several recent domestic developments.

- Cases of custodial deaths, extra-judicial killings, torture, and violence against protesters, are all illustrations of this form of brutality.
- Methods of torture by the police include inhuman, degrading and barbaric practices that fall squarely within the description of third-degree torture.
- These are not sporadic incidents of police brutality, but appear to be part of the police administration machinery and have been normalized to an alarming extent in society at large.⁴

III. IN COMPLETE DEFIANCE OF THE CONSTITUTION AND THE LAWS

Extra-judicial killings by the police, for instance, are legally permitted and do not amount to a criminal offence in only three types of cases:

1. When it is caused in the exercise of the right to private defence under **Section 96 of the Indian Penal Code (IPC)**.
2. When it is caused under **Section 100** (when the right of private defence of the body extends to causing death) or **Exception 3 of Section 300 of the IPC** (when the public servant exceeds his power for the advancement of justice).

⁴ The unlawfulness of police brutality in India – The Leaflet, (2021), <https://theleaflet.in/the-unlawfulness-of-police-brutality-in-india/> (last visited Sep 14, 2022).

3. If it is necessary to exert force against the accused to arrest him for a crime punishable with death or imprisonment for life. This is mandated under **Section 46 of the Code of Criminal Procedure (CrPC)**.

Constitutional provisions such as **Article 21**, which guarantees the right to life and personal liberty and **Article 22** which grants every accused person the right to an advocate stand violated in cases of fake police encounters.⁵

(A) A Collective Failure⁶

The rise in police brutality in India is due to the failure of three key stakeholders:

1. the Parliament and the Executive (that is, the political component of the State),
2. the Judiciary, and
3. the citizenry

The failure of the parliament to decolonize statutes, remove unreasonable immunity granted to police officers under the laws and create foolproof legislations after due consultation from every stakeholder, is evident.

The failure of the executive to control and discipline the police force is equally obvious. Accountability for law enforcement misconduct is flawed, and has huge structural problems.

The judiciary has also failed in the sense that its judgments are given little importance and are virtually not implemented for all practical purposes by police officers on the ground. For instance, in its landmark judgment in the case of **Prakash Singh & Ors. v. Union of India (2006)**, the Supreme Court issued several directives for police reforms. 15 years since that judgment was delivered, no state or Union territory has fully complied with its directives.

Failure of implementation of landmark judgments: Landmark judgments like this therefore end up becoming good pieces of jurisprudential literature and only has a symbolic value. It makes no sense when landmark judgments that prohibits the police to commit acts of torture and violence and yet, there are large scale violations of those judgments that take place regularly.

(B) A Citizens' Failure

Failure of the citizenry is critical: The failure of the State is a consequence of the failure of the citizenry to meaningfully engage with it and raise questions that are vital for democratic

⁵ Supra Note 3 at page 2

⁶ ibid

survival.

The political system is merely a reflection of its masses: As a key stakeholder, citizens form the backbone of any democracy and act as counter-narrative to forces that promote democratic backsliding. Their actions and nature of engagements define politics and policies of the State.⁷

In the case of police brutality there are three issues that the citizens have failed to engage with the State on:

- The rise in majoritarian politics,
- Increasing corruption, and
- The rise in predatory capitalism.

IV. RISE IN MAJORITARIANISM

India is a democracy and not a rule of the majority: While democracy functions with the belief that the majority will continue to change with changing issues, majoritarianism, on the other hand, is characterized by an organized majority. Majoritarianism is forged by introducing factors (such as religion) that make the division between the majority and the minority more definite and permanent.⁸

Use the police force as a tool for political mobilization: Majoritarianism has led to huge transformation in the Indian political ecosystem. It has inter alia given birth to populist leaders and their politics of appeasement.

- It is because of this rise in the latter that we now see a new tendency of the State to use the police force as a tool for political mobilization.
- It is happening in Uttar Pradesh where the state government highlights encounters as its achievements on a Republic Day. The trend in UP has now spilled over to states like Assam and other areas.
- In the communal riots broke out during the anti-Citizenship (Amendment) Act protests and post the police attacks on the Jamia Milia Islamia University campus, almost 53 citizens lost their lives.

All of the above instances are examples of how a majoritarian state suppresses the minority in

⁷ Indian police use violence as a shortcut to justice. It's the poorest who bear the scars - CNN, <https://edition.cnn.com/2020/12/02/india/police-brutality-india-dst-intl-hnk/index.html> (last visited Sep 14, 2022).

⁸ [Burning Issue] Institutionalization of police brutality - Civildaily, (2021), <https://www.civildaily.com/burning-issue-institutionalization-of-police-brutality/> (last visited Sep 14, 2022).

order to reinforce and perpetuate the division on which its politics survives. Such a suppression is in the form of police brutality.⁹

V. INCREASING CORRUPTION

Police force is by far, the most corrupt institution in India. There are two kinds of corruption within the police force in this country: One is the monetary compensation that police officers receive from common citizens to deliver preferential treatment in matters of law enforcement. Second is a specific kind of political corruption in the form of receiving personal gains, career advancements and such other kinds of favours from their political bosses in return for acting or not acting in a certain way.

A report by **India Spend** states how 28% of police respondents mentioned that **political pressure is the biggest hindrance in police investigations**. Public outrage against corruption in the police force has been rare and discourse over its relationship with police brutality rarer still. Corruption within the police force is directly proportional to police brutality. It is purely an economic model – the ones who pay will get away and the ones who don't will either be met with state sponsored violence or eventually faces the wrath of an extremely hostile administration. This is primarily also because of the huge powers and discretion that the police enjoy under our laws.¹⁰

VI. SUPPORT FOR PREDATORY CAPITALISM

The police force in India was formed under the British Raj through the **Indian Councils Act of 1861**. The idea for a special police force was inherited from the East India Company, which had introduced the '**Cornwallis System**' or the '**Daroga System**' in 1764. The company had brought in the Cornwallis system only to strengthen its hold over the Indian population and to check any act of conspiracy or revolution against the company. This is evidence of the fact that the origin of the police force itself was to protect the capitalists and their interests and not prevention of crime.

Capitalism itself has undergone massive transformation. From being once regarded as a tool to prosperity, it has now become a means to oppress the working class and further deepen divides and differences among people. The gap between the rich and poor is at an all-time high. Human relationships and social interactions are increasingly shaped by economic considerations through a cost and benefit analysis.¹¹

⁹ Supra Note 7 at page 4

¹⁰ *ibid*

¹¹ Supra Note 7 at page 4

VII. THE ROLE OF THE STATE IN PERPETUATING CAPITALISM

In a State where there is increasing level of competition, cops do policing only to serve the interest of the capitalist class and protect the 'rule of the capital'. The role of the State under a capitalist system has also changed. It has today assumed the position of a facilitator rather than a regulator. This is primarily because of its financial dependence on businesses. For predatory capitalism to succeed the working class will have to be necessarily silenced. That's when the capitalists, with the help of bourgeois politicians, use the police to propagate violence against the working class in order to suppress their voices of dissent.

VIII. THE STATE OF POLICE INFRASTRUCTURE AND CAPITALISM

The state of police infrastructure in the country is also evidence of how the police exist today to further the interests of the capitalists. The unequal distribution and subsequent utilization of resources for police infrastructure in Delhi vis-à-vis rural Bihar shows how we treat those who are at the bottom of the pyramid versus those at the top. This also shows that support for predatory capitalism and resentment against police brutality cannot go hand in hand and are rather contradictory. One cannot protest against police brutality without protesting against predatory capitalism and its excesses. This has not been seen in India. Public outrage has therefore been misplaced, and will need an overhaul to tackle the problem more effectively.¹²

IX. ISSUES RELATED TO FUNCTIONING OF POLICE

- **Political Criminalisation Nexus: Second Administrative Reforms Commission** (2007) has noted that the excessive power in the hands of police has been abused in the past by the political executive to unduly influence police personnel, and have them serve personal or political interests.

Further, there has been an increasing phenomenon of **criminalisation of politics**. This nexus interferes with professional decision-making by the police (e.g., regarding how to respond to law and order situations or how to conduct investigations), resulting in a biased performance of duties.

- **An Overburdened Police Force:** State police forces had 24% vacancies (about 5.5 lakh vacancies) in January 2016. Hence, while the sanctioned police strength was 181 police per lakh persons in 2016, the actual strength was 137 police.

¹² Ibid

This is way too low when compared with the United Nations' recommended standard of 222 police per lakh persons. Further, an average policeman ends up having an enormous workload and long working hours, which negatively affects his efficiency and performance.

- **Need to set Police accountability:** In India, various kinds of complaints are made against the police including complaints of unwarranted arrests, unlawful searches, torture and custodial rapes. To check against such abuse of power, various safeguards should be adopted, such as accountability of the police to the political executive, internal accountability to senior police officers, and independent police oversight authorities.

- **Lack of Resources:** CAG audits have found shortages in weaponry with state police forces. For example, Rajasthan and West Bengal had shortages of 75% and 71% respectively in required weaponry with the state police.

Also, the Bureau of Police Research and Development has also noted a 30.5% deficiency in stock of required vehicles with the state forces. Further, funds dedicated to the modernisation of infrastructure are typically not utilised fully. For example, in 2015-16, only 14% of such funds were used by the states.¹³

X. CONSTITUTIONAL PROVISIONS TO PROTECT PEOPLE FROM CUSTODIAL TORTURE

- Article 20 (3): says that no person “shall be compelled to be a witness against himself”.
- Article 21: Provides protection of life and liberty.

Similar provisions have also been provided in IPC and CrPC to protect individuals but they are not relevant to the present time.

Problems with these provisions:

These provisions **do not act as deterrence** to police as they are backed by political parties. There have been cases of use of police for political purposes and killing of suspected criminals in encounters.

Systemic failure:

- The practice of remanding accused persons to further custody (both the police and judicial), has become the norm instead of being an exception.

¹³ Supra note 7 at page 4

- The **overworked magistrate, struggling with an ever-increasing number of cases**, is very often in a rush to get done with the “remand case”, rather than treat an arrested person with the care and consideration that he/she deserves and is entitled to.

Work Culture in Police Forces:

In the Indian police force, **the lower ranks of police personnel are often verbally abused by their superiors**. Many are not considered as individuals, are not shown compassion by the senior ranks, and work in inhuman conditions.

Their relationship with their superior officers is stressful and sycophantic. There is no concept of welfare, and this manifests in their **improper behaviour with the citizenry**.¹⁴

Culture of Torture:

Police torture is endemic and a systemic problem. There is a need for a stringent legal framework that is aligned with and committed to the principles of international law under the **UN Convention against Torture (UNCAT)** to which India has been a signatory since 1997. **Although India signed the UNCAT in 1997**, it is yet to ratify it. The UNCAT aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world. The Supreme Court, through its verdict in the **Francis Coralie Mullin v. Union Territory of Delhi (1981)** and **Sheela Barse v. State of Maharashtra (1987)**, has condemned cruelty and torture as violative of **Article 21** of the Indian constitution.¹⁵

Lack of police reforms:

The issue of police reform ranks very low in the scheme of things for governments. There is **continued institutional apathy towards the issue of police reform**. There was inordinate delay in implementing guidelines issued through the Prakash Singh case and still, several States remain in contempt of the Supreme Court’s judgment.

Lack of implementation:

Constitutional courts have tried to change the reality of police brutality for well over two decades. The judiciary’s approach of simply passing directions and guidelines has not been very effective.

Despite criminal laws being struck down as unconstitutional, they continue to be enforced in

¹⁴ Custodial Deaths - UPSC GS2, IAS4SURE (2022), <https://www.ias4sure.com/wikias/gs2/custodial-deaths-upsc-gs2/> (last visited Sep 14, 2022).

¹⁵ Ibid

various parts of the country by local police.¹⁶

Police Re-Organisation-

2006, in the case **Prakash Singh v. Union Of India** the Supreme Court issued some of the guidelines as to the police set-up and directed the states and centre to re-organize their police set-up as investigated in its judgment. It is one of the landmark judgments that orders the state and central government to make reforms and work for functional autonomy for the police departments in the country.

The Delhi Special Police Establishment Act, 1946 has also played an important leading role in police operations in recent years. The act provides for the constitution of a special force in Delhi for the investigation of certain specified offences in the union territories and also provides for the extension of the operation of this police force to other parts of India with the concurrence of the state government concerned.¹⁷

Legislations

The detained prisoners fall under entry 4, the second list of the SEVENTH SCHEDULE of the CONSTITUTION OF INDIA.

- State government to manage and administer the condition and decorum of prisons.
- Ministry of home affairs - proper guidelines regarding the concerns of prisoners.
- Bureau of police research and development (BPRD) also talks about certain important issues in its volume 66 INDIAN POLICE JOURNAL.
- The Prisoner's Act, 1984
- The Transfer Of Prisoners Act, 1950
- The Repatriation Of Prisoners Act, 2003
- The Repatriation Of Prisoners Rules, 2004
- Model Prison Manual, 2016

Recent 2020 advisories

- Issued on 25th February, 2020- bringing attitudinal change in prison officials
- Issued on 2nd may, 2020- management of COVID 19 in prisons

¹⁶ Custodial Deaths - UPSC GS2, *supra* note 14.

¹⁷ Ibid

- Issued on 12th march, 2020- precautionary measures COVID 19¹⁸

CrPC and Police

- The criminal procedure code confers specific powers, for example, the power to make arrest, search, and seizure on the members of the police force who are enrolled as police officers.
- A large set of powers has been authorized to police officers who are in charge of police stations. Criminal jurisprudence is much more concerned with the prevention of offences

The preventive police action falls into three categories, stated below-

- Prevention of cognizable offences (section 140 to 151 of crpc)
- Prevention of injury to public property (section 152 of crpc)
- Inspection of weights and measures (section 153 of crpc)¹⁹

Arrest Provisions

- **Section 46** describes the mode in which the arrests are to be made, that is with or without a warrant. In making an arrest the police officer confines the person to be arrested unless there be a submission to custody by word or action. Mere gestures or words do not amount to arrest unless there has been an actual seizure or actual touching of the body is necessary.

The process of arrest is as follows-

- Power to use force- it is laid down under section 46 (2) – (3) and 49.
- Power to search a place- section 47
- Power to pursue offenders into other jurisdictions- section 48
- Power to require subordinate officer to arrest- section 55
- Power to re-arrest escapee- section 60

After arrest made-

- Search of arrested person- Section 51
- Seizure of offences weapons- Section 52

¹⁸ Supra note 15 at page 9

¹⁹ Ibid

- Medical Examination of accused- Section 53
- Reports of arrest to be sent to District Magistrate- Section 58
- Discharge of person apprehended- Section 59

Rights of arrested person-

Arrest to be rational and legal. It should be effected strictly according to the procedure established by law. The various powers of the police to arrest are subject to certain restraints.

The imposition of the restraints can be considered, to an extent as the recognition of the rights of the arrested person.

Some express provisions created important rights in favor of the arrested person. The Constitution of India also recognizes the rights of the arrested person under the 'fundamental rights.'²⁰

- Information to be provided to arrestee (section 50 CrPC)
- Arrested person to be presented before a magistrate (section 56 CrPC)
- Arrested individual cannot be detained for more than 24 hours (section 57 CrPC)
- Consultation with lawyer/ legal aid (article 22(1) of the indian constitution and section 303 CrPC)
- Examination by the medical practitioner (section 54 CrPC)
- Special protection to females (section 53(2) CrPC)
- Compensation for an unlawful arrest (section 357(3) CrPC)

NHRC Guidelines-

- Without any delay, the magisterial inquiry would be conducted.
- The following are the duties of the enquiry magistrate
- Visit the place of crime.
- Note all the relevant facts.
- Record pieces of evidence.
- Make optimum level of effort to identify the witnesses who were present at the happening of crime.

²⁰ Supra Note 15 at page 9

- A public notice will be issued to the relevant witness concerned with the inquiry. Mostly it is portrayed through the mode of print media such as newspapers.
- It should be an exhaustive inquiry and should contain all the aspects namely:
- The reasons for death etc.

Yet these reports are not reached to the commission and guidelines are not complied with.²¹

Anti-Torture Bill-

The PREVENTION OF TORTURE BILL, 2010 was introduced in the Lok Sabha in the budget session – which was set by the UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT to which India is a signatory and is nothing but a mere eyewash. The proposed legislation is not only a degradation from the standards set by the UN convention against torture, but, in many ways, is in direct opposition to the basic norm of adherence to at least the minimum standards set down with respect to the right to freedom from torture.

Prevention of Torture Bill, 2017-

If the malice take place by either person in authority or any such person inflicting torture with the consent of public servant will be held guilty under the law and will be provided with punishment for the same. The bill specifies that India is a signatory member of UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT. The act of torture shall include grievous hurt to the victim's limb or health or danger to his life. Any public servant if tortures the victim for the purpose of taking confession and extorting the information on the basis of language, religion, community, race, place of birth, caste or any other ground shall be liable for a minimum punishment of 3 years which further may be extended to ten years and fine on the basis of the gravity of the offence.²²

273rd Law commission-

Report of the Law Commission- recommended ratification of the U.N. Convention against Torture and other Cruel, Inhumane or Degrading Treatment (CAT). Cat was signed by India but yet to be ratified.

²¹ UP Police's brutality shows Indian law enforcement remains true to its colonial heritage, <https://theprint.in/opinion/security-code/up-polices-brutality-shows-indian-law-enforcement-remains-true-to-its-colonial-heritage/996914/> (last visited Sep 14, 2022).

²² shanKariasacademy, *Prevention of Torture Bill, 2017 | Current Affairs*, <https://www.iasparliament.com/current-affairs/prevention-of-torture-bill-2017> (last visited Sep 14, 2022).

D.K. Basu V. State Of Bengal in which the apex court observed, custodial violence (death in police custody/ lock-up, torture, rape) is a matter of deep concern. It infringes Article 21 of the constitution as well as the basic human rights and strikes a blow at rule of law. The state's action however, must be "right, just, and fair".

Nilabati Behera v. State of Orissa - The court made sure that the state could no longer escape liability in public law and had to be compelled to pay compensation.

Inderjeet V. State Of U.P- Supreme court of India held that prison restrictions amounting to torture, pressure or infliction and going beyond what the court authorities, are unreasonable as well as unconstitutional. Further, it extended that an under-trial or convicted prisoner cannot be subjected to physical or mental restraint, which is not warranted by the punishment awarded by the court, or which amount to human degradation.

CCTV Cameras-

In Paramvir Singh V. Baljit Singh (2020), the Supreme Court has directed states to cover more area of each police station under CCTV cameras and have storage facility of audio-video recording for 18 months.

XI. THE WAY FORWARD

- **Curbing Criminalization of Politics:** The criminal nexus with politics will have to be broken and reforms must start with the political system. Thus, there is a need for laws which debar persons with serious criminal cases from entering the assemblies and the Parliament.

- **Revamping Criminal Justice System:** There is a need to incorporate the **Menon Committee** and **Malimath Committee recommendations** for devising a national policy paper on the criminal justice system. Some of the key recommendations are as follows:

- Creation of a fund to compensate victims who turn hostile from the pressure of culprits.
- Setting up of separate authority at the national level to deal with crimes threatening the country security.
- A complete revamp of the entire criminal procedure system.

- **Independent Complaints Authority:** The Supreme Court has observed that there is a need to have an independent complaints authority to inquire into complaints of police misconduct.

- **The Model Police Act, 2006** requires each state to set up an authority comprising retired High Court Judges, civil society members, retired police officers and public administrators from another state.

- **Implementing the Supreme Court's Directive:** The Supreme Court's directions in Prakash Singh case 2006 on police reforms must be implemented. The court laid out seven directives where considerable work in police reforms is still needed.

XII. BETTER IMPLEMENTATION

- Rather than limiting itself to passing more guidelines, constitutional courts must seriously contend with the concrete cases that come their way and take a hard stand.

- **Passing compensation claims or ensuring timely prosecutions** in such cases could help break the sense of impunity. The Courts could also consider sanctions at a larger scale and impose monetary penalties at the district level, to drive home the message that the erring actions of one officer must be seen as a failure of the force itself.

- **Strengthening the magistrate:** The ordinary magistrate is the judicial actor wielding real power to realise a substantial change in police practices. It is the local magistrate before whom all arrested and detained persons must be produced within 24 hours, and thus becomes the point of first contact for a citizen with the constitutional rule of law.

- Separate investigation from law and order.

- The national police commission (1977-81), the law commission in its 154th report (1996) and the Malimath committee report (2003), and the Supreme Court in Prakash Singh v. Union of India (2006), have recommended that the investigating police should be separated from the law-and-order police to ensure better expertise in investigation.

- Increase the number of investigating officers.

- Display board on human rights

- The Supreme Court held that each arrest must be necessary and justified; having the authority to arrest is alone not sufficient.

- In Arnesh Kumar v. State of Bihar (2014), it was held that despite the offence being non-bailable under section 498A of the Indian Penal Code (IPC), which relates to torture for dowry, arrest is not mandatory as per section 41 of the code of criminal procedure (Crpc).

- In *Special Action Forum v. Union of India* (2018), the court further held that the police officer shall furnish to the magistrate the reasons and materials which necessitated the arrest for further detention of the accused.

- The police need to be trained better. The temptation to use third-degree methods must be replaced with scientific skills.²³

Thus, the need of the hour is to strike at the root cause of the problem and implement recommendations of various commissions to bring in necessary reforms.²⁴

XIII. CONCLUSION

The police are one of the coercive arms of governance and are assigned the task of maintaining law and order in society. When the police take the liberty of an individual and place him or her in police custody, it assumes full responsibility for the protection of the life and liberty of that person by the state itself under the obligation of domestic and international human rights laws.

India is a welfare state and governed by its constitution, which guarantees the life and personal liberty of citizens in general and persons in custody in particular. However, this is a deep matter of concern at the growing incidence of custodial crimes occurring in different parts of the country. Complaints of abuse of power and torture of suspects into custody of police and other law enforcement agencies having the power to detain a person for investigation in connection with interrogation of an offense are on an upward trend.

Compared with other crimes, custodial crimes are particularly heinous and reflect the betrayal of custodial trust by a public servant against the defenseless citizens in custody. Hence, it is the need of an hour to implement the laws that will help curb such instances.

²³ Supra Note 7 at page 4

²⁴ Supra Note 7 at page 4