A DISCUSSION ON JUDICIAL SUPERVISION OF POLICE FUNCTIONING

By: Divyansh Hanu Rathi

INTRODUCTION

The need to reform the police in India started being felt ever since the inception of state police in the last decade of eighteenth century, itself an effort to mitigate the excesses of "*Darogahs*" working for and paid by *Zamindars*. Complaints of torture by thestate police (working under Collectors) for realization of landrevenues led to the setting up of a "Commission for theInvestigation of Alleged Cases of Torture" in the MadrasPresidency, and its two-volume report in 1855 unveiled the reality of policing as based on torture and extraction of confessions.

The change from Company Raj to British Raj saw thepromulgation of a host of laws, including the Police Act, theCriminal Procedure Code, the Evidence Act, and various State Police Regulations which sought to give a human rightsorientation to policing by constraining their powers of arrest and use of force and by limiting the uses to which their records could be put to substantiate charges before a court of law, However the laws remained in the books and could not materially affect the practice, except in terms of presentation styles, as was concluded by the Police Commission of 1902.

Freedom from colonial rule did not mean freedom atrocities of Police, the atrocities of Police continued unabated. The legal scholar Upendra Baxi has said that "custodial violence or torture is an integral part of police operation in India", and the recent spate of arrest and prosecution of police officers of all ranks on charges of fake encounter, torture in custody and illegal detentions indicates that the need for reforms despite suggestions made by a plethoraof Commission and Committees, and their half-heartedimplementation, remains as pressing as ever.

As this historical account shows, the discourse on policereform is not so much about police ef fectiveness or police efficiency as it is about police conduct. The call for reforming the police has emanated not because of their failure to control crime, or detect crime, but on account of their unlawful, unscrupulous, brutal and deceitful behaviour.

The primary responsibility of Police is to protect life, liberty and property of citizens. It is for the protection of these rights that Criminal Justice System has been constituted assigning important responsibility to the Police. They have various of duties to perform, the most important among them being maintenance of Law and order and investigation of offences. The police are charged with the responsibility of protecting precious Human Rights of the citizens.

Whenever there is invasion or threat of invasion of one's human rights it is to the police that the citizen rushes for help. Unfortunately the contribution of the police in this behalf is not realized and only the aberrations of the police are noticed, highlighted and criticized. The aberrations must be corrected and the police respected for the difficult role they play even at the cost of their lives in the process of protecting the rights of the citizens.[1]

ROLE OF POLICE:

The institution of police is for the purpose of protecting the good and suppressing the evil in society by correctly enforcing the rules and regulations which man has created for himself to secure his moral development as an individual and material in development of the society[2].

The words *"Police" and "Police Officer"* need to be explained and understood. The term 'Police' has been defined in the **Police Act,1861** as "Police includes all persons who shall be enrolled under this act". But this definition is not exhaustive. The **Black's Law Dictionary**, defines the term as, "Police is the function of that branch of the administrative machinery of government which is charged with the preservation of public order and tranquillity, promotion of public health, safety and morals and prevention, detection and punishment of crimes.

There have been three types of Police system throughout the world namely the **People's Police, the Ruler Appointed Police, and Colonial Police[3].**

The police by the very nature should be People's Police, that is a body which has grown from amongst the people themselves by their voluntary contribution of labour for the guidance of individuals and the protection of society and maintaining its integrity.

The second type of Police is the ruler appointed police. When the ruler seized power by one means or other, he appointed a police force a police force to maintain order in the area and amongst the people he ruled. The existence of such a ruler appointed police can be traced to the earliest days of recorded history of the Egyptian or Persian civilisation.

The third type of Police, is the Colonial Police, appointed by a foreign power to carry out the

[1] Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs Report VOLUME I INDIA, March
[2] B.N Malik, A philosophy for the Police, Allied Publishers ,1969
[3] Dr. Deepa Singh, Human Rights and Police Predicament,2002

police functions in the subjugated country. This is the form of Police, which British introduced in the sub-continent of India. One of the good points of colonial police under the British rule was that Police must have roots in the people, came into the concepts of Indian Police.

The ruler appointed police naturally came in conflict with the national liberation movements in the country and had to act on behalf of the government and in this process acquired great deal of unpopularity.

The weakness of Indian Police still persists, because it not only to uphold the Constitution and the Fundamental Rights of the people but also the policies and politics of the ruling party, with which large masses of people may not be sometimes be in agreement. Hence police often come into conflict with people whenever there is an untoward expression of people's resentment against government measures.

ORGANIZATIONAL STRUCTURE OF POLICE

Each of the 29 states of India has a police force. The superintendence over it is exercised by each State Government. The head of the police force in the State is known as Director General of Police (DGP). The DGP is responsible to the State Government for the administration of the police force in the State and for advising the government on the police matters. State Police Organizations in India are structurally organized into various formations. The structural formation of any State Police in India is as follows:

State

↓

Zone

↓

Range

↓

District

↓

Sub Division

↓

Circle

↓

Police Station

Police units in India are well-structured hierarchical organizations. Though, there is marginal variation in the ranks and hierarchical order in the different organization, however, there is a general uniformity in this context in most of the police organizations. The rank and hierarchical structure of the police organization is as following:

Commissioner of Police (CP) or Director General of Police (DGP)

↓

Special Commissioner of Police (Spl CP) or Additional Director General of Police (ADGP)

↓

Joint Commissioner of Police (JCP) or Inspector General of Police (IGP)

↓

Additional Commissioner of Police (Addl CP) or Deputy Inspector General of Police (DIGP)

↓

Deputy Commissioner of Police (Selection Grade) (DCP) or Senior Superintendent of Police (SSP)

↓

Deputy Commissioner of Police (DCP) or Superintendent of Police (SP)

↓

Additional Deputy Commissioner of Police (Addl DCP) or Additional Superintendent of Police (Addl SP)

↓

Assistant Commissioner of Police (ACP) or Deputy Superintendent of Police (DSP)

↓

Inspector of Police (Ins.)

↓

Sub-Inspector of Police (SI)

↓

Assistant Sub-Inspector of Police (ASI)

↓

Police Head Constable (HC)

↓

Police Constable

Role of Courts in Effective Policing

While performing its duties, the police have to accomplish various types of functions. These functions can be purely administrative or field jobs. Apart from the routine departmental procedure the police have to perform different functions in its public dealing. These functions are categorised into two categories, to maintain the law and order and investigative functions. In this course, it has to deal with various types of reporting activities like arrest, detention, trials and procedures of bails and bounds. It is these functions through which, the police can either protect the human rights or on the opposite, can become the violator of the same. If the police perform these functions efficiently and effectively, it can become the protector of the human rights, but if performs them inefficiently or does not perform at all, it can endanger those very rights. Therefore to promote role of Police in administration of Justice effectively and efficiently modifications made in them from time to time by the Courts in India which will be discussed here.

I. PREVENTIVE DETENTION

Under **Article 22(5) of the Constitution of India**, there are provisions for preventive detention under special preventive detention law. Under the same Article, the provisions are made that the arrested person should, as soon as possible, be communicated the grounds of detention and he/she should be given the earliest opportunity to make a representation against the detention.

In the Supreme Court in the case of **Icchu Devi Choraria v. Union of India**[4], declared that personal liberty is a most precious possession and that life without it would not be worth living. Terming it as its duty to uphold the right to personal liberty, the court condemned *detention of suspects without trial observing that "the power of preventive detention is a draconian power, justified only in the interest of public security and order and it is tolerated in a free society only as a necessary evil".*

It further provided regarding preventive detention that:

i. The detained person must be supplied copies of the documents, statements and other materials on the basis of which she/he is being detained, without delay.

ii. The authorities who have detained a person must consider the representation of the detained person against the detention as soon as possible.

iii. The burden of proving that the detention is in accordance with the procedure established by law lies on the detaining authority.

II. POLICE REPORTS

One of the most important functions of the police is criminal investigation and all the procedures or the functions of the police regarding it are conducted and concluded in the form of various types of police reports. Under ***Section 2(1)(r) of the Code of Criminal Procedure,1973***, " The police report means a report forwarded by a police officer to a magistrate."[5]

These reports are mainly of three types –

[4] 1980 SCC 531
[5] Section .2(1) (r), Cr.PC

a) Initial or Preliminary Report, which can also be termed as 'First Informatory Report';

b) Supplemental or Progressive Report;

c) Closing or Final Report.

The report writing includes following aspects: - Gathering the facts; investigate, interview, interrogate.

i. Record the facts immediately, take notes, photographs and sketch map, prepare documentation

ii. Organise collected facts

iii. Write the report; concisely in paragraphs, and in sequence of events

iv. Evaluate the report, edit and revise it, if necessary

a) Preliminary Report or First Informatory Report

First Information Report (FIR) is the earliest and the first information which is received about the commission of the 'cognizable offence'. It sets the ball of the criminal justice process rolling.

The Supreme Court in **T.T. Anthony Vs State of Kerala**[6] has given directives that FIR is the record of the earliest information received about the commission of a cognizable offence. Therefore, question of registering second FIR does not arise. However, it is possible that more than one set of information may be received from time to time and from different people in respect of the same incident. In such a situation, before submitting the final report, the officer incharge of the police station must investigate "not merely the cognizable offence reported in the FIR but also other the connected offences found to have been committed in the course of the same transaction or the same occurrence."

In case of **Delhi Domestic Working Women's Forum v. Union of India and others**[7], the Supreme Court has given certain directives with respect to rape victims, which are as follows:

[6] 2001 SSC 181
[7] 1995 SCC 14

1. As soon as the rape victim reports the crime at the police station, she must be informed about her right to get a lawyer before any questions are asked from her. The facts that she was informed of this right must be mentioned in the police report

2. The police should make arrangements to provide the victim with a lawyer if she does not have access to one

3. In all rape trials, anonymity of the victim must be maintained.

Supreme Court in the case of **Lalita Kumari v. Union of India**[8], dealt extensively registration of FIR under Section 154 and laid down the following guidelines:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/ family disputes
(b) Commercial offences
(c) Medical negligence cases

[8] (2014) 2 SCC 1

(d) Corruption cases
(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry. (After modification of the judgement done on 05 march,2014)

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

b) **Report of Arrest**

Under Section 58 of the Cr. P.C, when a police officer makes an arrest without warrant, then the officer incharge has to inform the magistrate of the 'Ilaka' or the area. It is also mandatory for SHOs in compliance of the judgment of Supreme Court in **D.K.Basu v. West Bengal[9].**

III. INVESTIGATION

After registering the First Information Report (in short FIR), the police starts the investigation. As per Supreme Court verdict in **State of West Bengal v. Swapan Kumar Guha and Others[10]**, an investigation cannot be started on mere unfounded suspicion. The "*unlimited discretion*" according to the Supreme Court, to start the investigation is a "*ruthless destroyer of personal freedom."* The right of the police to conduct an inquiry must be conditioned by the existence of reason to suspect the commission of a cognizable offence. Such reason can be established only if facts in the FIR point towards an offence being committed.

The Supreme Court further laid down that an FIR which *"does not allege or disclose that the essential requirements of the penal provision, cannot form the foundation or constitute the starting point of a lawful investigation"*.

[9] AIR 1997 SC 610
[10] 1982 SCC 561

In this case, the Supreme Court laid down following clear directives as far as investigation is concerned:

i. It is essential before starting an investigation that facts mentioned in the FIR disclose all the elements that are required to make up a cognizable offence.

ii. Powers of investigation must be exercised in strict accordance with constitutional guarantees and legal provisions.

iii. Courts have a duty to intervene in the investigation process to prevent the harassment of individuals, if their rights are being violated, and correct procedure is not being followed.

IV. RIGHT AGAINST SELF-INCRIMINATION

During the course of investigation, one major issue which crops up is that of self incrimination. Under Article 20(3) of the Constitution of India, no person shall be compelled to be a witness against him/herself. Section 161(2) of the Cr.P.C (1973) cast a duty on a person to truthfully answer all the questions except those which establish a personal guilt.27 However, under section 179 of the Indian Penal Code, refusing to answer any question asked by a public servant, who is authorized to ask that question, is punishable.

But in the famous **Nandini Satpathy v. P. L Dani**[11], the Supreme Court has cleared that although a person cannot refuse to answer but he cannot at the same time be "forced" to do so.

In this case, the Supreme Court laid down the following guidelines regarding self-incrimination: -

i. An accused person cannot be coerced or influenced into giving a Statement pointing to her /his guilt.

ii. The accused person must be informed of her/his right to remain silent and also of the right against self-incrimination.

iii. The person being interrogated has the right to have a lawyer by his/her side if he/she so desires.

[11] AIR 1978 SC 1025

iv. An accused person must be informed of the right to consult a lawyer of his choice at the time of questioning, irrespective of the fact whether he/she is under arrest or in detention .

v. Women should not be summoned to the police station for questioning in breach of section 160(1) of the Cr.P.C.

vi. As far as consulting a lawyer during the course of interrogation is concerned, the Supreme Court in ***D.K. Basu v. State of West Bengal***[12] *has clarified that the arrestee can meet his/her lawyer during the interrogation but not throughout the interrogation.*

a.) Phone Tapping

Article 19 of constitution of India, the right to express once convictions and opinions by word of mouth is conferred to every citizen, thus telephone tapping violates this right. Under Section 5(2) of Indian Telegraph Act., 1882, the investigating agency has no "unguided and unbridled power" to invade a person's privacy through telephone tapping[13].

The Supreme Court in **People's Union for Civil Liberties v. Union of India**[14], has laid down following directives regarding telephone tapping: -

1. Tapping of telephone is prohibited without an authorizing order from the Home Secretary, Government of India or the Home Secretary of the concerned State Government (in case of emergency this power may be delegated to an officer of the home department not below the rank of Joint Secretary).

2. The order, unless it is renewed, shall cease to have authority at the end of two months from the date of issue. Though the order may be renewed, it cannot remain in operation beyond six months.

3. Telephone tapping or interception of communication must be limited to the address(es) specified in the order or to address(es) likely to be used by a person specified in the order.

4. All copies of the intercepted material must be destroyed as soon as their retention is not necessary under the terms of section 5(2) of the Indian Telegraph Act., 1882.

[12] AIR 1997 SC 610
[13] Section 5(2) of the Indian Telegraph Act, 1882
[14] AIR 1997 SC 568

IV. ARREST

One of the most prominent functions or actions of the police is to make an arrest after the required investigation. Article 22(1) of the Constitution of India lays down that no person, who is arrested, shall be detained in custody without being informed, as soon as may be, of the grounds of arrest nor shall he or she be denied the right to consult and be defended by a legal practitioner of his/her choice. Under section 57 of the Cr.P.C., the arrested person cannot be kept in the custody for more than 24 hours without the order of the Magistrate. Under Article 22 (2) of the Constitution of India, the police has to inform or to present the arrested person before the magistrate of the area, within 24 hours of the arrest.

The Supreme Court in **Joginder Kumar v. State of UP and other**[15] lays down following directives regarding the arrest: -

i. Arrests are not to be made in a routine manner. The officer making the arrest must be able to justify its necessity on the basis of some preliminary investigation.

ii. An arrested person should be allowed to inform a friend or relative about the arrest and the place, where she/he is being held. The arresting officer must inform the arrested person when she/he is brought to the police station, of this right and is required to make an entry in the diary as to who was informed.

iii. It is the duty of the magistrate before whom the arrested person is produced, to satisfy her/himself that the above requirements have been complied with.

The Supreme Court, in **D.K. Basu v. State of West Bengal**[16], has laid down specific guidelines required to be followed while making arrests. The principles laid down by the Supreme Court are given hereunder:

(i) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designation. The

[15] 1994 SCC 260
[16] AIR 1997 SC 610

particular of all such personnel who handle interrogation of the arrestee must be recorded in a register.

(ii) That the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(iii) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(iv) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aids Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(v) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(vi) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclosed the name of the next friend of the person who has been informed of the arrest and the names land particulars of the police officials in whose custody the arrestee is.

(vii) The arrestee should, where he so request, be also examines at the time of his arrest and major and minor injuries, if any present on his /her body, must be recorded at that time. The Inspector Memo' must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(viii) The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention In custody by a doctor on the panel of approved doctor appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(ix) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.

(x) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(xi) A police control room should be provided at all district and State headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

a.) **Identification of the Accused**

One of the major issues in the criminal justice procedure is that of 'identification' of the accused. Only after a right identification, the next procedure can be follow. In many cases, the accused earned acquittal because their identification was not free from doubt.

The *Rajasthan High Court* in **State of Rajasthan v. Ranjida**[17] ,has set a sound precedent in this regard. Holding of test identification parade is all the more necessary where the name of the offender is not mentioned by those who claimed to be an eye witnesses of the incident but claim to be not able to recall the features in sufficient detail.

The Supreme Court in the case of **Ramanathan v. State of Tamil Nadu**[18], has observed that,

> *"the holding of a test identification in such cases is as much in the interest of the investigation agency or the prosecution as in the interest of the suspect or the accused. While, it enables the investigating officer to ascertain the correctness or otherwise of the claim of those witnesses who claim to have seen the perpetrator of the crime and their capacity to identify him and thereby fill the gap in the investigation regarding the identity of the culprit, it saves the suspect or the accused from the sudden risk of being identified in the dock by the self-same witnesses during the course of the trial. The line-up of the suspect in a test identification parade is therefore a workable way of testing the memory and veracity of witnesses in such cases and has worked well in actual cases."*

[17] AIR 1962 Raj. 78
[18] AIR 1979 SC 1204

b). Women in Police Custody

Women in custody are particularly vulnerable to physical and sexual abuse. Under section 376 (2) of Indian Penal Code, 1860 custodial rape is punishable by a minimum of 10 years rigorous imprisonment. Under Section 51(2) of the Cr.P.C., it is the duty of officer in-charge of police station to ensure that women are not harmed and searches of their persons are carried out only by women with strict regard of decency.

The Supreme Court in the case of **Sheela Barse v. State of Maharasthra**[19] has given following *directives regarding the safety and security of women in police lockup:-*

(a) Female suspects must be kept in separate lockups under the supervision of female constable.

(b) Interrogation of females must be carried out in the presence of female police persons.

c.) Handcuffing

Under Article 14,19 and 21of the Constitution of India, use of handcuffs and fetters on prisoners violates the guarantees of basic human dignity and this has been stated by the Supreme Court in **Sunil Batra v. Delhi Administration**[20],but still the handcuffs can be used by the police and Supreme Court has laid down following directives regarding it: -

i. Handcuffs are to be used only if a person is :

a. involved in a serious non-bailable offence and has been previously convicted of a crime and /or

b. is of desperate character – violent, disorderly or obstructive; and /or

c. is likely to commit suicide; and /or

d. is likely to attempt escape

ii. The reason why handcuffs have been used, must be clearly mentioned in the daily diary report. They must also be shown to the court.

iii. Once an arrested person is produced before the court, the escorting officer must take the court's permission before handcuffing her/him to and fro from the court to the place of custody.

[19] 1983 SCC 96
[20] 1978 SCC 494

iv. The Magistrate before whom an arrested person is produced must inquire whether handcuffs or fetters have been used. If the answer is yes, the officer concerned must give an explanation[21].

The Supreme Court has also stated that the violation of court directives, regarding handcuffing by a police officer or any member of the jail establishment is punishable under Contempt of Court Act 1971.

In **Sunil Batra Case**[22], the Supreme Court has also made certain observations regarding the use of bar fetters which are as follows:

i. It must be absolutely necessary to put fetters;

ii. The reason for doing so must be recorded;

iii. The basic condition of dangerousness must be well grounded;

iv. Natural justice must be observed;

v. The fetter must be removed at the earliest opportunity;

vi. There should be a daily review of the absolute need for bar fetters; and

vii. Finally, if it is found that the fetters must continue beyond say (certain time) it would be illegal unless an outside agency like the district magistrate or sessions judges directs its continuance.

In the case of **Prem Shankar Shukla v. Delhi Administration**[23], the Supreme Court found the practice of *using handcuffs and fetters on prisoners violating the guarantee of basic human dignity*, which is part of the constitutional culture in India and thus not standing the test of equality before law (Article 14), fundamental freedoms (Article 19) and the right to life and personal liberty (Article 21).

It observed that "*to bind a man hand and foot' fetter his limbs with hoops of steel; shuffle him along in the streets, and to stand him for hours in the courts, is to torture him, defile his dignity, vulgarise society, and foul the soul of our constitutional culture"*. Strongly denouncing handcuffing of prisoners as a matter of routine, the Supreme Court said that to "*manacle a man*

[21] Prem Shankar Shukla v. Delhi Administration, 1980 SCC 526
[22] 1978 SCC 494
[23] 1980 SCC 526

is more than to mortify him, it is to dehumanize him, and therefore to violate his personhood….".

d.) Preventive Detention

Under **Article 22(5) of the Constitution of India**, there are provisions for preventive detention under special preventive detention law. Under the same Article, the provisions are made that the arrested person should, as soon as possible, be communicated the grounds of detention and he/she should be given the earliest opportunity to make a representation against the detention.

In the Supreme Court in the case of **Icchu Devi Choraria v. Union of India**[24], declared that personal liberty is a most precious possession and that life without it would not be worth living. Terming it as its duty to uphold the right to personal liberty, the court condemned *detention of suspects without trial observing that "the power of preventive detention is a draconian power, justified only in the interest of public security and order and it is tolerated in a free society only as a necessary evil".*

It further provided regarding preventive detention that:

i. The detained person must be supplied copies of the documents, statements and other materials on the basis of which she/he is being detained, without delay.

ii. The authorities who have detained a person must consider the representation of the detained person against the detention as soon as possible.

iii. The burden of proving that the detention is in accordance with the procedure established by law lies on the detaining authority.

V. BAILS AND BONDS

Bail is another important aspect regarding the arrested person. The provisions regarding it are contained in Chapter XXXIII of Cr.P.C, from Section 436 to 450. Under Section 2(A) of the

[24] 1980 SCC 531

Cr.P.C., an offence is bailable if it is included in the first schedule. Under section 436(1) of the Cr.P.C., the police is duty bound to release the arrested person if he/she is willing to give bail. Under Section 440(1) of the Cr.P.C., the amount of bail bond shall be fixed with due regard to the circumstances of the case and it shall not be excessive. Under Section 440 (2) of the Cr.P.C., the High Court and the Sessions Court are empowered to reduce the bail amount fixed by the police or the magistrate.

But, as Supreme Court has made an observation in **Hussainara Khatoon and others v. Home Secretary of State of Bihar**[25], that even after the re-enactment in 1974, the Cr.P.C. continues to require people to be released on personal bond who pledge a certain amount of money, as far too many people spend time in prison simply because the bail amount is too high and they are unable to arrange for the money.

The Supreme Court has observed that it is *a "traversity of justice" that certain persons end up spending extended time in custody, not because they are guilty but because the courts are too busy to try them, and they as the accused, are too poor to afford bail. Poor people find it difficult to arrange for bail because quite often, the bail amount fixed by the Magistrate or the police is "unrealistically excessive".*

In this context, the **Supreme Court** in the above stated case has made following directives regarding bails and bonds:-

(i). If the accused have the roots in the community, that would deter them from fleeing. They may be released on bail by furnishing a personal bond without sureties. The following facts may be taken into account in this regard: -

a) the length of residence of the accused in the community

b) the employment status and history of the accused

c) family ties and relationships of the accused

d) the reputation, character and monetary condition of the accused

e) any prior criminal record including record of prior release on bail

f) the existence of responsible persons in the community who can vouch for the reliability of the accused

g) the nature of the offence that the accused is charged with; probability of conviction; and likely sentence insofar as these are relevant to the risk of non-appearance of the accused

[25] AIR 1979 SC 1360

(ii). The bond amount should not be based merely on the nature of the charge but should be fixed keeping in mind the individual financial circumstances of the accused.

VI. CUSTODIAL VIOLENCE

Custodial violence has become a major problem as far as the functioning of the police is concerned. It has brought a bad name to the police and the legal arrangements regarding it should also be studied before studying other aspects of this problem. In **D.K. Basu v. State of Bengal**[26], the Supreme Court has made certain observations regarding custodial violence. The court agreed that the police has a legitimate right to arrest a criminal and to interrogate him /her in the course of investigation. However, the law does not permit the use of third degree method or torture on an accused person. "*Torture for extracting any kind of confession would neither be right nor just nor fair"*.

The Supreme Court further expounded that, *"Custodial torture is a naked violation of human dignity"*. The right to life guaranteed under the Constitution also includes the right to live with human dignity. Thus, those who violate this fundamental right should be prosecuted by the State.

The Apex Court also observed that in such instances, arrests are either disguised by not recording them or showing detention as prolonged interrogation. The court stressed that no matter what the circumstances, the State or its agents are not allowed to assault or torture people.

In this regard the **Supreme Court** in the above case, laid down guidelines including *Use of third degree methods or any form of torture to extract information is not permitted* as discussed under Arrest, to be circulated to the Director Generals of Police and the Home Secretary of every State and Union territory and stressed that it shall be their *obligations to put these guidelines up in every police station at a conspicuous place.*

The Supreme Court has also stated that failure to comply with these guidelines will not only render an officer, liable for punishment through departmental action but it also amounts to 'contempt of court'. As far as custodial violence against women is concerned, the Supreme Court has also given directives regarding it[27].

[26] AIR 1997 SCC 610
[27] Sheela Barse v. State of Maharashtra, 1983 SCC 96.

VII. PROTECTION OF WITNESSES

Firstly it is essential to understand the term "Witness". It is defined in **Delhi Witness Protection Scheme, 2015** as follows;

" Witness means any person, who possesses information or document about any crime regarded by the competent authority as being material to any Criminal proceedings and who has made a statement, or who has given or agreed to give evidence in relation to such proceedings";

The Supreme Court in **Zahira Habibulla H. Sheikh and Another v. State of Gujarat and Others**[28] came down heavily on the *State administration in general and the investigating agency in particular for rashly and negligently handling their duties and abdicating their responsibilities.* The categorical finding is that the whole machinery of a State failed in maintaining the confidence of public in the justice delivery system. Apex Court in strong words reminded the trial Courts to be alive to the reality about the witness hostility. One of the predominant points taken note of by the Hon'ble Supreme Court is the lack of witness protection in our country. The Apex Courts in the above case laid down that,

> "*If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control, to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by the court on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface. Broader public and social interest require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State representing by their presenting agencies do not suffer (p.395) ... there comes the need for protecting the witnesses. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth presented before the Court and justice triumphs and that the trial is not reduced to mockery. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power. ...As a protector of its citizens, it has to ensure that*

[28] (2004) 4 S.C.C. 158

during trial in court, the witness could safely depose truth without any fear of being haunted by those against whom he has deposed."

The Delhi High Court, in **Manu Sharma v. Union of India**, asked the government to frame a policy for protection of witnesses, depending on the sensitivity of the case and threat perception.

In pursuance of a 2013 Delhi High Court order passed by a DB headed by HMJ S. Ravinder Bhatt that the original Draft was prepared and presented by *Surinder S Rathi, Addl District & Sessions Judge/OSD, DSLSA* before it was approved by a High Powered Committee consisting of Principal Secretary Law, Principal Secretary Home, Secretary Finance, Director of Prosecutions, GNCTD, Commissioner Delhi Police and OSD, DSLSA. *Delhi became the first state in the country to announce a scheme for witness protection as the state government notified* ***The Delhi Witness Protection Scheme,2015.***

Under the Scheme, different types of protection measures have been provided which are as follows:

The witness protection measures ordered shall be proportional to the threat and for limited duration. They may include:

(a) Ensuring that witness and accused do not come face to face during investigation or trial;

(b) Monitoring of mail and telephone calls;

(c) Arrangement with telephone company to change witnesses telephone numbers or assign him or her an unlisted telephone number;

(d) Installation of security devices at witnesses home;

(e) Concealment of identity of the witness by referring to him/her with the changed name or alphabet;

(f) Emergency contact persons for the witness;

(g) Close protection of witnesses house and regular patrolling of his house.

(h) Temporary change of his residence;

(i) Escort to and from the court and provision of Government vehicle or a State funded conveyance for the date of hearing;

(j) Holding of in-camera trials;

(k) Allowing a support person to remain present during recording of statement and

deposition;

(l) Usage of specially designed vulnerable witness court rooms which have special arrangements like live links, one way mirrors and screens apart from separate passages for witnesses and accused, with option to modify the audio feed of witnesses voice so he/she is not identifiable.

(m) Ensuring expeditious recording of deposition during trial on day to day basis without adjournments;

(n) Awarding time to time periodical financial aids/grants to the witness from Witness Protection Fund for the purpose of re-location, sustenance or starting new vocation/profession, if desired;

(o) Any other form of protection measures considered necessary, and specifically, those requested by the witness.

They need to be assured that they will receive support and protection from intimidation and the harm that criminal groups may seek to inflict upon them in attempts to discourage or punish them from co-operating. Hence, legislative measures to emphasize prohibition against tampering of witnesses have become the imminent and inevitable need of the day. Even Law Commission of India has recommended that witnesses should be protected from the wrath of the accused in any eventuality.

VIII. DUTY TOWARDS VICTIMS-

In case, **Budhdev Kamaskar Vs Govt. of West Bengal**[29] in, while dealing with a case of a rescued Sex Worker it was directed a project be started on pilot basis in Delhi for Rehabilitation and Assurance of Dignity of the trafficked Sex Worker covering issues of Trafficking, rehabilitation and assurance of dignity of the Sex Workers as Citizens.

IX. DETENTION OF JUVENILES IN ADULT PRISONS-

In case, **Court on its Own Motion Vs. Department of Women and Child Development, Govt. Of NCT of Delhi** [30], DB of Delhi High Court found that Police is passing of and arresting

[29] W.P.(Crl.) No. 135/2010
[30] W.P. (C) No. 8889/11

Juveniles as Adults and sending them to Adult Prisons. Directions were issued to DSLSA & NCPCR to conduct inspections in all the jails in order to identify suspected Juveniles who might have been lodged in Adult Jails. Juveniles were rescued and produced before Juvenile Justice Boards.

X. JUDGES GAVE TRAINING TO JUVENILE WELFARE OFFICERS AND CHILD WELFARE COMMITTEES-

In case, **Sampurna Behura Vs Union of India & Ors**[31], Hon'ble Supreme Court ruled that State Legal Services Authorities headed by Judicial Officers shall Train JWOs and CWC Members.

CONCLUSION:

The primary responsibility of Police is to protect life, liberty and property of citizens. It is for the protection of these rights that Criminal Justice System has been constituted assigning important responsibility to the Police. They have various duties to perform, the most important among them being maintenance of Law and order and investigation of offences. The police are charged with the responsibility of protecting precious Human Rights of the citizens. Whenever there is invasion or threat of invasion of one's human rights it is to the police that the citizen rushes for help. Unfortunately the contribution of the police in this behalf is not realized and only the aberrations of the police are noticed, highlighted and criticized. The aberrations must be corrected and the police respected for the difficult role they play even at the cost of their lives in the process of protecting the rights of the citizens.

[31] W.P. (C) No. 473/2005